

Syllabus

IN THE MATTER OF
MORETRENCH CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3262. Complaint, Nov. 9, 1937—Decision, Feb. 6, 1939*

Where a corporation engaged in the manufacture of well points, pumps, and equipment used in dewatering wet soil during excavation work, and in sale and distribution thereof in commerce among the various States, and in substantial competition with others engaged in such sale and distribution of similar products—

- (a) Represented, by means of catalogs and other literature distributed by it to potential customers throughout the United States, that its well points had an unobstructed water-passing screen area of 350 square inches, and that its competitors' well points had only from 20 to 25 square inches, facts being such representations were misleading and deceptive in that method used for arriving at area of its said product was not used with respect to those of its competitors, quantity of discharge of water in operations involved is limited to diameter of riser pipe through which water must pass, regardless of speed with which same is pumped into well point, diameter of riser pipes of two of its competitors at time in question was larger than its own, and unobstructed water-passing screen areas of products of said two competitors was much greater than stated by it in its said catalog;
- (b) Represented, as aforesaid, that one of its well points was equal to five of those of its competitors, and that its own well points were much easier to get down than competitors', and never clogged up, facts being its well point was less efficient than that of one of its competitors, ease of sinking or jetting a well point is dependent upon many factors, including nature of soil, depth of excavation and other conditions, one well point may be more easily jetted than another under certain conditions, and more difficult under certain other conditions, both its well points and those of others, under certain conditions, will become clogged, and its various representations aforesaid were misleading and deceptive;
- (c) Represented, as aforesaid, that its well points had two valves, and that such fact added to their efficiency, and that those of its competitors had but one, facts being said circumstances do not affect relative efficiency of several well points, due to their construction upon different mechanical principles, and its statement aforesaid concerning increased efficiency thereof for reason set forth, was false and misleading; and
- (d) Represented, as aforesaid, that contractors all over the world testified that the operation costs of its well points were always 50 percent lower than those of its competitors, facts being contractors all over the world had not thus testified, though some had furnished it with testimonials containing statements attributed to them prior to the placing upon the market of such competitors' well points illustrated in its catalog;

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With effect of misleading purchasers and users of evacuation and pumping equipment into buying its said products in erroneous belief that such representations were true, and of diverting trade unfairly to it from its competitors:

Held, That such practices, under circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. William L. Pencke for the Commission.

McCole & Reid, of New York City, 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 Moretrench Corporation, 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 stating its charges in that respect as follows:

PARAGRAPH 1. Moretrench Corporation is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its principal office and place of business located in the town of Rockaway in the State of New Jersey. Said respondent is now, and for many years immediately last past has been, engaged in the manufacture of well points, pumps, and equipment used in dewatering wet soil during excavation work, and in the sale and distribution of said products in commerce between and among the various States of the United States and the District of Columbia, causing said products, when sold, to be shipped from its place of business in the State of New Jersey to purchasers thereof located in a State or States of the United States other than the State of New Jersey. There is now, and has been at all times herein mentioned, a constant current of trade and commerce in said well points, pumps, and equipment so sold and distributed by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent is now, and for many years last past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and shipment of similar products in com-

merce between and among the various States of the United States and the District of Columbia.

PAR. 3. Well-point equipment consists of a steel tubular header which is laid around the perimeter of a proposed excavation and attached to said header and inserted into the ground below the depth to which such excavation is to be made is a piece of pipe to which is attached a well point. One or more well-point pumps are attached to said header with which a vacuum is created in the header and in the well points below the ground. The water is then pumped out of the soil and away from the excavation job. Well points are made up of a piece of fluted tubing around which is wrapped a copper screen which acts as a filter and at the bottom is attached the well-point tip or jet head. Said well-point equipment manufactured by the respondent and its competitors is sometimes leased and sometimes sold to contractors. Said manufacturers demonstrate their respective equipment to contractors whenever excavation jobs are let. There are comparatively few manufacturers of such equipment and contractors have become familiar with the equipment of the several manufacturers and can identify them without being advised of the name of the manufacturer.

PAR. 4. In the course and conduct of its business, as aforesaid, said respondent, in soliciting the sale of and selling its products, causes catalogs to be distributed among its prospective customers and customers throughout the United States, in which said catalogs various false and misleading statements and representations are made with respect to the merits of the well-point equipment manufactured by respondent and respondent's competitors. One of said representations is in the form of an illustration of five well points designated by the numbers 1 to 5, respectively, the first one in addition being identified as a Moretrench well point and the other four, although bearing only said numbers, being easily identified by the contracting trade as the respective well points manufactured by specific competitors of respondent. Said pictorial representation is accompanied by a tabulation with respect to said five well points, showing a comparison as to the unobstructed water-passing screen area, the length of screen, the kind of material in screen mesh, number of valves in jetting tip, and percentage of jetting water passing the jetting tip. In said tabulation, respondent's product is designated as "Number 1" and shaded in orange color for emphasis, and represented as excelling the four competitive well points in each of the comparisons listed in said tabulation.

In truth and in fact, said tabulation is misleading and deceptive in that the method employed in arriving at the screen area of respondent's well point was not the same as that used in arriving at the screen area of the competitors' products, as a result of which said competitive products are unfairly and misleadingly shown at great disadvantage as compared with respondent's product and are falsely shown to possess substantially smaller screen areas. The water-passing screen area in a well point constitutes one of the important factors in the efficiency of equipment for pumping subsoil water to the surface for the reason that while all well points will clog up eventually in the course of the pumping operation, a larger screen area will enable a larger quantity of water to be filtered and pumped into the header.

PAR. 5. In the course and conduct of its business, respondent publishes advertisements in trade publications which have a circulation throughout the United States. In said advertisements, among others, is made the following representation:

"One Moretrench well point is equal to five of any other points, much easier to get down, and never clogs up," say experienced contractors.

In truth and in fact, said representation is false and misleading in that respondent's well point is not equal to five well points of any other manufacturer; and in that all well points do, in fact, clog up in the course of the pumping operation.

Respondent further represents in said advertisements that "operating costs are always 50% lower. Contractors all over the world testify to this." In truth and in fact said statement is false and misleading in that the operating costs of respondent's equipment as compared with the operating costs of the equipment of competing manufacturers is not 50 percent lower nor substantially lower, and contractors all over the world are not in a position to make such comparisons and have not in fact testified as represented by respondent.

PAR. 6. In the course and conduct of its business, as hereinbefore described, respondent is, and has been, in competition with corporations, partnerships, firms, and individuals engaged in the sale and shipment in commerce between the several States of the United States and the District of Columbia of excavation pump and well-point equipment, which said competitors do not misrepresent and have not misrepresented their said products in advertisements and otherwise.

PAR. 7. The statements and representations hereinabove set forth have the capacity and tendency to and do mislead the purchasers and users of excavation and pumping equipment into buying respondent's product in the erroneous belief that said representations

Findings

are true and that said equipment manufactured by respondent will accomplish the results represented in its said catalogs and advertisements. As a result of such false and misleading representations by respondent with respect to its said products, trade has been unfairly diverted to it from its said competitors whose ability to compete successfully with respondent has been and is lessened and injured by the methods of the respondent hereinabove set forth.

PAR. 8. The above acts and things done, or 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 interstate commerce within the meaning and intent of Section 5 of "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 November 9, A. D. 1937, issued and served its complaint in this proceeding upon the respondent, Moretrench Corporation, 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 the complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Samuel J. Reid, attorney for the respondent, before Charles F. Diggs, 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 proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; 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, Moretrench Corporation, is a corporation organized and existing under the laws of the State of New Jersey. Its principal place of business is at Rockaway, N. J. The

respondent is now, and since 1930 has been, engaged in the business of manufacturing well points, pumps, and equipment used in watering wet soil during excavation work, and in the sale and distribution of said products in commerce between and among the various States of the United States.

PAR. 2. The respondent is now, and since A. D. 1930, has been, in substantial competition with others engaged in the sale and distribution of similar products in commerce between and among the various States of the United States.

PAR. 3. A well-point system consists of a header pipe which is laid around the perimeter of the ground that is to be excavated; riser pipes attached to the header pipe, whose length is determined by the depth of the excavation, and the well point proper. Two pumps are required for the operation of the system. One pump is used to force the water into the well point for the purpose of disintegrating the ground and sinking the point to the desired depth; the other pump is used to create a vacuum in the pipes and thus withdraw from the ground all the ground water possible into the riser and header pipes. The water is finally discharged at some distant point. The well point itself consists of a fine wire screen surrounded by a coarse protective screen, or perforated metal; a valve, or valves, designed to permit the water to be forced through the point, or to close the opening when the ground water is withdrawn, and, finally, the point itself, which in some instances is blunt and in others, sharp. The efficiency of well points depends upon the ease with which water may be pumped out of the ground without clogging up the point, and the speed with which the water may be discharged into the header pipe. The diameter of the riser pipe is, therefore, the limiting factor, other things being equal, as to the speed with which the water may be discharged.

PAR. 4. The respondent, by means of catalogs and other literature distributed by it to potential customers throughout the United States, makes the following representations:

(a) That its well points have an unobstructed water-passing screen area of 350 square inches, and that its competitors' well points have only from 20 to 25 square inches.

(b) That one of its well points is equal to five of those of its competitors.

(c) That its well points are much easier to get down than those of its competitors.

(d) That its well points never clog up.

(e) That contractors all over the world testify that the operation costs of its well points are always 50 percent lower than those of its competitors.

PAR. 5. The efficient operation of well points, and the costs incident thereto, are largely dependent upon the matters and things concerning which the aforesaid representations are made. The representations appearing in respondent's catalog as to the water-passing screen areas are misleading and deceptive, in that the method used for arriving at the area for respondent's product is not used with respect to the products of its competitors. The respondent uses a coarse wire mesh as the outer covering for its fine-mesh inner screen, while two of its competitors use a smooth, perforated metal tube. The respondent, in determining the unobstructed water-passing screen area of its well point, deducted from the total area of the inner screen, the area of the solder points and the very fine points of immediate contact of the inner screen with the outer mesh only; but in arriving at the areas of two of its competitors' products, it deducted from the total area of the inner screen the entire area of the outer metal tube except for the perforations. The outer metal tube used by the respondent's said competitors does not constitute an obstruction, because the force of the water entering the points draws the flexible inner mesh away from the rigid metal covering. This was not given consideration by the respondent in arriving at the areas stated in its catalog. In the last analysis, the quantity of discharge of water is limited to the diameter of the riser pipe through which the water must pass, and this is true, regardless of the speed with which the water is pumped into the well point.

At the time the hearings were held in this proceeding the diameter of the riser pipes used by respondent and two of its competitors was the same, but at the time respondent distributed its catalog referred to in paragraph 4 hereof, respondent's riser pipe was smaller than those of its said two competitors. The unobstructed water-passing screen areas of the products of two of respondent's competitors are much greater than as stated by respondent in its said catalog.

PAR. 6. The statement contained in respondent's catalog that one of its well points is equal to five of those of its competitors is false and misleading. A comparative test showed that respondent's well point was less efficient than that of one of its competitors.

PAR. 7. The statement contained in respondent's catalog that its well points are much easier to get down than those of its competitors is misleading and deceptive. The operation of sinking a well point

is known as "jetting," and the ease with which this operation may be performed is dependent upon many factors—the nature of the soil, depth of excavations, and various other conditions. One well point may be more easily jetted than another under certain conditions, and more difficult to jet than the other under certain other conditions.

PAR. 8. The statement contained in respondent's catalog that its well points never clog up is false and misleading. The respondent's well points, as well as all others, under certain conditions of use, will become clogged.

PAR. 9. The statement contained in respondent's catalog that contractors all over the world testify that the operating costs of its well points are always 50 percent less than those of its competitors is false and misleading. Contractors all over the world have not testified that the operating costs of respondent's well points are always 50 percent lower than those of its competitors. Before respondent's competitors put upon the market their well points illustrated in respondent's catalog, some contractors furnished the respondent with testimonials containing the statements attributed to them by the respondent.

PAR. 10. In addition to the statements referred to in paragraph 4 hereof, respondent also states in its catalog that its well points have two valves, while those of its competitors have but one, and that this adds to the efficiency of its well points. While it is true that respondent uses two valves and its competitors but one, this does not affect the relative efficiency of the several well points, since they are constructed upon different mechanical principles. The respondent's statement concerning the increased efficiency of its well points because of the use of two valves is false and misleading.

PAR. 11. All of the aforementioned representations made by respondent are false and misleading and have the capacity and tendency to, and do, mislead the purchasers and users of evacuation and pumping equipment into buying respondent's products, in the erroneous belief that said representations are true.

PAR. 12. As a result of the above-mentioned false and misleading representations by respondent, trade has been unfairly diverted to respondent from its competitors.

CONCLUSION

The practices of respondent as set forth in the foregoing findings as to the facts are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

Order

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 Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Samuel J. Reid, counsel for the respondent, 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, Moretrench 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 well points and well-point systems in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Disparaging competitive products through representations that the unobstructed water-passing screen area of competitive well points is smaller than that of its own well points, which representations are based on the use of different methods of calculation, or through representations that its well points equipped with two valves are superior to competitive well points equipped with one valve when the respective well points are constructed on different mechanical principles.

2. Representing that one of its well points is equal to any given number of any competitive well points, goes down much easier and never clogs up.

3. Representing that contractors all over the world testify that operation costs of respondent's well points are always 50 percent or any other set percentage lower than those of competitive products.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
SIROIL 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 3378. Complaint, Apr. 12, 1938—Decision, Feb. 6, 1939

Where a corporation engaged in manufacture or compounding of its "Siroll" preparation, consisting of an emulsion of water and mineral oil and other ingredients, for application to the skin and scalp, and in sale and distribution thereof to members of the purchasing public and dealers in the various States and in the District of Columbia, in substantial competition with others engaged in similar sale and distribution of preparations and products designed and intended for and used in the treatment of the same ailments and conditions for which it recommended its said product, and including many who do not in any manner misrepresent their respective preparations and therapeutic properties thereof and do not make any other false statements in connection with their sale and distribution; in advertising its said product in newspapers and other publications circulating among the various States and in said District, and in pamphlets, bulletins, and other literature disseminated by mail and otherwise to members of the purchasing public in various States and in said District—

Represented, directly or by implication, that use thereof constituted a competent and effective remedy or cure for psoriasis and dandruff, and competent and effective treatment for said ailments and conditions, facts being it was neither a competent or effective cure, remedy or treatment thereof, would not do more, in any case, than temporarily remove the scales and crusts which are symptomatic of said ailments and conditions, and would not cause skin sores and blotches to disappear permanently, and would not restore the skin to normal texture;

With effect of misleading and deceiving members of the purchasing public, as aforesaid, into the erroneous and mistaken belief that said statements, representations, and advertisements were true, and that such preparation possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial number of such members, by reason of such erroneous and mistaken belief, to purchase substantial quantities thereof, and of placing in hands of retail dealers to whom it sold said preparation for resale to members of the purchasing public, means and instrumentality whereby they mislead and deceive such members into such erroneous and mistaken belief, and into purchasing substantial quantities of said product by reason thereof, and of diverting unfairly thereby trade to it from its competitors who truthfully advertise the effectiveness of their respective preparations; to the injury of competition in commerce:

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

Mr. Carrel F. Rhodes for the Commission.