

IN THE MATTER OF
WESTMINSTER TIRE CORPORATION

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

Docket 3786. Complaint, May 9, 1939—Decision, June 19, 1940

Where a corporation engaged in sale and distribution of pneumatic automobile and truck tires to purchasing distributors, jobbers, and dealers in State of origin and in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such tires in commerce as aforesaid, and including among its competitors some who sell and distribute such products but do not inaccurately set forth number of plies contained therein, and tire designations of which, in hands of unscrupulous or uninformed retail dealers, do not provide means and instrumentality to mislead purchasing public—

Caused to be placed, affixed, or molded on or into the side walls of its said tires, which were of four-ply bead-to-bead construction, with double breaker strips, white sidewalls, extra material and tread stock, and had a net weight considerably in excess of the corresponding weight of first line four-ply tires marketed by other manufacturers and distributors, and upon the tire wrappings encasing said tires, in addition to its name and size and type of tire, the designation "V-7" and, because of unusual character of construction, made no express declaration as to four-ply construction of such "V-7" tires and did not disclose further, in absence of specific inquiry, four-ply construction thereof to jobber, distributor and other dealer-purchasers, by whom likewise in resale thereof no express declaration was made as to said four-ply construction, and, in absence of inquiry, no such advice given to prospective purchasers;

Facts being there was custom and usage in industry, followed by number of manufacturers of pneumatic automobile and truck tires, and well known to public, of marketing such tires with words and figures or phrases so as conspicuously and accurately to indicate number of plies existing in construction of tires concerned, public was accustomed, in purchasing tires, to place full credence in manufacturer's representations as to manner and quality of construction and number of plies therein contained as indicated by marks, brands, words, letters, figures, insignia, or phrases appearing on wrappings and sidewalls of such tires, and tires herein concerned were, as aforesaid, four-ply and not 7;

With tendency and capacity, through such inaccurate marking or branding in use of said designation "V-7", and especially in hands of unscrupulous or uninformed retail dealers, to induce portion of purchasing public to believe tires thus designated and marked contained 7 plies, and with effect of thereby placing in hands of such unscrupulous or uninformed retailers means and instrumentality whereby they might mislead purchasing public into erroneous belief that said "V-7" tires actually contained 7 plies, and with result, as consequence of such erroneous and mistaken belief, that number of public purchased substantial volume of said tires, and trade was thereby diverted unfairly to it from its competitors engaged in sale and distribution of such products:

Complaint

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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Curtis C. Shears for the Commission.

Levien, Singer & Neuburger, 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 Westminster Tire 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. The respondent, Westminster Tire Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 601 West Twenty-sixth Street, New York, N. Y. Respondent is now, and for a number of years last past has been, engaged in the business of selling and distributing numerous brands of pneumatic motor vehicle tires and tubes to automobile dealers and wholesale and retail tire dealers throughout the United States. Respondent causes, and has caused, its said tires when sold to be transported from its place of business in New York, N. Y., and from the factories in which said products are made, to purchasing distributors, jobbers, and dealers hereinafter referred to as dealers, located in the State of New York, and in the various other States of the United States, and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade in said tires by said respondent in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent has been and is now in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and distribution of tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent has caused to be placed, affixed or molded on or into the side walls of said tires, conspicuous permanent

Complaint

31 F. T. C.

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, and representative, descriptive and indicative of the manner 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 herein set out and by other means and methods of similar import and effect, represents that its pneumatic automobile and truck tires 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 side walls 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. 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 side walls of said tires.

Respondent does not generally make known to said dealers nor to the general public that the words, letters, figures, phrases, or insignia as depicted and shown on the side walls of respondent's tires are not the actual number of plies contained and existing in certain of its pneumatic motor vehicle tires nor that said representations are false, misleading, and untrue.

PAR. 3. Many of respondent's tires, represented or indicated, directly or by inference, as being made and constructed of a specific number of plies, as described in paragraph 2 hereof, 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.

Certain brands of 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 or indicated, directly or by inference, 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.

One example of a brand of tires so marked and branded which is sold and distributed directly or indirectly to the purchasing public is a special brand of Westminster custom built, V-type white wall passenger car tires distinguished by a V-7 medallion which is molded into the side wall of said tires at the time of curing, or cemented to the side wall of said tires, hereinafter referred to as V-7 tires. Said V-7 tires are of 4-ply bead-to-bead construction with double breaker strips, white side walls, extra material, and tread stock, giving them a net weight considerably in excess of the corresponding weight of the first line 4-ply tires marketed by other manufacturers. Respondent does not disclose, in the absence of specific inquiry by said dealers who purchase said V-7 tires from respondent, that the V-7 tires are of 4-ply construction. Said dealers who purchase said V-7 tires, when reselling same directly or indirectly to the purchasing public, make no express declaration as to the ply construction of said V-7 tires and, in the absence of inquiry regarding same, prospective purchasers are not advised that said V-7 tires are actually of 4-ply construction. The use by respondent of said V-7 medallion on said V-7 tires, in the absence of any other declaration as to the ply construction of the same constitutes a misbranding and has the tendency and capacity to mislead, confuse, and deceive prospective purchasers as to the actual ply construction of the said V-7 tires.

PAR. 4. Wholesale and retail tire dealers and automobile dealers who purchase respondent's tires, directly or indirectly expose and sell the same to the purchasing public. Respondent thus supplies to, and places in the hands of, others, by virtue of the resale of said tires to the purchasing public in accordance with the sales plan or method set forth in paragraphs 2 and 3 hereof, a means and instrumentality whereby the public may be misled and deceived. In that the sale of said tires to the purchasing public, in the manner above alleged, involves a misbranding, said misbranding has had and now has a tendency and capacity to and does mislead and deceive pur-

Findings

31 F. T. C.

chasers and prospective purchasers of said tires into the erroneous and mistaken belief that such representations, indications or inferences, as set out in paragraphs 2 and 3 hereof, are true and induces them to purchase said tires on account thereof to their injury. Thereby trade is unfairly diverted to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of tires of the same general kind as those offered by respondent.

PAR. 5. In that the sale of said tires to the purchasing public in the manner above alleged involves a misbranding, many of said dealers, as defined and described in paragraph 1 hereof, who sell or distribute tires in competition with the respondent, as above alleged, are unwilling to adopt and use said sales plan or method, or any method involving a brand or mark which has a tendency and capacity to mislead prospective purchasers as to the actual ply construction of said tires or any other methods involving a misbranding, and such competitors refrain therefrom. Many of said dealers are attracted by said sales plan or method employed by respondent in the sale and distribution of its tires, and are thereby induced to buy and sell respondent's said tires in preference to tires offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent, because of said misbranding, has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 6. 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 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 9th day of May 1939, issued, and on the 10th day of May 1939, served, its complaint in this proceeding upon said respondent, Westminster Tire 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, on the 11th day

of April 1940, a stipulation was read into the record whereby it was stipulated and agreed that said statement of facts entered into the record by Levien, Singer and Neuberger, Esqrs., 70 Pine Street, New York, N. Y., attorneys for respondent, by Herbert M. Singer, Esq., of counsel, and Curtis C. Shears, trial attorney 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 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 in the record, said stipulation having been approved and accepted, 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, Westminster Tire 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 office and place of business located at 601 West Twenty-sixth Street, New York, N. Y.

PAR. 2. Respondent is now and has been engaged in the 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 the factories in which said products are made to the purchasing distributors, jobbers and dealers (hereinafter called dealers), located in the State of New York, and in the various other States of the United States 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

Findings

31 F. T. C.

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, affixed, or molded on or into the side walls of said tires and upon the tire wrappings encasing said tires, the designation "V-7" in addition to the respondent's name and the size and type of tire.

PAR. 7. The said "V-7" tires are of four-ply bead-to-bead construction with double breaker strips, white side walls, extra material and tread stock, given them a net weight considerably in excess of the corresponding weight of the first line four-ply tires marketed by other manufacturers and distributors. Respondent because of the unusual character of construction had made no express declaration as to the ply construction of said "V-7" tires and therefore has not disclosed, in absence of specific inquiry by said dealers who purchase said "V-7" tires from respondent, that the "V-7" tires are of four-ply construction. Said dealers who purchase said "V-7" tires, when reselling the same directly or indirectly to the purchasing public, have made no express declaration as to ply construction of said "V-7" tires and, in absence of inquiry regarding the same, prospective purchasers have not been advised that said "V-7" tires are actually of four-ply construction.

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 accurately 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 side walls of said tires.

PAR. 9. The "V-7" tires of the respondent have not been accurately marked or branded in that the designation "V-7" has a tendency and capacity especially in the hands of unscrupulous or uninformed retail

dealers to induce a portion of the purchasing public to believe that the tires so designated and marked contain seven plies when in fact said tires actually contain a lesser number of plies, and thus the respondent's acts and practices as herein detailed serve to place in the hands of such unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may mislead the purchasing public into the erroneous belief that the respondent's "V-7" tires actually contain seven plies.

PAR. 10. There are among the respondent's competitors some who sell and distribute pneumatic automobile and truck tires but do not inaccurately set forth the number of plies contained in their respective products and whose tire designations in the hands of unscrupulous or uninformed retail dealers do not provide a means and instrumentality to mislead the purchasing public.

PAR. 11. The designation "V-7" placed upon the wrapper and side walls of the respondent's tires has had a tendency and capacity especially in the hands of unscrupulous or uninformed retail dealers to induce a portion of the purchasing public to believe that the tires so designated contain seven plies. As a result of this erroneous and mistaken belief a number of the public have purchased a substantial volume of said tires with the result that trade has been diverted unfairly to the respondent from its competitors who are likewise engaged in selling and distributing pneumatic automobile and truck tires.

CONCLUSION

The aforesaid 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 the record herein between counsel for the respondent and 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.

Order

31 F. T. C.

It is ordered, That the respondent, Westminster Tire 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, words, figures, markings, insignia, or brands appearing in price lists, or on tire wrappings, or on tires, or in any other way, that the automobile and truck tires sold by the 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.

Syllabus

IN THE MATTER OF

THE KENDALL COMPANY, DOING BUSINESS UNDER THE
TRADE NAME OF BAUER & BLACK

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

Docket 3894. Complaint, Sept. 16, 1939—Decision, June 19, 1940

Where a corporation engaged in manufacture of its Velure vanishing lotion or, as formerly designated, "Velure Lotion," and in sale and distribution thereof to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution in commerce among the States and in said District of preparations designed and used for same general purpose, and including among such competitors many who sell and distribute hand lotion and other products designed, intended and sold to soften and beautify the skin and who do not in any way misrepresent quality or effectiveness of their respective products; in advertisements of its said preparation which it disseminated and caused to be disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States and through broadcasts from radio stations or extra-State audience and otherwise, and which were intended and likely to induce purchase of its said product—

- (a) Represented, directly and by implication, that its said preparation was a new and scientific discovery, which, applied to hands, acted more quickly in softening and beautifying skin than did various other hand lotions and other products sold by its competitors, in competition therewith, and that it was more economical and effective in use than competitive hand lotions; and
- (b) Represented that product in question conserved and supplemented the natural oils of the skin and that it had a bleaching and whitening effect thereon, and made hands shades lighter;

Facts being, none of the ingredients of which it consisted, essentially, had any substantial therapeutic value and all were commonly found in competitive hand lotions, it was not a new or scientific discovery, did not, applied to hands, act more quickly or achieve beneficial results more rapidly than other competitive products, and, although absorption of its glycerine and alcohol by skin might take place, it did not penetrate skin, and was not more economical or effective than competitive products, and would not accomplish results otherwise claimed therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all of such statements and representations were true, and that said product possessed properties represented and would accomplish results claimed, and that, as direct consequence of such beliefs induced by its said statements and representations, number of purchasing public bought substantial volume of its said preparation, and trade was thereby diverted unfairly to it from its competitors engaged in sale and distribution of hand lotions and similar products designed, intended and sold for use in the softening and beautifying