

Syllabus

IN THE MATTER OF

LINCOLN DENTAL SUPPLY 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 3351. Complaint, Mar. 9, 1938—Decision, Sept. 14, 1938

Where a corporation engaged in sale of dental supply products to purchasers in other States, in competition with others engaged in sale and distribution of such products and who truthfully represent their status and quality and nature of their said products, and with three manufacturers, products of which had come to be well and favorably known because of established quality thereof to members of dental profession and which, through many years, had come to acquire good will of dental supply trade—

- (a) Represented through advertisement which set forth and offered by name the cement of said three manufacturers, and which advertisement it caused to be inserted on frontispiece of a mail-order catalog distributed to prospective purchasers in the various States, that it was the legitimate and authorized representative of aforesaid three corporate manufacturers, facts being it was not such representative of any of aforesaid corporations and products therein referred to had not been purchased from any of them;
- (b) Represented through aforesaid advertisement thus offering such cement, that products referred to therein and there further described as "Government Sealed Stock, Guaranteed Quality although Liquid is Slightly Discolored," were among those being currently made and offered by said three corporate manufacturers and were of equal quality for the uses intended as those being currently made by such manufacturers, other than for slight discoloration, facts being products in question were sold by corporations in question to the Government prior to 1919 for use during the war, and had lost their full usefulness for purpose for which made and sold, and were far inferior in quality as result of deterioration over period of time to those being currently made and sold by them for similar purposes; and
- (c) Represented through aforesaid advertisement that United States Government had approved quality of said products, facts being it had not in any manner approved quality thereof, which, as aforesaid, was not equal to that of products being currently made and sold by corporate manufacturers aforesaid;

With effect of confusing, misleading, and deceiving purchasers into erroneous belief that it was the authorized representative of said three corporate manufacturers, that quality of products referred to in advertisement in question had been approved by the Government and was guaranteed equal to that of products being currently made and sold for similar purposes by corporations in question, except as above noted, and of causing purchasers to buy said products by reason of aforesaid erroneous beliefs thus engendered, and of thereby unfairly diverting trade to it from such corporate manufacturers and other competitors who do not similarly or in any manner misrepresent their business status or quality and nature of their respective products:

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

Complaint

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Before *Mr. W. W. Sheppard*, trial examiner.
Mr. Alden S. Bradley 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 Lincoln Dental Supply Co., Inc., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Lincoln Dental Supply Co., Inc., is a corporation organized and existing under the laws of the State of Pennsylvania, having an office and principal place of business at 1010 Chestnut Street in Philadelphia, Pa. It is now, and for several years last past has been, engaged in the sale of dental supply products. To a substantial extent, sales of said products are made by respondent to corporations, partnerships, firms, and individuals located in States other than the State of Pennsylvania, pursuant to which sales, and as a part thereof, shipments are made by respondent from the State of Pennsylvania through and into other States of the United States to such purchasers.

Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said dental supply products in commerce among and between the various States of the United States.

There are other corporations, partnerships, firms, and individuals engaged in the sale and distribution of similar products who truthfully represent the quality of their said products and the results to be obtained from the use thereof. The aforesaid corporations, partnerships, firms, and individuals cause their products, when sold, to be transported from their respective places of business to purchasers thereof located at points in the various States of the United States other than the State from which said shipment originated. The respondent is, and has been at all times herein mentioned, in competition in commerce among and between the various States of the United States.

PAR. 2. In connection with the promotion of sale and sale of said products in commerce, as described herein, the respondent caused the following advertisement to be inserted on the frontispiece of its mail-

order catalog which is distributed to prospective purchasers located in the various States of the United States:

Caulk's-S. S. White-Smith Cement, \$2.00 box \$1.00, six boxes \$5.00, Government Sealed Stock, Guaranteed Quality although Liquid is Slightly Discolored

The dental supplies referred to in the foregoing advertisement were manufactured by L. D. Caulk Co., a Delaware corporation, with an office and principal place of business in Milford, Del., the S. S. White Dental Manufacturing Co., a Pennsylvania corporation, with an office and principal place of business in Philadelphia, Pa., and Lee S. Smith & Son Manufacturing Co., a Pennsylvania corporation, with an office and principal place of business in Pittsburgh, Pa. These corporations, for a long period of time, have been engaged in the manufacture and sale of dental supply products, and cause their products, when sold, to be transported from their respective places of business to purchasers thereof located in various States of the United States. In the sale and distribution of their said products, as aforesaid, they are in substantial competition with respondent and other corporations, partnerships, firms, and individuals likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia. Through many years the above-named corporations have acquired the good will of the dental supply trade, and the products manufactured by them have come to be well and favorably known to the members of the dental profession because of the established quality thereof.

PAR. 3. The use of the advertisement set forth in paragraph 2 hereof has the capacity and tendency to create the impression in the minds of prospective purchasers that the respondent is the legitimate and authorized representative of the aforesaid corporation; that the products referred to in said advertisement are among those being currently manufactured and offered for sale by said corporations; that the United States Government has approved the quality of said products; and that the quality of said products is equal to the quality of the products being currently manufactured and sold by said corporations for similar purposes, except for slight discolorations. The respondent is not the representative of any of the aforesaid corporations, and the products referred to in the said advertisement were not purchased from any of them. The United States Government has not, in any manner, approved the quality of the products referred to in said advertisement, and the quality of the products referred to therein is not equal to the quality of the products being currently manufactured and sold by said corporations. In truth and in fact the products described and referred to in the aforesaid advertisement

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were sold by the aforesaid corporations to the United States Government prior to the year 1919, for use during the World War, and are products which have lost their full usefulness for the purpose for which they were manufactured and sold, and are far inferior in quality, as a result of deterioration over this period of time, to those being currently manufactured and sold by said corporations for similar purposes.

PAR. 4. The said advertisement has the capacity and tendency to confuse, mislead, and deceive, and has confused, mislead, and deceived, purchasers into the erroneous belief that respondent is the legitimate representative of the corporations hereinabove referred to: that the quality of the products referred to in said advertisement has been approved by the United States Government; and that the quality of said products is guaranteed to be equal to the quality of products being currently manufactured and sold by said corporations for similar purposes, except for slight discolorations, and to cause them to purchase said products on account of the erroneous beliefs thereby engendered. The use by respondent of the aforesaid advertisement has the capacity and tendency to unfairly divert, and has resulted in unfairly diverting trade to respondent from the corporations named herein and from other competitors of respondent who do not similarly, or in any manner misrepresent their status, or the quality and nature of their respective products. As a result thereof, substantial injury has been, and is now being done by respondent to substantial competition in commerce among and between the various States of the United States.

PAR. 5. The aforementioned acts, practices, and methods of respondent, as hereinabove alleged, are all to the prejudice of the public and respondent's said competitors, and 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 March 9, 1938, issued, and on March 11, 1938, served, its complaint in this proceeding upon respondent, Lincoln Dental Supply Co., Inc., a 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. Respondent, Lincoln Dental Supply Co., Inc., is a corporation organized and existing under the laws of the State of Pennsylvania, having its principal office and place of business at 1010 Chestnut Street, Philadelphia, Pa. It is now, and for several years last past has been, engaged in the sale of dental supply products. Sales of said products are made by respondent to corporations, partnerships, firms, and individuals located in States other than the State of Pennsylvania, pursuant to which sales shipments are made by respondent from the State of Pennsylvania through and into other States of the United States to such purchasers.

Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said dental supply products in commerce among and between the various States of the United States.

PAR. 2. Respondent is now, and has been at all times mentioned herein, in competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution of similar products who truthfully represent their status and the quality and nature of their respective products. Such corporations, partnerships, firms, and individuals cause their products when sold to be transported from their various places of business to the purchasers thereof located at points in the various States of the United States other than the State from which said shipments originated.

PAR. 3. In connection with the sale and distribution of its said products, respondent caused the following advertisement to be inserted on the frontispiece of a mail order catalog which it distributed to prospective purchasers located in the various States of the United States:

Caulk's-S. S. White-Smith Cement, \$2.00 box \$1.00, six boxes \$5.00, Government Sealed Stock, Guaranteed Quality although Liquid is Slightly Discolored

PAR. 4. The dental supplies referred to in the foregoing advertisement were manufactured by L. D. Caulk Co., a Delaware corporation,

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with an office and principal place of business in Milford, Del., the S. S. White Dental Manufacturing Co., a Pennsylvania corporation, with an office and principal place of business in Philadelphia, Pa., and Lee S. Smith and Son Manufacturing Co., a Pennsylvania corporation, with an office and principal place of business in Pittsburgh, Pa. These corporations for a long period of time have been engaged in the manufacture and sale of dental supply products and cause their products when sold to be transported from their respective places of business to purchasers of the same located in the various States of the United States.

In the sale and distribution of their said products, such corporations are in competition with respondent in the sale and distribution of dental supply products in commerce among and between the various States of the United States and in the District of Columbia. Through many years the above-named corporations have acquired the good will of the dental supply trade, and the products manufactured by them have come to be well and favorably known to the members of the dental profession because of the established quality thereof.

PAR. 5. The use of the advertisement as herein found has the capacity and tendency to create the impression in the minds of prospective purchasers that respondent is the legitimate and authorized representative of the aforesaid corporations; that the products referred to in said advertisement are among those being currently manufactured and offered for sale by said corporations; that the United States Government has approved the quality of said products; and that the quality of said products is equal to the quality of the products being currently manufactured and sold by said corporations for similar purposes, except for slight discolorations.

PAR. 6. Respondent is not the representative of any of the aforesaid corporations and the products referred to in the said advertisement were not purchased from many of them. The United States Government has not in any manner approved the quality of the products referred to in said advertisement and the quality of the products referred to therein is not equal to the quality of the products being currently manufactured and sold by said corporations.

The products described and referred to in the aforesaid advertisement were sold by the aforesaid corporations to the United States Government prior to the year 1919, for use during the World War and are products which have lost their full usefulness for the purpose for which they were manufactured and sold, and are far inferior in quality as a result of deterioration over a period of time to those being currently manufactured and sold by said corporations for similar purposes.

PAR. 7. The use of said advertisement by the respondent, as herein set out, has the capacity and tendency to confuse, mislead, and deceive, and has confused, misled, and deceived, purchasers into the erroneous belief that respondent is the authorized representative of said corporations; that the quality of the products referred to in said advertisement has been approved by the United States Government; and that the quality of said products is guaranteed to be equal to the quality of products being currently manufactured and sold by said corporations for similar purposes, except for slight discolorations; and has caused them to purchase said products on account of the aforesaid erroneous beliefs thereby engendered. Trade has been thus unfairly diverted to respondent from the corporations named herein and from other competitors of respondent who do not similarly or in any manner misrepresent their business status or the quality and nature of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all 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, 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 Lincoln Dental Supply Co., Inc., a 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 dental supply products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the names of its competitors, or through any other means or device, or in any manner, that respondent is the authorized representative of such competitors, when such is not a fact;

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2. Representing that the products manufactured by competitors and offered for sale by the respondent are of equal quality for the use intended as those of current manufacture by said competitors, when such is not a fact;

3. Representing that products which have lost their full usefulness through deterioration are of the same or equal quality for the use intended, save for slight discoloration, as those of current manufacture;

4. Representing that the United States Government has in any manner approved the quality of such products, when such is not a fact.

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
W. D. BOYCE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3358. Complaint, Mar. 15, 1938—Decision, Sept. 14, 1938*

Where a corporation engaged in publication, distribution, and sale of a monthly periodical to purchasing subscribers in other States—

- (a) Conducted, as an essential part of its said business, purported puzzle contests, and advertised same and its aforesaid periodical under name of its advertising manager, without disclosing his connection therewith, in its own and in various other periodicals and papers of general circulation throughout the several States, and initially contacted prospects through postcards attached to advertisements and double reply, postage prepaid, postcards addressed to said manager, and represented or implied that said advertisements to enter such contest were those of an individual and not of the company or concern publishing and selling aforesaid magazines;
- (b) Set forth in said advertisements, among numerous other false and misleading representations relating to said contests, and in resulting correspondence, that various automobile or cash, as specified, were given as prizes to winners, and that only qualification or requirement to win a prize was a prompt solution of the purported puzzle, and that no further effort or money was required therefor;
- (c) Gave or offered, at different stages, certain credits and bonuses in large figures which purportedly gave recipient substantial advance standing and made him sure winner of a "promptness prize," and made it appear in the advertisement and conduct of such contests that offers were made exclusively to individual addressed and that he had been selected for special individual favor or been granted exclusive advantage in the contest, and represented that form letters written to contestants and prospective contestants were purely personal to one addressed, and that each one addressed was in advanced position over all others, with little remaining to do to win grand prize, or was practically sure to be winner of one of first or other large money prizes;

Facts being solving purported puzzle did not qualify any contestant to win any prize, but such winning was dependent entirely upon procuring subscriptions for said magazine, not disclosed fully or at all in its aforesaid deceptive, misleading, and unfair advertisements, and plan was primarily not puzzle contest at all, but scheme and method which was intended to procure, through such deception and misrepresentations, large subscription sales force to sell subscriptions for its said magazine;

With intent and effect of having numerous innocent and unsuspecting contestants become sales people for it in the nature of subscription solicitors, as a result of such plan and practice, and "come-on" and inducing correspondence employed by it in carrying out the same, through which plan, and form letters used in carrying out the same, sent to all contestants alike as above indicated, contestants were led to believe, and with increasing emphasis, that they were among the few leaders in contest, as same