

Complaint

27 F. T. C.

IN THE MATTER OF
SALES ON SOUND CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3367. Complaint, Mar. 30, 1938—Decision, Aug. 31, 1938*

Where a corporation engaged in assembling, wholesaling, retailing, and exporting motion picture theater equipment to purchasers in other States and in foreign countries, in substantial competition with others engaged in similar sale and distribution of such equipment; in circulars and catalogs issued, published, and distributed to customers and prospective customers in different States and abroad—

- (a) Represented, designated, and referred to its motion picture theater sound screens, sold and offered by it as "Flame proof"; and
- (b) Represented, designated, and referred to its aforesaid product as top quality, or newly manufactured, or brand new;

Facts being its aforesaid products were neither flame proof nor top quality, and there were better quality motion picture sound screens used for same purpose;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that aforesaid representations were true, and with result, as direct consequence of such beliefs induced by its said advertising and misrepresentations, that number of said public bought substantial quantity of said products and trade was unfairly diverted to it from others engaged in sale of motion picture sound screens and who truthfully advertise their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Samuel Edelstein, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act the Federal Trade Commission, having reason to believe that Sales on Sound Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Sales on Sound Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place

850

Complaint

of business located in New York City, N. Y. Respondent is now, and for the period of more than 7 years last past has been, engaged in the assembling, wholesaling, retailing and exporting of motion picture theater equipment by direct mail through catalogs and circulars from its premises in New York to customers in commerce between and among various States of the United States and in foreign countries. It causes said products, when sold, to be shipped and transported from its place of business located in the State of New York to purchasers thereof located in the States of the United States other than the State of New York and in foreign countries. Respondent maintains, and during the times mentioned herein, has maintained a course of trade in said products so sold and distributed by it in commerce among and between the various States of the United States and foreign countries. Respondent, in the course and conduct of its business, is, and, at all times herein referred to, has been, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of motion picture theater equipment in commerce among and between the various States of the United States and in foreign countries.

PAR. 2. In the course and conduct of its business, the respondent, in soliciting the sale of and in selling its motion picture theater equipment has caused circulars and catalogs to be issued, published, and distributed to customers and prospective customers located in different States of the United States and in foreign countries, in which advertising matter motion picture theater sound screens sold and offered for sale by said respondent were represented, designated, and referred to by the following statements:

Flame Proof * * *.

Remember! Every screen flame-proof, * * * every screen top quality, newly manufactured, grade "A," * * * every screen fully guaranteed.

Genuine, Brand New Flameproof Da-Tone Sound Screens.

PAR. 3. The representations made by respondent, as aforesaid, with respect to the composition and quality of respondent's motion picture theater sound screens are false, misleading, and untrue.

In truth and in fact, said products, according to reliable scientific authority, are not "flameproof" and are not "top quality," and there are motion picture theater sound screens used for the same purpose that are of better quality than respondent's screens.

PAR. 4. Each and all of the false, misleading, and untrue representations so made by respondent in offering for sale and in selling its motion picture theater sound screens were and are calculated to, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief

Findings

27 F. T. C.

that said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondent, as aforesaid, a number of the purchasing public has purchased a substantial quantity of said products, with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale of motion picture theater sound screens who truthfully advertise their products. As a result thereof, substantial injury has been, and is now being done by the respondent herein to competition in commerce among and between the various States of the United States and in foreign countries.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 30, 1938, issued, and on March 31, 1938, served, its complaint in this proceeding upon respondent, Sales on Sound Corporation, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Sales on Sound Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in New York City, N. Y. Respondent

850

Findings

is now, and for the period of more than 7 years last past has been, engaged in the assembling, wholesaling, retailing, and exporting of motion picture theater equipment. It causes said products, when sold, to be shipped and transported from its place of business located in the State of New York to purchasers thereof located in the States of the United States other than the State of New York and in foreign countries. Respondent maintains, and during the times mentioned herein, has maintained a course of trade in said products so sold and distributed by it in commerce among and between the various States of the United States and foreign countries. Respondent, in the course and conduct of its business, is, and at all times herein referred to, has been, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of motion picture theater equipment in commerce among and between the various States of the United States and in foreign countries.

PAR. 2. In the course and conduct of its business, the respondent, in soliciting the sale of and in selling its motion picture theater equipment has caused circulars and catalogs to be issued, published, and distributed to customers and prospective customers located in different States of the United States and in foreign countries, in which advertising matter motion picture theater sound screens sold and offered for sale by said respondent were represented, designated, and referred to by the following statements:

Flame Proof. * * *

Remember! Every screen flame-proof * * * every screen top quality, newly manufactured grade "A" 1 * * * every screen fully guaranteed.

Genuine, Brand New Flameproof Da-Tone Sound Screens.

PAR. 3. The representations made by respondent, as aforesaid, with respect to the composition and quality of respondent's motion picture theater sound screens are false, misleading, and untrue.

The Commission finds that said products are not "flameproof" and are not "top quality," and there are motion picture theater sound screens used for the same purpose that are of better quality than respondent's screens.

PAR. 4. Each and all of the false, misleading, and untrue representations so made by respondent in offering for sale and in selling its motion picture theater sound screens were and are calculated to, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondent, as aforesaid, a number of the

Order

27 F. T. C.

purchasing public has purchased a substantial quantity of said products, with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale of motion picture theater sound screens who truthfully advertise their products.

CONCLUSION

The aforesaid acts, representations, and practices of the respondent, Sales on Sound Corporation, have been and 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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, Sales on Sound Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of motion picture theater sound screens in commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from representing.

1. That said motion picture theater sound screens are flameproof;
2. That said sound screens are "top quality" or "newly manufactured" or "brand new," when such is not the case.

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

THE PERFECT MANUFACTURING COMPANY, INC., TRADING AS KAR-NU COMPANY AND NO-FLATZ COMPANY

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

Docket 3440. Complaint, May 23, 1938—Decision, Aug. 31, 1938

Where a corporation respectively engaged, under trade names Kar-Nu Co. and No-Flatz Co., in manufacture of liquid automobile finishing preparation and liquid product for use in tire tubes to prevent punctures, and in the sale and distribution of its said products to retailers, salesmen, and agents for sale to purchasing public in the different States and in the District of Columbia, in competition with many others engaged in sale of similar products in interstate commerce who truthfully represent the qualities thereof: in advertising its said preparations in newspapers and periodicals circulated in such commerce, and through circulars and pamphlets distributed among prospective purchasers—

- (a) Represented that its said "Kar-Nu" was a "miracle discovery," and that an application thereof to the finish of an automobile would cause discoloration and sun fade to disappear instantly, and would finish autos like new and give a result equal in beauty to a repaint job costing from \$25 to \$75, and that there was nothing in the world just like it, facts being transparent liquid in question was not such a discovery, there were number of products on the market of similar composition and for similar use, it could not add color where color had disappeared, and would not accomplish results claimed for it as above set forth:
- (b) Represented that its "No-Flatz" was an amazing new discovery which rendered tires absolutely puncture-proof, ending flat tires forever, and that use thereof in an inner tube mended punctures instantly and permanently without patching, and that when in use, hole resulting from puncture of tube by nail or other sharp object would remain completely and permanently sealed, facts being product in question was not a sensational, amazing, new discovery, and would not accomplish results claimed for it as above set forth: and
- (c) Represented that its aforesaid preparations had been tested and approved by the Automotive Test Laboratory of America, through reproduction in its advertising of document entitled "Certificate of Merit," certifying that preparations in question had "been tested" in the laboratories of, and approved by, the Automotive Test Laboratory of America, together with statements describing, or purporting to describe, the qualities of said respective products, facts being certificates in question did not reflect results of recognized scientific tests of products named therein, such Automotive Test Laboratory of America was not equipped with any machinery or scientific instruments that could be used for making tests on aforesaid or other materials, and maintained no staff of experts or chemists who conducted any experiments to determine quality of products involved, and so-called "Certificates of Merit" were false and fraudulent and tended and had capacity to