

IN THE MATTER OF  
THE LUMINO COMPANY, INC.

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

*Docket, 3222. Complaint, Sept. 2, 1937—Decision, July 2, 1938*

Where a corporation engaged in the manufacture, sale, and distribution of a material or compound for structural waterproofing and dampness prevention, under the name "Lumino," in competition with others similarly engaged in sale and distribution of materials or compounds for waterproofing and dampness prevention in interstate commerce and in the District of Columbia—

Represented, in circulars and pamphlets supplied dealers for distribution among prospective users and in advertising mats for dealers' use in advertising in local papers, that its said product was a true waterproofing material or compound and, applied as directed, as a coating to brick, concrete, cement, stucco, or other surfaces, caused such construction to become impervious to water and dampness, through such statements, among many others, as "Once properly applied, you need have no further fear of dampness seeping through," " \* \* \* will waterproof your damp, wet cellar from the inside," " \* \* \* will waterproof exterior masonry walls permanently!," "Positively waterproof," and on labels of the containers thereof represented the same as a transparent waterproofing for interior or exterior use, and that it "Positively waterproofs concrete, concrete blocks, cement, brick, stucco";

The facts being that said product, applied as directed, acted only as a water repellant and dampness resisting material, and, while better than some so-called waterproofings analyzed, was less permanent than some of the nontransparent metallic base products, and, as disclosed by Government analyses of such product, in common with and as one of a large number of so-called waterproofing and dampness resisting materials or compounds, of varying degrees of partial efficacy only, and of uncertain and varying duration as water repellants and dampness resisters, it did not make either the walls or surfaces of concrete, cement, brick, or stucco structures impervious to water or dampness or totally prevent water or dampness from entering the same or make the interiors dry or free therefrom, and to designate and describe such products, notwithstanding the desirability and great need thereof in construction as "waterproofing" or "dampness preventive," was misnomer;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations and implications were true, and of causing a substantial portion thereof, by reason of such belief, to buy its said product, and thereby unfairly divert trade in said commerce to it from competitors who do not promote or attempt to promote the sale of their products by the use of such false and misleading representations; to the substantial injury of competition among and between the various States and in the District of Columbia;

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

*Mr. Wm. T. Chantland* 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 The Lumino Company, Inc., a corporation, hereinafter referred to as respondent, has been, and is now, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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, The Lumino Company, Inc., is a New York corporation with its office and principal place of business at 515 Madison Avenue, New York, N. Y. Said respondent is now, and for several years last past has been, engaged in the business of manufacturing and selling an alleged waterproofing material or compound, known as "Lumino."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said product, when sold, to be transported from its place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondent now maintains a constant current of trade and commerce in said product distributed and sold by it between and among the various States of the United States.

PAR. 3. In the course and conduct of its said business, respondent is now and has been in substantial competition with individuals, firms, and corporations engaged in the business of selling and distributing waterproofing materials in commerce among and between the various States of the United States.

PAR. 4. In the course and operation of its business in said commerce and for the purpose of inducing the purchase of its said product, respondent supplies dealers purchasing said product for resale with circulars and pamphlets for distribution among prospective users and supplies such dealers with advertising mats which are used in advertisements placed in local papers by such dealers, which contain many representations regarding the effectiveness of the product "Lumino" as a waterproofing material or compound. Respondent

## Complaint

27 F. T. C.

also places representations as to the effectiveness of the product "Lumino" as a waterproofing material or compound on the labels of the containers in which the product is offered for sale and sold.

Typical of the representations so used by the respondent in said advertising matter as aforesaid are the following:

**Reclaim Your Wet Cellar or Damp Building**

**Luminizing Your Cellar Adds Another Room to Your Home.** "Luminizing" is the name given to the Lumino method of treating walls built of brick, cement, concrete blocks, concrete or stone to make them absolutely moisture proof.

It penetrates and forms a leathery film that has an almost unbelievable resistance to water. No matter if your walls are damp when you start, Luminize actually dries in the presence of water itself.

Once properly applied you need have no further fear of dampness seeping through.

Luminize the outside, too. The annoying presence of moisture and dampness in walls built of brick, stucco and concrete can be entirely eliminated by Luminizing.

No matter whether your house is new or old—to Luminize it means trouble of leakage is forever gone.

\* \* \* \* \*

**Wet Basements Are Unhealthy**

**Leaky Walls Are Expensive**

**L U M I N I Z E**

**Will Make Them Dry**

**And Waterproof**

**IT'S A FACT!!!**

**LUMINO will waterproof your damp,  
wet cellar from the inside!**

**LUMINO will waterproof exterior  
masonry walls permanently!**

\* \* \* \* \*

**L U M I N O**

**Formerly "Coscotite"**

**A TRANSPARENT WATERPROOFING**

**For Interior or Exterior Use**

**To Be Used With or Without Colors**

**(Contains no paraffin or wax)**

**POSITIVELY**

**W A T E R P R O O F S**

**CONCRETE**

**CONCRETE BLOCKS**

**CEMENT**

**BRICK**

**STUCCO**

\* \* \* \* \*

**TRUE WATERPROOFING**

\* \* \* \* \*

## Complaint

## L U M I N O

## Waterproofing

Easily applied by anyone with an ordinary paint brush  
on interior or exterior wet or dry masonry surfaces.

Prevents Water and Dampness  
Penetrating Through Exterior Walls

Lumino Positively Waterproofs

\* \* \* \* \*

## L U M I N O

## Waterproofs

Easily applied with an ordinary paint brush on wet or  
dry masonry surfaces.

Damp—Wet—musty cellars  
made dry and livable.

Lumino positively waterproofs

\* \* \* \* \*

Many other representations of similar import and effect are made  
by the respondent in said advertisements.

The following representation appears on the label of the container  
in which said product is sold:

## L U M I N I Z E

A Transparent Waterproofing  
For Interior or Exterior Use  
on Wet or Dry Surfaces  
(Contains no paraffin or wax)

POSITIVELY  
WATERPROOFS  
CONCRETE  
CONCRETE BLOCKS  
CEMENT  
BRICK  
STUCCO

\* \* \* \* \*

Respondent guarantees its product to produce all of the results  
claimed and represents that it will refund purchasers the purchase  
money for said product if the product does not produce the results  
claimed or if the purchaser is dissatisfied with the results produced.

PAR. 5. By the means and in the manner aforesaid the respondent  
represents and implies that the product "Lumino" is a true water-  
proofing material or compound, and that when applied, as directed,  
as a coating to brick, concrete, cement, stucco, or other surfaces  
causes such surfaces to become impervious to water and dampness.  
In truth and in fact, the product "Lumino" is not a true waterproof-

ing material or compound and will not render brick, concrete, cement, stucco, or other surfaces impervious to water or dampness when used and applied as directed by the respondent.

In many instances, respondent has failed to carry out its guarantee and to make refunds to purchasers of the product "Lumino" when purchasers complained that said product did not perform as claimed by the respondent.

PAR. 6. The above and foregoing representations and implications so made by the respondent, in connection with the offering for sale and sale of its product "Lumino," are false, misleading, and deceptive, and have had and now have, the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and implications are true, and cause a substantial portion of the purchasing public, because of said erroneous belief, to purchase respondent's said product, thereby unfairly diverting trade in said commerce to the respondent from competitors who do not promote, or attempt to promote, the sale of their products by the use of false and misleading representations and implications, and as a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 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."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 2, 1937, issued, and on September 3, 1937, served its complaint in this proceeding upon respondent, The Lumino Company, Inc., charging it with unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answer by respondent, there was filed herein and duly approved by the Commission a stipulation as to the facts between W. T. Kelley, chief counsel for the Commission, and the respondent, which provided that the statement of facts therein contained might be taken as the facts in this proceeding, and in lieu of testimony and documentary evidence in support of the charges stated in said complaint,

or in opposition thereto; and that the commission might proceed thereon to make its report, stating its findings as to the facts (including inferences which it might draw therefrom), and its conclusion thereon, and without the filing of briefs and the presentation of argument might enter thereon its order disposing of the proceeding.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation as to the facts, and the Commission having duly considered the same 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. Respondent, The Lumino Company, Inc., is a New York corporation with its office and principal place of business at 515 Madison Avenue, New York, N. Y., and is now and for several years last past has been engaged in the business of manufacturing, selling, and distributing competitively in interstate commerce a material or compound for structural waterproofing and dampness prevention known as "Lumino." Respondent is in competition with other corporations and with individuals, partnerships and firms also engaged in the sale and distribution of materials or compounds for "waterproofing" and dampness prevention in interstate commerce and in the District of Columbia.

PAR. 2. In the course and operation of its business in said commerce and for the purpose of inducing the purchase of its said product for resale, the respondent furnishes dealers with circulars and pamphlets for distribution among prospective users and supplies such dealers with advertising mats which are used in advertisements placed in local papers by such dealers. These circulars, pamphlets, and advertisements contain many representations regarding the effectiveness of the product "Lumino" as a waterproofing and dampness prevention material or compound. Respondent also places representations as to the effectiveness of the product "Lumino" as a waterproofing material or compound on the labels of the containers in which the product is offered for sale and sold.

PAR. 3. Among the representations so used by respondent in said advertising matter, as aforesaid, and typical thereof, are the following:

Reclaim Your Wet Cellar or Damp Building

Luminizing Your Cellar Adds Another Room to your Home. "Luminizing" is the name given to the Lumino method of treating walls built of brick,

## Findings

27 F. T. C.

cement, concrete blocks, concrete or stone to make them absolutely moisture proof.

It penetrates and forms a leathery film that has an almost unbelievable resistance to water. No matter if your walls are damp when you start, Luminize actually dries in the presence of water itself.

Once properly applied you need have no further fear or dampness seeping through.

Luminize the outside, too. The annoying presence of moisture and dampness in walls built of brick, stucco and concrete can be entirely eliminated by Luminizing.

No matter whether your house is new or old—to Luminize it means trouble of leakage is forever gone.

Wet Basements Are Unhealthy  
Leaky Walls Are Expensive  
LUMINIZE  
Will Make Them Dry  
And Waterproof.

IT'S A FACT!!!  
LUMINO will waterproof your damp,  
wet cellar from the inside!  
LUMINO will waterproof exterior  
masonry walls permanently!

LUMINO  
Formerly "Coscotite"  
A TRANSPARENT WATERPROOFING  
For Interior or Exterior Use

POSITIVELY  
WATERPROOFS

TRUE WATERPROOFING

LUMINO  
Waterproofing

Prevents Water and Dampness  
Penetrating Through Exterior Walls  
Lumino Positively Waterproofs

LUMINO  
Waterproofs

Damp—wet—musty cellars  
made dry and livable.  
Lumino positively waterproofs

Other representations of similar import and effect are made by the respondent in said advertisements.

The following representation appears on the label of the container in which said product is sold:

LUMINIZE  
A Transparent Waterproofing  
For Interior or Exterior Use  
on Wet or Dry Surfaces  
(Contains no paraffin or wax)

POSITIVELY  
WATERPROOFS  
CONCRETE  
CONCRETE BLOCKS  
CEMENT  
BRICK  
STUCCO

PAR. 4. By the means and in the manner above set out, the respondent represents and implies that the product "Lumino" is a true waterproofing material or compound, and that when applied, as directed, as a coating to brick, concrete, cement, stucco, or other surfaces causes such construction to become impervious to water and dampness, whereas in fact Lumino acts only as a water repellent and dampness resisting material.

PAR. 5. Analyses by the United States Bureau of Standards of a large number of so-called waterproofing and dampness resisting materials or compounds, both of organic and of inorganic or mineral base, including respondent's colorless or transparent organic base product "Lumino," made at the Bureau of Standards, have thus far failed to disclose any one such material or compound which is a positive, absolute waterproofing or moisture proofing or dampness preventing material or compound; and that the several products so designated and analyzed are in fact in varying degrees only of partial efficacy and of uncertain and varying duration as water repellents or dampness resistants, and do not make either the walls or surfaces of concrete, cement, brick, or stucco structures impervious to water or dampness, or totally prevent water or dampness from entering said walls, or make the interiors dry and free from dampness. The unqualified designation or description, either by direct statement or implication, of any such products including "Lumino," as "waterproofing" or "dampness preventive" products is a misnomer, and not accurate since none of such products is a permanent or true waterproof material, which will totally prevent water or dampness from entering such structures or the walls thereof and make the interiors dry or free from dampness.

## Order

27 F. T. C.

PAR. 6. Water repellent and dampness resisting products are desirable and greatly needed in construction, and many such products are on the market, and they are habitually but erroneously referred to in the industry itself and in the construction industry as "waterproofing" materials or compounds, and, in common with many others, "Lumino" has merit as a transparent water repellent and dampness resistant, and as compared with other so-called waterproofings analyzed, "Lumino" is better than some, but less permanent than some of the nontransparent metallic base products.

PAR. 7. The above and foregoing representations and implications so made by the respondent, in connection with the offering for sale and sale of its product "Lumino," are false, misleading, and deceptive, and have had, and now have, the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and implications are true, and cause a substantial portion of the purchasing public, because of said erroneous belief, to purchase respondent's said product, thereby unfairly diverting trade in said commerce to the respondent from competitors who do not promote, or attempt to promote, the sale of their products by the use of false and misleading representations and implications, and as a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

## CONCLUSION

The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission and the answer filed herein on September 22, 1937, and a stipulation as to the facts filed herein, 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, The Lumino Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its product for structural waterproofing and dampness prevention known as "Lumino,"

354

## Order

or the same or a similar compound under whatever name sold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or by implication:

1. That said product is a "waterproofing" or a dampness preventive material or compound or that it renders walls or structures made of concrete, cement, brick, or stone, impervious to water or dampness;

2. That the water repellent and dampness resisting qualities of Lumino are permanent.

*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  
THE HAMMOND CLOCK COMPANY

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

*Docket 2930. Complaint, Sept. 26, 1936—Decision, July 9, 1938*

Where a corporation engaged in manufacturing and selling in commerce an electrical musical instrument known as the "Hammond Organ"; in advertising the same in newspapers of interstate circulation and through booklets or pamphlets and other literature sent through the mails into other States—

- (a) Represented that said organ could produce or reproduce the entire range of tone coloring of a pipe organ required or necessary for the adequate rendition of great works of classical organ literature, and that it was capable of producing or reproducing a range in harmonics and partials equivalent to that of a pipe organ, and the entire range of musical tone colors or effects, and that it had available to the organist an infinite variety of tone covering the diapason, string, and reed families; and
- (b) Represented that as to pipe organ tones, the tones produced by said instrument were an improvement over those of any modern organ of recognized merit and that its said instrument was comparable in the production of pipe organ music to the ordinary \$10,000 pipe organ;

The facts being that, excepting flute tones, said instrument, as constructed, motivated, and operated, was incapable of producing or reproducing (1) faithfully the musical tones of a pipe organ required and necessary for the rendition, without sacrifice, of the great works of classical organ literature; (2) range in harmonics equivalent to that of a pipe organ or all tones that are sustained tones; or (3) of producing such range of tone colors or effects that it could properly and adequately interpret, without sacrifice, the pipe organ works of the great classical musicians; and (4) did not have instantly available and could not produce an infinite variety of tones covering diapason, string, and reed families nor produce tones which were in any way an improvement over or superior to those produced by any modern pipe organ of recognized merit; and (5) was not comparable in production of pipe organ music to an ordinary \$10,000 pipe organ or to such organs selling for considerably less;

With tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations were true and into purchase of its said instruments as a result thereof, and with effect that trade in organs was diverted unfairly thereby to it and from those of its competitors who were engaged in making, distributing, and selling pipe organs in commerce among and between the various States and in the District of Columbia and who do not promote or attempt to promote sale thereof by false and misleading advertisements and representations:

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