

IN THE MATTER OF

ISRAEL RASKIN TRADING AS L. & M. MERCANTILE COMPANY, AND GEORGE R. CRAGGETT TRADING AS MISSOURI VALLEY PAINT MANUFACTURING COMPANY

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

Docket 3614. Complaint, Sept. 30, 1938—Decision, Feb. 24, 1939

Where an individual engaged in manufacture and sale of paint, and second individual engaged in sale and distribution of such product of former, and in selling, as thus engaged, their said products to purchasers in other States and in the District of Columbia, in competition with others engaged in sale and distribution of such products in commerce among the various States and in said District, and acting together in the acts and practices below set forth, and at the instance one of the other—

- (a) Designated and labeled as "Certified Double Body Guaranteed Ready Mixed Paint—White," certain white product thus made and dealt in by them, and set forth on label on front of container thereof that it "Contains White Lead, Zinc Oxide, and Linseed Oil";
- (b) Set forth, also, on label placed on such container, analysis purporting to show composition of said product, and setting forth as composition thereof, among other ingredients, "White Lead, Zinc, and Calcited Lithopone" as 47.17 percent, "Carbonate of Calcium" as 17.86 percent, "Oxide of Silicon" as 5.78 percent, "Linseed and Weatherproofing Oils" as 21.77 percent, and "Solution Oil of Pine" as 1.17 percent;

Facts being said product, thus described and labeled, contained so little white lead, zinc, and linseed oil that it had little or no value for use as paint, and did not contain ingredients set out in proportions stated in such purported analysis, but had white lead, zinc, and calcited lithopone content of approximately 10 percent less than stated, with white lead and zinc content so small as to have no value, contained about 14 percent more carbonate of calcium than there set forth, and 22 percent more silicon content, and water in large quantities, presence of which was concealed through use of term "Solution Oil of Pine," and no tung oil, contrary to impression implicit in use of words "Weatherproofing Oils";

With effect of misleading and deceiving purchasing public, through their said false, misleading, and deceptive acts and practices in labeling and representing and describing their said product, as above set out, as being a certified double body guaranteed ready mixed white paint containing white lead, zinc, and linseed oil in substantial quantities, into the erroneous and mistaken belief that said representations were true, and of causing substantial number of such public, because of said erroneous and mistaken belief, to buy their said product in preference to products of competitors who truthfully label and represent the same and the manufacture thereof; and

- (c) Represented name of manufacture of said paint on front label aforesaid as being "The National Paint Co., Chicago, Ill., Tulsa, Okla.," notwithstanding

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ing fact there was no such company maintaining offices at said addresses, and said products, sold under said name, were not manufactured by such a company, but were made by individual aforesaid and sold and distributed by him and said other individual as above set out; with effect of misleading prospective purchasers into erroneous belief that such paint product was made by company known as "The National Paint Company," and which maintained places of business in Chicago and Tulsa;

With result that their said acts and practices, as above set forth, unfairly diverted to themselves trade in said commerce from many competitors who sell and distribute in said commerce ready-mixed white paint similar in general appearance to their above-described product, but which are in fact ready-mixed white paints of good quality, composed largely of and containing substantial quantities of, white lead, zinc, and linseed oil, and who in no wise misrepresent the character of their said products or their ingredients or the manufacturers thereof; to their injury and to that of the public:

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

Mr. James L. Fort for the Commission.

Watson, Ess, Groner, Barnett & Whittaker, of Kansas City, Mo., for respondents.

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 Israel Raskin, individually and trading as L. & M. Mercantile Co., and George R. Craggett, trading as Missouri Valley Paint Manufacturing Co., hereinafter referred to as respondents, have 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 Israel Raskin is an individual trading as L. & M. Mercantile Co. and having his office and principal place of business located at 3313 Brooklyn Avenue, in the city of Kansas City, State of Missouri. Respondent George R. Craggett is an individual trading as Missouri Valley Paint Manufacturing Co. and having his office and principal place of business at 22-24 West Third Street, in the city of Kansas City, State of Missouri.

PAR. 2. Respondent George R. Craggett is now, and for some time last past has been, engaged in the manufacture of paints and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent Israel Raskin is now, and for some time last past has been, engaged in the sale and distribution of the paint products

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manufactured by respondent George R. Craggett in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause, and have caused, said products, when sold, to be transported from their respective places of business as aforesaid to the purchasers thereof located at various points in the several States of the United States, other than the State of Missouri, and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondents in such products 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 their businesses as aforesaid respondents are, and have been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of paint products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Among the paint products manufactured by the respondent George R. Craggett and sold and distributed by him and the respondent Israel Raskin in said commerce is a white paint product, which the respondent George R. Craggett, under the direction of, and in cooperation and concert with, the respondent Israel Raskin, manufactures, and designates and labels "Certified Double Body Guaranteed Ready Mixed Paint—White," with a statement on the label on the front of the container for said product stating that it "Contains White Lead, Zinc Oxide, and Linseed Oil." The name of the manufacturer of said paint, on said front label, is represented as being the "National Paint Co., Chicago, Ill., Tulsa, Okla." Respondents also place on the container for said paint a label purporting to show the composition of the paint therein contained, which is as follows:

COMPOSITION

	<i>Percent</i>
White Lead, Zinc, and Calcited Lithopone.....	47.17
Carbonate of Calcium.....	17.86
Oxide of Silicon.....	5.78
Linseed and Weatherproofing Oils.....	21.77
White Blended Varnish Oil.....	2.49
Volatile Mineral Solvents.....	3.76
Solution Oil of Pine.....	1.17
	100.00

The respondent George R. Craggett causes said paint, so labeled, upon the order and direction of the respondent Israel Raskin, to be shipped and delivered from his said place of business in the State of Missouri to the purchasers thereof located in the several States of

the United States other than the State of Missouri and in the District of Columbia. Certain of said paint, so labeled, is delivered by the respondent George R. Craggett to the respondent Israel Raskin, who then transports said paint from his place of business in the State of Missouri into the several States of the United States, other than the State of Missouri, where he offers said paint for sale to farmers and others, either at private sale or at so-called farmers' auctions.

PAR. 5. Said product, when marketed by respondents, is similar in appearance, color, and packing to white paint of good quality, but in truth and in fact said product contains so little white lead, zinc, and linseed oil that it has little or no value for use as paint. The statement as to the composition of the paint, as made by respondents, is false and misleading in that it does not contain the ingredients set out therein in the proportions stated. The white lead, zinc, and calcited lithopone content is approximately 37.2 percent, rather than 47.17 percent as stated, and the white lead and zinc content contained therein is so small in amount that it has no value. The product sold by respondents contains 13.9 percent more carbonate of calcium than is represented on the label. The oxide of silicon content is 22.4 percent greater than stated on the label. The use of the term "Solution of Oil of Pine" avoids disclosing the presence of water, which respondents' product contains in large percentage. The use of the words "Weatherproofing Oils" on the label has a tendency to, and does, convey the impression that tung oil is present, when in truth and in fact no such oil is a part of the product.

PAR. 6. The use of the name "National Paint Co." and the addresses "Chicago, Ill." and "Tulsa, Okla." has a tendency to, and does, mislead prospective purchasers into the erroneous belief that such paint product is manufactured by a company known as the National Paint Co. which maintains places of business in Chicago, Ill. and Tulsa, Okla., when in truth and in fact there is no "National Paint Co." maintaining offices at said addresses, and said products sold under said name are not manufactured by the "National Paint Co." but are manufactured by the respondent George R. Craggett and are sold and distributed by said respondent and respondent Israel Raskin, as hereinabove alleged.

PAR. 7. Respondents' acts and practices in labeling, and representing and describing, their said product, as hereinabove set forth, as being a certified double body guaranteed ready mixed white paint containing white lead, zinc, and linseed oil in substantial quantities are false, misleading, and deceptive, and have a capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said representations are true, and cause

a substantial number of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said product in preference to the products of their competitors who truthfully label and represent their said products and the manufacture thereof.

PAR. 8. There are among the competitors of respondents, mentioned in paragraph 3 hereof, many who sell and distribute in competition with respondents in said commerce ready mixed white paints similar in general appearance to respondents' above described product, but which are in fact ready mixed white paints of good quality composed largely of, and containing substantial quantities of, white lead, zinc, and linseed oil, and which competitors in nowise misrepresent the character of said products or their ingredients or the manufacturers thereof.

Respondents' acts and practices, as hereinabove set forth, have a capacity and tendency to, and do, unfairly divert to said respondents from said competitors trade in said commerce, to the injury of said competitors and to the injury of the public.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 September 30, 1938, issued, and on October 3, 1938, served, its complaint in this proceeding upon respondents Israel Raskin, and George R. Craggett charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers the Commission, by order entered herein, granted respondents' motion for permission to withdraw their said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to the said facts, which substitute answers were 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 the substitute answers 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 Israel Raskin, is an individual trading as L. & M. Mercantile Co. and his office and principal place of business is located at 3313 Brooklyn Avenue in the city of Kansas City, State of Missouri.

Respondent George R. Craggett is an individual trading as Missouri Valley Paint Manufacturing Co. and his office and principal place of business is located at 22-24 West Third Street in the city of Kansas City, State of Missouri.

PAR. 2. Respondent George R. Craggett is now, and for some time last past has been, engaged in the manufacture of paints and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent Israel Raskin is now, and for some time last past has been, engaged in the sale and distribution of the paint products manufactured by respondent George R. Craggett in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause, and have caused, said products, when sold, to be transported from their respective places of business as aforesaid to the purchasers thereof located at various points in the several States of the United States, other than the State of Missouri, and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondents in such products 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 their businesses as aforesaid respondents are, and have been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of paint products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Among the paint products manufactured by the respondent George R. Craggett and sold and distributed by him and the respondent Israel Raskin in said commerce is a white paint product, which the respondent George R. Craggett, under the direction of, and in cooperation and concert with, the respondent Israel Raskin, manufactures, and designates and labels "Certified Double Body Guaranteed Ready Mixed Paint—White," with the statement on the label on the front of the container for said product stating that it "Contains White Lead, Zinc Oxide, and Linseed Oil." The name of the manufacturer of said paint on said front label is represented as being "The National Paint Co., Chicago, Ill., Tulsa, Okla." Respondents also place on the container for said paint a label purport-

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ing to show the composition of the paint therein contained, which is as follows:

COMPOSITION

	<i>Percent</i>
White Lead, Zinc, and Calcited Lithopone-----	47.17
Carbonate of Calcium-----	17.86
Oxide of Silicon-----	5.78
Linseed and Weatherproofing Oils-----	21.77
White Blended Varnish Oil-----	2.49
Volatile Mineral Solvents-----	3.76
Solution Oil of Pine-----	1.17
	100.00

The respondent George R. Craggett causes said paint, so labeled, upon the order and direction of the respondent Israel Raskin, to be shipped and delivered from his said place of business in the State of Missouri to the purchasers thereof located in the several States of the United States other than the State of Missouri and in the District of Columbia. Certain of said paint, so labeled, is delivered by the respondent George R. Craggett to the respondent Israel Raskin, who then transports said paint from his place of business in the State of Missouri into the several States of the United States, other than the State of Missouri, where he offers said paint for sale to farmers and others, either at private sale or at so-called farmers' auctions.

PAR. 5. Said product, when marketed by respondents, is similar in appearance, color, and packing to white paint of good quality, but in truth and in fact said product contains so little white lead, zinc and linseed oil that it has little or no value for use as paint. The statement as to the composition of the paint, as made by respondents, is false and misleading in that it does not contain the ingredients set out therein in the proportions stated. The white lead, zinc, and calcited lithopone content is approximately 37.2 percent, rather than 47.17 percent as stated, and the white lead and zinc content therein is so small in amount that it has no value. The product sold by respondents contains 13.9 percent more carbonate of calcium than is represented on the label. The oxide of silicon content is 22.4 percent greater than stated on the label.

The use of the term "Solution of Oil of Pine" avoids disclosing the presence of water, which respondents' product contains in large percentage. The use of the words "Weatherproofing Oils" on the label has a tendency to, and does, convey the impression that tung oil is present, when in truth and in fact no such oil is a part of the product.

PAR. 6. The use of the name "National Paint Co." and the addresses "Chicago, Ill." and "Tulsa, Okla." has a tendency to and does mislead prospective purchasers into the erroneous belief that such paint product is manufactured by a company known as the National Paint Co. which maintains places of business in Chicago, Ill., and Tulsa, Okla., when in truth and in fact there is no "National Paint Company" maintaining offices at said addresses, and said products sold under said name are not manufactured by "National Paint Co." but are manufactured by the respondent George R. Craggett and are sold and distributed by said respondent and respondent Israel Raskin, as hereinabove alleged.

PAR. 7. Respondents' acts and practices in labeling and representing and describing their said product, as hereinabove set forth, as being a certified double body guaranteed ready mixed white paint containing white lead, zinc, and linseed oil in substantial quantities are false, misleading, and deceptive, and have a capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said representations are true, and cause a substantial number of the purchasing public because of said erroneous and mistaken belief to purchase respondents' said product in preference to the products of their competitors who truthfully label and represent their said products and the manufacture thereof.

PAR. 8. There are among the competitors of respondents, mentioned in paragraph 3 hereof, many who sell and distribute in competition with respondents in said commerce ready mixed white paint similar in general appearance to respondents' above-described product but which are in fact ready mixed white paints of good quality composed largely of, and containing substantial quantities of, white lead, zinc, and linseed oil, and which competitors in no wise misrepresent the character of said products or their ingredients or the manufacturers thereof.

Respondents' acts and practices, as hereinabove set forth, have a capacity and tendency to, and do, unfairly divert to said respondents from said competitors trade in said commerce to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of respondents as herein found, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Israel Raskin and George B. Craggett, individually, and trading as L. & M. Mercantile Co. and Missouri Valley Paint Manufacturing Co., respectively, or under any other name or names, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of paint products, or other like articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Labeling or selling as paint any product which does not contain the necessary ingredients in quantities sufficient to give it the quality, character, or value of paint.

2. Using the words "lead" or "zinc," or any other words of similar import, to designate, describe, or refer to any paint product or any pigment content thereof when such paint products do not contain sufficient quantities of such lead, zinc, or other ingredient to give such paint products the quality, character or value implied by the use of such words.

3. Using any analysis on labels, in advertising or in any other way which does not truthfully and accurately state the ingredients contained in said products and the proportion in which each appears.

4. Representing on labels or in advertising in any other way, expressly or by implication, that their paint products are composed of white lead, zinc oxide, and linseed oil, unless and until the pigment content of such paint products, exclusive of necessary coloring matter, is composed wholly of white lead and zinc oxide, and the nonvolatile liquid content, exclusive of necessary driers, is composed wholly of linseed oil.

5. Representing, by labels on cans containing paint products, or in any other way, expressly or by implication, that their paint products contain white lead, zinc oxide, or linseed oil in certain proportions or percentage unless the paint products so represented contain white lead, zinc oxide, and linseed oil in the proportion or percentage represented.

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6. Representing, through the use of the term "Weatherproofing Oils," or any other term of similar import or meaning, or through any other means or device, that their paint products contain tung oil or other weatherproofing oils unless such products do actually contain tung oil or such other oils in sufficient quantities to give such products the quality, character, or value implied by the use of such term.

7. Representing that their paint products are manufactured at a place other than the actual place of manufacture or that they are manufactured by or for any person, corporation or partnership other than that person, corporation, or partnership by whom or for which said paint products are actually manufactured.

It is further ordered, That the respondents, Israel Raskin, and George R. Craggett, shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
INSTRUCTION SERVICE, INC., AND CHARLES J. OZMENT
TRADING AS INSTRUCTION SERVICE AND PERFECT
PENMANSHIP INSTITUTE

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

Docket 3628. Complaint, Oct. 8, 1938—Decision, Feb. 24, 1939

Where a corporation, and an individual who was president thereof and managed, controlled, and directed its policies and operations, engaged in sale and distribution of courses of study and instruction to prepare students for examinations for various civil service positions with the United States Government, and as thus engaged, in sending their courses of instruction, pamphlets, study, and question sheets, and other printed matter, written material, and equipment to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in similar sale and distribution of similar correspondence courses of study and instruction, and including many who do not in any manner misrepresent their courses of instruction and do not make any false representations in connection with sale or distribution thereof; in advertising their courses in newspapers, magazines, and other publications circulating among the various States and in said District, and in pamphlets, circulars and other printed matter circulated to members of the purchasing public as aforesaid—

- (a) Represented that men and women were constantly needed for Government positions, and that such positions were immediately available, and that anyone with only a common school education might obtain well-paying Government position, and that large numbers of prison guards, watchmen, and men for similar Government positions were needed, with no special qualifications necessary and that railway mail clerks were allowed to travel and receive allowances for expenses immediately upon appointment and were paid while off duty, facts being that men and women are not thus constantly needed, nor are such positions immediately available, many positions, in addition to high school education, require special training and experience, and there are relatively few positions available at salaries stated by them to those having only common school education, actual probable earnings available to those who may succeed in being employed after having successfully taken examination, were in many instances less than amount stated by them or available only after many years of service, no examinations were contemplated within reasonable time for prison guards, watchmen, and similar positions, in which, in addition to exacting qualifications, war veterans were given preference, and railway mail clerks were not sent out to travel immediately after being employed, but were required to serve long period of time at terminals or other stations before being allowed to travel, at least 50 percent of them received no expense allowances by reason of such circumstances or employment on short runs, and such clerks did not receive compensation when not working and were required to average 8 hours work a day for 306 days a year;