

Complaint

31 F. F. C.

IN THE MATTER OF

JOHNS-MANVILLE CORPORATION AND JOHNS-MANVILLE SALES CORPORATION

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

Docket 3899. Complaint, Sept. 26, 1939—Decision, June 26, 1940

Where a corporation and sales subsidiary thereof engaged, as case might be, in manufacture, and in sale, of various lines of building and insulating materials, including certain low temperature insulating product sold under registered trade-mark "Rock Cork," to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution, in commerce as aforesaid, of low temperature insulating materials; in advertisements and advertising matter relating to said "Rock Cork" in magazines, newspapers, circulars, pamphlets, booklets, catalogs, leaflets, and other printed and illustrated material, widely circulated and distributed by them among prospective purchasers of their said insulating material—

Represented that said product was composed entirely of mineral matter, through such statements as "Make Sure Of Lasting Insulating Efficiency with this MINERAL INSULATION! * * * is entirely mineral, rotproof, vermin-proof * * *," "The reason for their long life is the fact that * * * is entirely mineral in composition * * * The efficient insulation material that cannot rot or decay. Mineral—Not Vegetable Composition," facts being said product was not, and for some time last past had not been, composed entirely of mineral matter, but was, and had for some time, been composed of approximately 88 percent mineral matter and 12 percent vegetable matter, and vegetable fiber was not that vegetable matter known to public as, and properly designated, "cork";

With effect of misleading and deceiving substantial portion of purchasers and prospective purchasers of said product into erroneous and mistaken belief that it was entirely of mineral composition, and of inducing such purchasers and prospective purchasers to buy said "Rock Cork" on account of such belief, and of unfairly diverting thereby trade in commerce to them from their competitors, who do not use misrepresentations with respect to their low temperature insulating materials:

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

Mr. Curtis C. Shears for the Commission.

Mr. William E. Lamb, of Washington, D. 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 Johns-Manville Cor-

poration and Johns-Manville Sales Corporation, corporations, hereinafter referred to as respondents, have 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, Johns-Manville 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 22 East Fortieth Street, in the city of New York, State of New York. Respondent is now and for some time last past has been engaged in the business of manufacturing various lines of building and insulating materials including a certain low temperature insulating material sold under the registered trade mark "Rock Cork." Johns-Manville Sales 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 22 East Fortieth Street, in the city of New York, State of New York, and is a wholly owned subsidiary of respondent Johns-Manville Corporation. It is engaged in the sale and distribution of said Rock Cork in commerce between and among the various States of the United States and in the District of Columbia. In the conduct of their businesses, as aforesaid, respondents cause and have caused said Rock Cork when sold to be transported from its place of manufacture in Indiana to purchasers thereof in various other States in 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 Rock Cork by said respondents 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 businesses respondents are in competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of low temperature insulation materials.

PAR. 2. In the course and conduct of their businesses, as described in paragraph 1 hereof, respondents, in soliciting the sale and selling of said Rock Cork and as an incident to and means of inducing and procuring the sale of said Rock Cork, are now causing, and for some time last past have caused advertisements and advertising matter relating to said Rock Cork to be inserted and displayed in magazines, newspapers, circulars, pamphlets, booklets, catalogs, leaflets, and other printed and illustrated material (all of which is hereinafter designated and referred to as "advertising matter") circulated or distributed among prospective purchasers of said Rock Cork for the aforesaid

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purposes. Respondents are now and have been distributing said advertising matter widely in commerce.

PAR. 3. Respondents, in advertising or causing said advertising matter to be published, distributed, displayed, or exposed, as aforesaid, in commerce, have made false and misleading representations in and through said advertising matter to the effect that said Rock Cork when manufactured is made and constructed entirely of mineral matter or with words used in connection or conjunction with the word Rock Cork or with words, phrases, statements or representations descriptive of said Rock Cork which import or imply or tend to convey the belief to purchasers and prospective purchasers that Rock Cork is an entirely mineral product. Among and typical of said representations used and caused to be used by said respondents are the following:

Make Sure of Lasting

Insulating Efficiency

with this

MINERAL

INSULATION

* * * * *

The explanation is simple. J-M Rock Cork is entirely mineral, rot-proof, verminproof, highly resistant to moisture.

30 YEARS OLD and still going strong * * * This MINERAL INSULATION.

* * * * *

The reason for their long life is the fact that J-M Rock Cork is entirely mineral in Composition. Rot-proof and highly resistant to moisture, its low conductivity is practically unaffected by time.

J-M ROCK CORK—a real investment. The efficient insulation material that cannot rot or decay.

Mineral—Not Vegetable

Composition

A product of the recognized leader in the insulating field, Rock Cork is one of the most efficient insulating materials known. As a milk tank insulation, it is superior to other materials in that it is of material, not vegetable composition and therefore cannot rot or decay.

In truth and in fact the statements and representations set forth herein and other statements to the effect either stated or implied that Rock Cork is entirely mineral are false and misleading when in truth and in fact the product so advertised, designated, represented, and sold is not and for some time last past has not been composed entirely of mineral matter but contains, and for some time last past has contained approximately 88 percent mineral and 12 percent vegetable matter. The vegetable matter is not the vegetable product known

to the public as and properly designated cork. The mineral matter is "rock wool" and an asphaltum binder.

PAR. 4. The use by respondents of the foregoing advertisements, statements, and representations, and others similar thereto, in advertising, soliciting, and offering for sale and selling of said Rock Cork as herein set out has had the tendency and capacity to, and did in fact, mislead and deceive a substantial portion of the purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the said Rock Cork is of entirely mineral composition and has induced them to purchase said Rock Cork on account of said erroneous and mistaken belief. Thereby trade has been unfairly diverted to said respondents from competitors who do not make use of similar misrepresentations with respect to their low temperature insulating materials and who are engaged in the sale of said materials in commerce between and among the various States of the United States and in the District of Columbia.

As a result of respondents' said practices, as herein set out, substantial injury has been done by said respondents to competitors engaged in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The above alleged acts and practices of respondents are each and all to the injury and prejudice of the public and to competitors of respondents and constitute unfair methods of competition 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 September 26, 1939, issued, and on September 27, 1939, served its complaint in this proceeding upon the respondents, Johns-Manville Corporation and Johns-Manville Sales Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondents filed an answer admitting all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts which answer was duly filed in the office of the Commission on October 23, 1939. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said admission answer; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Johns-Manville 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 22 East Fortieth Street, in the city of New York, State of New York. Respondent is now and for some time last past has been engaged in the business of manufacturing various lines of building and insulating materials including a certain low temperature insulating product sold under the registered trade mark "Rock Cork," Johns-Manville Sales Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 22 East Fortieth Street, in the city of New York, State of New York, and is a wholly owned subsidiary of respondent Johns-Manville Corporation. It is engaged in the sale and distribution of said "Rock Cork" in commerce between and among the various States of the United States and in the District of Columbia. In the conduct of their businesses, as aforesaid, respondents cause and have caused said product, "Rock Cork," when sold to be transported from its place of manufacture in Indiana to purchasers thereof in various other States in 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 "Rock Cork" by said respondents 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 businesses respondents are in competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of low temperature insulation materials.

PAR. 2. Respondents in the course and conduct of their businesses, in soliciting the sale and selling of said "Rock Cork" and as an incident to and means of inducing and procuring the sale of "Rock Cork" for a considerable period of time prior to the issuance of the complaint herein, caused advertisements and advertising matter relating to said "Rock Cork" to be inserted and displayed in magazines, newspapers, circulars, pamphlets, booklets, catalogs, leaflets, and other printed and illustrated material, which were circulated and distributed by respondents among prospective purchasers of said "Rock Cork" widely in commerce between and among the various

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Findings

States of the United States and in the District of Columbia. Typical of these advertisements are the following:

Make Sure of Lasting

Insulating Efficiency

with this

MINERAL

INSULATION!

* * * * *

The explanation is simple. J-M Rock Cork is entirely mineral, rotproof, verminproof, highly resistant to moisture.

30 YEARS OLD and still going strong . . . This MINERAL INSULATION.

* * * * *

The reason for their long life is the fact that J-M Rock Cork is entirely mineral in composition. Rot-proof and highly resistant to moisture, its low conductivity is practically unaffected by time.

J-M ROCK CORK—a real investment. The efficient insulation material that cannot rot or decay.

MINERAL—NOT VEGETABLE COMPOSITION

A product of the recognized leader in the insulating field, Rock Cork is one of the most efficient insulating materials known. As a milk tank insulation, it is superior to other materials in that it is of mineral not vegetable composition and therefore cannot rot or decay.

PAR. 3. Through said advertisements and advertising matter so used and distributed by the respondents in advertising said insulating products, respondents represent that said product is composed entirely of mineral matter, when in truth and in fact said products is not, and for some time last past has not been, composed entirely of mineral matter but is, and for some time last past has been, composed of approximately 88 percent mineral matter and 12 percent vegetable matter. The vegetable fiber is not the vegetable matter known to the public as and properly designated cork. The mineral fiber is "Rock Wool" and an asphaltum binder.

PAR. 4. The use by respondents of the foregoing advertisements, statements, and representations, and others similar thereto, in advertising, soliciting, and offering for sale and selling of said "Rock Cork" as herein set out has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the said "Rock Cork" is entirely of mineral composition and has induced them to purchase said "Rock Cork" on account of said erroneous and mistaken belief. Thereby trade in commerce between and among

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the various States of the United States and in the District of Columbia has been unfairly diverted to said respondents from their competitors, who do not use misrepresentations with respect to their low temperature insulating materials.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition 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 on 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, Johns-Manville Corporation and Johns-Mansville Sales Corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of insulating material now known as "Rock Cork," whether sold under that name or any other name, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the terms "entirely mineral," "mineral composition," "mineral in composition," "mineral—not vegetable," or any other words of similar import and meaning to describe or in any way refer to a product which is not in fact entirely mineral in composition.

It is further ordered, That the respondent 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.

Syllabus

IN THE MATTER OF

MORTON COHEN, TRADING AS LEE-MOORE & CO. AND
ADWELL SALES CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3938. Complaint, Nov. 2, 1939—Decision, June 26, 1940*

Where an individual engaged in sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, and various other articles of merchandise to purchasers in various States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar merchandise in commerce as aforesaid—

- (a) Sold to wholesalers, jobbers and retailers certain assortments of merchandise which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers and included (1) assortment consisting of two pen and pencil sets, three knives, two pipes, two cigar lighters, and watch and punchboard for use in sale and distribution of said articles under a plan and in accordance with said board's explanatory legend by which numbers secured by chance for five cents each by customer-purchasers determined which, if any, of said various articles, purchaser received, and under which person purchasing last number on board received the watch and person failing to qualify by obtaining one of lucky numbers or punching last number received nothing for his money other than privilege of punching number, and included (2) various other assortments of merchandise, along with punchboards involving lot or chance feature similar to that 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 his merchandise in accordance with sales plan above set forth by retail dealers who, as direct or indirect purchasers thereof, exposed and sold his said products in accordance with such plan, involving game of chance or sale of a chance to procure one of said articles at price much less than normal retail price, and less than value thereof and five cents paid for chance to secure same, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said sales plan or method employed in sale and distribution of his merchandise and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by his said competitors who do not use such or equivalent method, and with effect, through use of such method and because of said game of chance, of diverting unfairly trade in commerce to himself from his competitors aforesaid who do not use such or equivalent method;