

IN THE MATTER OF
B & T FLOOR COMPANY

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

Docket 3541. Complaint, Aug. 17, 1938—Decision, Dec. 19, 1939

Where a corporation engaged in sale and distribution of extruded aluminum trimmings and metal products for trimming wall and floor covering materials; in advertising, under trade-mark "Chromedge," its said trimmings in circulars, folders, catalogs and stationery circulated generally throughout the United States, and through agents sent into various States—

- (a) Represented that it manufactured such trimmings, through use of such statements as "manufactured only by," etc.; and
- (b) Represented that its said trimmings were made of an alloy, one of the principal component parts of which was chromium, and that such trimmings, thus made, could be obtained only from it, and that so-called "Chromedge" was metal of superior quality, having attributes of chromium, and was preferable to extruded aluminum, through such statements as "can be obtained ONLY from ourselves or through an authorized distributor. Do not accept inferior imitations. * * *" and "* * * manufactured from a special white metal alloy in which we have incorporated chromium, magnesium, * * *";

Facts being it did not manufacture metal in question sold by it under trade name "Chromedge," nor manufacture the extruded aluminum alloy trimmings sold by it as aforesaid, so-called "Chromedge" was not a metal of superior quality having attributes of chromium, etc., but was in fact an extruded aluminum alloy purchased by it from aluminum manufacturer, by whom same was also sold to numerous competitors of said corporation for trimmings, as aforesaid;

With tendency and capacity to mislead and deceive substantial portion of purchasing public, and with effect of causing number of such public, many of whom prefer to purchase trimmings and metal products made of chromium because of durability and inherent qualities thereof, and on the part of which there has long existed preference for buying direct from manufacturer by reason of advantages thus had, as believed, in matter of better goods at lower prices, to purchase substantial volume of such trimmings from it, and of thereby causing trade to be diverted unfairly to it from its competitors who truthfully advertise and represent their metal trimmings, and of whom many sell and distribute such products of same general nature without in any way misrepresenting quality thereof or nature of material from which made, or that they are manufacturers of their products; to prejudice and injury of competitors and public:

Held, That such acts, practices, statements and representations, 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.

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

Mr. Merle P. Lyon and *Mr. Charles S. Cox* for the Commission.

Mr. James M. Schooler and *Mr. W. S. McDowell*, of Columbus, Ohio, and *Mr. Samuel Schrivener, Jr.*, of Washington, D. C., 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 B & T Floor 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. Respondent, B & T Floor Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its office and principal place of business at 135 North Front Street, Columbus, Ohio.

PAR. 2. Respondent is now and for more than 9 months last past has been in the business of selling and distributing extruded aluminum alloy trimmings and metal products. Respondent causes said products, when sold, to be transported from its place of business in Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said products 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. Respondent, in the course and conduct of its said business, at all times herein mentioned has been, and is now, in competition with other corporations and with individuals, firms, and partnerships engaged in the advertising, sale, and distribution of extruded aluminum alloy trimmings and of metal products similar to those of respondent and of other products designed for similar usage 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 said business, and for the purpose of inducing the purchase of said products, respondent, by means of advertising circulars, folders, catalogs, and stationery circulated generally throughout the United States and through its agents sent into various States of the United States, has made many representa-

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tions concerning the character and nature of said products. Among such representations made by respondent are the following:

CHROMEDGE, the brilliant solid white metal for trimming wall and floor covering materials, manufactured only by the B & T Floor Company, Columbus, Ohio.

* * * **PLEASE NOTE:** All Chromedge items are branded with our trade mark. Look for the name "Chromedge" on the flange. If it is not trademarked "chrom-edge," it is not genuine chromedge. Chromedge can be obtained **ONLY** from ourselves or through an authorized distributor. Do not accept inferior imitations. Insist on genuine Chromedge—so that you will be sure the beauty of your installations will endure * * *.

METAL. Chromedge is not a plated metal. Chromedge is manufactured from a special white metal alloy in which we have incorporated chromium, magnesium, silicon, iron, copper, etc. in such a way that it will accept and retain a brilliant, lustrous polish. Its ductility is of such a nature that it may be easily bent to fit curves and angles.

All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products. In all of its advertising literature, by use of the trade name "Chromedge" and through other means respondent, directly or by inference through the statements and representations herein set out, and other statements of similar import and effect, represents that it manufactures the metal it sells under the trade name "Chromedge"; that "Chromedge" is a metal which is composed of a large percentage of chromium; that respondent corporation is the only concern from and through whom this material can be purchased; that "Chromedge" is a metal of superior quality having the attributes of chromium, and therefore, preferable to extruded aluminum.

PAR. 5. The aforesaid representations made by respondent with respect to the nature and quality of its products are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent does not manufacture the metal it sells under the trade name "Chrom-edge." "Chromedge" is not a metal which is composed of a large percentage of chromium. "Chromedge" is not a metal of superior quality having the attributes of chromium and is not preferable to extruded aluminum. The true facts are that "Chromedge" is an extruded aluminum alloy trimming and is composed of approximately 98 percent aluminum and less than 1 percent chromium. The word "Chromedge" is merely a trade-mark of respondent B & T Floor Co. Extruded aluminum alloy trimmings with substantially identical component ingredients can be purchased from respondent's competitors who do not use the trade name "Chromedge" to describe the same.

PAR. 6. For many years there has existed a preference on the part of the purchasing public for buying goods direct from the manufac-

turer thereof. This preference results from the belief that manufacturers are able to offer lower prices, better quality and other advantages not obtainable elsewhere. There are those of the purchasing public who prefer to purchase metal products made of chromium in preference to those made of extruded aluminum because of the durability and inherent qualities of chromium.

PAR. 7. There are among respondent's competitors many who sell and distribute similar products and who do not in any way misrepresent the quality and character of their respective products and their respective business status.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent in describing its products, as hereinabove set out, were, and are, calculated to, and 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 of said representations are true. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing said products, and who truthfully advertise their respective products. As a consequence thereof, injury has been done, 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. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 August 17, 1938, issued its complaint and caused same to be served upon the respondent B & T Floor Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of an answer thereto by said respondent, William C. Reeves, an examiner for said Commission, was designated and appointed to take testimony and to receive evidence in said proceeding, and pursuant thereto a hearing was held at Columbus, Ohio, on November 10, 1938, at which hearing a stipulation as to cer-

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tain facts was entered into by and between Merle P. Lyon, counsel for the Commission, and James M. Schooler and W. S. McDowell, counsel for respondent, which stipulation was read into the record, whereupon testimony was taken and evidence received at the instance of counsel for the Commission explanatory of and supplementary to said stipulation, which stipulation and testimony has been reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Thereafter the proceeding regularly came on for final hearing before the Commission upon said complaint, the answer thereto, the stipulation as to the facts and testimony and evidence explanatory of and supplementary to said stipulation, and the brief in support of the charges stated in the complaint. No brief was filed on behalf of respondent and oral argument was waived by counsel for 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 this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent B & T Floor Co. is a corporation organized under the laws of the State of Ohio with its principal place of business in the city of Columbus in said State. Said respondent is, and has been for more than a year, engaged in the business of selling and distributing extruded aluminum trimmings and metal products, for use in trimming wall and floor covering materials. It has caused, and now causes, the trimmings sold by it to be transported from its place of business at Columbus in the State of Ohio through and into various other States of the United States to the respective purchasers thereof, and in the course and conduct of its said business respondent has been, and is now, in active competition with various persons and partnerships and other corporations also engaged in the sale of similar materials in commerce between and among several of the States of the United States.

PAR. 2. The respondent, in the course and conduct of its business, as described in paragraph 1 hereof, adopted and used a trade-mark consisting of the word "Chromedge" for the trimmings for wall and floor covering materials offered for sale and sold by it. In the course and conduct of its said business and for the purpose of inducing the purchase of said products, respondent by means of advertising in circulars, folders, catalogs, and stationery circulated generally throughout the United States, and through its agents sent into various States of the United States has made many representations con-

cerning the character and nature of said product, among which were the following:

CHROMEDGE, the brilliant solid white metal for trimming wall and floor covering materials, manufactured only by the B & T Floor Company, Columbus, Ohio.

* * * **PLEASE NOTE:** All Chromedge items are branded with our trade-mark. Look for the name "Chromedge" on the flange. If it is not trade-marked "chrom-edge", it is not genuine chromedge. Chromedge can be obtained **ONLY** from ourselves or through an authorized distributor. Do not accept inferior imitations. Insist on genuine Chromedge—so that you will be sure the beauty of your installations will endure * * *.

METAL. Chromedge is not a plated metal, Chromedge is manufactured from a special white metal alloy in which we have incorporated chromium, magnesium, silicon, iron, copper, etc. in such a way that it will accept and retain a brilliant, lustrous polish. Its ductility is of such a nature that it may be easily bent to fit curves and angles.

The statements and representations contained in said advertising matter which respondent caused to be distributed, as stated, purported to be descriptive of the trimmings offered for sale and sold by respondent and by the use of these statements and representations, and other statements and representations of like import, together with the use of the trade mark "Chromedge," as stated, respondent represented that it manufactured such trimmings and that such trimmings were made of an alloy, one of the principal component parts of which was chromium; that trimming made of such alloy could be obtained only from respondent; that "Chromedge" was a metal of superior quality having the attributes of chromium and was preferable to extruded aluminum.

PAR. 3. The respondent does not manufacture the metal it sells under the trade name "Chromedge" and does not manufacture the extruded aluminum alloy trimmings it sells. "Chromedge" is not a metal which is composed of a large percentage of chromium but is composed of the following ingredients:

Magnesium-----	1.10% to 1.40%.
Silicon-----	45% to 65% of magnesium contents.
Chromium-----	0.20% to 0.30%.
Iron, maximum-----	0.20%.
Copper, maximum-----	0.05%.
Other elements, maximum of each-----	0.03%.
Aluminum, approximately-----	0.98%.

The metal sold by respondent under the name "Chromedge" is not a metal of superior quality having the attributes of chromium and is not preferable to extruded aluminum, but is, in fact, an extruded aluminum alloy. Respondent purchases practically all of its extruded aluminum alloy, which it sells under the trade name "Chromedge," from the

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Aluminum Co. of America, and said alloy is manufactured by the Aluminum Co. of America under a formula 53-S.

The same alloy is sold by the Aluminum Co. of America to numerous competitors of respondent and trimmings for wall and floor covering materials made of such alloy are sold by competitors of the respondent.

PAR. 4. The statements and representations made by the respondent in its advertising matter, as aforesaid, concerning its metal trimmings for wall and floor covering materials offered for sale and sold by it have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public and have caused a number of the purchasing public to purchase a substantial volume of such trimmings from the respondent, thereby causing trade to be diverted unfairly to the respondent from its competitors in commerce between and among the various States of the United States, who truthfully advertise and represent the metal trimmings offered for sale and sold by them, to the injury of such competitors.

PAR. 5. Many of the competitors of respondent sell and distribute trimmings for wall and floor covering materials of the same general nature as those sold by respondent, which competitors do not in any way misrepresent the quality of such trimmings or the nature of the material from which they are made, and do not falsely represent that they are the manufacturers of products sold by them. Members of the public prefer to purchase metal products made of chromium because of the durability and inherent qualities of that material. For many years there has existed a preference on the part of the purchasing public for buying goods direct from the manufacturer. This preference results from the belief that manufacturers are able to offer advantages not obtainable elsewhere, including goods of better quality at lower prices.

PAR. 6. Many members of the purchasing public prefer to purchase trimmings for wall and floor covering materials made of chromium rather than those made of extruded aluminum, and the statements and representations made by respondent in its advertising matter, without qualification or explanation, concerning the composition and nature of the alloy from which the trimmings offered for sale and sold by respondent were made, as set out in paragraph 2 hereof, constituted false and misleading claims, statements and representations and were to the prejudice of the public and to competitors of respondent and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act.

CONCLUSION

The acts, practices, statements, and representations of the respondent, as herein set out, have been and are all to the prejudice and injury of the public and to the 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by Charles S. Cox, counsel for the Commission, no brief having been filed by the respondent and no oral argument having been requested, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent B & T Floor Co., 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 extruded aluminum alloy trimmings and metal products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly :

1. By use of the words "manufactured only by," "manufactured," or any other words of similar import and effect, or in any manner, that it is the manufacturer of any such product, unless and until the respondent actually owns and operates or directly and absolutely controls a manufacturing plant or factory wherein the product so represented is manufactured by it.

2. By use of the word "Chromedge" or any other word or words of similar import or meaning, or in any other manner, that extruded aluminum alloy metal, or any other metal not composed principally of chromium, is chromium.

3. That respondent's extruded aluminum alloy metal product designated "Chromedge" is anything other than extruded aluminum alloy metal, or that it is different in any material respect from the extruded aluminum alloys sold by its competitors.

4. That respondent's extruded aluminum metal product, now designated "Chromedge," has the attributes of chromium or that it is superior in quality, and preferable, to extruded aluminum.

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5. That competitors' extruded aluminum alloy products are inferior to, or imitations of, the extruded aluminum metal products now sold by the respondent under the name "Chromedge," or that respondent's product is secured from sources not available to its competitors.

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.

Syllabus

IN THE MATTER OF
ZO-AK 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 3724. Complaint, Feb. 28, 1939—Decision, Dec. 19, 1939*

Where a corporation engaged in sale and distribution of certain medicinal or pharmaceutical preparations designated as "Zo-Ak Tablets" (blue label) or "Zo-Ak for Men," and "Zo-Ak Tablets" (orange label) or "Zo-Ak for Women," to wholesale and retail druggists and other purchasers in various other States and in the District of Columbia; in advertisements which it disseminated concerning its said preparations through the mails and through newspapers and periodicals of general circulation and through circulars and other printed or written matter distributed in commerce, and which were intended and likely to induce purchase thereof—

- (a) Represented that its said "Zo-Ak Tablets for Men" constituted a competent remedy or treatment for sexual debility and a stimulant for reduced virile powers, and was of peculiar value to men in relation to their sex life, and would build up health and strength, facts being said preparation was not a competent remedy or treatment for aforesaid conditions, nor of peculiar value, as above claimed, but acted only as an irritant, did not contain sufficient concentrated vitamins to be beneficial in building up health and strength, and did contain dangerous ingredient yohimbine hydrochloride, aphrodisiac effect of which cannot be produced by recognized and established therapeutic dosage, which was greatly exceeded by recommended dosage in preparation in question;
- (b) Represented that said "Zo-Ak Tablets for Women" constituted a remedy or relief for the nervous symptoms due to "change of life" and a cure, remedy, or relief for various symptoms of "change of life," such as hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells, facts being said preparation was not a remedy or relief for such symptoms, did not make period in question one of greater ease and comfort, and was not a cure or relief for hot flushes, etc., as above set forth, and was entirely insufficient to accomplish any of the results claimed therefor by it; and
- (c) Failed to reveal to purchasers and prospective purchasers, in false advertisements disseminated by it, that use of its said preparation for men, under conditions prescribed or under such conditions as are customary or usual, in some cases caused injury to health and might be injurious, taken as aforesaid, and caused irritation and injury to urinary tract, with serious nephritis as one of its possible after-effects;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of inducing portion of said public, because of such belief, to purchase its injurious, drug-containing medicinal preparations:

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