

Complaint

IN THE MATTER OF

LENOIR WOODFINISHING COMPANY, INC., AND ARTHUR
G. SPENCER, TRADING AS LENOIR SOLVENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 4048. Complaint, Mar. 5, 1940—Decision, Apr. 17, 1940*

Where a corporation and an individual, who was president and sales manager thereof and formulated and controlled its sales methods, engaged in manufacture of paints, varnishes, stains, thinners, sealers, and other woodfinishing products, and in sale and distribution thereof to various woodfinishing concerns and furniture manufacturers at various points in the several States, in substantial competition with others engaged in sale of woodfinishing materials in commerce among the various States and in the District of Columbia—

Gave substantial sums of money and other things of value to officials and employees of customers or prospective customers, without said customers' knowledge or consent, for the purpose of inducing such officials or employees to purchase their woodfinishing materials for said customers' use or recommend purchase thereof, or as payments to said officials and employees for having induced such purchase or recommended such use, and thus offered to pay and paid or gave, without knowledge or consent of employer-customers involved, to finishing room foremen of customers or prospective customers, fixed fee of certain amount per drum for every drum of such materials purchased from them by said foremen's customer employers, and in other instances gave customer employees fixed percentages of purchase price of all materials thus bought by such customer employers;

With effect of diverting trade unfairly to them from their competitors engaged also in sale of woodfinishing materials, and who do not indulge in such acts and practices and with tendency and capacity so to do; to the injury of competition in commerce:

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

Mr. Gerard A. Rault for the Commission.

Mr. Don A. Walser, of Lexington, N. C., for respondents.

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 Lenoir Woodfinishing Co., Inc., a corporation, and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., hereinafter referred to as respondents,

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have 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:

PARAGRAPH 1. Lenoir Woodfinishing Co., Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal place of business located at Lenoir, N. C. Said respondent is now and since its incorporation in 1938 has been in the business of manufacturing paints, varnishes, stains, thinners, sealers, and other woodfinishing products and in the sale thereof to various woodfinishing concerns and furniture manufacturers in commerce between and among the various States of the United States.

Respondent Arthur G. Spencer is an individual and is president and sales manager of respondent corporation, and as such formulates and controls its methods of selling its products. Prior to the incorporation of respondent Lenoir Woodfinishing Co., Inc., respondent Arthur G. Spencer was in the business of manufacturing woodfinishing materials under the trade name of Lenoir Solvent Co. with his principal place of business located in Lenoir, N. C., and of selling said products to various woodfinishing concerns and furniture manufacturers in commerce between and among the various States of the United States.

PAR. 2. Respondent Lenoir Woodfinishing Co., Inc., causes said woodfinishing materials when sold to be transported from its place of business in North Carolina to its customers located in various other States of the United States. Said respondent maintains a course of trade in said woodfinishing materials in commerce between and among the various States of the United States.

For several years prior to the date of incorporation of Lenoir Woodfinishing Co., Inc., Arthur G. Spencer, trading as Lenoir Solvent Co., caused the woodfinishing materials manufactured by him when sold to be transported from his place of business in the State of North Carolina to his customers located in various other States of the United States and maintained a course of trade in said woodfinishing materials in commerce between and among the various States of the United States.

PAR. 3. Respondent Lenoir Woodfinishing Co., Inc., since the date of its incorporation in the course and conduct of its said business and prior to that date respondent Arthur G. Spencer, trading as Lenoir Solvent Co., have been in substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale of woodfinishing materials 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 their said businesses, respondents have given substantial sums of money and other things of value to certain officials and employees of respondents' customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials and employees to purchase respondents' woodfinishing materials for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials and employees for having induced the purchase or recommended the use of respondents' products by their employers.

In some instances respondents have offered to pay and have paid to finishing room foremen employed by respondents' customers or prospective customers a fixed fee of \$5 per drum for every drum of woodfinishing materials purchased by their employers from respondents. In other instances, respondents have given some employees of respondents' customers 7 percent or 10 percent of the purchase price of all materials purchased from respondents by said customers. All of said payments and offers of payment have been made without the knowledge and consent of respondents' customers whose employees are so paid.

PAR. 5. The use by the respondents of the acts and practices hereinabove set forth were and are calculated to have, and have, a tendency and capacity to, and do, divert trade unfairly to respondents from their competitors also engaged in the business of selling woodfinishing materials, who do not indulge in said acts and practices.

As a consequence thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 6. The aforesaid acts and practices, as herein alleged, are all to the prejudice of the public and of respondents' 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 the 5th day of March 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Lenoir Woodfinishing Co., Inc., and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., charging them with the use of unfair methods of competition in commerce and unfair and

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deceptive acts and practices in commerce in violation of the provisions of said act. On March 29, 1940, the respondents filed their answer to said complaint, in which answer they admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, and the answer thereto, 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. Lenoir Woodfinishing Co., Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal place of business located at Lenoir, N. C. Said respondent was organized in the year 1938, and is now, and since the date of its organization has been, engaged in the business of manufacturing paints, varnishes, stains, thinners, sealers, and other woodfinishing products and in the sale and distribution thereof to various woodfinishing concerns and furniture manufacturers located at various points in the several States of the United States.

Respondent Arthur G. Spencer is an individual and is president and sales manager of respondent corporation, and as such formulates and controls its methods of selling its products. Prior to the date of the incorporation of respondent Lenoir Woodfinishing Co., Inc., respondent Arthur G. Spencer was engaged in the business of manufacturing such woodfinishing materials under the trade name Lenoir Solvent Co. with his principal place of business located at Lenoir, N. C., and in the sale and distribution of said products to various woodfinishing concerns and furniture manufacturers located at various points in the several States of the United States.

PAR. 2. Respondent Lenoir Woodfinishing Co., Inc., causes said woodfinishing materials when sold to be transported from its place of business in North Carolina to its customers located in various other States of the United States. Said respondent maintains a course of trade in said woodfinishing materials in commerce between and among the various States of the United States.

For several years prior to the date of incorporation of Lenoir Woodfinishing Co., Inc., Arthur G. Spencer trading as Lenoir Solvent Co., caused the woodfinishing materials manufactured by him when sold to be transported from his place of business in the State of North Carolina to his customers located in various other States of the United

States, and maintained a course of trade in said woodfinishing materials in commerce between and among the various States of the United States.

PAR. 3. Respondent Lenoir Woodfinishing Co., Inc., since the date of its incorporation, in the course and conduct of its said business, and prior to that date, respondent Arthur G. Spencer, trading as Lenoir Solvent Co., have been in substantial competition with other corporations and individuals, and with firms and partnerships engaged in the sale of woodfinishing materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The Commission finds that in the course and conduct of their said businesses, respondents have given substantial sums of money and other things of value to certain officials and employees of respondents' customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials or employees to purchase respondents' woodfinishing materials for use by their employers, or to recommend the purchase of the same by their employers, or as payments to said officials and employees for having induced the purchase or recommended the use of respondents' products by their employers.

In some instances respondents have offered to pay and have paid to finishing room foremen employed by respondents' customers or prospective customers, a fixed fee of \$5 per drum for every drum of woodfinishing materials purchased by their employers from respondents. In other instances respondents have given some employees of respondents' customers 7 percent or 10 percent of the purchase price of all materials purchased from said respondents by said customers. All of said payments and offers of payment have been made without the knowledge or consent of respondents' customers whose employees were so paid.

PAR. 5. The use by the respondents of the acts and practices hereinabove set forth were, and are, calculated to have and have a tendency and capacity to and do divert trade unfairly to respondents from their competitors also engaged in the business of selling woodfinishing materials, who do not indulge in said acts and practices.

As a consequence thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair

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and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Lenoir Woodfinishing Co., Inc., its officers, and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their paints, varnishes, stains, thinners, sealers, and other woodfinishing products, in commerce as commerce is defined in the Federal Trade Commission Act, do cease and desist from giving sums of money and other things of value, to officials and employees of respondents' customers or prospective customers, without the knowledge or consent of said cus-

¹ The Commission on June 18, 1940, issued modified order to cease and desist, as follows:

"This proceeding having been heard by the Federal Trade Commission upon the motion of the Commission's chief counsel that the order to cease and desist issued herein on April 17, 1940, be modified in certain respects specifically detailed in said motion, and it appearing that on May 23, 1940, the Commission ordered the respondents herein, within 10 days from the service upon them of a copy of said motion, to show cause why the order to cease and desist heretofore entered should not be modified as specified in said motion, and it further appearing that a copy of said order to show cause and said motion was served on the respondents herein on May 25 and 27, 1940, respectively, and it further appearing that respondents have failed to show cause within the 10-day period provided for why the motion of the Commission's chief counsel should not be granted, and the Commission having duly considered the matter, and being now fully advised in the premises;

"It is ordered, That the respondents, Lenoir Woodfinishing Co., Inc., its officers, and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their paints, varnishes, stains, thinners, sealers and other wood finishing products, in commerce, as commerce is defined in the Federal Trade Commission Act, do cease and desist from giving, or offering to give, sums of money or other things of value to officials or employees of respondents' customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials or employees to purchase respondents' wood finishing materials for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials or employees for having induced the purchase or recommended the use of respondents' products by their employers.

"It is further ordered, That the respondents shall within 60 days after service upon them of this modified order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this modified order."

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tomers, for the purpose of inducing said officials and employees to purchase respondents' woodfinishing materials for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials and employees for having induced the purchase or recommended the use of respondents' products by their employers;

It is further ordered, That the respondents shall within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
KAUFMANN BROS. & BONDY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3881. Complaint, Aug. 28, 1939—Decision, Apr. 22, 1940

Where a corporation engaged in sale and distribution of pipes and other articles of merchandise to purchasers in the various other States and in the District of Columbia; in soliciting sale of and in selling and distributing its merchandise—

Furnish various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery scheme, through which said merchandise was sold and distributed to ultimate consumers thereof wholly by lot or chance, and distribution of various push cards and punchboards for use in sale and distribution thereof by means of game of chance, gift enterprise, or lottery scheme, in accordance with various plans and including as typical (1) scheme by which persons succeeding in selecting from list of 50 girls' names that corresponding to name concealed under card's master seal as disclosed after sale of chances thereon, received pipe being thus disposed of, and customer paid for chance amount dependent upon number secured from disc accompanying name of girl selected, so that fact as to whether purchaser received said article or nothing for amount of money paid was determined by lot or chance; (2) scheme under which number of pipes being thus disposed of were secured by certain purchasers securing particular numbers, and purchasers who did not secure one of numbers in question or punch last number in one of four sections into which boards were divided received nothing further for their nickels; and (3) various other assortments of pipes and punchboards involving lot or chance feature and similar to those above described and varying therefrom in detail only; and

Supplied thereby to, and placed in the hands of, others means of conducting lotteries in the sale of its products, in accordance with sales plans above set forth, by retail dealer purchasers, whether as direct or indirect buyers of products in question, who exposed and sold same to purchasing public in accordance with such plans involving game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof contrary to an established public policy of the United States Government and in violation of the criminal laws;

With the result that many persons were attracted by said sales plans or methods employed by it in sale and distribution of its merchandise and by element of chance involved therein, and were thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors who do not use same or equivalent methods and with result, through use of such methods and because of said game of chance, of diverting unfairly trade to it from its competitors aforesaid; to the substantial injury of competition in commerce:

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