

Complaint

29 F. T. C.

IN THE MATTER OF
MARLIN FIREARMS COMPANY

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

Docket 3871. Complaint, Aug. 17, 1939—Decision, Nov. 7, 1939

Where a corporation engaged, under corporate name long associated with manufacture of high quality firearms, in sale and distribution of razor blades and other products—

Represented, directly and indirectly, through such statements as “* * * Marlin, world-famous for its firearms, has produced a really fine blade to sell at little more than 1¢ a blade * * * made with the same care that has made Marlin guns tops in quality for 67 years,” “Marlin, world-famous firearms manufacturer, has found a way to produce a truly fine razor blade * * *,” etc., that such so-called “Marlin” blades were made by it and manufacturer of “Marlin” firearms, facts being products in question, sold by it under its trade-mark and designated by it as aforesaid, were made by another company whose output in part it purchased, and it did not own or control manufacturing plant in which such blades were manufactured;

With effect of misleading and deceiving substantial portion of purchasing public, on the part of which, as of consuming public and dealers, there had long been preference for dealing direct with manufacturer as thereby securing lower prices, elimination of middlemen's profits, superior products and other advantages, and also on the part of which there would be preference for blades manufactured by such firearms manufacturer as supposedly better equipped, by reason of its reputation, to make high-grade product, into erroneous and mistaken belief that such statements, representations and advertisements were true, and that said blades were made by it, and into purchase thereof because of such belief:

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.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Edward J. Brennan, of New Haven, Conn., 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 Marlin Firearms Co., 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. Marlin Firearms Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located in New Haven, Conn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of razor blades and other products. In the course of its business the respondent causes said razor blades to be transported from its principal place of business in the State of Connecticut to purchasers thereof at their respective points of location in various States of the United States other than the State of Connecticut and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said razor blades sold by respondent 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 business, as aforesaid, respondent has published or caused to be published in newspapers and periodicals, having a general circulation, among and between various States of the United States, advertisements containing the following statements and representations and others similar thereto:

Here is a new, high-speed, luxury razor blade made of the finest surgical steel by craftsmen with years of experience. Marlin, world-famous for its firearms, has produced a really fine blade to sell at little more than 1¢ a blade * * *. It's not hard to understand why Marlin is one of the finest blades in the world. They are made with the same care that has made Marlin guns tops in quality for 67 years.

Marlin, world-famous firearms manufacturer has found a way to produce a truly fine razor blade * * *. These blades are hardened, ground and honed scientifically by craftsmen with a true knowledge of fine steel.

Made by the Marlin Firearms Company, makers of fine fire-arms for 65 years.

Made of finest Swedish surgical steel and guaranteed by the makers of the famous Marlin guns.

Through the use of the statements hereinabove set forth, and others of similar import or meaning not specifically hereinabove set forth, respondent has represented and does now represent, directly and indirectly, that it is the manufacturer of razor blades and that the aforesaid blades designated by respondent as "Marlin" blades are manufactured by the respondent, the manufacturer of "Marlin" firearms.

PAR. 4. In truth and in fact respondent does not make or manufacture razor blades, and the aforesaid blades sold by respondent under its trade-mark and represented as "Marlin" blades are manufactured by another company, whose output, in part, is purchased by respondent. Respondent does not own or control the manufacturing plant in which the aforesaid blades are manufactured.

Findings

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PAR. 5. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and dealers to deal direct with a manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products and other advantages can thereby be obtained. Furthermore, the name "Marlin" has long been associated with the manufacture of high quality firearms and there would be a preference on the part of a substantial portion of the purchasing public for razor blades manufactured by the Marlin Firearms Co. in the belief that the company, by reason of its reputation, is better equipped to manufacture a high grade product.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to its razor blades 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 statements, representations and advertisements are true, and that such razor blades are manufactured by respondent, and into the purchase of said razor blades because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 August 17, 1939, issued and served its complaint in this proceeding upon the respondent, Marlin Firearms Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer 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. Marlin Firearms Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located in New Haven, Conn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of razor blades and other products. In the course of its business the respondent causes said razor blades to be transported from its principal place of business in the State of Connecticut to purchasers thereof at their respective points of location in various States of the United States other than the State of Connecticut and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said razor blades sold by respondent 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 business, as aforesaid, respondent has published or caused to be published in newspapers and periodicals, having a general circulation, among and between various States of the United States, advertisements containing the following statements and representations and others similar thereto:

Here is a new, high-speed, luxury razor blade made of the finest surgical steel by craftsmen with years of experience. Marlin, world-famous for its firearms, has produced a really fine blade to sell at little more than 1¢ a blade * * *. It's not hard to understand why Marlin is one of the finest blades in the world. They are made with the same care that has made Marlin guns tops in quality for 67 years.

Marlin, world-famous firearms manufacturer has found a way to produce a truly fine razor blade * * *. These blades are hardened, ground and honed scientifically by craftsmen with a true knowledge of fine steel.

Made of finest Swedish surgical steel and guaranteed by the makers of the famous Marlin guns.

Through the use of the statements hereinabove set out, and others of similar import or meaning not specifically hereinabove set forth, respondent has represented and does now represent, directly and indirectly, that it is the manufacturer of razor blades and that the aforesaid blades designated by respondent as "Marlin" blades are manufactured by the respondent, the manufacturer of "Marlin" firearms.

PAR. 4. In truth and in fact respondent does not make or manufacture razor blades, and the aforesaid blades sold by respondent under its trade-mark and represented as "Marlin" blades are manufactured by another company, whose output, in part, is purchased by respondent. Respondent does not own or control the manufacturing plant in which the aforesaid blades are manufactured.

Order

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PAR. 5. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and dealers to deal direct with a manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained. Furthermore, the name "Marlin" has long been associated with the manufacture of high quality firearms and there would be a preference on the part of a substantial portion of the purchasing public for razor blades manufactured by the Marlin Firearms Co. in the belief that the company, by reason of its reputation, is better equipped to manufacture a high grade product.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to razor blades sold by it 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 advertisements are true, and that such razor blades are manufactured by respondent, and into the purchase of said razor blades because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute 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 the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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 Marlin Firearms Co., a corporation, its officers, agents, and representatives, in connection with the sale and distribution of razor blades in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1300

Order

Representing that Marlin Firearms Co. is the manufacturer of the razor blades which it sells, unless and until it owns and operates, or directly and absolutely controls, the factory wherein said razor blades are manufactured.

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
THE AMERICAN PRODUCTS COMPANY AND THE ZANOL
PRODUCTS COMPANY

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

Docket 2836. Complaint, June 8, 1936—Decision, Nov. 8, 1939

Where a corporation engaged in manufacture and sale of numerous food and toilet products and household cleaners, and its corporate subsidiary which it caused to sell its said products to retail vendors for resale to purchasing public and which, in acts below set forth, acted at all times under its domination, supervision, and direction, engaged, as aforesaid, in sale of such products to purchasers in various other States and in the District of Columbia, in competition with others likewise engaged in sale and distribution and transportation of similar commodities, and including those who, in advertising potential earning possibility of salesmen and representatives, do not falsely represent potential profit to be realized by such persons as far in excess of that actually possible; in advertising, through said subsidiary, in various daily newspapers, trade magazines, and other periodicals of interstate circulation, and through circulars and letters forwarded to prospective or potential representatives throughout the various States, to induce persons contacted to agree to represent said subsidiary in sale of their products throughout the various States—

- (a) Misrepresented, through said subsidiary, volume of their business, and represented that salesmen or distributors incurred no risk or expense, through such statements as " * * * When I tell you that my business has grown from nothing to a five-million-dollar-a-year business, you can see for yourself how successful my ideas have been" and "I Start You at My Risk," "Best of all I am going to start you in this wonderful business at my expense * * * I am going to assume all the expense and take all the risk," facts being claim of annual turnover of inventory was excessive and exorbitant and statement that so-called representatives would be given contract at sole risk and expense of such corporation was misleading, in that deposit was required by them for goods or samples supplied;
- (b) Represented that it gave "A Ford Sedan Free," through statements to such effect and "I will pay you up to \$42.50 a week and I will furnish a car to producers," and "Free Auto If You Qualify" or "Automobile Given to Producers," facts being Ford sedan stated as given free to representatives was only given when they had purchased from corporation in question, within 12-month period and at wholesale prices, not less than \$2,500 worth of goods; and
- (c) Represented that large earnings were to be gained by those contracting with it, through advertisements in trade magazines, newspapers, and other periodicals of interstate circulation, making such statements as "Agents Six Dollars a Day. Wonderful chance to make \$6 a day taking orders. * * *" "Man—I want a man for local tea and coffee routes paying up to \$32.50 first week. Opportunity for steady cash increases. * * *," "\$80 in One Week. * * * 62 years old * * * reported he made better than \$80 in