

IN THE MATTER OF
THE FAIRFACTS COMPANY

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

Docket 2327. Complaint, Mar. 13, 1935—Decision, Oct. 23, 1940

Where a corporation engaged in sale and distribution of recessed china bathroom accessories and related products, to various contractors, retailers, and purchasers located in other States, in competition with others engaged in manufacture, sale, and distribution of similar products in commerce among the various States, and including those who manufacture such accessories and products and truthfully represent themselves as so doing to purchasing public—

Represented itself as a manufacturer, and displayed such designation on all of its stationery, billheads, invoices, and other printed matter, and in classified telephone directory advertising described itself as "Manufacturers," notwithstanding fact it did not own and operate or directly and absolutely control any pottery or plant wherein such products were produced or made, and it was not such a manufacturer, from whom a substantial portion of buyers of such accessories and related products, including contractors and retail dealers who purchase such bathroom fixtures, prefer to buy, rather than from jobbers or wholesalers, due to fact that standard grade of fixtures may not be had from jobbers or nonmanufacturing sellers, and commodity advertised, when not made by such jobbers or dealers, may not be obtainable therefrom in event of breakage;

With effect of misleading and deceiving retailers into erroneous and mistaken belief that products offered and sold by it were by it made, or that it was a manufacturer and not a seller and distributor of recessed china bathroom accessories and related products made by some other concern, and with result that some of aforesaid dealers and purchasers, who prefer to buy from such manufacturers, as above set forth, products in question, purchased same of it, representing itself, as aforesaid, as manufacturer, believing it to be maker of products sold and distributed by it, and substantial volume of commodity in question was purchased of it by consuming public, and trade was diverted unfairly to it from those engaged in sale of such accessories and related products who manufacture same and truthfully represent themselves as such manufacturers; to the substantial 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.

Before *Mr. Robert S. Hall* and *Mr. John W. Addison*, trial examiners.

Mr. Morton Nesmith, for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Fairfacts Co., a corporation, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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. That respondent, the Fairfacts Co., is a corporation organized under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Trenton, N. J. Said respondent is engaged in the sale and transportation of recessed china bathroom accessories between and among the different States of the United States. The respondent, in the course and conduct of its business, as aforesaid, has caused and still causes the articles in which it deals to be transported from its said place of business in the State of New Jersey into and through the other States of the United States and in the District of Columbia to various contractors, retailers, and purchasers. Said respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and transportation of china bathroom accessories and recessed china bathroom accessories in commerce between and among the different States of the United States.

PAR. 2. That the respondent, in the course and conduct of its business, as aforesaid, stated and represented in its price lists, catalogs, advertisements, and advertising matter circulated in interstate commerce among customers and prospective customers, that it was a manufacturer of china bathroom accessories. Said representations made by respondent are false and misleading and have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the belief that when purchasing from respondent they are dealing with the manufacturer of the products purchased and thereby are gaining an advantage by saving the middleman's profits. The said false representations also have the capacity and tendency unfairly to divert and do divert trade to the respondent from its competitors.

PAR. 3. In truth and in fact, respondent, the Fairfacts Co., is not a manufacturer of china bathroom accessories or recessed china bathroom accessories, nor does it own, operate, or control any factory wherein the products which it sells and distributes in interstate commerce, as aforesaid, are made, manufactured, or fabricated.

Findings

31 F. T. C.

PAR. 4. There are among the competitors of the respondent many persons, firms, and corporations who manufacture china bathroom accessories and recessed china bathroom accessories, and sell and distribute the same in interstate commerce and who truthfully hold themselves out as manufacturers; there are also among the competitors of the respondent many persons, firms, and corporations who do not manufacture china bathroom accessories and recessed china bathroom accessories, but who purchase said products from certain manufacturers and resell same in interstate commerce, which last-named distributors and wholesalers do not hold themselves out as manufacturers. Both of said classes of competitors sell their products in interstate commerce.

PAR. 5. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 13th day of March 1935, issued and subsequently served its complaint in this proceeding upon respondent, The Fairfacts Co., a corporation, charging it with the use of unfair methods in competition in commerce. After the issuance of said complaint (the respondent filed no answer thereto), testimony and other evidence in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Commission, and in opposition to the allegations of the complaint by W. L. Hart, vice president of the respondent corporation, before Robert S. Hall and John W. Addison, examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, testimony and other evidence, brief in support of the complaint (respondent not having filed brief, and oral argument not having been requested), 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, The Fairfacts Company, is a New York corporation with its principal office and place of business located in Trenton, N. J. It is engaged in the sale and distribution of recessed china bathroom accessories and related products. In the course and conduct of its business, respondent has caused recessed china bathroom accessories and related products to be transported from its place of business in New Jersey into and through the other States of the United States and in the District of Columbia to various contractors, retailers, and purchasers located in States other than New Jersey. It is in competition with individuals, partnerships, and other corporations, engaged in the manufacture, sale, and distribution of similar products in commerce, among and between the various States of the United States.

PAR. 2. The respondent, The Fairfacts Co., has represented itself to be a manufacturer as far back as May 1939, and the designation "manufacturer" appeared on all of its stationery, bill heads, invoices, and other printed matter, as far back as May 1929. Typical of the advertisement used by the respondent in a classified telephone directory the following appears in large, bold black type:

BATHROOM ACCESSORIES—CHINA—MANUFACTURES

Fairfacts Company, The, 2324 W. 14th Street.

Prior to the issuance of the complaint herein, the respondent The Fairfacts Co. was not a manufacturer of recessed china bathroom accessories and related products, nor did it own and operate or directly and absolutely control any pottery or plant wherein such products were produced or manufactured.

PAR. 3. There are competitors of the respondent who sell and distribute in commerce among and between the various States of the United States recessed china bathroom accessories and related products which they manufacture and who truthfully represent to the purchasing public that they manufacture said products.

PAR. 4. A substantial portion of the purchasers of recessed china bathroom accessories and related products, including contractors and retail dealers who purchase fixtures incident to bathrooms such as the respondent sells and transports in commerce as herein described, prefer to purchase from manufacturers of such commodities rather than to purchase from jobbers or wholesalers, because when such purchases may be made from jobbers or sellers who are not manufacturers, a standard grade of fixtures may not be had, and such jobbers or dealers who are not the manufacturers of the articles advertised

might not be able to supply such purchasers and dealers the commodity in the event of breakage. Some of such dealers and purchasers have purchased the products sold and distributed by respondent, representing itself to be the manufacturer as stated herein, believing the respondent to be the manufacturer of the products sold and distributed.

PAR. 5. The use by the respondent of the acts and practices set forth herein has the capacity and tendency to, and does, mislead and deceive retail dealers and members of the purchasing public into the erroneous and mistaken belief that the products offered for sale and sold by the respondent are manufactured by the respondent or that the respondent is a manufacturer and not a seller and distributor of recessed china bathroom accessories and related products manufactured by some other corporation, firm or person.

PAR. 6. It is further found that as the direct consequence of the erroneous and mistaken belief induced by respondent in advertising and representing itself to be the manufacturer of the commodity sold and distributed, a substantial volume is purchased by the consuming public and trade has been diverted unfairly to respondent from corporations, individuals, firms, and partnerships also engaged in the business of selling recessed china bathroom accessories and related products, who manufacture such products and who truthfully represent that they are the manufacturers thereof. As a result thereof, substantial injury has been done by respondent to competition in commerce between 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 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 upon the complaint of the Commission, testimony and other evidence taken before Robert S. Hall and John W. Addison, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by Morton Nesmith for the Commission (the respondent not having filed brief, and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclu-

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Order

sion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Fairfacts Co., 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 bathroom fixtures in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, through the use of the word "manufacturers" or through the use of any word or terms of similar import or meaning, or through any means or device or in any manner, that respondent is the manufacturer of the products sold by it, unless and until respondent actually owns and operates, or directly and absolutely controls a manufacturing plant wherein said products are manufactured by it.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, forward to the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

31 F. T. C.

IN THE MATTER OF
DIXIE CANDY COMPANY, INC.

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

Docket #255. Complaint, Aug. 22, 1940. Decision, Oct. 23, 1940

Where a corporation engaged in the manufacture of candy, and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) number of bars of uniform size and shape, together with push card for use in sale and distribution of said candy under a plan, in accordance with which purchasers paid for such bars amounts ranging from 1 to 5 cents, in accordance with their success or failure in securing by chance certain numbers concealed in card, and (2) assortments with various other push cards for use in sale and distribution of its said candy by means of game of chance, gift enterprise, or lottery scheme, similar to that above described and varying therefrom in detail only—

Sold such assortments to wholesalers, jobbers, and retailers, by whom, as direct or indirect retailer-purchasers thereof, assortments in question were exposed and sold to purchasing public in accordance with sales plans aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with such plans, involving game of chance or sale of a chance to procure bars of candy at prices 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, 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 other method contrary to public policy, and refrain therefrom;

With the result that many persons were attracted by said sales plan or method employed by it in sale and distribution of its candy and element of chance involved therein, and were thereby induced to buy and sell its said candy in preference to that of competitors who do not use same or equivalent methods, and with effect, through use of such method and because of said game of chance, of unfairly diverting trade to it from its said competitors who do not use same or equivalent methods:

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. L. P. Allen, Jr., for the Commission.

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 Dixie Candy Co., Inc.,