

Complaint

IN THE MATTER OF

WILLIAM H. PEARCE & COMPANY, WILLIAM H. PEARCE,
PHILIP S. SHASSIAN, AND E. E. BRAZELTONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3071. Complaint, Mar. 8, 1937—Decision, Mar. 1, 1939*

Where two individuals engaged in making, under and pursuant to patents, tops to replace open grates on gas ranges and providing smooth cooking surface similar to that of coal ranges, and in selling and distributing said tops to consumers through crews of canvassers making house-to-house solicitation and using advertising literature supplied or approved by them, and selling such tops at prices ranging from \$7.90 to \$9.90, as case might be—

Represented that every top was properly ventilated to insure proper combustion and that use thereof materially reduced gas bills and increased cooking capacity, cooking two to four articles with one burner, facts being, while one of two types made by them was properly ventilated to insure proper combustion, other type was not thus ventilated with more than one burner in use and, used with more than one burner lighted, emitted carbon monoxide in dangerous quantities, use of such tops materially decreased efficiency of gas used and tended to increase, rather than reduce, gas bills, and use of such tops with one burner lighted would not bring to a boil, or cook, any article placed on top except directly over lighted burner, though articles brought to boil over lighted burner might be kept warm on other parts of top while another article was being heated or boiled directly over such lighted burner;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that such representations were true, and to induce number of such public to buy substantial quantity of said tops which they would not otherwise buy and, as direct consequence of such belief thus induced, to cause number of such public to buy substantial quantities of their said merchandise, with result that trade was diverted unfairly to them from others likewise engaged in sale of stove tops for gas ranges, and who truthfully advertise and represent their merchandise; to the substantial injury of competitors in commerce:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Butler & Denny, of Philadelphia, Pa., for respondents.

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

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Federal Trade Commission, having reasons to believe that William H. Pearce and Philip S. Shassian, trading and doing business as William H. Pearce & Co., and E. E. Brazelton, an individual, hereinafter referred to as respondent, have been and are using unfair methods of competition in commerce, as "commerce" is defined in 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. William H. Pearce & Co. is a copartnership composed of William H. Pearce and Philip S. Shassian and the principal place of business of said partnership is 52 South Second Street, Philadelphia, Pa. They are now, and have been for a number of years last past, engaged in the manufacture, transportation, sale, and distribution, between and among various States of the United States, of an appliance to be used on an open top gas stove or range and designated as the "Pearce Stove Top." The respondent, E. E. Brazelton, of 200 S. Kennelworth Avenue, Elmhurst, Ill., is a sales agent of said William H. Pearce & Co., and has charge of the field agents of said company and directs the methods of their work and selects the territory in which they work. The respondents cause said appliances, when sold, to be shipped and transported in commerce from the respondents' place of business in Philadelphia, Pa., to purchasers thereof located at various points in States of the United States other than the State of Pennsylvania and they maintain a constant current of trade and commerce among and between the various States of the United States in the sale and distribution of said product.

PAR. 2. The respondents, in the course and conduct of said business are now, and at all times herein referred to have been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of closed top gas stoves and detachable tops for gas stoves and other appliances to be used for the same and similar purpose as the appliances which the respondents sell, and these competitors do not in any way misrepresent the quality or efficacy of their products or resort to unfair practices in offering for sale and selling their products.

PAR. 3. The respondents, William H. Pearce and Philip S. Shassian, in the course and conduct of their business, have employed the respondent E. E. Brazelton, on a commission basis, to sell said product, and the territory assigned to the said E. E. Brazelton is the whole of the United States, with the exception of the city of Philadelphia, Pa., and the city of New York, N. Y. The respondent, E. E. Brazelton, in the course of his employment and in the scope of his

employment, in selling and offering for sale said product to the purchasing public, has employed a large number of men to make a house-to-house canvass and solicit orders, collect for, and install gas stove tops. The respondents, William H. Pearce and Philip S. Shassian, have prepared and have caused to be prepared, printed pamphlets, circulars, etc., on which the name, William H. Pearce & Co., and the name of the product is prominently and conspicuously displayed. The said pamphlets, circulars, etc., are furnished by the respondents William H. Pearce and Philip S. Shassian, to said salesmen to be used by the salesmen in soliciting orders for said product, and to be distributed by the salesmen to prospective purchasers of said product. In describing the quality and efficacy of the product, the respondents represent:

Reduces your gas bill.

Increases cooking capacity of the range.

Eliminates unsanitary grates.

Will cook two to four articles with one burner.

Prevents burners from clogging.

Will keep a whole meal hot until ready to serve with one burner turned low.

Manufactured by the oldest and largest stove top company in the world.

Every Pearce Top is properly ventilated to insure proper combustion.

In addition to the representations in the pamphlets, circulars, etc., the salesmen, in the course of their employment, and in the scope of their employment, represent to the prospective purchasers that said stove tops will save from one-third to one-half on gas bills, and that said stove tops will save 2,000 feet of gas per month.

PAR. 4. All of said representations as above set out, and many other similar representations not specifically mentioned herein, are highly exaggerated, false, and misleading and had, and now have, the capacity and tendency to mislead and deceive the purchasing public and did, and do now, lead a substantial portion of the purchasing public into the false and erroneous belief that when said appliance is used on an open top gas range or stove; (1) it will reduce the amount of gas consumed; (2) it will reduce the amount of gas consumed from one-third to one-half; (3) it will increase the cooking capacity of the stove or range; (4) it will prevent the burners from clogging; (5) it will by the use of one burner turned low keep an entire meal hot; (6) it will add to the sanitary condition of the stove; (7) every Pearce stove top is properly installed to insure proper combustion; and (8) that the respondents are the oldest and largest stove top company in the world.

PAR. 5. In truth, and in fact, the said appliance, when used, will not lessen the consumption of gas in any respect, it will not increase the cooking capacity of an open top stove or range to any appreciable

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degree. It will not prevent the burners from clogging. It will not add to the sanitary conditions of a stove. The respondents, William H. Pearce and Philip S. Shassian, do not operate the oldest and largest stove top company in the world as there are other companies as old and as large, if not older and larger. Not only is the appliance lacking in the advantages it is falsely represented to have, but the appliance is so constructed that there is a considerable likelihood of escape of carbon monoxide gas which renders the use of said appliance highly hazardous.

PAR. 6. In addition to the false and misleading representations and unfair practices as above set out, the salesmen in soliciting orders for said stove tops, and for the purpose of securing the initial payment, make representations that said stove tops will be delivered to the purchaser, and be delivered on a specified date. The truth is the stove tops are not delivered on the date promised and in many cases are never delivered and in such cases the respondents refuse to refund the amount deposited.

PAR. 7. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations hereinabove set out, a substantial number of the purchasing public has purchased a substantial amount of respondents' product with the result that trade has been unfairly diverted to the respondents from competitors engaged in selling and distributing closed top gas stoves and appliances for the same purpose and use for which the respondents' product is manufactured, distributed, and sold, and who in no way misrepresent the quality and efficacy of their product. As a result of the unfair acts and false and misleading representations of the respondents, injury has been, and is now being done to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 (U. S. Code, title 15, sec. 45), the Federal Trade Commission, on March 8, 1937, issued, and on March 9, 1937, served its complaint in

this proceeding upon William H. Pearce & Co., a partnership, William H. Pearce, Philip S. Shassian, and E. E. Brazelton, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act and respondents entered their appearances and filed their answers herein. Thereafter, hearings were held and evidence was introduced by Floyd O. Collins, attorney for the Commission, in support of the allegations of the complaint, and by Joseph G. Denny, Jr., attorney for respondents, in opposition to the allegations of the complaint, before John W. Addison, an examiner of the Commission theretofore duly appointed by it. Thereupon this proceeding regularly came on for final hearing before the Commission on said complaint, the answers thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto filed by respondents, William H. Pearce and Philip S. Shassian, and oral arguments by said counsel for Commission and respondents, Pearce and Shassian; and the Commission having duly considered said complaint, answers, testimony, and evidence, briefs and oral arguments, 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, E. E. Brazelton, died March 25, 1937.

PAR. 2. Respondents, William H. Pearce and Philip S. Shassian, are individuals trading as partners under the firm name and style of William H. Pearce & Co. This partnership, in 1921, succeeded to the business established by William H. Pearce in 1910 and conducted by him until the partnership was formed. It is engaged at Philadelphia in the business of making and selling tops to replace open grates on gas ranges. The tops are made under and pursuant to patents issued by the United States Patent Office claiming to provide gas ranges with means whereby the heat from a single burner can be economized, controlled, and distributed in such manner as to provide for the effective heating of two or more cooking utensils and utilized to much better advantage than in the ordinary gas range. They provide a smooth cooking surface similar to that of coal ranges.

PAR. 3. Respondent, William H. Pearce & Co., sells these tops to consumers. The sales are made by men with crews of canvassers making house-to-house solicitations using advertising literature supplied or approved by respondent, William H. Pearce & Co. The price of the tops for four-burner gas ranges to the consumer in Philadelphia and New York and territory surrounding these cities is \$7.90 each, and in other territory the price to the consumer is \$9.90.

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PAR. 4. Respondent, William H. Pearce & Co., sells the tops in commerce among the several States to buyers in States other than Pennsylvania and ships them through and into such other States and causes them to be there delivered to the buyers.

PAR. 5. There are other individuals, partnerships, and corporations also engaged in the business of selling tops to replace open grates on gas ranges in commerce among the several States who sell in competition with respondent, William H. Pearce & Co.

PAR. 6. Respondent, William H. Pearce & Co., to promote the sale of these stove tops, represents:

(a) Every Pearce top is properly ventilated to insure proper combustion.

(b) The use of Pearce tops materially reduces gas bills, and

(c) Their use increases cooking capacity—cooking two to four articles with one burner.

PAR. 7. In truth and in fact:

(a) Respondent, William H. Pearce & Co., make two types of said tops. One type is properly ventilated to insure proper combustion. The other type is not properly ventilated to insure proper combustion with more than one burner in use and when used with more than one burner lighted emits carbon monoxide in dangerous quantities.

(b) The use of the tops materially decreases the efficiency of gas used and tends to increase rather than reduce gas bills.

(c) The use of the tops with one burner lighted will not bring to a boil or cook any article placed on the top except directly over the lighted burner. Articles brought to a boil over a lighted burner may be kept warm on other parts of the top while another article is being heated or boiled directly over the lighted burner.

PAR. 8. Each and all of the false and misleading representations so made by respondent as set forth in paragraph 6 above, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and false belief that said representations are true; and to induce a number of the purchasing public to buy a substantial quantity of said tops which they would not buy except for such erroneous and false belief. Further, said representations have the capacity and tendency as a direct consequence of such erroneous and false belief induced by the representations of respondent as aforesaid, to cause a number of the purchasing public to buy substantial quantities of said merchandise with the result that trade is diverted unfairly to respondent from other partnerships, individuals, and corporations likewise engaged in the sale of stove tops for gas ranges who truthfully advertise and

represent their merchandise. Substantial injury has been and is being done by respondent, William H. Pearce & Co., to its competitors in commerce among the several States of the United States and to the public.

CONCLUSION

The aforesaid acts and representations of respondent, William H. Pearce & Co., have been and are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony, and other evidence taken before John W. Addison, 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 Floyd O. Collins, counsel for the Commission, and by Joseph G. Denny, Jr., counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents, William H. Pearce and Philip S. Shassian, individually and as copartners trading as William H. Pearce & Co., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, William H. Pearce and Philip S. Shassian, individually and as copartners trading as William H. Pearce & Co., or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of tops to replace open grates on gas ranges in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That their tops for gas ranges or any other article of similar construction or design are properly ventilated unless and until said tops are so ventilated as to insure proper combustion when used with one or more burners and so constructed and designed that they will not emit carbon monoxide gas.

2. That the use of the tops for gas ranges which are sold and distributed by the respondents will materially reduce gas bills or gas consumption unless and until such tops are so constructed and designed as to materially reduce the consumption of the gas.

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3. That the use of the tops for gas ranges which are sold and distributed by the respondents will increase cooking capacity unless and until such tops are so constructed and designed as to materially increase cooking capacity.

It is further ordered, That the respondents 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.

Syllabus

IN THE MATTER OF

MATTHEW A. WILLIS, TRADING AS ROGERS REDEMPTION BUREAU AND THE THOMPSON POTTERY COMPANY ADVERTISING DEPARTMENT

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 15 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3198. Complaint, Aug. 9, 1937—Decision, Mar. 1, 1939

Where an individual engaged in sale and distribution of silverware in commerce among the various States by means of sales-promotional plans which included premium certificates redeemable in said ware as sent in by customers of the retail merchants and others to whom it sold said plans, through salesmen employed to solicit such merchants and furnished by him with forms of contract for execution by particular merchant in purchase of plan, and with folders and catalogs illustrating such ware and samples of premium certificates or gift cards, and, as thus engaged, in substantial competition with others similarly engaged in sale and distribution of sales promotional plans and silverware in commerce among the various States, and including many who do not in any manner misrepresent their business status or terms and conditions of their said plans or make any other false representations in regard to the sale and distribution of their respective products—

- (a) Made use of words "Rogers Redemption Bureau" in trade name employed by him in his said business, and printed on the face of his said contract forms, in conspicuous large red letters, words "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd.," with capacity and tendency, through use of term "Rogers" in his trade name as aforesaid, and statements on contract form, to cause members of purchasing public to have erroneous and mistaken belief that he was connected with or a part of the manufacture of Wm. A. Rogers silverware, and represented to retail merchants and others, through his said salesmen, that he, trading as aforesaid, was connected with or a part of "Oneida, Ltd.," manufacturer of Wm. A. Rogers silverware, facts being he had no connection, direct or indirect, with said Oneida, Ltd., manufacturer of said long and favorably known, high-grade silverware, except as purchaser through jobber of its products;
- (b) Made statements on reverse side of said contract relative to number of premium certificates or gift cards required to redeem the various items of silverware, there referred to as "free," through reference to "NUMBER OF CARDS REQUIRED FOR VARIOUS FREE ITEMS LISTED BELOW," and represented, through salesmen, to prospective purchasers of such sales plans that the retail dealer's customers would receive silverware without additional cost upon sending to him designated number of certificates or cards, facts being such items were not given away free, but there was a charge of 1 cent for each card redeemed in silverware, and his said agents, in many instances, did not show form of certificate or card to retail merchants, who discovered, after shipment to them of such certificates, that on reverse side thereof there was statement making the card redeemable in silverware aforesaid as per schedule below, provided holder had received card in regular course of trade and "encloses one cent for each card";