

Complaint

33 F. T. C.

IN THE MATTER OF
DENISTON COMPANY

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

Docket 4219. Complaint, Aug. 6, 1940—Decision, June 30, 1941

Where a corporation engaged in the manufacture and in the interstate sale of lead head roofing nails, including types designated as "drive screw" and "ring shank"; in advertising in circulars and in trade publications—

- (a) Represented and implied that the holding power of its "drive screw" and "annular ring" nails was approximately four times that of the straight shank nails, facts being that while such nails may have more holding power than other, they do not have four times, or even twice, holding power of said other; and
- (b) Represented and implied that its "drive screw" shank nail would afford greater holding power than any other type of lead head nail, facts being that, while such nail, as well as same type made by its competitors, might have greater holding power than other types of lead head nails under certain conditions of use, they did not have such holding power under all conditions:

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

Mr. Clark Nichols for the Commission.

Parker & Carter, 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 the Deniston Co., 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, Deniston Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 4856 South Western Avenue, Chicago, Ill. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture and sale of lead head roofing nails of various kinds, one type being designated by the respondent as "drive screw" and another type being designated "ring shank." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to purchasers

thereof located at various points in the several States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the several States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of its business in said commerce as aforesaid and for the purpose of inducing the purchase of its roofing nails designated "drive screw" and "ring shank," respondent has circulated among prospective purchasers of said products through advertisements in the form of circulars and advertisements placed in trade publications, many statements concerning the claimed superiority and efficiency of its said nails over those manufactured and sold by competitors in said commerce. Among the statements so used and circulated among prospective purchasers by the respondents are the following:

The holding power of drive screw and annular ring nails is approximately 4 times that of the straight shank nail.

* * * * *

The drive screw shank gives the nail greater holding power than any other lead head nail made.

Through the use of the foregoing statements, and others of similar import and meaning not set out herein, the respondent represents and implies that the holding power of its "drive screw" nail and the holding power of its "ring shank" nail is approximately four times that of the straight shank nail; that a nail provided with the "drive screw" shank will afford greater holding power than any other type of lead head nail and that both the "drive screw" nail and the "ring shank" nail possess a substantial superiority in holding power over all competitive products.

PAR. 3. The above and foregoing representations and implications are false, misleading, and deceptive, for in truth and in fact, the holding power of respondent's "drive screw" nail or respondent's "ring shank" nail is not four times that of the straight shank nail. Respondent's "drive screw" shank nail will not afford greater holding power than all other types of lead head nails. The comparative superiority and holding power claimed by the respondent for both types of its nails is greatly in excess of any superiority that does exist between either of said types of nails and straight shank nails and other competitive nails.

PAR. 4. The use by the respondent of the foregoing false and misleading representations and implications respecting its said product as to the holding power and superiority of its product over all other types of lead head nails, has had, and now has, the capacity and tendency

Findings

33 F. T. C.

to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, 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 the 6th day of August 1940, issued and thereafter served its complaint in this proceeding upon respondent, Deniston Co., a corporation, charging it with the use of 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 an answer by respondent thereto, a stipulation as to the facts was entered into between Parker and Carter, attorneys of record for respondent, by Leslie M. Carter on behalf of respondent, and W. T. Kelley, Chief Counsel of the Federal Trade Commission, in which it is provided that the Commission may proceed upon such statement of facts, including the inferences which may be drawn therefrom, to make its findings as to the facts and its conclusion based thereon, and to enter its order disposing of the proceeding without the presentation of argument, the filing of briefs, or the filing of a trial examiner's report upon the evidence.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved by the Commission, 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, Deniston Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at 4856 South Western Avenue, Chicago, Ill. Respondent is now and for more than 2 years last past has been engaged in the manufacture and sale of lead head roofing nails of various kinds, one type being designated by the respondent as "drive screw" and another type being designated as "ring shank."

Respondent also makes and sells a type known as "plain barbed." Respondent causes said products when sold to be transported from its place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business in said commerce, as aforesaid, and for the purpose of inducing the purchase of its roofing nails designated "drive screw" and "ring shank," respondent has circulated among prospective purchasers of said products, advertisements in the form of circulars and statements placed in trade publications, in which it claims superiority and efficiency for its said nails over those manufactured and sold by competitors in said commerce. Among the statements so used and circulated among prospective purchasers by the respondent are the following:

The holding power of drive screw and annular ring nails is approximately 4 times that of the straight shank nails.

The drive screw shank gives the nail greater holding power than any other lead head nail made.

PAR. 3. Through the use of the first of the foregoing quoted statements, the respondent represents and implies that the holding power of its "drive screw" and "annular ring" nails is approximately four times that of a straight shank nail.

The first of the above quoted statements is exaggerated, false, and misleading, because, while the "drive screw" and the "annular ring" nails may have more holding power than straight shank nails they do not have four times the holding power or even twice the holding power of the straight shank nails.

Through the use of the second of the foregoing statements, the respondent represents and implies that its "drive screw" shank nail will afford greater holding power than any other type of lead head nail.

The second statement above quoted is exaggerated, false, and misleading, because, while the "drive screw" nail made by the respondent as well as the drive screw type of nail made by respondent's competitors may have greater holding power than other types of lead head nails under certain conditions of use, they do not have such greater holding power under all conditions of use.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and

Order

33 F. T. C.

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 a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Deniston Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale and the sale and distribution of its lead head roofing nails, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Representing in any manner, that the holding power of its drive screw and annular ring nails is approximately four times that of the straight shank nail, or any other number of times in excess of the true ratio of the holding power of such nails.

2. Representing in any manner, that its drive screw shank nail has greater holding power than any other type of lead head nail, under all conditions of use.

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

HOWARD S. WEAVER, TRADING AS WEAVER REAL
ESTATE APPRAISAL TRAINING SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4353. Complaint, Oct. 22, 1940—Decision, June 30, 1941*

Where an individual engaged in interstate sale and distribution of correspondence home study courses in rural and city real estate appraisal training; in offering his said courses through his sales representatives, advertisements in newspapers and magazines of general circulation, printed matter and radio broadcasts—

- (a) Represented and implied that the demand for land appraisers greatly exceeded the supply, and that land appraising was an uncrowded field lacking qualified men, through such statements as "Never before was the demand so great and the shortage so acute," and "At present the appraisal field is using thousands of unskilled, untrained men who should be replaced—and are being replaced * * * with competent, qualified trained men as rapidly as they are available"; and
- (b) Represented and implied that various Government loan agencies, as well as private industry, were seeking men trained by him, that the Civil Service Commission was holding examinations for land appraisers from time to time with salaries up to \$3,800 obtainable, that men trained by him were earning \$175 to \$300 monthly, and that choice money-making positions were available to them;

The facts being that, while in some instances in certain locations, services of competent appraisers were not available, there were more appraisers with field experience than could be gainfully employed; occupation in question does not, of itself, insure choice money-making opportunities; it was not true that loan agencies or private industry were seeking men trained by him, and that institutions acquainted with his school commended it most highly and were eager to get his graduates (notwithstanding his training was highly thought of by some who employed such graduates); and while Civil Service Commission had held examinations in recent years for real-estate appraisers, considerable experience was required, with exception of examination for Junior Appraiser for Land Banks, for which, however, graduation from said individual's school alone would not qualify the graduate; choice money-making positions were not available to his graduates, he did not have jobs to offer and was not in a position to guarantee earnings in any amount; and

- (c) Represented that only a limited number of students were to be selected for training, and that each student was to receive his individual assistance and guidance; and
- (d) Represented and implied that the tuition fee was less than half the regular tuition charge, through statement that, in view of his confidence in students securing "one of the many positions available on completing the course," he asked payment of less than half of the low fee in two installments, with