

IN THE MATTER OF
JAMES HEDDON'S SONS

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

Docket 3792. Complaint, May 16, 1939—Decision, Aug. 8, 1939

Where a corporation engaged in manufacture, distribution, and sale of fishing tackle, including fishing rods, reels, lines, and lures, and in selling its said products to purchasers in other States and in the District of Columbia in substantial competition with others engaged in distribution and sale of similar products of fishing tackle; in advertising its "Pal" hollow seamless steel fishing rod in periodicals of general circulation through various statements and depictions relative to thickness of the walls of its said "Pal" rods as compared to walls of competitive products, and the effectiveness and desirability of its own said product—

- (a) Represented that all other steel rods had a "THICK WALL at the TIP END" and a "THIN WALL at the BUTT END," whereas its said "Pal" rod had a "THIN WALL at the TIP END" and a "THICK WALL at the BUTT END";
- (b) Made use of depictions, in connection with assertions aforesaid, which purported to show thickness of other rod at butt and tip as $\frac{1}{32}$ and $\frac{2}{32}$ inch, respectively, and which showed, for its "Pal" rod, wall thickness of approximately $\frac{1}{8}$ inch at butt and $\frac{1}{32}$ inch at tip, and accompanied such depictions with such comment as "The two sectional drawings (at left and right) show the difference in wall thickness between Steel Rods produced by the old practice and the new Heddon construction," and "The left hand sketch shows how the old practice produced an unnecessarily thick wall at tip end where flexibility—not strength—is needed"; and
- (c) Set forth, on basis of breakage or durability, asserted results of comparative tests of its said "Pal" rod with other rods tested in connection with aforesaid assertions and depictions, and alleged advantages of its said "Pal" rod, to the very great advantage of the latter, and under statement reading "Which Steel Rod did the Casting-Testers say was 'Best-by-Test?' Four (4) Tubular Steel Casting Rods went to the Casting-testers—look what their tests proved. Note: These Testers are expert casters— * * *," and represented thereby that tests had been made by persons expert in matters involved and who were independent of it, and on the basis of such tests had pronounced its said "Pal" rod as "Best-by-Test";

Facts being other hollow steel casting rods are sold and distributed in commerce which have walls whose thickness tapers from butt to tip, or whose walls are uniform in such thickness, and while some hollow steel casting rods have walls thicker at tip than butt, thickness at former is not ordinarily twice that at latter, thickness of said "Pal" rod at butt was not ordinarily four times that at tip, both depictions were in exaggerated and distorted proportion and had capacity and tendency to engender mistaken and erroneous belief that walls of all such rods other than said "Pal" were disproportionately thick at the tip in comparison to the butt, and that

the walls of said "Pal" at tip were far thinner in comparison with walls of such rods at butt than was in fact the case, said tests were not made by experts independent of it, but by workmen in its employ, and there are many factors which bear upon desirability and utility of casting rod other than its durability, superiority in which, alone, does not furnish sufficient basis for claim of general superiority;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations and claims were true, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial numbers of its said "Pal" rods, and of thereby diverting, through use and dissemination of such statements, representations, and claims, trade unfairly to it from competitors, including many who do not misrepresent the thickness of the walls of their respective hollow steel fishing rods or such thickness as compared to that of their competitors' rods, and do not misrepresent nature of tests made relative to the effectiveness in use of their respective products; to the injury of competition in commerce:

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

Mr. R. W. Branch for the Commission.

Banning & Banning, of Chicago, Ill., 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 James Heddon's Sons, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it now 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 James Heddon's Son is a corporation organized under the laws of the State of Michigan and having its office and principal place of business in the city of Dowagiac, in the State of Michigan.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling fishing tackle, including fishing rods, reels, lines, and lures. One of its products is a hollow steel fishing rod referred to by respondent as its "New" or "Improved" Heddon "Pal" rod.

Respondent causes and has caused its said products, when sold, to be transported from its said place of business in the State of Michigan to purchasers thereof located in various States of the United

States other than the State of Michigan and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said fishing tackle among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent is now, and has been for more than 3 years last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the distribution and sale of rods, reels, lines, and lures, and other articles generally referred to as fishing tackle, in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the thickness of the walls of their respective hollow steel fishing rods or the thickness of the walls of their said rods as compared to the walls of the hollow steel rods of their competitors, and who do not misrepresent the nature of tests made relative to the effectiveness in use of their respective fishing rods.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said fishing rods, the respondent has caused to be inserted in magazines and other publications having a general circulation throughout the various States of the United States advertisements containing various statements and pictorial representations relative to the thickness of the walls of its hollow steel fishing rods, the thickness of the walls of said rods as compared to the walls of the rods of its competitors and the effectiveness and desirability in use of its said rods. Among and typical of the advertisements by respondent containing the aforesaid false and misleading statements and pictorial representations, disseminated as aforesaid, is an advertisement containing the following statements:

All Other Steel Rods have a Thick Wall at the Tip End and have a Thin Wall at the Butt End.

The New Heddon "Pal" Steel Rod has a Thin Wall at the Tip End and has a Thick Wall at the Butt End.

The foregoing statement relative to all-steel rods other than respondent's "New Heddon Pal" rod is in close proximity to, and graphically illustrated by, a depiction of what purports to be a longitudinal cross section of any steel rod other than the "New Heddon Pal," showing a tapered hollow-steel fishing rod having a wall thickness at the tip greater than that at the butt. The foregoing statement relative to respondent's "New Heddon Pal" rod is in close proximity to, and graphically illustrated by, what purports to be a longitudinal cross section of the "New Heddon Pal" rod, showing

a tapered hollow-steel fishing rod having a wall thickness at the tip less than that at the base. Both depictions are approximately $7\frac{7}{8}$ inches in length and show an outside diameter of approximately $\frac{5}{16}$ inch at the base and $\frac{3}{16}$ inch at the tip. The depiction first referred to shows wall thicknesses at the butt and tip of approximately $\frac{1}{32}$ inch and $\frac{3}{32}$ inch respectively; the other depiction shows a wall thickness of approximately $\frac{1}{8}$ inch at the butt and $\frac{1}{32}$ inch at the tip.

The aforesaid advertisement of respondent also contains the following statements and representations:

The two sectional drawings (at left and right) show the difference in wall thickness between Steel Rods produced by the old practice and the new Heddon construction.

The left hand sketch shows how the old practice produced an unnecessarily thick wall at tip end where flexibility—not strength—is needed.

Which Steel Rod did the Casting-Testers say was "Best-by-Test?" Four (4) Tubular Steel Casting Rods went to the Casting-Testers,—look what their tests proved. Note: These Testers are expert casters—* * *

HERE IS THE TESTING REPORT:

<i>Rods Tested</i>	<i>Result</i>
1st rod (competitor "A's" Rod)	A Limited number of days. Rod broke.
2nd rod (competitor "B's" Rod)	16% Longer than rod "A". Rod broke.
3rd rod (Old Style Heddon Pal)	50% Longer than rod "A". Rod broke.
4th rod (NEW HEDDON PAL)	Over 400% Longer than Rod A. Rod in fine condition.

PAR. 5. Though the use of the statements, claims, and representations hereinabove set-out and others similar thereto not herein set out, all of which purport to be descriptive of the method of construction of the Improved Heddon Pal rod as distinguished from all other steel casting rods, and its superiority to such other rods, respondent directly and by implication, among other things, has represented: that all hollow-steel fishing rods other than the Improved Heddon Pal have walls which are thicker at the tip than at the butt; that the wall thickness of such rods at the tip is approximately twice that at the butt, whereas the Improved Heddon Pal has a wall thickness at the tip approximately one-fourth that at the butt; that tests have been made by persons expert in the testing of casting rods who are independent of the respondent and that on the basis of such tests persons have pronounced the Improved Heddon Pal as "best-by-test."

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described are exaggerated, misleading, and untrue. In truth and in fact there are sold and distributed in commerce among and between the various States of the United States and in the District of Columbia other hollow-steel casting rods which have walls whose thickness tapers from butt to tip and

others whose walls are uniform in thickness from butt to tip. Although some hollow-steel casting rods have walls thicker at the tip than at the butt, the wall thickness at the tip is not ordinarily twice that at the butt. The thickness of the walls of the Heddon Pal rod at the butt is not ordinarily four times that at the tip. Both depictions are in exaggerated and distorted proportion and have the capacity and tendency to engender the mistaken and erroneous belief that the walls of all hollow-steel rods other than the Heddon Pal are disproportionately thick at the tip in comparison to the butt, and that the walls of the Heddon Pal at the tip are far thinner in comparison with the walls of such rods at the butt than is in fact the case. The tests referred to were not made by experts independent of the respondent but were made by workmen in its employ.

There are many factors which bear upon the desirability and utility of a casting rod other than its durability. Superiority in strength or durability alone does not furnish a sufficient basis for a claim of general superiority.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and claims disseminated as aforesaid with respect to its Improved Heddon Pal rod has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading statements, representations, and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial numbers of the respondent's Improved Heddon Pal rod.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise their wares, as described in paragraph 3 hereof. In consequence thereof injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce 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 May 16, 1939, issued, and on May

18, 1939, served its complaint in this proceeding upon said respondent, James Heddon's Sons, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 7, 1939, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by Banning & Banning, counsel for the respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same 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, James Heddon's Sons, is a corporation organized under the laws of the State of Michigan and having its office and principal place of business in the city of Dowagiac in the State of Michigan. It is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling fishing tackle, including fishing rods, reels, lines, and lures. One of its products is a hollow seamless steel fishing rod referred to by respondent as its "New" or "Improved" Heddon "Pal" rod. In the course and conduct of its business respondent causes and has caused its said products, including the "Pal" rod, when sold, to be transported from its place of business in the State of Michigan to purchasers thereof located in States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains, and has maintained at all times mentioned herein, a course of trade in commerce in the said fishing tackle 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 said business respondent is now, and has been for more than 3 years last past, in substantial competition with other corporations, and with individuals, firms, and partnerships, engaged in the distribution and sale of rods, reels, lines, and lures and other articles generally referred to as fishing tackle 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 its said business and for the purpose of inducing the purchase of the said "Pal" fishing rods, respondent has caused to be inserted in magazines having a general circulation throughout the various States of the United States advertisements containing various statements and pictorial representations relative to the thickness of the walls of its hollow-steel fishing rods, the thickness of the walls of said rods as compared to the walls of the rods of its competitors, and the effectiveness and desirability in use of its said rods. Among and typical of the statements and pictorial representations contained in the aforesaid advertisements are the following:

All Other Steel Rods have a THICK WALL at the TIP END and have a THIN WALL at the BUTT END.

The New HEDDON "PAL" Steel Rod has a THIN WALL at the TIP END and has a THICK WALL at the BUTT END.

The foregoing statement relative to all-steel rods other than respondent's "New Heddon Pal" rod is in close proximity to, and graphically illustrated by, a depiction of what purports to be a longitudinal cross section of any steel rod other than the "New Heddon Pal," showing a tapered hollow-steel fishing rod having a wall thickness at the tip greater than that at the butt. The foregoing statement relative to respondent's "New Heddon Pal" rod is in close proximity to, and graphically illustrated by, what purports to be a longitudinal cross section of the "New Heddon Pal" rod, showing a tapered hollow-steel fishing rod having a wall thickness at the tip less than that at the base. Both depictions are approximately $7\frac{7}{8}$ inches in length and show an outside diameter of approximately $\frac{9}{16}$ -inch at the base and $\frac{3}{16}$ -inch at the tip. The depiction first referred to shows wall thicknesses at the butt and tip of approximately $\frac{1}{32}$ -inch and $\frac{2}{32}$ -inch respectively; the other depiction shows a wall thickness of approximately $\frac{1}{8}$ -inch at the butt and $\frac{1}{32}$ -inch at the tip.

The two sectional drawings (at left and right) show the difference in wall thickness between Steel Rods produced by the old practice and the new Heddon construction.

The left hand sketch shows how the old practice produced an unnecessarily thick wall at tip end where flexibility—not strength—is needed.

Which Steel Rod did the Casting-Testers say was 'Best-by-Test'? Four (4) Tubular Steel Casting Rods went to the Casting-testers—look what their tests proved. Note: These Testers are expert casters— * * *

HERE IS THE TESTING REPORT:

<i>Rods Tested</i>	<i>Result</i>
1st rod (competitor "A's" Rod)	A Limited number of days. Rod broke.
2nd rod (competitor "B's" Rod)	16% Longer than rod "A". Rod broke.
3rd Rod (Old Style Heddon Pal)	50% Longer than rod "A". Rod broke.
4th rod (NEW HEDDON PAL)	Over 400% Longer than rod "A". Rod in fine condition.

PAR. 4. Through the use of the statements, claims, and representations hereinabove set-out and others similar thereto not herein set-out, all of which purport to be descriptive of the method of construction of the Improved Heddon Pal rod as distinguished from all other steel casting rods and its superiority to such other rods, respondent directly and by implication, among other things, has represented: that all hollow-steel fishing rods other than the Improved Heddon Pal have walls which are thicker at the tip than at the butt; that the wall thickness of such rods at the tip is approximately twice that at the butt, whereas the Improved Heddon Pal has a wall thickness at the tip approximately one-fourth that at the butt; that tests have been made by persons expert in the testing of casting rods who are independent of the respondent and that on the basis of such tests such persons have pronounced the Improved Heddon Pal as "best-by-test."

PAR. 5. The representations made by respondent, directly and by implication, used and disseminated by respondent in the manner described, are exaggerated, misleading, and untrue. In truth and in fact there are sold and distributed in commerce among and between the various States of the United States and in the District of Columbia other hollow-steel casting rods which have walls whose thickness tapers from butt to tip and others whose walls are uniform in thickness from butt to tip. Although some hollow-steel casting rods have walls thicker at the tip than at the butt, the wall thickness at the tip is not ordinarily twice that at the butt. The thickness of the walls of the Heddon Pal rod at the butt is not ordinarily four times that at the tip. Both depictions are in exaggerated and distorted proportion and have the capacity and tendency to engender the mistaken and erroneous belief that the walls of all hollow-steel rods other than the Heddon Pal are disproportionately thick at the tip in comparison to the butt, and that the walls of the Heddon Pal at the

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tip are far thinner in comparison with the walls of such rods at the butt than is in fact the case. The tests referred to were not made by experts independent of the respondent but were made by workmen in its employ.

There are many factors which bear upon the desirability and utility of a casting rod other than its durability. Superiority in strength or durability alone does not furnish a sufficient basis for a claim of general superiority.

PAR. 6. The use by the respondent of the foregoing statements, representations, and claims disseminated as aforesaid with respect to its Improved Heddon Pal rod has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial numbers of the respondent's Improved Heddon Pal rod.

Among respondent's competitors are many who do not misrepresent the thickness of the walls of their respective hollow-steel fishing rods, or the thickness of the walls of their said rods as compared to the walls of the hollow-steel rods of their competitors, and who do not misrepresent the nature of tests made relative to the effectiveness in use of their respective fishing rods. From such competitors, as a result of respondent's use and dissemination of the aforesaid statements, representations, and claims, trade has been diverted unfairly to the respondent. In consequence thereof injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of competitors of respondent, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the provisions of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the

¹ Par. 1 of order published as modified by order dated November 13, 1939.

respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, James Heddon's Sons, a corporation, 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 its Improved Heddon Pal hollow-steel fishing rod, or other fishing rods, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that all hollow-steel fishing rods, other than respondent's hollow-steel rods, have walls which are thicker at the tip than at the butt.

2. Using any depiction, pictorial representation, or other advertisement which shows in incorrect proportion the relative thickness of the walls at the tip and butt of respondent's or other hollow-steel fishing rods, or any section or sections thereof.

3. Stating the results of, or making representations relative to, tests of respondent's or other fishing rods, unless such tests were made by competent persons independent of respondent, provided that if such tests are made by persons not independent of respondent, there must be stated in direct connection therewith, in words of equal conspicuousness, the connection of such persons with respondent.

4. Representing that the results of comparative tests of respondent's fishing rods with other rods show respondent's rods to be superior unless and until such is the fact and unless such representation is limited to the superiority of respondent's rods in only those factors proven by such tests.

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
USONA SHIRT COMPANY

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

Docket 3842. Complaint, July 6, 1939—Decision, Aug. 8, 1939

Where a corporation engaged in sale and distribution of various grades and types of textile fabrics, including men's shirts, to members of purchasing public in various States and in the District of Columbia; in furtherance of practice of representing falsely condition and constituent fiber or material of which various products sold and distributed by it were made, through false representations on labels attached to its products and in various advertising matter, and, in said connection, of inserting in catalogs, price lists, and other advertising matter distributed among prospective purchasers situated in the various States and in said District, false statements and representations purporting to be descriptive of its said products as aforesaid—

- (a) Represented, as typical, that certain of its products were "shrunk," "pre-shrunk," or "full shrunk," through use of said words on labels thereof, and that such garments thus labeled were made from shrink-proof or non-shrinkable cloth, or from cloth which had been shrunk to such an extent that no residual shrinkage was left therein, facts being products thus marked, stamped, labeled, and advertised were not made of such cloth, and said cloth from which such products were made had not in fact been fully shrunk to the extent that no residual shrinkage was left remaining in goods concerned; and
- (b) Represented, as typical, to purchasing and consuming public, that its said products were made especially for each individual customer, through using, on labels and in catalogs, term "custom made," notwithstanding fact they were manufactured in same way that ready-made shirts are ordinarily manufactured;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous beliefs that it had truthfully represented condition of constituent fiber or material of which its various products were made, and that they were in fact custom made, and with result, by reason of such erroneous and mistaken beliefs, that number of consuming public purchased substantial volume of its products, and trade was diverted unfairly to it from its competitors also engaged in sale and distribution in commerce as aforesaid of various grades and types of textile fabrics and both custom-made and ready-made shirts:

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

Mr. James L. Fort for the Commission.