

Complaint

IN THE MATTER OF
INDUSTRIAL PLANTS CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3835. Complaint, June 27, 1939—Decision, July 30, 1940*

Where a corporation engaged in sale and distribution of various products, including pliers, to purchasers in various other States and in District of Columbia, in substantial competition with others engaged in sale and distribution of said last-named product in commerce as aforesaid; in describing its said pliers in advertisements and catalogs and other printed matter distributed to members of the purchasing public in the various States and the District of Columbia—

Falsely represented said products as nickel plated, through such statements as "Machine nickel pliers are furnished and nickel plated" and "Nickel plated pliers are ground and polished all over, heavily nickel plated and buffed to a high luster";

With effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantity of its said product by reason of such belief, and with direct result that trade in commerce was diverted unfairly to it from its said competitors who do not falsely represent as nickel plated their respective products; to the 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.

Mr. Maurice C. Pearce for the Commission.

Mr. Jerome N. Sowards, 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 Industrial Plants Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Industrial Plants Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business at 90 West Broadway in the city of New York, State of New York.

Complaint

31 F. T. C.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of selling and distributing various products, including pliers and wrenches. Respondent causes said pliers and wrenches, when sold, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said pliers and wrenches in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, individuals and partnerships selling and distributing pliers and wrenches 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 its aforesaid business and for the purpose of inducing the purchase of its said pliers and wrenches, respondent has caused various statements and representations relative to said pliers and wrenches to be inserted in advertisements in catalogues and other printed matter all of which are distributed to members of the purchasing public situated in the various States of the United States and in the District of Columbia. Among and typical of said statements and representations by respondent relative to said pliers and wrenches are the following:

Machine Nickel Pliers are finished and nickel plated.

Nickel Plated Pliers are ground and polished all over, heavily nickel plated and buffed to a high lustre.

Nickel Plated Wrenches.

Through the use of the aforesaid statements and representations, and others of similar import and meaning not herein set out, the respondent has represented that the aforesaid pliers are nickel plated, and that the aforesaid wrenches are nickel plated.

PAR. 5. The aforesaid statements and representations by respondent relative to said pliers and wrenches are false and misleading. In truth and in fact, the pliers which the respondent represents as aforesaid as being nickel plated are not nickel plated. The wrenches which the respondent represents as aforesaid as being nickel plated are not nickel plated.

PAR. 6. There is a preference on the part of a substantial number of members of the purchasing public for pliers and wrenches which are nickel plated because of the durability and resistance to rust and corrosion of such pliers and wrenches.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's pliers and wrenches because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not falsely represent that their respective pliers and wrenches are nickel plated. In consequence thereof, 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. 8. The aforesaid acts and practices of the respondent as herein alleged 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 27th day of June 1939, issued and thereafter served its complaint in this proceeding upon respondent, Industrial Plants Corporation, a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer dated June 19, 1940, admitting all the material allegations of fact set forth in said complaint, except those allegations contained therein referring to wrenches, which are denied, and waived all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute 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. Respondent, Industrial Plants Corporation, is a corporation organized, existing, and doing business under and by virtue

Findings

31 F. T. C.

of the laws of the State of New York, and having its office and principal place of business at 90 West Broadway, in the city of New York, State of New York.

PAR. 2. Respondent is now and has been for several years last past, engaged in the business of selling and distributing various products including pliers. Respondent causes said pliers when sold to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said pliers in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, individuals, and partnerships selling and distributing pliers in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said pliers, respondent has caused various statements and representations relative to said pliers to be inserted in advertisements and catalogues and other printed matter, all of which are distributed to members of the purchasing public situated in the various States of the United States and in the District of Columbia. Among and typical of said statements and representations by respondent relative to said pliers are the following:

Machine nickel pliers are furnished and nickel plated.

Nickel plated pliers are ground and polished all over, heavily nickel plated and buffed to a high lustre.

Through the use of the aforesaid statements and representations and others of similar import and meaning, not herein set out, the respondent has represented that the aforesaid pliers are nickel plated.

PAR. 5. The aforesaid statements and representations by respondent relative to said pliers are false and misleading. In truth and in fact the pliers which the respondent represents as aforesaid as being nickel plated are not nickel plated.

PAR. 6. There is a preference on the part of a substantial number of the members of the purchasing public for pliers which are nickel plated because of the durability and resistance to rust and corrosion of such pliers.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations has had and now has the capacity and tendency to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of a substantial quantity of respondent's pliers, because of said erroneous and mistaken belief. As a direct result thereof trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not falsely represent that their respective pliers are nickel plated. In consequence thereof, 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.

CONCLUSION

The aforesaid acts and practices of the 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 the answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint except those allegations contained therein referring to wrenches which are denied, and states that it waives all intervening procedure and further hearing as to said facts and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Industrial Plants 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 its products in commerce, as commerce is defined by the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that pliers or any other tools which are not plated with the metal nickel are nickel plated.

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.

IN THE MATTER OF

LUXOR, LTD.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (E) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3736. Complaint, Mar. 10, 1939—Decision, July 31, 1940

Where a corporation which was engaged in manufacture of toilet articles and cosmetics and in sale thereof to purchasers in each of the several States and in the District of Columbia, and which, as thus engaged in sale of its said products to retailers in the various States, was in competition with others who made and thus sold like articles and products to retailers who purchased products of said corporation and those of said other manufacturers and were in competition with each other in business of selling and reselling same to purchasing public;

In carrying on its business as above indicated and set forth, in connection with which it (1) sold and shipped its products to retail druggists and drug jobbers in every State, (2) made contracts fixing minimum resale price thereof in all States in which it was permissible by law so to do, called on retail druggists who did not receive direct shipments from it, and maintained its pricing policies with druggists not under contract and who purchased indirectly through jobbers, and (3) packaged for resale some of its most popular complexion powders, creams and rouge in "standard" or "regular" size packages and in "junior" size containers having about one-fifth capacity of others and resale price of 10 cents, as compared with 49 cent resale price of "standard" or "regular" size packages; and (4) accorded to novelty, variety, syndicate and five and ten cent stores both service or facility of such "standard" size packaging or packages, further division of which by retailer was impracticable and undesirable, and such "junior" size packaging, for which there was public demand from all classes of consumers, irrespective of financial conditions or position in life, by reason, in part, of convenience, reduction of waste and retention of fragrance and freshness, and by which packaging resale was facilitated.

Refused to furnish service or facility of such "junior" size packaging to competing purchasers of identical products, including retail druggists upon whom there was demand for its products in said "junior" size and whose practice it was to seek to maintain stock in their stores for which there was public demand, and who endeavored to obtain its products in such "junior" size and were in direct competition in same cities with, and often in close proximity to, said novelty, variety, syndicate and five and ten cent stores to whom it furnished its "junior" size facilities, in or through which convenience in display and sale was promoted, and lack of which, through such druggists' inability to furnish same in response to public call therefor, resulted in loss of sale and sometimes loss of regular customer:

Held, Subsection (e) of Section 2 of act of Congress approved October 15, 1914, as amended by act of Congress approved June 19, 1936, violated by it.