

IN THE MATTER OF
GRAND GASLIGHT, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2596. Complaint, Oct. 23, 1935—Decision, Mar. 21, 1939

Where a corporation engaged in sale of incandescent lamps for general lighting service and operation in connection with electric current supplied by public service corporations, and in selling its said products through salesmen and the mails to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such products in commerce and in said District, and including many who correctly brand their said products as to wattage and voltage—

- (a) Represented and implied to purchasers of its said bulbs that it was the manufacturer thereof and owned and operated, or directly and absolutely controlled manufacturing plant in which such products were made, through statement "Manufacturers and importers of electric light bulbs" on folders, statements, and letterheads sent to prospective purchasers and to purchasers, facts being it did not make any such bulbs during period in question, but purchased same from domestic corporation and from foreign sources, and did not own, operate, nor control plant in which such bulbs were manufactured; and
- (b) Caused bulbs offered and sold by it to be marked with figures and letters misleadingly and prejudicially indicative of wattage and voltage of particular product, facts being its said bulbs, marked in accordance with custom and practice in industry, did not, due allowance made for recognized and established tolerances, produce light and consume current as thus indicated, but, excepting those marked "25-W, 120-V," produced less light and consumed more current than indicated, purchasers of such bulbs would, with exception aforesaid, use substantially more electricity and secure substantially less light from bulbs than indicated by markings thereon, bulbs excepted as aforesaid produced less light and consumed less current, and all bulbs tested were, as compared with recognized standards, of inferior quality as producers of light;

With tendency and capacity to mislead and deceive many members of purchasing public and cause them erroneously and mistakenly to believe that it was the manufacturer of the bulbs offered and sold by it, and that said bulbs were of wattage and voltage indicated by letters and figures thereon, on which ordinary purchaser must rely in determining value or efficiency of such products, and to cause such members, because of said erroneous and mistaken belief, to purchase substantial quantities of its said products and thus unfairly divert trade in commerce to it from its competitors who do not misrepresent their business status, and who truthfully brand and mark their products:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Clark Nichols for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Grand Gaslight, Inc., hereinafter referred to as respondent, has been and now is 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. Respondent, Grand Gaslight, Inc., is a corporation, incorporated on or about January 24, 1933, under the laws of the State of New York, having a place of business in the city of New York, and it is and has been since on or about the date of its incorporation engaged in the business of the sale of incandescent lamps.

PAR. 2. During all the times since its organization as a corporation the respondent has sold incandescent lamps, made for general lighting service for operation in connection with electric current supplied by public service corporations, including the lamps hereinafter mentioned and referred to, to purchasers, including wholesale dealers or jobbers and retail dealers therein, located in various States of the United States other than New York or the State of origin of the shipment, for resale by the dealers for use or consumption. The respondent has caused the lamps when so sold by it to be transported from New York, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 3. During all the times above mentioned and for many years prior thereto, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged, some of them in the business of the manufacture and sale, and others in the business of the sale of incandescent lamps for operation with electric current supplied by public service corporations for general lighting service to purchasers, wholesale dealers or jobbers and retail dealers therein, located in various States of the United States other than the State of the seller or the State of origin of the shipment, for resale by the dealers for use or consumption. The sellers, respectively, have caused the lamps, when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 4. The respondent, in the sale of incandescent lamps, is and has been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in

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paragraph 3 hereof, during all the times referred to in paragraph 3 hereof.

PAR. 5. There is and has been, during all the times above mentioned and referred to and for many years prior thereto, an established and universal custom in the United States in connection with the manufacture and sale of incandescent lamps manufactured for general lighting service for operation in connection with electric current supplied by public service corporations, that, at the times the lamps are displayed or offered for sale or sold by manufacturers, dealer distributors, or others, to users or consumers, including the Federal and State Governments and their agencies, and municipal and other corporations, and members of the public, the lamps shall be legibly, durably marked or printed, among other things, with the words and figures indicating, respectively, the number of volts and watts that is the measure of their electromotive force and power, allowing for certain tolerances, more or less, in the statement of the number of watts with which they are marked or branded.

The tolerances in the watt measurement above referred to are and have been known to and have been recognized, substantially by all the members of the industries engaged in the manufacture and sale of incandescent lamps in the United States, during all the times above mentioned and referred to. And, the tolerances in the watt measurement of incandescent lamps, manufactured for general lighting service, above referred to, have during said times coincided with the tolerances as set forth in the Federal specifications for the purchase of incandescent lamps by the United States.

PAR. 6. The tolerances in the statement of the number of watts with which incandescent lamps are and have been marked or branded, mentioned and referred to in paragraph 5 hereof, for example, for the years beginning July 1, 1932, and ending June 30, 1933; beginning July 1, 1933, and ending June 30, 1934; and beginning July 1, 1934, and ending June 30, 1935, for large tungsten filament lamps for general lighting service, for standard bulbs marked 25, 40, 60, 75, and 100 watts, were as follows:

For the year beginning July 1, 1932, and ending June 30, 1933

Watts	Bulb	Total watts above or below standard
25	A-19	<i>Percent</i>
40	A-19	4
60	A-21	4
75	A-23	4
100	A-23	4

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*For the years July 1, 1933 to June 30, 1934,
and July 1, 1934 to June 30, 1935*

Watts	Bulb	Total watts above or below rating
25	A-19	<i>Percent</i> 4
40	A-19	4
60	A-21	4
75	A-21	4
100	A-23	4

PAR. 7. During all the times above mentioned and referred to in paragraphs 2 and 4 hereof, the respondent in offering for sale and in the sale of incandescent lamps, sold by it as set forth in paragraphs 2 and 4 hereof, has represented on its letterheads and invoices and verbally by statements of its agents to dealers, who purchase such lamps for resale to the public for use or consumption, that respondent was a manufacturer of incandescent lamps and the manufacturer of the lamps sold by it; and it has caused such representation to be made by dealers, who purchased its lamps for resale, to the public to whom the lamps were resold for use or consumption by the dealers.

The respondent also caused its incandescent lamps mentioned and referred to above to be offered for sale and sold during all the times above-mentioned and referred to with the number of watts of their electromotive power marked or branded thereon by such method and in such manner that the marking or branding thereof was easily erased in handling the lamps, contrary to the customary method and manner recognized and used by the industries engaged in the manufacture and sale of such lamps, and with the watt measurement that was in some instances in excess of and in other instances less than their actual watt measurement, after allowing for the tolerances above-mentioned.

PAR. 8. The respondent during all the times above-mentioned and referred to was not a manufacturer of incandescent lamps, and was not the manufacturer of the lamps sold by it as above set forth, and the statements and representations above-mentioned that it was a manufacturer of incandescent lamps and the manufacturer of the incandescent lamps sold by it, and the marking or branding of the lamps sold by it as above set forth with the watt measurement that was in excess of or less than the actual watt measurement of the lamps, had the capacity and tendency to deceive and mislead dealers and the members of the public who purchase incandescent lamps for use or consumption into the belief that the respondent was the manufacturer of the lamps offered for sale and sold by it, and, that when

purchasing respondent's lamps from respondent they obtain a direct from factory price and save a middleman's profit; and, that the lamps were of the watt measurement with which they were marked or branded, and in reliance upon such belief, into purchasing respondent's lamps in place of incandescent lamps sold by respondent's competitors, and the dealers and members of the public were deceived and misled thereby into purchasing respondent's lamps in preference to and in place of lamps sold by respondent's competitors and trade in incandescent lamps was thereby diverted from respondent's competitors to the respondent.

PAR. 9. The above acts and things done and 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 commerce within the meaning and intent of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 23, 1935, issued, and subsequently served, its complaint upon respondent, Grand Gaslight, Inc., charging it with the use of unfair methods in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondent, testimony, and other evidence in support of the allegations of the said complaint were introduced by Clark Nichols, attorney for the Commission, and in opposition to the allegations of the complaint by the respondent through its president, Samuel Rudefer, before W. W. Sheppard, 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 regularly came on for final hearing before the Commission on said complaint, testimony, and other evidence, brief in support of the complaint, no brief having been filed by the respondent, 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 its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Grand Gaslight, Inc., is a corporation organized under and by virtue of the laws of the State of New York.

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Findings

It has its principal office and place of business in New York, N. Y. It is engaged in the sale of incandescent lamps made for general lighting service and for operation in connection with electric current supplied by public service corporations. When said products are sold, respondent causes the same to be transported from its said place of business in New York, N. Y., to the purchasers thereof located in various States of the United States other than New York and in the District of Columbia. In the course and conduct of its business respondent is in substantial competition with other corporations and with firms and individuals likewise engaged in the sale and distribution of electric light bulbs or incandescent lamps in commerce between and among the various States of the United States and the District of Columbia. Among said competitors are many who correctly brand their products as to wattage and voltage.

PAR. 2. Respondent makes use of salesmen and the United States mails in connection with the sale and distribution of its said products. It does no newspaper advertising. It mails to prospective purchasers, and purchasers, folders, statements, and letterheads which, for a considerable period of time prior to October 1935, contained the following statement:

Manufacturers and importers of electric light bulbs.

By this means the respondent represented and implied to purchasers of its said products that it was the manufacturer thereof and owned and operated, or directly and absolutely controlled, the manufacturing plant wherein such products were made and manufactured.

In truth and in fact the respondent did not manufacture any of the light bulbs offered for sale and sold by it during the period in which it made the representations aforesaid, but purchased said bulbs in part from the Lednew Corporation, a domestic corporation, and from foreign sources. Respondent did not own, operate, nor control the manufacturing plant wherein the bulbs were made or manufactured. The representation that respondent was a manufacturer of bulbs was false, misleading, and deceptive.

PAR. 3. Respondent, as is the custom and practice in the industry, caused the bulbs offered for sale and sold by it to be marked with figures and letters to indicate the wattage and voltage of the particular bulb on which the figures and letters were placed. Figures and letters, such as 25-W, 40-W, and 60-W, are used to indicate the number of watts of electricity consumed by the bulb when attached to a current of the voltage likewise indicated on the bulb by figures and letters, such as 110-V, 115-V, and 120-V, indicating the voltage of the electrical current on which the bulb should be used. The wattage

of a bulb indicates the amount of light which should be produced by such bulb when attached to a current of the voltage indicated on the bulb.

Recognized scientific tests by the National Bureau of Standards of the United States Department of Commerce, of a representative number of bulbs, marked, "25-W, 120-V," "40-W, 120-V," "60-W, 120-V," "75-W, 120-V," and "100-W, 120-V," respectively, sold by the respondent and delivered to a retailer in Chicago, Ill., disclosed that a great majority of the bulbs consume, after making due allowance for the generally recognized tolerances permitted in the marking of such bulbs, a substantially greater wattage of electricity and produced substantially less light than indicated and represented by the markings on the bulbs. Some of the bulbs consumed less electricity but gave less light than indicated by the markings thereon. The results of this test show, and the Commission finds, that the bulbs marked, "25-W, 120-V" used less electricity but gave approximately 20 percent less light than indicated by the markings thereon; that the bulbs marked, "40-W, 120-V" and "60-W, 120-V" used substantially more watts of electricity and produced approximately 20 percent less light than indicated by the markings thereon; and that bulbs marked "75-W, 120-V" and "100-W, and 120-V" used substantially more watts of electricity and gave approximately 25 percent less light than indicated by the markings thereon.

Purchasers of these bulbs would, in all instances, except as to the 25-W bulbs, be using substantially more electricity and securing substantially less light than indicated by the markings thereon or which should be secured by the amount of electricity used. All of the bulbs tested are of inferior quality, insofar as producing light is concerned, when compared to recognized standards.

The acts and practices of the respondent in misbranding its said bulbs as to the wattage are misleading and deceptive as the ordinary purchaser must rely on the markings found on a bulb in determining the value or efficiency thereof.

PAR. 4. The acts and practices of the respondent, as aforesaid, in connection with the sale and distribution of its products in commerce between and among the various States of the United States and in the District of Columbia are false, misleading, and deceptive and had, and now have, a tendency and capacity to mislead and deceive many members of the purchasing public and cause them erroneously and mistakenly to believe that the respondent is the manufacturer of bulbs offered for sale and sold by it, and that the bulbs are of the wattage and voltage indicated by the letters and figures placed thereon, and to cause them, because of said erroneous and mistaken

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belief, to purchase substantial quantities of respondent's said products, and, as a result, to unfairly divert trade in said commerce to the respondent from its competitors who do not misrepresent their business status and who truthfully brand and mark their products.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice of the public and 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, testimony, and other evidence taken before William W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint, 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, Grand Gaslight, Inc., 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 incandescent lamp bulbs in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That it is a manufacturer of incandescent lamp bulbs, unless or until said respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured.

2. That incandescent lamp bulbs are of any designated number of watts or designed to operate on any designated voltage other than the actual wattage and voltage of such bulbs.

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
ROBERT C. TAYLOR TRADING AS MARVEL PRODUCTS
COMPANY

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

Docket 3316. Complaint, Jan. 27, 1938—Decision, Mar. 21, 1939

Where an individual engaged in manufacturing hair and scalp lotions including product designated as "Hair Marvel," and in selling same through wholesale barber supply houses, department stores, barber shops, beauty shops, drug stores, and by mail direct—

- (a) Represented, through statements circulated through newspapers, booklets, and labels, including therein purported testimonial quotations, directly and by implication, that said product was not a hair dye or was something other than a hair dye, and would restore the natural color of the hair, and that it did not have the detrimental qualities usually attributed to hair dyes and was unqualifiedly safe, and would stimulate the growth of the hair, and rejuvenate, invigorate, and nourish hair roots, and restore scalp to natural healthy condition; and
- (b) Represented, as aforesaid, that said preparation possessed germicidal antiseptic properties and would stop falling hair and eradicate dandruff, and constituted effective cure or remedy for alopecia, psoriasis, itch, eczema, and blotchy scalp;

Facts being said product was a dye and not harmless, by virtue of lead acetate ingredient therein, which might prove harmful under some conditions of use, or used by certain persons, either children or adults, and said preparation would not effectively restore natural color of hair, stimulate growth thereof, etc., and aforesaid representations were false; and

- (c) Represented that he owned or controlled laboratory used in connection with scientific experiment, analyses, or manufacture of said "Hair Marvel," through use on letterheads, stationery, and other printed matter of legend including word "Laboratory," together with trade name employed, and address, facts being he neither owned, operated, nor controlled any such laboratory used as aforesaid;

With result that members of consuming public believed true such representations and statements as to said product not being dye and bought and used same in such belief, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and of inducing members of such public to buy and use said "Hair Marvel" because of such erroneous belief, and of diverting thereby trade to him from competitors engaged in sale in interstate commerce of hair color restorers and like and similar preparations and treatments for scalp and hair, and who, in sale of their said products, in no wise misrepresent their scientific or experimental equipment or efficiency or therapeutic value thereof; to the substantial injury and prejudice of competitors: