

IN THE MATTER OF
FIRESIDE INDUSTRIES, INC.

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

Docket 3362. Complaint, Mar. 19, 1938—Decision, Dec. 6, 1938

Where a corporation engaged in sale and distribution of home study courses for decoration of novelties and, in connection therewith, in sale and distribution of unpainted and undecorated furniture, toys, lamp shades, and other novelties, along with its own exclusive designs, instructions, and color schemes, to members of purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products and home study courses; in advertising its said courses and products and business and sales policies in publications, bulletins and other matter circulated among the various States—

- (a) Represented that its customers had all of its resources at their command, and that such resources were available for such customers' use and benefit, and that it was a guild or association of persons formed for mutual protection or aid and had counselors or agents in Europe, through such statements, among others, as that "Every member has at his command all of Fireside's tremendous resources for his or her benefit," "The Fireside Guild is, in reality, a close association of some 50,000—men and women, scattered throughout America," and "The Advisory Service includes timely information collected by our counselors and agents located in the art centers of Europe and America," facts being it was not a guild and such various misrepresentations were otherwise exaggerated, misleading and untrue; and
- (b) Represented that financial failure was impossible for those engaged in the business advocated by it, and that it purchased articles from customers and acted as their sales agent, and that its offer to refund purchase price to customers was backed by a gold bond, facts being bond backing its refund offer was not a gold bond, it did not purchase articles from customers or act for them as aforesaid, though performing function of advisor and counselor on sales problems, and it did not guarantee success to customers, for whom financial failure was possible, but merely provided for refund to customer, in event of his dissatisfaction with courses purchased from it;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of causing substantial portion thereof, by reason of such belief, to buy substantial quantities of its said courses and products, and of thereby diverting unfairly trade to it from competitors, as aforesaid, who truthfully advertise their business, products, and sales policies:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. John N. Wheelock for the Commission.

Mr. W. B. Alexander, of Adrian, Mich., 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 Fireside Industries, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fireside Industries, Inc., is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its office and principal place of business located at Adrian, Mich. Respondent is now, and for more than 2 years last past has been, engaged in the business of selling unpainted and undecorated furniture, toys, lampshades, and other novelties, and home study courses in the decoration of novelties which respondent distributes throughout the various States of the United States.

PAR. 2. Said respondent, being engaged in business aforesaid, causes said products and courses, when sold, to be transported from its office and principal place of business in the State of Michigan to purchasers thereof located at various points in States of the United States other than the State from which such shipments are made, and in the District of Columbia.

Respondent now maintains a course of trade in said products distributed and sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent is now, and has been, in substantial competition with other corporations, and with individuals and firms likewise engaged in the business of selling and distributing similar products and home study courses in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent, in order to promote the sale of its products and courses of study, published or caused to be published the following statements and representations:

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Every member has at his command all of Fireside's tremendous resources for his or her benefit.

The advisory service includes timely information collected by our counsellors and agents located in the art centers of Europe and America.

All of this is offered you now on a plan that insures your success. You cannot fail.

We are so sure you can succeed we give you an absolute warranty backed by a thousand dollar gold bond.

The Fireside Guild is, in reality, a close association of some 50,000 * * * men and women, scattered throughout America.

Fireside will * * * give you the individual service of the Fireside Sales Department.

Fireside guarantees your success. The thousand-dollar guaranteed bond protects you.

I absolutely guarantee your satisfaction with Fireside training. Everything is absolutely guaranteed.

World membership shows popularity of Fireside Guild.

PAR. 5. In all of its advertising literature respondent represents, through statements and representations herein set out, and through statements of similar import and effect,

1. That respondent's customers have all of respondent's resources at their command, and that these resources are available for their benefit;

2. That respondent has counsellors or agents in Europe;

3. That financial failure is not possible for those engaged in the business advocated by respondent;

4. That respondent's offer to refund the purchase price to customers is backed by "gold" bond;

5. That respondent's organization is a guild; that is, an association of persons engaged in kindred pursuits for mutual protection, aid or cooperation;

6. That respondent purchases articles from its customers or acts as their sales agent;

7. That respondent guarantees success to its customers.

PAR. 6. The above representations made by respondent are exaggerated, false, misleading, and untrue. In truth and in fact, all of respondent's resources are not available for respondent's customers, and respondent's customers do not have all of respondent's resources at their command. Respondent does not have counsellors or agents in Europe. Financial failure is possible for those engaged in the business advocated by respondent. Respondent's offer to refund purchase price to customers is not backed by a "gold" bond. Respondent is not a guild or a corporation or association of persons formed for mutual protection, aid or cooperation, of its membership. Respondent does not purchase articles from its

customers, nor does it act as sales agent for customers, but merely performs the function of an adviser on sales problems. Respondent does not guarantee success to its customers, but provides for a refund of the purchase price in case a customer is not satisfied.

PAR. 7. The foregoing statements and representations made by respondent in promoting the sale of novelties, its plan for decoration of the novelties, and its courses, of study in connection therewith, had, and now have, a tendency and capacity to, and do, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the misrepresentations of respondent, a number of the consuming public purchased a substantial volume of respondent's products. As a result, trade has been diverted unfairly to respondent from corporations, individuals, and firms likewise engaged in the business of selling novelties and plans for the decoration of novelties, and who truthfully advertise their respective products and courses of study. As a result thereof, substantial injury has been done, and is now being done by respondent to competition in commerce between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts and practices of the respondent are all 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 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 March 21, 1938, issued and served its complaint in this proceeding upon respondent Fireside Industries, 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John N. Wheelock, attorney for the Commission, and in opposition to the allegations of the complaint by W. B. Alexander, attorney for respondent, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding

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regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, oral argument not having been requested; and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Fireside Industries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan and having its office and principal place of business in the city of Adrian, Mich. Respondent was incorporated in the year 1924.

PAR. 2. The respondent is now, and has been from the date of its incorporation, engaged in the business of selling and distributing home study courses for the decoration of novelties, and as a part of its said business of selling and distributing such home study courses, respondent has been, during all of such times, and is now, engaged in the business of selling and distributing unpainted and undecorated furniture, toys, lamp shades, and other novelties with its own exclusive designs, instructions, and color schemes. Respondent sells said home study courses and products to members of the purchasing public situated in various States of the United States and the District of Columbia, and causes the said home study courses and products, when sold by it, to be transported from its aforesaid place of business in the State of Michigan to purchasers thereof at their respective points of location in various States of the United States other than the State of Michigan, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said home study courses and products among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations and with partnerships, firms and individuals engaged in the business of selling and distributing similar products and home study courses.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said home study courses and products, the respondent has caused advertisements containing representations and claims with respect to its business and sales policies

to be disseminated in publications, bulletins, and circulars having a circulation among and between the various States of the United States. The following statements and representations were made in the aforesaid advertisements:

Every member has at his command all of Fireside's tremendous resources for his or her benefit.

The Advisory Service includes timely information collected by our counselors and agents located in the art centers of Europe and America.

All of this is offered you now on a plan that insures your success. You cannot fail.

We are so sure you can succeed we give you an absolute warranty backed by a thousand dollar gold bond.

The Fireside Guild is, in reality, a close association of some 50,000—men and women, scattered throughout America.

Fireside will * * * give you the individual service of the Fireside Sales Department.

Fireside guarantees your success. The thousand dollar guaranteed bond protects you.

I absolutely guarantee your satisfaction with Fireside training. Everything is absolutely guaranteed.

World membership shows popularity of Fireside Guild.

Through the use of the statements and representations hereinabove set forth, all of which purport to be descriptive of respondent, its home study courses, products, and sales policies, the respondent has represented directly and by implication:

1. That respondent's customers have all of respondent's resources at their command, and that these resources are available for their benefit;
2. That respondent has counsellors or agents in Europe;
3. That financial failure is not possible for those engaged in the business advocated by respondent;
4. That respondent's offer to refund the purchase price to customers is backed by "gold" bond;
5. That respondent's organization is a guild; that is, an association of persons engaged in kindred pursuits for mutual protection, aid or cooperation;
6. That respondent purchases articles from its customers or acts as their sales agent;
7. That respondent guarantees success to its customers.

PAR. 5. The above representations made by respondent are exaggerated, misleading, and untrue. In truth and in fact, the purchasers of respondent's products and home study courses do not have all the resources of respondent corporation at their command or available for their benefit. Respondent does not have counsellors or agents in

Europe, and has not had foreign representatives located in the art centers of Europe since July 1, 1937. Financial failure is possible for those customers of respondent who engage in the business advocated by respondent and for those who purchase the products and home study courses from respondent. The offer of respondent to refund the purchase price for its products and home study courses to its customers is backed by a bond but such bond is not a gold bond. Respondent, Fireside Industries, Inc., is not a guild or association of persons formed for mutual protection or aid. Respondent does not purchase articles from its customers, nor does it act as a sales agent for its customers, but respondent performs the function of an adviser and counsellor on sales problems for its customers. Respondent does not guarantee success to its customers who purchase from respondent its home study courses and products, but respondent merely provides for a refund to the customer in the event that the customer is not satisfied with the home study courses which he has purchased from respondent.

PAR. 6. The use by respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to its business and sales policies has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and causes a substantial portion of the purchasing public, because of said mistaken and erroneous belief, to purchase substantial quantities of respondent's home study courses and products. As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce, who truthfully advertise their business, products and sales policies.

CONCLUSION

The aforesaid acts and practices of respondent 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, the answer of respondent, testimony, and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support

Order

of the allegations of the complaint and in opposition thereto, briefs filed herein, oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Fireside Industries, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of home study courses for the decoration of novelties, unpainted and undecorated furniture, toys, lamp shades, and other novelties, in interstate commerce or in the District of Columbia, do forthwith cease and desist representing:

1. That its customers have all of its resources at their command and that these resources are available for their use and benefit;
2. That financial failure is impossible for those who engage in the business advocated by it and that it guarantees success to its customers;
3. That its organization is a guild or association of persons formed for mutual protection or aid;
4. That its offer to refund the purchase price to its customers is backed by a gold bond;
5. That it purchases articles from its customers or acts as their sales agent, or does other than perform the function of an adviser and counsellor on sales problems;
6. That it has counsellors or agents in Europe when such is not the fact.

It is further ordered, That 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 GROVE LABORATORIES, INC.

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

Docket 2771. Complaint, Apr. 17, 1936¹—Decision, Dec. 7, 1938

Where a corporation engaged in manufacture, distribution, and sale of its "Laxative Bromo Quinine" tablets; in advertising its said preparation through display signs and in magazines and newspapers circulating among the various States, and through radio broadcasts—

Represented that said tablets constituted a cold remedy and a "complete" treatment for colds which would "kill" or fix or expel the same, or give the final touch in so doing, or would drive out or clean out poisonous infection, or eliminate, destroy, or break up cold infection, or fortify the system, and that said preparation had a germicidal effect and would stop a cold in its tracks, or on the first day, or in 24 hours, or in the fastest time on record, and would afford "thorough" and "complete" relief from colds;

Facts being cold virus cannot with certainty be combatted, attacked, "killed," "stopped," "fixed," or "destroyed" by any presently known germicide, remedy, cure, treatment, or mixture of drugs or other agents, no commercial remedies of so-called secret composition, such as tablets concerned, are recognized by medical authorities as remedies or cures for colds, or as being capable of stopping same, individuals react differently to different medicinal preparations, and no known formula or composition of drugs will, in all cases, serve as competent and effective treatment for such ailments, product in question, at most, was an aid or adjunct in treatment of common cold and in securing relief therefrom, and representations made by it with respect to nature and action of its product, its therapeutic value and effectiveness, were misleading and untrue;

With tendency and capacity to mislead and deceive purchasers of such product into mistaken and erroneous beliefs that said tablets furnished curative and remedial benefits in the treatment of colds to the extent represented, and with result that persons suffering from or threatened therewith, and reading its aforesaid advertisements in various periodicals and newspapers of interstate circulation, purchased substantial quantities of said tablets in reliance on the truthfulness of such representations as to the nature and effectiveness thereof, and took the same in accordance with its directions and without obtaining curative or remedial benefit or relief anticipated; and

With effect, as true consequence of mistaken and erroneous beliefs induced by acts, advertisements, and representations aforesaid, that substantial number of consuming public bought its said product in substantial volume, and trade was diverted unfairly to it from those likewise engaged in distribution and

¹ Complaint published as amended by motion granted July 21, 1937.