

IN THE MATTER OF
CENTRAL PATTERN & FOUNDRY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2954. Complaint, Oct. 21, 1936—Decision, May 14, 1938

Where a corporation engaged in the manufacture, sale, and distribution of aluminum, brass, and bronze castings and patterns, manufactured from ingot metals made to specifications, and from virgin ingots, gates, sprues, and mismachined or scrapped castings—

Described as "clean, smooth aluminum castings at a price as low as 23 cents per pound, using *only new ingot metals*," products, in fabrication of which it used virgin ingots and misrun or mismachined and scrapped castings;

With effect of misleading members of trade and substantial portion of purchasing public into erroneous belief that it used the ordinarily more costly and superior primary or virgin aluminum in fabrication of its products, represented as new ingot metals, and into purchase, by reason thereof, of substantial quantities of said products, and of unfairly diverting trade to it from competitor manufacturers and distributors of aluminum and other castings, who do not misrepresent type or classification of metal used in fabrication of their products, and who advertise, sell, and distribute aluminum and other castings in commerce among the various States and in the District of Columbia:

Held, That such acts and practices were to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Central Pattern & Foundry Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Central Pattern & Foundry Company, is now and for several years last past, has been a corporation, organized, existing, and doing business under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago and State aforesaid.

It has been for several years last past and now is engaged in the production of aluminum and other castings and in the sale and distribution of such products in commerce between the State of Illinois and the various other States of the United States, and in the District of Columbia.

It causes its products when sold to be transported from said place of business to the purchasers thereof located in the various States of the United States other than the State of Illinois, and in the District of Columbia.

Such purchasers consist of manufacturers of various kinds who use aluminum in the fabrication of their particular products, foundries of various kinds, and others selling castings of various metals.

In the course and conduct of its business, the said respondent, Central Pattern & Foundry Company has been, and now is, in substantial competition with other individuals, partnerships, and corporations engaged in the sale in interstate commerce of aluminum and other castings.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, Central Pattern & Foundry Company, in soliciting orders for its aforesaid products has distributed circular letters among customers and prospective customers, including customers of its competitors hereinafter described in paragraph 3 hereof, wherein it has offered and offers for sale clean, smooth aluminum castings at a price as low as 23 cents per pound using only "new ingot metals."

In truth and in fact, the words "new ingot metals" have signified and meant for many years to the trade, and now signify and mean to it, that castings so described have been, were and are, made from virgin ingots. The products offered for sale and sold by respondent, described and designated as "new ingot metals," have not been and are not made from virgin ingots, have not been and are not "new ingot metals" as understood by the trade or the consuming public, but have been and are made from secondary or so-called No. 2 of grade No. 12 remelted metals and alloys.

PAR. 3. There are now and for several years last past have been individuals, partnerships, and corporations offering for sale and selling in interstate commerce in competition with respondent, new ingot metals or castings made from virgin ingots, or virgin ingot metals and also from secondary or so-called No. 2 of grade No. 12 remelted metals and alloys who truthfully advertise, describe, and represent such products.

PAR. 4. The practice of respondent described in paragraph 2 hereof has had and has the capacity and tendency to mislead and

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deceive, has misled and deceived and does mislead and deceive the trade and purchasing public into the belief that the aforesaid representation and statement of respondent in paragraph 2 hereof regarding the use exclusively in its aluminum castings of "new ingot metals" has been and is true and into the purchase of respondent's said products in reliance on such erroneous belief.

The aforesaid practice of the respondent also has had and has the capacity and tendency to and does, unfairly divert trade to respondent from its competitors mentioned in paragraph 3 hereof who truthfully represent, advertise, and describe their products, and as a result thereof, respondent has been and is doing substantial injury to such competitors in the course of such competition.

PAR. 5. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 21, 1936, issued, and on October 23, 1936, served its complaint in this proceeding upon the respondent, Central Pattern & Foundry Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before John L. Hornor, an examiner of the Commission, theretofore duly designated by it. No testimony or other evidence was introduced by the respondent in opposition to the allegations of the complaint. The said testimony and other evidence in support of the allegations of the complaint were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (no brief having been filed by respondent and no oral argument having been requested); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Central Pattern & Foundry Company, is an Illinois corporation organized in March 1929. Its principal office and place of business are at 3737 South Sacramento Avenue, Chicago, Ill. It is engaged in the manufacture, sale, and distribution of aluminum, brass and bronze castings, and wood and metal patterns, which are sold to manufacturers generally throughout the United States. Respondent's products are manufactured from ingot metals made to specifications, virgin ingots, gates, sprues, and mismatched or scrapped castings. Respondent's dollar volume of business for 1936 was approximately three-quarters of a million dollars.

When orders are received for respondent's said products, it causes them to be shipped from its said place of business in Chicago, Ill., to the purchasers thereof located at various points in States of the United States other than the State of Illinois. The respondent now maintains, and for several years last past has maintained, a course of trade in said products in commerce between and among the various States of the United States.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the manufacture, sale, and distribution or in the sale and distribution, of aluminum and other metal castings in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. The ore from which aluminum is taken is called bauxite. It is dug out of the ground, usually by open mining. After bauxite is mined, it is reduced to alumina, which is generally done by a chemical process. The alumina is then reduced to aluminum by an electrolytic process. The aluminum is then remelted and made into convenient shapes and forms which are called ingots.

Aluminum is a metal, and is divided generally in two classifications, viz., primary or virgin aluminum and secondary aluminum. Primary or virgin aluminum is the metal obtained by an electrolytic treatment of alumina and is the best quality aluminum. It is generally higher in price than secondary aluminum and comes nearer to meeting specifications than does secondary aluminum. Secondary aluminum is that which has lost its original identity as to source, and is obtained by remelting used parts and waste, such as gates, sprues or mismatched, and scrapped castings. Secondary aluminum usually contains impurities, such as copper and zinc, and lacks the elasticity of the primary metal.

Both classifications of aluminum are used in the manufacture of aluminum castings. Castings are generally manufactured according

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to specifications, such as the S. A. E. or A. S. T. M. specifications. In some instances, the purchaser specifies that only primary or virgin metal be used. In other instances, however, the purchaser does not specify which classification of the metal is to be used, but leaves the matter to the discretion of the manufacturer.

PAR. 3. In the course and conduct of its business, as described herein, the respondent distributed a circular letter among customers and prospective customers, in which it offered for sale "clean, smooth aluminum castings at a price as low as 23 cents per pound, using *only new ingot metals*." Respondent used virgin ingots, misrun or mismachined, and scrapped castings, in the fabrication of its said products.

There is no specific classification in the castings industry such as "new ingot metals." However, based upon the testimony of foundrymen, sales managers, salesmen, purchasing agents, and executive officers of manufacturers of castings of various kinds, the Commission finds that the expression "new ingot metals," when used to describe aluminum and other castings means virgin or unused metals, and that castings so described are manufactured from only primary or virgin metal.

PAR. 4. The use by respondent of the representations set forth herein, in describing its aluminum castings, has had, and now has, the capacity and tendency to mislead, and does mislead, members of the trade and a substantial portion of the purchasing public into the erroneous belief that respondent uses only primary or virgin metal in the fabrication of its products, which are represented as "new ingot metals," and as a result of such erroneous belief, into the purchase of substantial quantities of respondent's said products.

There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of aluminum and other castings who do not misrepresent the type or classification of metal used in the fabrication of their products, who likewise advertise, sell and distribute aluminum and other castings in commerce among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade has been, and is now being diverted unfairly to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent, Central Pattern & Foundry Company, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and brief filed herein in support of the complaint (no brief having been filed by respondent and no oral argument having been requested) and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Central Pattern & Foundry Company, its agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of aluminum castings in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using the expression "only new ingot metals," or any other expression or device of similar import and meaning, to describe its aluminum castings, or the metal from which such castings are made, unless such castings are manufactured wholly from primary or virgin aluminum.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
COLONIAL DAMES, INC., AND COLONIAL DAMES
COMPANY, LTD.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3104. Complaint, June 7, 1937¹—Decision, May 16, 1938

Where two corporations engaged in manufacture and sale and sale and distribution, from Hollywood, of a certain line of preparations for use in the care, treatment, and beautification of the skin—

- (a) Included words "Colonial Dames" in their respective corporate names and made use thereof in listing, identifying and describing their said businesses, and in trade names of said various preparations and made use thereof in identifying and describing their various preparations in advertisements in newspapers, pamphlets, radio broadcasts, etc., and as a trade name on the packages and containers in which sold, and referred to the "Head," "Chief Chemist," or "Famous Beauty Consultant" of their "Colonial Dames Laboratories," in connection with sale of their said products, and more particularly in connection with radio advertising thereof, and in conveying to prospective purchasers among the consuming public various messages, creeds, and representations;

Notwithstanding fact their said preparations were not produced, approved, sponsored or recommended by, or in any manner connected with or related to, any of several patriotic, historical and social organizations with national or more or less wide-spread ramifications and chapters, and history and membership running back for many years, and so named or identified, and none of which had ever engaged in manufacture or sale of cosmetics or any other preparation or product of commerce;

With effect of misleading and deceiving a substantial portion of purchasing public into erroneous belief that said preparations were produced, approved, sponsored, endorsed, or recommended by one or more of such societies; and

- (b) Represented in advertising their said products in newspapers, circulated in various parts of the United States and through pamphlets, etc., and radio broadcasts, that the "Beauty Wash," included in their aforesaid line and sold under said trade name, would have an instant beautifying effect on the skin, and that it worked like magic in banishing stubborn blackheads, etc., and, while not a chemical bleach, would gently bleach the skin with whitening action derived from the natural elements from which made;

Facts being it did not have said effects or tone fallow skins and effect was merely to cleanse and not to bleach, and it was not the answer to stubborn blackheads, etc.;

- (c) Represented, as aforesaid, that the "Massage Cream," included in its said line and sold under aforesaid designation, was a superlative tissue cream and quickly banished, by reason of almond oil content, all traces of dryness and sluggishness, increased circulation of fresh, pure blood, etc.,

¹ Amended.