

Complaint

29 F. T. C.

IN THE MATTER OF
MARTIN CUSTOM MADE TIRES CORPORATION

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

Docket 3585. Complaint, Sept. 14, 1938—Decision, Sept. 18, 1939.

Where a corporation engaged in manufacture and sale of pneumatic automobile and truck tires to purchasers in various other States and in the District of Columbia, in substantial competition with those engaged in sale and distribution of similar products in commerce as aforesaid, and including many who sell and distribute such tires and do not misrepresent manner and quality of construction or number of plies contained therein—

Placed on the wrappings encasing its tires certain representations intended to portray, represent, and indicate, among other things including manufacturer's name, size, etc., numerical ply structure, and fact that tires were custom built, and affixed or molded into the side walls of its tires words, letters, or phrases stating tires were built as aforesaid, and colored permanent marks, brands, or insignia with certain words, letters, figures, or phrases intended to be representative and indicative of number of plies contained and existing in structure of products in question, facts being certain of the tires marked by it as aforesaid were not truthfully marked and branded, and did not contain number of plies thus indicated, in accordance with well-known and accepted custom and usage, but substantially smaller number; With tendency and capacity to mislead and deceive substantial portion of purchasing public as to number of plies actually contained in tires in question, and with result, as direct consequence of such erroneous and mistaken belief, that number of the public purchased substantial volume of its said tires, and trade was diverted unfairly to it from its competitors aforesaid, likewise engaged in selling and distributing such products, and with effect of placing in hands of unscrupulous or uninformed retailers means and instrumentality whereby they might mislead purchasing public into erroneous belief that its said tires contained actual number of plies as indicated by its said representations:

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. B. G. Wilson for the Commission.

Strauss, Riech & Boyer, of New York City, 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 the Martin Custom Made Tires Corporation, a corporation, 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. Respondent, Martin Custom Made Tires Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 645 Eleventh Avenue, New York, N. Y., and its factory located at Salem in the State of Ohio.

Respondent is engaged in the manufacture and sale of pneumatic automobile and truck tires, and causes said products, when sold, to be transported from its place of business in New York, N. Y., and from its factory in Salem, Ohio, to the purchasers thereof located in States of the United States other than the States of New York and Ohio, and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said pneumatic automobile and truck tires, sold and distributed by it 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, respondent is in active and substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of pneumatic automobile and truck tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of said pneumatic automobile and truck tires, respondent has made many representations concerning the character and quality of said products, by means of letters, blotters, signs, and price lists circulated generally among dealers and by means of tire wrappings, markings, insignia, and brands appearing on tires distributed to dealers located in the various States of the United States and in the District of Columbia.

Respondent has caused to be placed and affixed on the tire wrappings encasing its tires, certain representations purporting to portray, represent, and indicate the manufacturer's name, the respective size, type, and numerical ply structure, and the fact that said tires are custom built.

Respondent has caused to be placed, affixed, or molded on or into the sidewalls of said tires certain words, letters, or phrases stating that said tires are custom built and has further caused to be placed, affixed, or molded on or into the side walls of said tires, conspicuous

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tricolored permanent marks, brands, or insignia in the form and shape of shields, said shields depicting in their centers certain words, letters, figures, or phrases which purport to be representative and indicative of the number of plies contained and existing in the structure of the tires whereon they appear.

The words, letters, figures, phrases, or insignia, as appearing on or in the wrappings, sidewalls, and shields of respondent's tires, purport to be representative, descriptive, and indicative of the manner and quality of construction and of the actual number of plies contained and existing in respondent's said products.

Respondent, directly or by inference, through the means and methods hereinabove set out and by other means and methods of similar import and effect, represents that its pneumatic automobile and truck tires are custom built and are made and constructed of the actual number of plies as indicated by the words, letters, figures, phrases, or insignia as depicted and shown on the wrappings and sidewalls of said tires.

The manner and quality of construction and the number of plies contained are substantial factors considered in the choice for purchase of pneumatic automobile and truck tires. The term "custom built," when correctly used, describes goods or products specially made to order; through extended usage the term has acquired a well known secondary meaning, commonly associated with goods or products of a value superior to the comparable general commercial standard. It is a known fact regarding tires of identical or similar quality of material and workmanship that the manufacturer, retail dealer, and purchasing public have long been accustomed to offer and accept as indicative of greater value the tire containing the larger number of plies in its structure.

There is a custom and usage in the Rubber Tire Industry, followed by a number of manufacturers of pneumatic automobile and truck tires, of marking such tires with words and figures or phrases so as to conspicuously and truthfully indicate the number of plies existing in the construction of such tires.

This custom and usage is well known to the public and the public is accustomed in the purchase of tires to place full credence in the manufacturer's representations as to the manner and quality of construction and the number of plies therein contained as indicated by the marks, brands, words, letters, figures, insignia, or phrases appearing on the wrappings and sidewalls of said tires.

PAR. 5. The said representations, as made by respondent with respect to the manner and quality of construction and the actual number

of plies contained and existing in certain of its pneumatic automobile and truck tires are false, misleading, and untrue.

In truth and in fact respondent's tires are not custom made. Many of respondent's tires, represented as being made and constructed of a specific number of plies, do not contain the actual specific number of plies as therein indicated by the words, letters, phrases, figures, or insignia depicted on the wrappings or shields appearing on said tires.

The true facts are that respondent's tires are not made to specific special order. Respondent's tires are made and stocked in the ordinary course of respondent's business and are of a material, quality, and workmanship standard comparable to the like products of competing manufacturers.

Many of respondent's pneumatic automobile and truck tires are correctly marked and branded in that the number of plies contained and existing in the structure of said tires are as represented and indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing thereon.

Certain tires of respondent are not truthfully marked and branded. The number of plies contained and existing in the structure of these tires are not as represented by respondent, but are of a substantially lesser number than as indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing on said tires.

PAR. 6. There are among respondent's competitors many who sell and distribute pneumatic automobile and truck tires who do not misrepresent the manner and quality of construction or the number of plies contained in their respective products.

PAR. 7. Each and all of the false and misleading representations made by the respondent in describing the manner and quality of construction and the number of plies actually contained or existing in the structure of its pneumatic automobile and truck tires as hereinbefore set out were and are calculated to have had, and now 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 the respondent's products with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in selling and distributing pneumatic automobile and truck tires who truthfully represent the manner and quality of construction and correctly mark or brand their respective products as to the actual number of plies therein contained.

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 custom built and contain the actual number of plies as indicated by respondent's representations.

As a consequence thereof, injury has been done, and is now being done, by respondent to competition and 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 the 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 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 the 14th day of September 1938 issued and on the 17th day of September 1938 served its complaint in this proceeding upon said respondent, Martin Custom Made Tires Corporation, 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. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by Strauss, Riech & Boyer, 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 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, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Martin Custom Made Tires Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 645 Eleventh Avenue, New York, N. Y., and its factory located at Salem in the State of Ohio.

PAR. 2. Respondent is engaged in the manufacture and sale of pneumatic automobile and truck tires, and causes said products, when sold, to be transported from its place of business in New York, N. Y., and from its factory in Salem, Ohio, to the purchasers thereof located in States of the United States other than the States of New York and Ohio, and in the District of Columbia.

PAR. 3. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said pneumatic automobile and truck tires, sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent in the course and conduct of its business is in active and substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of pneumatic automobile and truck tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondent in the course and conduct of its business and for the purpose of inducing the purchase of said pneumatic automobile and truck tires, has made many representations concerning the character and quality of said products, by means of letters, blotters, signs, and price lists circulated generally among dealers and by means of tire wrappings, markings, insignia, and brands appearing on tires distributed to dealers located in the various States of the United States and in the District of Columbia.

PAR. 6. Respondent has caused to be placed and affixed on the tire wrappings encasing its tires, certain representations which were and are intended to portray, represent, and indicate the manufacturer's name, the respective size, type, and numerical ply structure, and the fact that such tires are custom built.

PAR. 7. Respondent has caused to be placed, affixed, or molded on or into the side-walls of said tires certain words, letters, or phrases stating that said tires are custom built and has further caused to be placed, affixed, or molded on or into the sidewalls of said tires, conspicuous tricolored permanent marks, brands, or insignia in the form

and shape of shields, said shields depicting in their centers certain words, letters, figures, or phrases which were and are intended to be representative and indicative of the number of plies contained and existing in the structure of the tires whereon they appear.

PAR. 8. There is a custom and usage in the Rubber Tire Industry, followed by a number of manufacturers of pneumatic automobile and truck tires, of marking such tires with words and figures or phrases so as to conspicuously and truthfully indicate the number of plies existing in the construction of such tires. This custom and usage is well known to the public, and the public is accustomed in the purchase of tires to place full credence in the manufacturer's representations as to the manner and quality of construction and the number of plies therein contained as indicated by the marks, brands, words, letters, figures, insignia, or phrases appearing on the wrappings and sidewalls of said tires.

PAR. 9. Many of respondent's pneumatic automobile and truck tires are correctly marked and branded in that the number of plies contained and existing in the structure of said tires are as represented and indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing on said tires.

PAR. 10. Certain tires of respondent are not truthfully marked and branded. The number of plies contained and existing in the structure of these tires are not as represented by respondent, but are of a substantially lesser number than as indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing on said tires.

PAR. 11. There are among respondent's competitors many who sell and distribute pneumatic automobile and truck tires who do not misrepresent the manner and quality of construction or the number of plies contained in their respective products.

PAR. 12. The false and misleading representations made by the respondent in describing the number of plies contained or existing in the structure of certain of its pneumatic automobile and truck tires as hereinbefore set out were and are calculated to have, have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the number of plies actually contained in said tires. As a direct result of this erroneous and mistaken belief, a number of the public have purchased a substantial volume of the respondent's products with the result that trade has been diverted unfairly to respondent from competitors referred to in paragraphs 4 and 11 who are likewise engaged in selling and distributing pneumatic automobile and truck tires.

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PAR. 13. 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 contain the actual number of plies as indicated by respondent's representations.

CONCLUSION

The foresaid acts and practices of respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into between counsel for the 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, Martin Custom Made Tires Corporation, 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 pneumatic automobile and truck tires in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist:

1. From representing directly or indirectly by means of letters, blotters, words, figures, price lists, tire wrappings, markings, insignia, or brands appearing on respondent's automobile and truck tires or in any other way, that the tires sold by respondent contain more plies in their construction than they actually contain.

2. From representing directly or indirectly that the construction of respondent's tires or the materials therein contained are other than the actual construction and materials contained in said tires.

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

CONSOLIDATED CANDY COMPANY, INC., A CORPORATION, AND LESLIE FINUCANE, INDIVIDUALLY, AND AS AN OFFICER OF CONSOLIDATED CANDY COMPANY, INC.

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

Docket 3657. Complaint, Dec. 3, 1938—Decision, Sept. 18, 1939.

- Where a corporation and an individual, who was secretary and treasurer thereof and formulated and directed its practices and policies, engaged in manufacture and sale of candy and nut confections which were sold, packed and assembled so as to involve use of a lottery scheme when sold and distributed to the consumers thereof and which included (1) number of bars of a nut confection or candy, together with push card, for sale under a plan and in accordance with said card's explanatory legend, pursuant to which customer received the confection or candy without cost or paid therefor 1, 2, or 3 cents, dependent upon the securing by chance of the letter O or number 1, 2, or 3 in accordance with disk selected on card, and (2) various other assortments of candy and nut confection which involved lottery or chance feature in method of sale and distribution, but were similar to that above described and varied therefrom in detail only; and acting in cooperation with one another in the matters here involved—
- Sold to dealers for display and resale by retail dealer purchasers thereof in accordance with aforesaid sales plan such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their product in accordance with such sales plan involving game of chance or sale of a chance to secure a bar of candy or nut confection without cost or at a price much less than normal retail price thereof, contrary to an established policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to offer and sell candy and nut confections so packed and assembled as above described or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method of sale contrary to public policy and refrain therefrom;
- With tendency and capacity to induce purchasers of their candy and nut confections to buy their said products in preference to those offered and sold by competitors, and with result that many dealers in and ultimate purchasers of candy and nut confections were attracted by their said method and manner of packing such products and by element of chance involved in sale thereof, as above set forth, and were thereby induced to purchase such candy and nut confections thus packed and sold by them in preference to products offered and sold by their competitors aforesaid who do not use same or equivalent or similar method, and with tendency and capacity through use of such method and because of said game of chance to divert to them trade and custom from their said competitors who do not use any such method, to exclude from candy and nut confections trades all competitors who are unwilling to and do not use same or equivalent or