

Syllabus

IN THE MATTER OF

SAM BELL, DOING BUSINESS AS LONGWEAR PAINT &
VARNISH WORKSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3632. Complaint, Oct. 18, 1933—Decision, Aug. 1, 1939*

Where an individual engaged in manufacture and sale of mixtures or compounds by him described as paints, and in purchase of such mixtures or compounds from others, and in resale thereof, and in selling such products to peddlers who resold same direct to consumers from automobile trucks in other States, and in selling same to purchasers in States other than State of origin—

- (a) Sold said mixtures and compounds in containers to which he caused labels to be affixed with purported statements of qualitative and quantitative analysis of contents thereof, and which indicated that such mixtures and compounds were paints of good quality and composed of usual ingredients, and in proper proportions, from which such paints are made, facts being mixtures or compounds therein contained were of no protective value as paints, but had calcium carbonate content of 65 percent to 75 percent, and white lead or zinc sulphate content of only 1 percent or less, and could not properly be classified as paints, and were not made of proper pigments and suitable liquids and were incapable of forming solid adherent covering when spread on surface for purposes of decoration or protection, or both; and
- (b) Sold said mixtures or compounds in containers to which were affixed labels, in some cases, setting forth what appeared to be name of manufacturer of contents, such as "Eagle Paint and Color Works," together with brand name "Eagle," and, in some cases, setting forth what appeared to be name and address of such manufacturer, such as "Crown White Lead & Zinc Corporation, Detroit, Michigan," together with brand name "Crown," facts being such firm and brand names printed on said labels as aforesaid, were fictitious and contents in question had not been produced by manufacturers thus indicated;

With capacity and tendency to mislead and deceive members of purchasing public, and to induce them to buy such mixtures or compounds in mistaken belief that they were composed of the ingredients shown in what purported to be the analysis printed upon the labels affixed to the containers, and had been produced by a manufacturer whose name was printed thereon, and of unfairly diverting trade to him from those of his competitors who sell paints of good quality and who do not falsely represent nature and quantity of the ingredients of which such paints are made, and origin of manufacturers of their products; to competitors' substantial injury:

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

Complaint

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Before *Mr. William C. Reeves*, trial examiner.

Mr. William L. Pencke and *Mr. B. G. Wilson* for the Commission.
Charno & Drummond, of Kansas City, Mo., for respondent.

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 Sam Bell, an individual doing business under the name and style of Longwear Paint and Varnish Works, hereinafter referred to as respondent, has 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. The respondent, Sam Bell, is an individual doing business under the name and style of Longwear Paint and Varnish Works, with his principal place of business located at 2014 Burlington Avenue, North Kansas City, Mo. Said respondent is engaged in the manufacture, the purchase for resale, and the sale and distribution of paint and varnish in commerce among and between the various States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in the said products sold and distributed by him 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 his said business, respondent is in active and substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of like or similar products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of respondent's business and for the purpose of inducing the purchase of said products, respondent has caused and causes certain labels to be affixed to the containers of the paint manufactured, offered for sale, sold, and distributed by respondent in commerce as hereinbefore set out.

Many of the said labels affixed as above have printed on their faces a purported analysis of the paint within the respective containers whereon said labels appear. Certain of said labels affixed as above have printed on their faces general statements purporting to indicate the character, content, and standard of quality of

the paint within the respective containers whereon said labels appear. Each and all of said labels affixed as above have printed on their faces certain statements purporting to represent and to indicate the name of the manufacturer and the location and place of manufacture of the paint within the respective containers whereon said labels appear.

PAR. 4. The said representations as made by respondent in the manner and method as set out in paragraph 3 are in many instances false, misleading, and untrue.

In truth and in fact, the analyses and general statements as printed and appearing on the faces of said labels are often false, incorrect, and misleading. Said analyses and statements are not true representations of the actual analysis or the real character, content, and standard of quality of the paint within the respective containers whereon said labels are affixed and appear.

Certain of the manufacturers' names and the locations and places of manufacture as printed and appearing on the faces of said labels are fictitious and indicative of nonexistent individuals, firms, partnerships, or corporations never engaged in the manufacture or the sale and distribution of paint and varnishes at the place or places indicated by the said representations as printed and appearing on the said labels so affixed as above.

PAR. 5. There are among respondent's competitors, as described in paragraph 2, many who sell and distribute like or similar products who do not misrepresent their respective products or matters pertaining thereto.

PAR. 6. Each and all of the false and misleading representations made by the respondent in the sale and distribution of his products as hereinabove set out have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations are true. As a direct result of this erroneous and mistaken belief, a number of the public have purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to respondent from competitors engaged in selling and distributing like and similar products who truthfully represent the same.

Respondent's acts and practices as herein detailed serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may mislead the purchasing public into the erroneous belief that respondent's products are as indicated by respondent's descriptions and representations.

As a consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between

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the various States of the United States, and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair 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 October 18, 1938, issued its complaint in the above entitled proceeding and caused same to be served on the respondent, Sam Bell, an individual doing business under the name and style of Longwear Paint and Varnish Works, charging him with violation of the provisions of said act. The respondent entered his appearance herein on December 3, 1938, and filed an answer to said complaint in which answer said respondent admitted all of the material allegations in said complaint, and thereafter on April 6 and 7, 1939, at the instance of Wm. L. Pencke, counsel for the Commission, testimony was introduced and evidence received in support of the charges stated in the complaint and in opposition thereto by Warren A. Drummond of the firm of Charno & Drummond before Wm. C. Reeves, an examiner for the Commission duly designated by it, and said testimony was reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the said complaint and answer thereto, the testimony and other evidence and the brief of counsel for the Commission. Counsel for the respondent filed no brief and made no request for permission to present oral argument, and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Sam Bell for about 20 years has carried on business under the name and style of Longwear Paint and Varnish Works with his principal place of business at 2014 Burlington Avenue, North Kansas City in the State of Missouri, during which time he has been engaged in the business of the manufacture and sale of mixtures or compounds described by him as paints and the purchase of such mixtures or compounds from others

and the resale of same. Said respondent has caused such mixtures or compounds sold by him to be transported from his place of business in the State of Missouri to the respective purchasers thereof in States of the United States other than the State of Missouri. Respondent also has sold such mixtures or compounds to peddlers who have resold same direct to consumers from automobile trucks in States other than the State of Missouri, and in the course and conduct of his said business has been and is now in active competition with various partnerships and corporations and other persons engaged in the manufacture and sale or the sale of various types of paints in commerce among several States of the United States.

PAR. 2. Respondent in the course of his business as described in paragraph 1 hereof caused labels to be affixed to the containers of the mixtures and compounds sold by him as paints, which labels had printed thereon what purported to be statements of the result of a qualitative and quantitative analysis of each of said mixtures or compounds, but such statements were in all respects false and did not show each of the several ingredients constituting the contents of each of the containers to which such labels were affixed or the proportionate part of each of the ingredients of the several mixtures or compounds sold by him as paints. The statements so printed upon such labels indicated that the contents of the containers to which such labels were affixed were paints of good quality and were composed of the usual ingredients and in the proper proportions from which paints of good quality were made, whereas the contents of such containers were mixtures or compounds of no protective value as paints but had a calcium carbonate content of 65 to 75 percent and had a white lead or zinc sulphate content of only 1 percent or less, and could not be properly classified as paints. Such mixtures or compounds were not made of proper pigments and suitable liquids and were incapable of forming a solid adherent covering when spread on a surface for purposes of decoration or protection or both.

PAR. 3. Some of the labels affixed to the containers of mixtures or compounds sold by respondent as paints, as set out in paragraph 2 hereof, had printed thereon what would appear to be the name of the manufacturer of the contents of the containers, namely, the "Eagle Paint and Color Works" together with the brand name of "Eagle" and other such labels had printed thereon what would appear to be the name and address of the manufacturer of the contents of the containers to which such labels were affixed, namely, the "Crown White Lead & Zinc Corporation, Detroit, Michigan," together with the brand name of "Crown." Each of these firm names and brand

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names printed on the labels, as stated, was fictitious, and the contents of the containers to which the labels were affixed had not been produced by manufacturers indicated by the names printed upon the respective labels.

PAR. 4. The sale by respondent of the mixtures or compounds, as set out in paragraphs 2 and 3 hereof, has had the capacity and tendency to mislead and deceive members of the purchasing public and to induce them to purchase such mixtures or compounds in the mistaken belief that such mixtures or compounds were composed of the ingredients shown in what purported to be the analyses printed upon the labels affixed to the containers and had been produced by a manufacturer whose name was printed upon the respective labels. The use of such labels has, and has had, the capacity and tendency unfairly to divert trade to respondent from those of his competitors who sell paints of good quality and who do not falsely represent the nature and quantity of the ingredients from which such paints are made and who do not falsely represent the origin or manufacturers of paints sold by them, and as a result, substantial injury has been done to competitors of respondent in interstate commerce.

CONCLUSION

The acts and practices of the respondent Sam Bell, trading under the name and style of Longwear Paint and Varnish Works under the circumstances described in the foregoing findings are all to the prejudice of the purchasing public and to competitors of respondent and constitute unfair methods of competition in commerce and are in violation of the provisions 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, in which answer the respondent admitted all the material allegations of the complaint, testimony and other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondent not having filed brief and oral argument not having been requested), 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.

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It is ordered, That the respondent, Sam Bell, individually and doing business as Longwear Paint and Varnish Works, or under any other name or names, his 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. Representing, labeling, or selling as paint any product which does not contain the necessary ingredients in quantities sufficient to to give it the quality, character, or value of paint.

2. 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.

3. Representing, in any manner, that respondent's paint products have a different quality, character, composition, or value different from the quality, character, composition, or value actually possessed by said products.

4. Representing that respondent's paint products are manufactured at any place other than the actual place of manufacture, or that they are manufactured by any person, corporation, or partnership other than that person, corporation, or partnership by whom said paint products are actually manufactured.

It Is Further Ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
HARRY EPSTEIN, TRADING AS RESTORIA COMPANY

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

Docket 3737. Complaint, Mar. 14, 1939—Decision, Aug. 1, 1939

Where an individual engaged in sale and distribution of "Restoria," medicinal preparation, as treatment for blood and remedy for blood disorders and related conditions; in advertisements which he disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed matter, including purported testimonial letters, and pamphlets, booklets, and advertising copy, and which advertisements were intended and calculated to induce purchase of his said product—

- (a) Represented that said "Restoria" was an effective remedy or cure for various conditions due to "bad blood," such as ulcers, eruptions, swollen glands, eczema, etc., and constituted a competent treatment for such condition and was a remedy or cure for neuritis, neurasthenia, rheumatism, skin eruptions, blood poisoning, and other related conditions, and would furnish relief therefrom;
- (b) Represented, as aforesaid, that it would control diseased blood and would restore the same, and was safe and harmless, and would produce no bad after effects, and that it was a remedy or cure for syphilis and a competent treatment therefor, and that persons suffering from said ailment would react favorably within a short time after using said "Restoria;" and
- (c) Represented that it was manufactured in modern laboratories and under expert supervision;

Facts being it was not a competent treatment nor effective remedy or cure for said various conditions, and use would not relieve the same or build up the body, sufferers from syphilis would not be favorably affected thereby, it was not manufactured in a modern laboratory or under supervision of skilled scientist, and would not control diseased blood nor restore the same, was not harmless under all conditions of use, but might have severe harmful results when used by public in treatment of conditions for which it was recommended, and use by uninformed persons under conditions prescribed, or such as are customary and usual, might, in some cases, cause users to suffer irreparable injury to health, and it was definitely harmful, by reason of certain ingredients, in early treatment of syphilis, in which iodides contained therein might disseminate and generalize the disease, and, by reason of iodine content, might aggravate certain diseases, such as pulmonary tuberculosis, hyperthyroidism and nephritis;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations and advertisements were true, and of inducing, directly or indirectly, purchase by public of such drug-containing medicinal preparation, and with likelihood so to induce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.