

IN THE MATTER OF

JAMES LEDWITH AND MORTON E. ROSENTHAL, TRADING AS WOODFINISHING PRODUCTS COMPANY, AND J. M. THOMAS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4579. Complaint, Aug. 29, 1941—Decision, Dec. 23, 1941

Where two partners engaged in the manufacture of paints, varnishes, stains, thinners, lacquers, sealers, toners, and other woodfinishing materials, and in competitive interstate sale and distribution thereof to furniture manufacturers and others; and the sales manager of their branch office who was their sales agent and representative, visiting the above-mentioned trade and procuring orders therefrom for the aforesaid products; acting together and through said individual—

Gave and offered to give, to finishers, foremen and other employees of manufacturers of furniture, without the knowledge and consent of their respective employers, substantial sums of money as inducements to influence said employees to purchase the products of said partners, and to recommend such purchases and the use of said products to their employers, or as promised rewards or gratuities for having induced such purchases by employers or for having recommended the use of such products to said employers;

With effect of diverting trade unfairly to them from their competitors who do not indulge in said acts and practices; 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.

Mr. D. C. Daniel 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 James Ledwith and Morton E. Rosenthal, individually and as copartners, trading as Woodfinishing Products Co. and J. M. Thomas, individually and as agent for James Ledwith and Morton E. Rosenthal, copartners trading as Woodfinishing Products Company, hereinafter referred to as respondents, have 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. Respondents, James Ledwith and Morton E. Rosenthal, are individuals doing business as copartners under the name of Woodfinishing Products Co. with their principal office and place of business located at 34 Industrial Street, New York, N. Y. They also maintain a branch office and manufacturing plant at 572 Waughtown Street, Winston-Salem, N. C.

Respondents, Ledwith and Rosenthal, are engaged in the manufacture of paints, varnishes, stains, thinners, lacquers, sealers, toners, and other wood-finishing materials and in the sale and distribution thereof to manufacturers of furniture and others located in the various States of the United States and in the District of Columbia. Said respondents cause and have caused said products when sold to be transported from their aforesaid places of business in New York, N. Y., and Winston-Salem, N. C., to their customers located in the various other States of the United States and in the District of Columbia. There is now, and for several years last past has been, a constant course of trade by said respondents in said products 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 business said respondents are, and have been, in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, J. M. Thomas, an individual, during a period of several years last past, has been and still is sales manager for said Winston-Salem branch office, and agent of, and sales agent and representative for, respondents Ledwith and Rosenthal, and, among other duties and activities in said latter connection, the said Thomas visits the trade hereinabove mentioned and solicits and procures orders from said trade for the aforesaid products manufactured and sold in the commerce aforesaid by respondents Ledwith and Rosenthal.

All of said respondents act together and in cooperation in doing the acts and things as herein alleged.

PAR. 2. In the course and conduct of said business as described in paragraph 1 hereof, respondent Thomas, acting for and in behalf of, and in concert with, respondents Ledwith and Rosenthal, has, from time to time during several years last past, offered to give, and has given, to finishers, foremen, and other employees of manufacturers of furniture, without the knowledge and consent of their respective employers, substantial sums of money as inducements to influence said employees to purchase the products of respondents Ledwith and Rosen-

thall, to recommend such purchases to such employers, and to recommend to said employers the use of said products, or as promised rewards or gratuities for having induced such purchases by such employers or for having recommended the use of said products to such employers. In making said gifts of money, respondent Thomas, in order to conceal said transactions and the identity of the donors of said sums, has made payments of said sums to aforesaid employees in cash only.

PAR. 3. The use by the respondents of the acts and practices hereinabove set forth were and are calculated to have, and have, a tendency and capacity to, and do, divert trade unfairly to respondents from their competitors also engaged in the business of selling wood-finishing materials, as aforesaid, who do not indulge in said acts and practices. As a result thereof, substantial injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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 August 29, 1941, issued, and thereafter served its complaint in this proceeding upon respondents James Ledwith and Morton E. Rosenthal, individually and as copartners, trading as Woodfinishing Products Co. and J. M. Thomas, individually, and as agent for James Ledwith and and Morton E. Rosenthal, copartners, trading as Woodfinishing Products Co., charging them with the use of unfair methods of competition in commerce 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 respondents' answer the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving 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 substitute answer, and the Commission having duly considered the matter and being now fully advised in the prem-

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Findings

ises, 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

PARAGRAPHS 1. Respondents, James Ledwith and Morton E. Rosenthal (named in the complaint as Morton E. Rosenthall), are individuals doing business as copartners under the name of Woodfinishing Products Co. with their principal office and place of business located at 34 Industrial Street, New York, N. Y. They also maintain a branch office and manufacturing plant at 572 Waughtown Street, Winston-Salem, N. C.

Respondents, Ledwith and Rosenthal, are engaged in the manufacture of paints, varnishes, stains, thinners, lacquers, sealers, toners, and other wood-finishing materials and in the sale and distribution thereof to manufacturers of furniture and others located in the various States of the United States and in the District of Columbia. Said respondents cause and have caused said products when sold to be transported from their aforesaid places of business in New York, N. Y., and Winston-Salem, N. C., to their customers located in the various other States of the United States and in the District of Columbia. There is now, and for several years last past has been, a constant course of trade by said respondents in said products 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 business said respondents are, and have been, in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, J. M. Thomas, an individual, during a period of several years last past, has been and still is sales manager for said Winston-Salem branch office, and agent of, and sales agent and representative for respondents, Ledwith and Rosenthal, and, among other duties and activities in said latter connection, the said Thomas visits the trade hereinabove mentioned and solicits and procures orders from said trade for the aforesaid products manufactured and sold in the commerce aforesaid by respondents Ledwith and Rosenthal.

All of said respondents act together and in cooperation in doing the acts and things as herein found.

PAR. 2. In the course and conduct of said business as described in paragraph 1 hereof, respondent, Thomas, acting for and in behalf of,

Order

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and in concert with, respondents, Ledwith and Rosenthal, has, from time to time during several years last past, offered to give, and has given, to finishers, foremen and other employees of manufacturers of furniture, without the knowledge and consent of their respective employers, substantial sums of money as inducements to influence said employees to purchase the products of respondents Ledwith and Rosenthal, to recommend such purchases to such employers, and to recommend to said employers the use of said products, or as promised rewards or gratuities for having induced such purchases by such employers or for having recommended the use of said products to such employers. In making said gifts of money, respondent Thomas, in order to conceal said transactions and the identity of the donors of said sums, has made payments of said sums to aforesaid employees in cash only.

PAR. 3. The use by the respondents of the acts and practices hereinabove set forth were and are calculated to have, and have a tendency and capacity to, and do, divert trade unfairly to respondents from their competitors also engaged in the business of selling wood finishing materials, as aforesaid, who do not indulge in said acts and practices. As a result thereof, substantial injury has been done and is now being done by respondents 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 respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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 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, James Ledwith and Morton E. Rosenthal (named in the complaint herein as Morton E. Rosenthal),

trading as Woodfinishing Products Co. or trading under any other name or names, and respondent J. M. Thomas, individually and as agent for respondents, James Ledwith and Morton E. Rosenthal, and respondents' agents, representatives, and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of paints, varnishes, stains, thinners, lacquers, sealers, toners, or other wood-finishing products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Giving or offering to give sums of money or other things of value to employees of respondents' customers or prospective customers, or those of their competitors' customers or prospective customers, without the knowledge or consent of their employers, as inducements to influence said employees to purchase the products of respondents, or to recommend such purchases to said employers, or to recommend to said employers the use of respondents' products or as promised gratuities for having induced such purchases by such employers, or for having recommended the use of respondents' products to such employers, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of respondents, or to influence such employers to continue to deal with respondents.

It is further ordered, That the respondents 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.

Complaint

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IN THE MATTER OF

E. R. DAVIS, TRADING UNDER THE NAME OF E. R. DAVIS
PRESCRIPTION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4289. Complaint, Aug. 29, 1940—Decision, Jan. 7, 1942*

Where an individual engaged in interstate sale and distribution of his "Davis Formula No. 7895" medicinal preparation; in advertisements disseminated through the mails and by radio continuities, circulars, leaflets, pamphlets, and other advertising literature, in which he included quotations or purported quotations from testimonials; directly and by implication—

Represented that his said formula was a cure or remedy for asthma or hay fever and a competent and effective treatment therefor, use of which would prevent attacks and recurrence of attacks thereof and relieve the suffering incident thereto;

Facts being said formula or preparation—in the package of which he included a 4-ounce bottle of concentrated Vitamin A containing 30,000 International units per gram, and in which preparation were included potassium iodide and lobelia, sometimes used to relieve temporarily the symptomatic spasms of asthma—was not a cure or remedy for any of the many different types of asthma, which do not all yield to same treatment, and had no therapeutic value in treatment thereof in excess of furnishing temporary relief from its symptomatic paroxysms, nor value in preventing recurrence of attacks of ailments referred to; and, as respects hay fever, did not constitute a cure or remedy therefor or have any substantial therapeutic value in the treatment thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and of thereby inducing it to purchase his said preparation:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. William L. Pencke* for the Commission.

Mr. E. R. Davis, pro se.

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 E. R. Davis, an individual, trading under the name of E. R. Davis Prescription Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding