

IN THE MATTER OF
NEW METHOD FILE GRINDERS, INC., ALSO TRADING AS
AUTOMOBILE BODY SUPPLY COMPANY

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

Docket 4020. Complaint, Feb. 6, 1940—Decision, Oct. 15, 1940

Where a corporation engaged in purchase of used and second-hand files from automobile manufacturers, garages, automobile body repair establishments, and other sources, and in cleaning, reconditioning, or resharpening said products and selling and distributing same to trade; in advertisements in advertising matter having general interstate circulation—

Represented to purchasers that some of its said files were water damaged or had been through fires and damaged by water, but were otherwise new and unused, facts being that some of the products thus represented were files which had actually been used by mechanics and other operators and artisans and had thereafter been purchased by it in normal course of its business for purpose of reconditioning and sale;

With tendency and capacity to mislead and deceive substantial part of purchasing public into mistaken belief that such representations were true, and with result that, as consequence of such belief thus engendered, substantial part of such public was induced to and did purchase its said products:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. S. Brogdyne Tew, II, for the Commission.

Mr. Robert E. Dunne, of Chicago, Ill., 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 New Method File Grinders, Inc., a corporation, trading as Automobile Body Supply Co., 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, New Method File Grinders Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, and having its principal office and place of business at 5120 South Halsted Street, city of Chicago, State of Illinois. It also trades as Automobile Body Supply Co.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of used, reconditioned, and resharpened files. Respondent causes its said product when sold to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, it has been and is the practice of respondent to purchase used or second-hand files from automobile manufacturers, garages, automobile body repair establishments, and from other sources. These files are shipped to the respondent's place of business where they are cleaned, reconditioned, or resharpened, and then resold to the trade.

PAR. 4. Respondent solicits business through the medium of advertising matter having a general interstate circulation, and in said advertisements respondent represents to purchasers and prospective purchasers that its said files are water damaged, or have been through a fire and were damaged by water, but are otherwise new and unused.

In truth and in fact, the files represented by the respondent as being water damaged but otherwise new and unused, are files which actually have been used by mechanics or other operators and artisans, and which thereafter have been purchased by the respondent in the normal course and conduct of its business for the purpose of reconditioning and sale.

PAR. 5. The practice of the respondent in representing to the purchasing trade that the files offered by it are new, except for water damage, when in truth and in fact said files are not new, water damaged files, but are in fact used files purchased by the respondent in the normal course of its business, has the tendency and capacity to and does mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that respondent's files are new files, water damaged. As a result of such erroneous and mistaken belief engendered as herein set forth, a substantial part of the purchasing public have been induced to purchase, and have purchased, respondent's said product.

PAR. 6. The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute 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 February 6, 1940, issued, and subsequently served its complaint in this proceeding upon respondent New Method File Grinders, Inc., charging it with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. On February 29, 1940, the respondent filed its answer. Thereafter this matter coming on for the taking of testimony, an agreed statements of facts was read into the record whereby it was stipulated and agreed that such statement of facts might be taken as the facts in the case, and in lieu of testimony in support of the charges in the complaint, or in opposition thereto. Respondent thereafter through counsel further agreed to waive the filing of a trial examiner's report upon the evidence, the filing of briefs and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and agreed statement of facts, 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 this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent New Method File Grinders, Inc., also trading as Automobile Body Supply Co., is a corporation organized and doing business under the laws of the State of Illinois. It has its principal office and place of business at 5120 South Halsted Street, Chicago, Ill.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of used, reconditioned, and resharpened files. Respondent causes its products to be sold and transported from its principal place of business in Chicago, Ill., to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent for some time past has maintained a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of its business it has been the practice of the respondent to purchase used and second-hand files from automobile manufacturers, garages, automobile body repair establishments, and from other sources. These files are shipped to the respondent's place of business where they are cleaned, reconditioned, or resharpened and sold to the trade.

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PAR. 4. Respondent solicits its business through the medium of advertising matter having a general interstate circulation, and in some of its advertisements respondent has represented to purchasers of its products that some of its files are water damaged, or have been through fire and damaged by water but that the files are otherwise new and unused.

The truth is that some of the files represented by the respondent as being water damaged but otherwise new and unused are files which actually have been used by mechanics and other operators and artisans and have thereafter been purchased by the respondent in the normal course of its business for the purpose of reconditioning and sale.

PAR. 5. The practice of the respondent in representing to the purchasing trade that the files offered by it are new except for water damage has a tendency and capacity to mislead and deceive a substantial part of the purchasing public into the mistaken belief that such representations are true, and by reason of such mistaken belief, so engendered, a substantial part of the purchasing public have been induced to purchase and have purchased respondent's said products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and constitute 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, the answer of the respondent and an agreed statement of facts read into the record wherein it was agreed that such statement of facts might be taken as the facts in the case in lieu of testimony in support of the allegations of the complaint or in opposition thereto and a further agreement that the filing of briefs and all other intervening procedure was waived; 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.

It is ordered, That the respondent, New Method File Grinders, Inc., also trading as Automobile Body Supply Co., or trading under any other name, 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 used and reconditioned

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files, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly representing:

That such files are new files, or are new files which have been damaged in some way, or are anything other than used files which have been reconditioned.

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

C. H. STALLMAN & SON, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4096. Complaint, Apr. 23, 1940—Decision, Oct. 15, 1940*

Where a corporation engaged in sale and distribution of cigars, candy, and various other articles of merchandise, including certain assortments thereof which were so packed and assembled as to involve use of game of chance, gift enterprise, or lottery scheme when merchandise in question was sold and distributed to consumers, and included (1) number of cigars and punchboard, to be used in sale and distribution of said cigars under a plan and in accordance with said board's explanatory legend, by which purchaser or customer received for penny paid 1, 3, 5, or 10 cigars in accordance with success or failure in selecting by chance from board designated numbers, person selecting last number in each of sections into which board was divided received one cigar, and those not making such selection or securing one of said designated numbers received nothing, and (2) other assortments with punchboards and push cards for use in sale and distribution of merchandise involved to consuming public by means of sales plans or methods similar to that above described and varying therefrom in detail only;

Sold such assortments, as above set forth, to dealer or retailer purchasers, by whom they were exposed and sold to purchasing public in accordance with aforesaid sales plans or methods, and thereby supplied to and placed in hands of others means of conducting lottery in sale and distribution of their merchandise in accordance with such plans or methods, involving game of chance or sale of a chance to procure 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 criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plans or methods involving a game of chance or sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and refrain therefrom;

With held that many dealers in and ultimate purchasers of said or like or similar merchandise were attracted by such sales plans or methods employed by it in the sale and distribution of its merchandise and element of chance involved therein, and were thereby induced to buy such merchandise in preference to that offered and sold by its said competitors who do not use same or equivalent sales plans or methods, and with effect, through use of such plans or methods by it and because of said game of chance, of diverting unfairly trade to it from its competitors aforesaid who do not use same or equivalent sales plans or methods; 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.