

IN THE MATTER OF
DAY-LITE ILLUMINATING CORPORATION

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

Docket 2663. Complaint, Dec. 18, 1935—Decision, Aug. 23, 1938

Where a corporation engaged in sale and distribution of electric light fixtures, or the salesmen thereof, as the case might be—

- (a) Represented that its fixtures, and particularly its "Day-Lite Major" and "Day-Lite Junior," gave more and better light than competitive fixtures, "because of the patented magnifying lenses in the bottom," and that, because said lenses were made "of the finest quality crystal clear glass and scientifically designed," they "effectively magnify light rays from the electric lamp," and that glass and lenses used in the construction thereof were patented, facts being its said fixtures do not produce more or better light than do comparable competitive products because of such purported magnifying lenses, which do not magnify rays at all and effect of which on light rays is limited solely to changing direction thereof, and do not give more light in sense of producing more foot-candles thereof, but, because of such change in direction of rays, give more light in some cases directly beneath fixture and in other cases less than do competitors' products of similar construction, and its said light units do not produce more illumination than comparable products of competitors, except by way of concentrating light rays and increasing illumination in certain areas and thereby decreasing it in others, and there is no patent covering glass and lenses such as used by it in its light fixtures; and
- (b) Represented that its said light units, consisting of a light bulb and fixture, would produce twice as much illumination as comparable units of competitors, and, in such connection, made demonstrations, in which particular salesman inserted in unit bulb designed for use on a lower voltage current than that serving prospective customer, and falsely attributed unnaturally bright light, produced through such mismating of bulb and current, to glass and lenses used in units in question; facts being such mismating is injurious to bulb and materially shortens its life, units in question do not produce twice as much illumination as comparable units of competitors, and salesmen's practice of thus mismating bulb designed for use on current of lower voltage deceives prospective purchasers into false belief that its said fixtures produce more illumination than those of competitors using proper bulbs in electric current designed for their use;

With effect of misleading and deceiving prospective purchasers into erroneous belief that such representations are true and of causing a substantial portion of purchasers to buy substantial volume of its products as result of such mistaken and erroneous belief, and of thereby unfairly diverting to it substantial trade from competitors engaged in selling products of same kind and character and who truthfully advertise and represent the character and quality thereof; to the substantial injury of competition in commerce:

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

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Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Clark Nichols for the Commission.

Lowenhaupt & Wolff, of Chicago, Ill., for respondent.

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 Day-Lite Illuminating Corporation, hereinafter referred to as respondent, has been and now is 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 Day-Lite Illuminating Corporation is a corporation, incorporated in or about the month of September 1930, under the laws of the State of Illinois and having at all times since its organization as a corporation a place of business in Chicago, Ill.

PAR. 2. During all the times above mentioned the respondent has been and still is engaged in the business of the sale of incandescent lamps made and sold for general lighting service for operation in connection with electric current supplied by public service corporations and also in the sale of glass lamp globes, both the incandescent lamps and lamp globes being sold sometimes separately and sometimes together as a lighting unit or fixture. The respondent during said times has sold and caused its incandescent lamps and globes to be sold, among other ways, by canvassing agents or salesmen to members of the public, purchasers of incandescent lamps and lamp globes, located in various States of the United States other than Illinois, or the State of origin of the shipment. The respondent has caused its incandescent lamps and lamp globes when so sold by it to be transported from Illinois, or the State of origin of the shipment, to the purchasers referred to above, located in said other States.

PAR. 3. During the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged in the sale of incandescent lamps made and sold for general lighting service for operation with electric current supplied by public service corporations, and in the sale of lamp globes used in connection with incandescent lamps, to purchasers, members of the public for use or consumption and to wholesale and retail dealers therein for resale to the public, located in various States of the United

States other than the State of the seller or the State of origin of the shipment. The sellers, respectively, have caused the lamps and globes, when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 4. The respondent, in the sale of incandescent lamps and lamp globes is and has been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in paragraph 3 hereof, during all the times mentioned and referred to in paragraph 2 hereof.

PAR. 5. Substantially, at all the times above mentioned and referred to and for many years prior thereto, it has been the custom and practice of public service corporations throughout the United States to supply users of electric current for general lighting service in the respective communities served by them, variously for the particular community, on either 110, 115, or 120 volt multiple circuits, as the case may be. For instance, electric current for general lighting service in Columbus, Ohio, is supplied by two public service corporations, one of which supplies electric current for such service on an 115-volt multiple circuit and the other on an 120-volt multiple circuit. During said times, all the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States have known of this custom and practice and of the voltage of the electric current supplied by the service corporations in their respective localities.

PAR. 6. There is and has been, during all the times above mentioned and referred to and for many years prior thereto, an established and universal custom in the United States in connection with the manufacture and sale of incandescent lamps manufactured for general lighting service for operation in connection with electric current supplied by public service corporations, that, at the times they are displayed or offered for sale or sold by the manufacturers to dealer-distributors for resale and at the times they are displayed or offered for sale or sold by manufacturers, dealer-distributors, or others to users or consumers, including the Federal and State Governments and their agencies, and municipal and other corporations, and members of the public, the lamps shall be legibly, durably marked or branded, among other things, with the words and figures indicating, respectively, the number of volts and watts that is the measure of their electromotive force and power, allowing for certain tolerances, more or less, in the statement of the number of watts with which they are marked or branded. The tolerances in the watt measurement above referred to are and have been known to and recognized, substantially by all the

members of the industries engaged in the manufacture and sale of incandescent lamps in the United States during all the times above mentioned and referred to. And, the tolerances in the watt measurements of incandescent lamps manufactured for general lighting service, above referred to, have during said times coincided with the tolerances as set forth in the Federal Specifications for the Purchase of Incandescent Lamps by the United States Government.

PAR. 7. Prior to and during all the times above mentioned and referred to, it is and has been the universal understanding in the commercial manufacturing and distributing industries in incandescent lamps, that the lamps operated for general lighting service on 110, 115, and 120 volt multiple circuits should produce a certain number of lumens of light per watt, according to the watt rating of the lamp, allowing for certain tolerances of measure above or below the said number of lumens, in order to be adequately and practicably efficient in the production of light. During substantially all of the times above mentioned and referred to, the said number of lumens per watt and the tolerances referred to, have been known to and have been recognized by the members of the manufacturing and distributing industries engaged in the commercial manufacture and sale of incandescent lamps in the United States, and substantially during said times the lamps made and sold by the members of the said industries when operated for general lighting service have produced the amount of lumens per watt above referred to, which has during said times coincided with the amount of lumens per watt and with the tolerances therefor as set forth in the Federal Specifications for the Purchase of Incandescent Lamps by the United States Government.

For example, for the years beginning July 1, 1932, and ending June 30, 1933; beginning July 1, 1933, and ending June 30, 1934; and beginning July 1, 1934, and ending June 30, 1935, the rated initial lumens, and the rated initial lumens per watt for large tungsten filament lamps for 110, 115, and 120 volt multiple lighting service, on standard bulbs for general lighting service marked 25, 40, 60, 75, and 100 watts, were as follows:

For the year beginning July 1, 1932, and ending June 30, 1933

Watts	Rated initial lumens	Rated initial lumens per watt	Bulb
25	253	10.1	A-19
40	440	11.0	A-19
60	738	12.3	A-21
75	998	13.3	A-23
100	1,430	14.3	A-23

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For the year beginning July 1, 1933, and ending June 30, 1934

Watts	Initial lumens	Rated initial lumens per watt	Bulb
25	250	10.0	A-19
40	432	10.8	A-19
60	732	12.2	A-21
75	1,028	13.7	A-21
100	1,470	14.7	A-23

For the year beginning July 1, 1934, and ending June 30, 1935

Watts	Initial lumens	Rated initial lumens per watt	Bulb
25	250	10.0	A-19
40	428	10.7	A-19
60	744	12.4	A-21
75	1,035	13.8	A-21
100	1,490	14.9	A-23

For the 2 years above mentioned, from July 1, 1933, to June 30, 1934, and July 1, 1934, to June 30, 1935, the rated lumens per watt for the 25-watt lamps listed above were for 115-volt lamps only. For 25-watt lamps, for 110-volt multiple lighting service, to obtain the correct rated lumens per watt there should be added 0.05 to the rated lumens per watt listed above; and, for 120-volt lamps there should be subtracted 0.05 from the rated lumens per watt listed above.

For the 2 years from July 1, 1933, to June 30, 1935, the rated lumens listed above for the 40, 60, 75, and 100 watt lamps were for 115-volt lamps only. To obtain the correct rated lumens for 110-volt lamps of those watt measurements there should be added 0.15; and for 120-volt lamps of such watt measurement there should be subtracted 0.15 from the lumens per watt listed above.

PAR. 8. The tolerances allowed in the statement of the number of watts with which incandescent lamps are and have been marked or branded and the tolerances allowed and recognized in the measure of the lumens of light produced by incandescent lamps or the rate of lumens per watt mentioned and referred to in paragraphs 6 and 7 hereof, during the times mentioned and referred to in said paragraphs 6 and 7, for example, for the years beginning July 1, 1932, and ending June 30, 1933; beginning July 1, 1933, and ending June 30, 1934; and beginning July 1, 1934, and ending June 30, 1935, for large tungsten filament lamps for general lighting service, on 110, 115, and 120 volt multiple circuits, for standard bulbs marked 25, 40, 60, 75, and 100 watts, were as follows:

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For the year beginning July 1, 1932, and ending June 30, 1933

Watts	Bulb	Lumens per watt above or below standard	Total watts above or below standard
		<i>Percent</i>	<i>Percent</i>
25	A-19	6	4
40	A-19	6	4
60	A-21	6	4
75	A-23	6	4
100	A-23	6	4

For the years July 1, 1933, to June 30, 1934, and July 1, 1934, to June 30, 1935

Watts	Bulb	Lumens per watt above or below declared rating	Total watts above or below rating
		<i>Percent</i>	<i>Percent</i>
25	A-19	5	4
40	A-19	5	4
60	A-21	5	4
75	A-21	5	4
100	A-23	5	4

PAR. 9. At all times in the use of incandescent lamps, the purchaser, or user, of the lamp is really buying light and the most efficient lamp is the one which produces the required amount of light for the least cost. Generally the cost of the electricity consumed by an incandescent lamp is many times more than the cost of the lamp to the purchaser or user and the efficiency of the lamp purchased by the user determines how advantageously or economically the electricity used by the lamp produces light. Lamps of low efficiency are inferior to lamps of high efficiency and waste electricity, thereby increasing the cost of light to the purchaser.

Incandescent lamps may be manufactured or designed for a long or a short life performance but as the efficiency of such lamps is in general not maintained at their initial light output beyond a certain period, it is desirable to manufacture such lamps in accordance with a design for a certain period of life, and to such effect that they will come as nearly as possible to maintaining their initial light output throughout their life.

There is and has been during all the times above mentioned and referred to, a standard of life performance, stated in hours, for large tungsten filament incandescent lamps of the different watt measurements in operation for general lighting service on 110, 115, and 120 volt circuits and which lamps in such operation produce, respectively, the amount of lumens of light referred to in paragraph

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7 hereof. The amount of lumens for 25, 40, 60, 75, and 100 watt lamps being, for example, set forth in said paragraph 7. The standard of life performance above referred to coincides with the specifications therefor in the above-mentioned Federal specifications for such incandescent lamps, and is known to, and recognized by, all the members of the industry engaged in the manufacture and sale of incandescent lamps throughout the United States.

The efficient life performance, referred to, of incandescent lamps measuring 25, 40, 60, 75, and 100 watts, and of standard lumen production as above set forth, was, during the year beginning July 1, 1932, and ending June 30, 1933, 1,000 hours, respectively. For the years beginning July 1, 1933, and ending June 30, 1934, and beginning July 1, 1934, and ending June 30, 1935, it was 1,000 hours for lamps rated at 25, 40, and 60 watts, and for lamps rated at 75 and 100 watts, the rated life performance was 750 hours, respectively.

PAR. 10. The light output of incandescent lamps made for general lighting purposes for operation at a designated voltage is increased when such lamps are operated with electric current of a higher voltage but in such case the average period of efficient life performance is substantially decreased and the light produced by lamps operated at a higher voltage than that for which they are designed to be operated with is thereby produced at a higher cost to the consumer for the electricity used by the lamp than when the lamp is operated at its designed voltage.

PAR. 11. During the times above mentioned the respondent through its agents and salesmen has caused demonstrations of its incandescent lamps to be made to members of the public. In such demonstrations the light output of an incandescent lamp of a certain watt measurement then in use by a prospective purchaser was compared with the light output of an incandescent lamp of the respondent sometimes of a lesser watt measurement and sometimes purporting to be of the same watt measurement as the competitor's. The lamp then in use by the prospective purchaser and the respondent's said lamp being then both operated on a double socket by electric current of the voltage for which the lamp then in use by the purchaser was designed but which was greater than the voltage designed for the respondent's lamp, the result of the simultaneous operation of both lamps was a substantially greater production of light by the respondent's lamp which was sometimes represented to the prospective purchaser to be of the same watt and volt measurement and sometimes was represented to be of less watt measurement, in which latter case the expense of operation would be less than the expense of operating the purchaser's lamp, and the prospective purchaser was thereby deceived and misled into

believing that respondent's lamp was of the same watt and volt measurement and produced more light and at the same or less expense with the understanding that the average efficient life of the respondent's lamp under such conditions was equal to that of the lamp of respondent's competitor which was then in use by the prospective purchaser.

During the same times the respondent through its agents and salesmen has also caused statements and representations to be made to members of the public, prospective purchasers, and users of incandescent lamps, to the effect that by the use of the respondent's lamps, substantially more and even twice the amount of light will be obtained as was then being obtained from the incandescent lamps of competitors then in use by prospective purchasers.

The respondent during said times further caused its salesmen and agents to represent to the public that the lamp globes, sold by it in connection with its incandescent lamps, when used in connection with incandescent lamps, but more particularly when used in connection with incandescent lamps sold by the respondent, caused substantially more illumination to the premises of the prospective purchaser than did the incandescent lamps or lamp globes of competitors.

In the course of the demonstrations of respondent's lamps and in the sale of the lamps, signatures of members of the public to papers purporting to be contracts were obtained by respondent's agents and salesmen on the pretense that the papers signed were receipts for lamps left in the custody of the prospective purchaser for examination for a short period, usually overnight.

PAR. 12. The representations made and caused to be made by the respondent through its agents and salesmen to members of the public to the effect that its lamp globes and its incandescent lamps furnished more light to the user of incandescent lamps and the statements that respondent's lamps would furnish twice as much light as the lamps of respondent's competitors, together with the representations made in demonstrations described above to members of the public that the incandescent lamps exhibited by its salesmen to prospective purchasers were of the same voltage as the lamps of competitors then in use by the prospective purchaser, were false representations of material facts which the respondent and its agents and salesmen knew, or with reasonable care should have known, were false, and such representations had the capacity and tendency to deceive and mislead members of the public, purchasers, and prospective purchasers of incandescent lamps for use, into believing that respondent's lamps of equal or less watt measurement and of equal volt measurement would give an average efficient life performance, equal to that of the lamps of

respondent's competitors, and at the same time would furnish more light at less cost for electricity for operation of respondent's lamps than would be the case in the use of the lamps of respondent's competitors. The statements and representations made and caused by respondent to be made by its agents and salesmen to the effect that its lamp globes would cause twice as much illumination as would be produced by the use of competitor's lamp globes were false and had a like capacity and tendency to deceive and mislead purchasers into believing that the said statements were true; and the demonstration of respondent's lamps and the statements and representations made by it concerning its incandescent lamps and its lamp globes as above set forth had the capacity and tendency to deceive and mislead members of the public into believing that the same were true and in reliance upon such belief, into purchasing respondent's lamps and lamp globes instead of the incandescent lamps and lamp globes of respondent's competitors, and members of the public were deceived and misled thereby into believing the said statements and representations were true and in reliance thereon into purchasing respondent's lamps and lamp globes instead of those of its competitors and trade was thereby diverted from respondent's competitors to respondent.

PAR. 13. The above acts and things done and caused to be done by the respondent were and are each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the meaning and intent 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 the 18th day of December 1935 issued and served its complaint in this proceeding upon said respondent, Day-Lite Illuminating Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 9, 1936, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Lowenhaupt & Wolff, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that

the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Day-Lite Illuminating Corporation is a corporation which was organized in September 1930 under the laws of the State of Illinois, having its principal place of business in the city of Chicago, State of Illinois. Respondent is engaged in the business of selling and distributing electric light fixtures, and shipping its products from its place of business in the city of Chicago, Ill., to purchasers thereof located at points in many States of the United States other than the State of Illinois and in the District of Columbia.

Respondent is in competition with other corporations, partnerships, firms, and individuals engaged in the sale of similar products, or other products to be used for the same or similar purposes, who truthfully represent the construction and merits of their respective products, and who sell and deliver said products to purchasers thereof located at points in the various States of the United States other than the State of the origin of the various shipments so made and in the District of Columbia.

PAR. 2. Respondent, through statements appearing in advertisements circulated by it among prospective purchasers located at various points in the several States of the United States and in the District of Columbia, represents that its fixtures, particularly those designated "Day-Lite Major" and "Day-Lite Junior," give more and better light than do competitive fixtures "because of the patented magnifying lenses in the bottom"; and that because the lenses are made "of the finest quality crystal clear glass and scientifically designed" they "effectively magnify light rays from the electric lamp."

Also in such advertising respondent represents that the glass and lenses used in the construction of its light fixtures are patented.

PAR. 3. In connection with the promotion of the sale and distribution of the products, agents of the respondent have represented to

prospective purchasers located at various points in the several States of the United States and in the District of Columbia that respondent's light units, consisting of a light bulb and fixture, will produce twice as much light or illumination as comparable light units of competitors. In connection with this representation, respondent's agents in making demonstrations of its light units sometimes insert in said unit a light bulb designed for use on a lower voltage current than that which serves the prospective customer. Such mismating of a bulb with a higher voltage current than that for which it was designed for use produces an unnaturally bright light, which is attributed by respondent's agents to the glass and lenses used in respondent's said units and not to the mismating of the bulb and current. Such mismating of bulb and current is injurious to the bulb and materially shortens the life thereof.

PAR. 4. In truth and in fact respondent's light fixtures do not produce more or better light or illumination than do comparable competitive fixtures because of the purported magnifying lenses in the bottom thereof, nor do these lenses effectively magnify the light rays from the bulb inserted in the fixtures. These lenses do not magnify rays at all and their effect on the light rays is limited solely to changing the direction thereof. Such fixtures do not give more light in the sense of producing more foot-candles of light, but because of the change in the direction of the light rays by these lenses some of the fixtures give more light directly beneath the fixture, and some give less than do fixtures of similar construction offered for sale and sold by competitors, and the question of whether they give a better light is dependent upon the purpose for which the light is desired. Respondent's light units will not produce any more light or illumination than will comparable light units sold by its competitors except to concentrate the light rays and give more illumination on certain areas, thereby decreasing it at other areas.

In truth and in fact, respondent's light units will not produce twice as much light or illumination as comparable units of competitors, and the practices employed on occasions by respondent's salesmen in the mismating of a light bulb designed for use on electric current of lower voltage deceives prospective purchasers into believing that the light fixtures of respondent produce more light or illumination than do fixtures of its competitors who use the proper incandescent electric bulbs in an electric current designed for their use. In truth and in fact, the increased light or illumination is caused by the misuse of the incandescent electric bulb.

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In truth and in fact, there is no patent in existence covering the glass and lenses as such which are used in respondent's light fixtures.

PAR. 5. The representations, acts, and practices of the respondent as hereinbefore set out have a tendency and capacity to, and do, mislead and deceive prospective purchasers, and leads them erroneously to believe that such representations are true and causes a substantial portion of such purchasers to purchase a substantial volume of respondent's products as a result of said mistaken and erroneous belief. Thereby substantial trade has been, and is, unfairly diverted to the respondent from its competitors engaged in selling products of the same kind and character in commerce as hereinbefore set out, who truthfully advertise and represent the character and quality of their products. As a result thereof, substantial injury has been and is now being done by respondent to the competition in commerce between and among the several States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, the Day-Lite Illuminating Corporation, are to the prejudice 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Day-Lite Illuminating Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its electric light fixtures in interstate commerce and in the District of Columbia, do forthwith cease and desist from representing:

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1. That the lenses in its fixtures magnify the rays of light from the incandescent electric bulb, thereby increasing the amount of light or illumination coming from the incandescent electric bulb;

2. That the increased brilliancy produced by inserting in its fixture an incandescent electric light bulb of a lower voltage than the voltage of the electric current present in the socket of said fixture is created by the use of its said fixture;

3. That the lenses and glass used in the construction of its light fixtures are patented, when such is not a fact;

4. That its fixtures produce more light than competitors' fixtures, both using electric bulbs of identical electromotive force and power, without a qualifying statement that the increase of light is only in the area of the focus of the lens used in the fixture.

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.

Syllabus

IN THE MATTER OF
MALL TOOL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3376. Complaint, Apr. 9, 1938—Decision, Aug. 25, 1938*

Where a corporation engaged in the assembling and manufacturing of machinery and equipment, including concrete vibrators, and in the sale and distribution thereof to construction contractors, dealers, and members of the public, in substantial competition with others similarly engaged—

Represented that motors or engines purchased by it from the manufacturer for use in such vibrators, and from which motors and engines it had removed manufacturer's name plate and identification, and upon which, and after reconstruction thereof, it had placed its own plates reading "Mall 3 h.p. 2500 r.p.m., type CC," together with identifying number, were motors or engines of its own make and were in fact 3 horsepower motors or engines for driving vibrator units made and sold by competitors;

Facts being motors or engines in question, capable of delivering 2.77 horsepower at 2,500 revolutions per minute, were made to be run at approximately 2,000 revolutions with horsepower developed in excess of 2 at such number of revolutions, regarded as proper and desirable safety factor which resulted in greatest operating efficiency and fewer replacements and less expense and loss of time incident thereto, such motors or engines, as reconstructed by it, did not develop sufficient power to be designated and described as 3 horsepower, as used and understood in trade in such connection, and did not develop enough power at 2,500 revolutions per minute to provide sufficient margin of safety, and operation thereof at such number of revolutions decreased their efficiency and increased necessity for replacements and repairs;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into erroneous belief that said representations were true, and that said motors or engines were made by it and were capable of producing 3 horsepower with sufficient margin of power in excess thereof to constitute a proper and desirable safety factor which would result in greatest operating efficiency, and to cause such portion of said public, by reason of said mistaken and erroneous belief, to buy its said product and thereby unfairly divert trade to it from its competitors, many of whom do not in any manner misrepresent concrete vibrators and equipment sold and offered for sale by them:

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

Mr. Wm. T. Chantland for the Commission.

Gardner & Hitzeman, of Chicago, Ill., for respondent.