

Syllabus

IN THE MATTER OF
LINCOLN LOCKER CORPORATION

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

Docket 3345. Complaint, Mar. 3, 1938—Decision, June 13, 1939

Where a corporation engaged in sale, distribution and installation of certain cold storage lockers which were purchased by it from manufacturers under special arrangement and distributed through jobbers and also direct to ultimate user, and consisted of separate compartments, individually locked, for installation in cold storage warehouses and leasing to individual patrons for use in storing and preserving perishable food stuffs so as to permit withdrawal as required; in advertising its said product through periodicals, circulars, advertising booklets, brochures, and leaflets—

- (a) Represented that said lockers were made or built of copper alloy galvanized sheet metal, and rustproof copper alloy steel, and that the box panels were fabricated of 22 gage copper alloy sheets, facts being said products were made of galvanized sheet steel, and contained none of the little more rust-resistant, but preferred, copper or copper alloy metal, and were not built of copper alloy galvanized sheet metal or rustproof copper alloy steel or copper alloy sheet steel, as set forth in advertisements thereof;
- (b) Represented that each box would hold from 300 to 400 pounds of meat or other produce, facts being that most popular sized locker, and one which it sold largest quantity of, representing from 50 to 75 percent of its total sales, was medium size, with maximum storage capacity of not more than 225 pounds of meat or other produce, two other sizes sold by it had still smaller maximum capacity, it never advertised or sold any of largest size or pictured any of next largest, and lockers customarily sold by it would not, as represented, hold from 300 to 400 pounds, as above set forth; and
- (c) Represented that locks for its said products were available in three types, namely, five-disc tumbler locks and padlocks, in which types key changes were practically unlimited, facts being 75 percent of lockers sold by it were equipped with five-disc tumbler locks having, in majority of cases, only 100 possible key changes, with consequent possibility of loss by theft in cold storage installations where there are more than 100 lockers equipped with such locks, and such key changes cannot properly be represented as "practically unlimited";

With tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that all said representations were true, and with effect of causing consuming public, as direct consequence of such mistaken and erroneous belief induced by such advertising and representations, to purchase substantial volume of its said lockers, and of thereby diverting trade unfairly from others engaged in sale of like and similar products intended for use in like and similar purposes, and who truthfully advertise the same; to the substantial injury of competition in commerce:

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

Before *Mr. Edward J. Hornibrook*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. F. E. Alstine, of Pocahontas, Ia., 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 Lincoln Locker Corporation, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lincoln Locker Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at Pocahontas, Iowa. Respondent is now, and for a period of more than 1 year last past has been, engaged in the sale, distribution and installation of cold storage lockers known as "Lincoln Louvred Lockers," in commerce between and among various States of the United States. It causes said products, when sold, to be shipped and transported from its place of business located in the State of Iowa, or from factories located in the States of Nebraska and Illinois, to purchasers thereof located at various points in States of the United States other than the States of Iowa, Nebraska and Illinois. Respondent maintains, and during the times mentioned herein has maintained a course of trade in said products so sold and distributed by it in commerce among and between the various States of the United States. In the course and conduct of its business, respondent is, and at all times herein referred to has been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of cold storage lockers in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, the respondent, in soliciting the sale of and in selling its Lincoln Louvred Lockers has caused circulars and other advertising booklets, brochures, and leaflets to be issued, published and distributed to customers and pro-

spective customers located in different States of the United States, in which advertising matter said products were represented, designated and referred to by the following statements:

Lincoln Lockers are built of copper alloy galvanized sheet metal * * * Built with rust-proof copper alloy steel * * * Lincoln Locker assemblies are made of copper alloy sheet steel, galvanized throughout.

Each box will hold from three to four hundred pounds of meat or other produce.

Locks for Lincoln Lockers are available in three types—(1) five-disc tumbler locks and (2) padlocks, in which types, key changes are practically unlimited.

PAR. 3. The representations made by respondent, as aforesaid, with respect to the composition and capacity of respondent's cold storage lockers and the number of key changes which may be made in their locks are false, misleading and untrue.

In truth and in fact, said products are not made of or manufactured from copper alloy galvanized sheet metal, but are made of material other than that represented. The capacity of each box is much less than 300 to 400 pounds of meat or other produce, and is not more than 200 to 250 pounds. The five-disc tumbler locks have only 100 key changes and therefore cannot truthfully be said to be practically unlimited as to key changes.

PAR. 4. Each and all of the false, misleading and untrue representations so made by respondent in offering for sale and in selling its "Lincoln Louvred Lockers" were and are calculated to, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondent, as aforesaid, a number of the consuming public has purchased a substantial quantity of said products, with the result that trade has been unfairly diverted from other corporations, individuals, firms and partnerships likewise engaged in the sale of cold storage lockers who truthfully advertise their products. As a result thereof, substantial injury has been and is now being done by the respondent herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above and foregoing acts, practices and representations of the respondent herein have been, and are, all to the prejudice of the public and of respondent's competitors, as aforesaid, and have been, and are unfair methods of competition in commerce 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."

Findings

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 3, 1938, issued and served its complaint in this proceeding upon respondent, Lincoln Locker Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Merle P. Lyon, attorney for the Commission, and in opposition to the allegations of the complaint by F. E. Van Alstine, attorney for the respondent, before Edward J. Hornibrook, 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, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto; 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 Lincoln Locker Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at Pocahontas, Iowa. It is now, and for more than 2 years last past has been, engaged in the sale, distribution and installation of cold storage lockers known as "Lincoln Louvred Lockers." These are purchased from manufacturers under special arrangement and are distributed through jobbers and also direct to the ultimate user. The "Lincoln Louvred Lockers" are separate compartments, individually locked and are installed in cold storage warehouses for leasing to individual patrons who use the same for storing and preserving perishable foodstuffs, the facility being that people can store perishable food in these boxes and withdraw it for use as it is required, thus offering facilities of cold storage to a large number of people in that manner.

PAR. 2. Respondent causes its products, when sold, to be shipped and transported from its place of business located at Pocahontas, Iowa, or from factories located in Nebraska and Illinois, to the pur-

chasers thereof located at various points in states of the United States other than the States of Iowa, Nebraska, and Illinois.

PAR. 3. In the course and conduct of its business, respondent is, and for more than two years last past has been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of cold storage lockers in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale of and in selling its said product and for the purpose of creating a demand therefor, now causes, and for more than two years last past has caused, advertisements to be issued, published and circulated to and among the members of the consuming public of the United States through the medium of magazines, circulars, advertising booklets, brochures, and leaflets.

PAR. 5. Respondent makes, and has made to the general public, statements with reference to the alleged value and merit of said product, some of which statements so made and circulated by the respondent are as follows:

Lincoln lockers are built of copper alloy galvanized sheet metal * * * built with rust-proof copper alloy steel * * * Lincoln lockers assemblies are made of copper alloy sheet steel, galvanized throughout.

Each box will hold from 300 to 400 pounds of meat or other produce.

Locks for Lincoln lockers are available in three types—(1) five-disc tumbler locks and (2) padlocks, in which types, key changes are practically unlimited. For smaller installation in which not more than 300 or 400 key changes are required we can obtain a flat key cylinder lock. All locks are master keyed and readily demountable when the box is opened. The locks are sold separate from the box to permit selection by the buyer.

The box panels are fabricated of 22 gauge copper alloy sheet.

PAR. 6. "Lincoln Louvred Lockers" are manufactured of galvanized sheet steel, their doors and bottoms being of 24 gage and the backs and sides being of 26 gage galvanized sheet steel. There is no copper or copper alloy metal whatsoever used in the manufacture or construction of these lockers. There is a public preference for lockers composed of copper or copper alloy steel to lockers composed of galvanized sheet steel, due to widespread beliefs on the part of the general public that copper alloy steel is much better than ordinary galvanized sheet steel. There is in fact, however, very little difference in the two metals so far as rust-resistant qualities are concerned. The respondent's lockers are not built of copper alloy galvanized sheet metal or rust-proof copper alloy steel or copper alloy sheet steel, and the box panels are not fabricated of 22 gage copper alloy sheet.

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PAR. 7. "Lincoln Louvred Lockers" are offered to the public in five sizes varying in capacity from 7,680 cubic inches to 14,400 cubic inches inside measurements. The capacity of each size locker is respectively 7,680, 8,640, 9,600, 11,520 and 14,400 cubic inches. Respondent, however, has never advertised or sold any of the largest size having a capacity of 14,400 cubic inches, and, although it has sold some of the next largest size having a capacity of 11,520 cubic inches, it has never pictured any of that size lockers in its advertising literature. The most popular size locker and the one that respondent sells the largest quantity of is the medium size locker having a capacity of 9,600 cubic inches. The sales of this size locker constitute from 50 to 75 percent of respondent's total sales. The dimensions of this locker are 16 by 20 by 30 inches, and it has a maximum storage capacity of not more than 225 pounds of meat or other produce. The two smaller sizes, 7,680 and 8,640 cubic inches, respectively, have a maximum storage capacity of less than 225 pounds of meat or other produce. The lockers customarily sold by respondent will not each hold from 300 to 400 pounds of meat or other produce, as represented by respondent.

PAR. 8. Some of respondent's lockers are sold equipped with locks, and sometimes the purchaser furnishes his own locks. When the lockers are sold equipped with locks, the locks are of three types, padlocks, pin tumbler cylinder locks, and disc tumbler cylinder locks. The lock that is most commonly furnished by respondent is the disc tumbler cylinder lock, which is a built-in lock, actuated by a key lining up the tumblers which are made in the form of little discs, and the insertion of the key rolls the cylinder of the lock from engagement with the barrel to open the lock. This is the type of lock that is advertised by respondent as a "5-disc tumbler lock." Seventy-five percent of the lockers sold by respondent equipped with locks were equipped with this type of lock. The remaining 25 percent of such lockers were equipped with either padlocks or pin tumbler cylinder locks.

The five-disc tumbler locks are of two models, one made by the National Lock Co. of Rockford, Ill., consisting of a master keyed tumbler lock with one hundred key changes, the other made by the Corbin Lock Co. and having 600 key changes. The majority of the five-disc tumbler locks sold by the respondent are of the type which have only 100 possible key changes. In the case of the locks having only 100 possible key changes, there would necessarily be a duplication of locks if more than 100 lockers equipped with such locks were used in any particular cold storage plant or sold to any one customer. In installations in cold storage plants where there are more than 100 lockers equipped with the five-disc tumbler locks having a maximum

of 100 key changes, the duplication of keys results in the possibility of loss by theft. Key changes in such locks cannot properly be represented as "practically unlimited."

PAR. 9. Each and all of the false and misleading claims and representations made by respondent, as aforesaid, by means of advertisements in offering for sale and selling "Lincoln Louvred Lockers" were and are calculated to, and have had and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that all said representations are true.

PAR. 10. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representations, causes the consuming public to purchase a substantial volume of said "Lincoln Louvred Lockers," with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships engaged in the sale of like and similar products intended for use in like and similar purposes, who truthfully advertise their products. As a result thereof, substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Edward J. Hornibrook, 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, (no oral arguments having been requested or made), 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, Lincoln Locker Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of cold storage lockers now designated by the name of "Lincoln Louvred Lockers,"

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whether sold under that name or under any other name, do forthwith cease and desist, directly or indirectly, from:

1. Representing that said cold storage lockers are made or built of copper or copper alloy galvanized sheet metal or rust-proof copper alloy steel, or 22 gauge copper alloy sheet.

2. Representing that cold storage lockers having a capacity of 9600 cubic inches or less will hold or contain more than 225 pounds of meat or other produce.

3. Representing that each of said cold storage lockers will have a storage capacity greater than its actual capacity.

4. Representing that the key changes for the five-disc tumbler locks on respondent's cold storage lockers are practically unlimited, or larger than the actual possible number of key changes.

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.

EASTERN TRADING CO.

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Complaint