

Syllabus

IN THE MATTER OF
THE PERMA-MAID 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 3268. Complaint, Nov. 20, 1937—Decision, Nov. 18, 1939

Where a corporation engaged, as wholly owned subsidiary of manufacturer of stainless steel cooking utensils, in selling, as agent and distributor of said manufacturer, such products to purchasers in other States, in substantial competition with others engaged in manufacture and in sale and distribution among the various States and in the District of Columbia of cooking utensils made from steel or other materials or metals, including distributors of like and similar commodities made from aluminum metal and distributors of like and similar commodities made from steel and other metals, who do not falsely represent their products or make false and disparaging statements concerning those of their competitors;

In selling from its district offices its said steel cooking utensils through some 300 sales representatives, and who obtained orders from members of the public for such products through house-to-house canvass, and certain of whom, acting on their own initiative in obtaining and paying for pamphlets, leaflets and circulars from persons having no connection with or interest in it or its business, and which, containing false and misleading statements and representations with respect to value and effect of aluminum materials used in kitchen utensils, were made use of by said agents and representatives, contrary to its instructions—but in scope of their employment,

Represented through statements and representations in pamphlets, leaflets, and circulars, as aforesaid and in sales talks to prospective purchasers by such agents and representatives, that food prepared and kept in aluminum utensils was detrimental to user thereof, and that preparation thereof in such utensils caused formation of poisons, and consumption of food thus prepared or kept in such utensils would cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases, facts being aluminum had been used in manufacture of cooking utensils for many years and been found, during such period to be satisfactory material for such use, consumption of food prepared or kept therein would not cause ulcers or other ailments, conditions, or afflictions, and foods so prepared or kept were not detrimental to health of users, and preparation of food in such utensils did not cause formation of poisons;

With effect of misleading and deceiving substantial number of persons to whom such false, misleading and unfairly disparaging representations were made by its agents and representatives, as above set forth, into false and erroneous belief that cooking utensils made from aluminum were harmful and dangerous to the consumers of food prepared therein, and that all the statements and representations made by such agents and representatives with respect to aluminum utensils were true, and of thus inducing such persons, in reliance upon such belief or beliefs, to purchase its cooking utensils instead of those of competitors, and of thereby unfairly diverting trade in commerce to it from its competitors aforesaid:

Complaint

29 F. T. C.

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. S. Brogdyne Tew, II for the Commission.

Larkin, Rathbone & Perry, of New York City, 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 Perma-Maid Co., Inc., 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, Perma-Maid Co., Inc., is a corporation organized and doing business under the laws of the State of Delaware, and having its principal place of business in the city of Toledo, State of Ohio. It is now, and for more than 1 year last past has been engaged in the manufacture, sale, and distribution of steel cooking utensils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said products are sold respondent transports or causes the same to be transported from its place of business in the city of Toledo, State of Ohio, to purchasers thereof located in other States of the United States and in the District of Columbia.

There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above described products sold by respondent 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 now, and has been, in substantial competition with other corporations, and with individuals, partnerships, and firms likewise engaged in the business of manufacturing, selling, and distributing cooking utensils made from steel or other metals or materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course of the operation of its business, and for the purpose of inducing the purchase of its products, exhibits samples of said products to prospective purchasers and makes many

false, misleading and unfairly disparaging statements and representations with respect to the value of certain other materials used in the manufacture of kitchen utensils and the effects obtained from use of utensils made from such materials. Said false and misleading statements and representations are made in pamphlets, leaflets, and circulars furnished by respondent for distribution or display to members of the purchasing public, and are also made by respondent's representations in sales talks to prospective customers. The following are representative of the various false and misleading statements and representations contained in said circulars, leaflets, and pamphlets, and made in said sales talks, but are not all inclusive:

1. Scientific information pertaining to the ingestion of aluminum compounds is now available. With all the governmental reports of the deleterious effects of this metal before us, surely we should heed the warnings when we consider the fact that many millions of dollars worth of ALUMINUM is used for the purpose of cooking and storing foods throughout the United States.

2. The metal is soft and forms various poisons with the foods with which it is in contact.

3. There is no objection to the use of this metal for casket purposes or as a mordant in the dye which is used to color the clothing which covers a corpse.

4. The manufacturers of dyes state in their literature that we should NOT do our dyeing in ALUMINUM—There is a reason.

5. The substance is used for tanning hides, wall paper sizing, etc. It is the principal metal base used in making bricks, sewer pipe and road building materials. * * *

6. Boll some of your drinking water in an aluminum dish for one-half hour, pour in a clear glass can and after cooling several hours note the white feathery substance in the bottom of the can. This is the poison dissolved from the utensil which readily combines with other chemicals forming aluminum compounds, some of these are: aluminum acetate, chloride of aluminum, aluminum phosphate, aluminum sulphate. A host of other potent poisons are manufactured during the ordinary process of cooking foods in aluminum dishes. These are formed according to the kind of food cooked therein.

7. Did you ever find maggots in your aluminum pans? Do you know that such pans may be full of the most deadly bacteria known to science?

8. Almost daily you read in the press of hundreds being poisoned by eating food cooked in aluminum. Do you know how such poisonings occur? If you do not, this circular will tell you.

9. Aluminum is a soft metal and is easily corroded and pitted under certain conditions. For example, when sauerkraut or vegetables are cooked in aluminum and allowed to stand for some time the utensil often becomes badly pitted.

10. It has frequently happened that sauerkraut has eaten holes completely through the aluminum kettles in which it was prepared.

11. Vegetables that are cooked with soda and salt will produce similar results.

12. Corned beef corrodes most aluminum utensils. * * *

13. Rolled, pressed or cast aluminum all corrode.

PAR. 5. All the foregoing statements and representations are false and misleading, and serve as representations to customers and prospective customers that the consumption of food prepared or kept in aluminum utensils will cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases; that food so prepared or kept in aluminum utensils is detrimental to the health of the users thereof, and that preparation of food in aluminum utensils causes formation of poisons.

In truth and in fact aluminum has been used in the manufacture of cooking utensils for many years. During that period of time it has been found to be a highly satisfactory material for use in cooking utensils. Further, in truth and in fact, the consumption of food prepared or kept in aluminum kitchen utensils will not cause ulcers, cancers, cancerous growths, and other ailments, afflictions, and diseases of the human body. Foods so prepared or kept in aluminum utensils are not detrimental to the health of the users thereof by reason of the use of aluminum utensils. Poisons are not formed from the preparation of foods in aluminum utensils.

PAR. 6. There are among the competitors of the respondent in commerce as herein set out, manufacturers and distributors of like and similar commodities who truthfully advertise and represent their respective products, and who refrain from defaming and unfairly disparaging the products of competitors in the manner and form herein set out, by which respondent defames and disparages its competitors' products.

PAR. 7. The aforesaid false, misleading, and disparaging representations so made by respondent as above alleged have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial part of the consuming public into the false and erroneous belief that cooking utensils made from aluminum are undesirable and harmful in the ways alleged, and are dangerous to the consumers of food prepared in said aluminum cooking utensils, and that all of said statements and representations made by respondent with reference to said aluminum cooking utensils are true.

As a result thereof trade has been unfairly diverted to respondent from those competitors herein referred to engaged in like and similar businesses. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts, and prac-

1403

Findings

tices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued a complaint on the 20th day of November 1937, against the respondent, The Perma-Maid Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act.

The respondent filed its answer to the complaint on December 13, 1937.

After the filing of the respondent's answer to the complaint, testimony and evidence in support of the complaint was introduced by S. Brogdyne Teu, II, Esq., attorney for the Commission, and in opposition to the complaint by T. R. Iserman, Esq., and C. D. Peet, Esq., of counsel to Larkin, Rathbone & Perry, attorneys for the respondent, before Edward E. Reardon, Esq., theretofore duly designated an examiner by the Commission.

The testimony and evidence introduced was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint; the answer to the complaint; the testimony and evidence; and upon briefs and oral arguments of counsel for the Commission and for the respondent; 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 the findings of the Commission as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Perma-Maid Co., Inc., is a company incorporated in March 1935, and organized and doing business under the laws of Ohio. Its principal office and place of business is located at Cincinnati, Ohio.

PAR. 2. The respondent is a wholly owned subsidiary of the Electric Auto-Lite Co., and the selling agent and distributor of stainless steel cooking utensils manufactured by the Electric Auto-Lite Co.

The Perma-Maid Co. has district offices for the conduct of the sales of the cooking utensils, located at Boston, Mass.; New Haven,

Findings

29 F. T. C.

Conn.; New York City, N. Y.; Newark, N. J.; and, at Philadelphia, Pa. It employs about 300 sales representatives, who work out from the district offices, and obtain orders from members of the public for the purchase of the cooking utensils in a house to house canvass. The cooking utensils so ordered and purchased are later delivered by the respondent from Cincinnati, Ohio, to the purchasers in the other States, or in States other than the State of origin of the shipment.

PAR. 3. The respondent is, and for more than 1 year prior to December 13, 1937, has been, engaged in the sale of stainless steel cooking utensils, in commerce, between and among the various States of the United States and the District of Columbia.

PAR. 4. The respondent, in the sale of its stainless steel cooking utensils, is and has been engaged, during the times mentioned and referred to above, in substantial competition with others, individuals, firms and corporations, who are and have been engaged in the business of manufacturing and in the business of selling and distributing, in commerce among and between the various States of the United States and in the District of Columbia, cooking utensils made from steel or other metals or materials.

PAR. 5. The respondent's agents and sales representatives referred to above, have exhibited samples of respondent's products to prospective purchasers, and certain of the agents and sales representatives, upon their own initiative, for the purpose of inducing the purchase of respondent's products, have made false, misleading, and unfairly disparaging statements and representations with respect to the value of aluminum materials used in the manufacture of kitchen utensils and the effects obtained from the use of utensils made from such materials upon foods prepared therein.

Said false and misleading statements and representations have been made in pamphlets, leaflets, or circulars and in sales talks to prospective purchasers. Respondent did not print, obtain or pay for said pamphlets, leaflets, or circulars. They were obtained and paid for by such agents and representatives from persons having no connection with or interest in respondent, or its business, and who published said pamphlets, leaflets, or circulars or similar ones for several years before respondent began business.

The following are representative of the various statements and representations by respondent's agents and representatives contained in said sales talks and literature but are not all inclusive:

1. Scientific information pertaining to the ingestion of aluminum compounds is now available. With all the Governmental reports of the deleterious effects of this metal before us, surely we should heed the warnings when we consider the fact that many millions of dollars worth of ALUMINUM is used for the purpose of cooking and storing foods throughout the United States.

Findings

2. The metal is soft and forms various poisons with the foods with which it is in contact.

3. There is no objection to the use of this metal for casket purposes or as a mordant in the dye which is used to color the clothing which covers a corpse.

4. The manufacturers of dyes state in their literature that we should NOT do our dyeing IN ALUMINUM—There is a reason.

5. The substance is used for tanning hides, wall paper sizing, etc. It is the principal metal base used in making bricks, sewer pipe and road building materials. * * *

6. Boil some of your drinking water in an aluminum dish for one-half hour, pour in a clear glass can and after cooling several hours note the white feathery substance in the bottom of the can. This is the poison dissolved from the utensil which readily combines with other chemicals forming aluminum compounds, some of these are: aluminum acetate, chloride of aluminum, aluminum phosphate, aluminum sulphate. A host of other potent poisons are manufactured during the ordinary process of cooking foods in aluminum dishes. These are formed according to the kind of food cooked therein.

7. Did you ever find maggots in your aluminum pans? Do you know that such pans may be full of the most deadly bacteria known to science?

8. Almost daily you read in the press of hundreds being poisoned by eating food cooked in aluminum. Do you know how such poisonings occur? If you do not, this circular will tell you.

9. It has frequently happened that sauerkraut has eaten holes completely through the aluminum kettles in which it was prepared.

10. Vegetables that are cooked with soda and salt will produce similar results.

11. Corned beef corrodes most aluminum utensils. * * *

PAR. 6. The foregoing statements and representations of respondent's agents and sales representatives have served as representations to customers and prospective customers that food prepared or kept in aluminum utensils is detrimental to the health of the users thereof; and that the preparation of food in aluminum utensils causes the formation of poisons. The respondent also stipulated that statements and representations made by its agents and representatives serve as representations to customers and prospective customers that the consumption of food prepared or kept in aluminum utensils would cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases.

PAR. 7. Aluminum has been used in the manufacture of cooking utensils for many years. During that period of time it has been found to be a satisfactory material for use in cooking utensils. The consumption of food prepared or kept in aluminum kitchen utensils will not cause ulcers, cancers, cancerous growths, or other ailments, afflictions, or diseases of the body. The foods so prepared or kept in aluminum utensils are not detrimental to the health of the users thereof, and the preparation of food in aluminum utensils does not cause the formation of poisons.

Conclusion

29 F. T. C.

PAR. 8. Respondent, upon discovering that certain of its agents and representatives had made the statements and representations and had distributed the pamphlets, leaflets, and circulars above referred to, forbade its agents and representatives to make such statements and representations and to distribute such pamphlets, leaflets and circulars, and for more than one year last past on every occasion where a violation of its instructions has been called to its attention, has discharged or otherwise penalized the agents and representatives so violating its orders. In making said statements and representations, however, said agents and representatives were acting within their scope of employment by respondent. Respondent is fully responsible for the aforesaid statements and representations made by its agents and representatives.

PAR. 9. There are, among the competitors of the respondent referred to in paragraph 4 hereof, distributors of like and similar commodities made from aluminum metal, and distributors of like and similar commodities made from steel and other materials, who do not falsely represent their products or make false and disparaging statements concerning the products of their competitors.

PAR. 10. The false, misleading, and unfairly disparaging representations made by respondent's agents and representatives, as herein set out, have had the tendency and capacity to, and did, mislead and deceive a substantial number of the persons to whom they were made into the false and erroneous belief that cooking utensils made from aluminum are harmful and are dangerous to the consumers of food prepared therein, and that all of the statements and representations made by respondent's agents and representatives with reference to aluminum utensils are true, and in reliance upon such belief or beliefs so induced into purchasing respondent's cooking utensils instead of the cooking utensils of respondent's competitors. In consequence thereof trade in commerce among and between the various States of the United States and in the District of Columbia in cooking utensils was thereby diverted unfairly to the respondent from its said competitors.

CONCLUSION

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

1403

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Edward E. Reardon, 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 and oral arguments by S. Brogdyne Teu, II, counsel for the Commission, and T. R. Iserman, counsel for the respondent, 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 Perma-Maid Co., Inc., 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 cooking utensils in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that food prepared or kept in aluminum utensils is detrimental to the user thereof.
2. Representing that the preparation of food in aluminum utensils causes the formation of poisons.
3. Representing that the consumption of food prepared or kept in aluminum utensils will cause ulcers, cancers, cancerous growths and various other ailments, afflictions and diseases.

It is further ordered, That the respondent shall within 60 days from and after the date of 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 and is complying with the order to cease and desist hereinabove set forth.

Complaint

29 F. T. C.

IN THE MATTER OF
DIAMOND KNITTING MILLS, INC.

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

Docket 3877. Complaint, Aug. 26, 1939—Decision, Nov. 28, 1939

Where a corporation engaged in manufacture of various articles of knitted wearing apparel, and in sale and distribution thereof to retailers in various States and in the District of Columbia—

Falsely represented, on labels attached to its products, constituent fibers or materials of which they were composed, and thus represented certain products as composed entirely of unweighted silk, product of cocoon of silkworm, through attaching thereto cloth tag or label bearing words "Genuine * * * All Silk," with diamond interposed, notwithstanding fact products in question were not, as aforesaid, and as understood by purchasing and consuming public from word "silk," unqualified, composed entirely of silk, long highly esteemed product of cocoon of silkworm, and not weighted or subjected to metallic bath containing metallic salts or other weighting substance;

With tendency and capacity to mislead and deceive retail dealers and substantial portion of purchasing public into erroneous and mistaken belief that said products were composed wholly of unweighted silk, and with result, by reason of such belief, that a number of retailers and members of purchasing public bought substantial volume of its products and trade was diverted unfairly to it from its competitors engaged in sale and distribution of various articles of knitted silk wearing apparel in commerce, and who do not falsely represent the constituent fibers of which their products are composed:

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. George W. Williams for the Commission.

Mr. Samuel A. Blank, of Philadelphia, Pa., 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 Diamond Knitting Mills, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of 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: