

Complaint

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IN THE MATTER OF

FRANK G. HUNTINGTON, JOSEPH PUSTERHOFER, HERMAN PUSTERHOFER, AND LOUIS WALTON, TRADING AND DOING BUSINESS UNDER THE NAME EUCLID RUBBER & MANUFACTURING COMPANY

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

Docket 4394. Complaint, Nov. 30, 1940—Decision, Apr. 3, 1942

Where two individuals, engaged in interstate sale and distribution of electric lamp guards, rubber handles for safety lights, and other electrical devices—

- (a) Represented, through statements in catalogues and letters, and through placing letters "U L" on devices sold and distributed by them, that their products had been approved and tested by Underwriters' Laboratories, Electrical Testing Laboratories, and Hydro-Electric Power Commission of Ontario;

Notwithstanding fact they had not submitted their products to any such testing organizations, which had not approved such products, and they had not been authorized to mark any of their goods in any manner signifying that they had been thus tested or approved; and

- (b) Made misrepresentations with respect to a competitor, through such typical statements as that name of the concern, which included word "manufacturing," was a false and misleading representation of such concern's business, as they did not then or never had manufactured anything "but lies concerning this company," and did not own "a stitch of machinery for the manufacture of their rubber handles or lamp guards," as all of their "manufacturing" is "jobbed out to the lowest bidder and they merely pack and ship the goods";

When in fact such concern manufactured 15 to 20 percent of its total sales, amounting to about \$125,000 annually, including some of the rubber handles used on its products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby causing it, because of such mistaken belief, to purchase said products:

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. Miles J. Furnas* and *Mr. John W. Norwood*, trial examiners.

Mr. Clark Nichols and *Mr. James I. Rooney* 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 Frank G. Hunting-

ton, Joseph Posterhofer, Herman Posterhofer, and Louis Walton, trading as Euclid Rubber & Manufacturing Co., 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, Frank G. Huntington, Joseph Posterhofer, Herman Posterhofer, and Louis Walton, are individuals, trading and doing business under the firm name, Euclid Rubber & Manufacturing Co., with their principal office and place of business at 19730 Tyronne Avenue, Cleveland, Ohio. Respondents are now, and for more than two years last past have been, engaged in the manufacture and sale of rubber handles for safety lights, electric lamp guards and other electrical devices. Respondents cause said devices, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various points in the several States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said devices 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 their business in said commerce as aforesaid, and for the purpose of inducing the purchase of their rubber handles for safety lights, lamp guards, and other electrical devices, respondents have circulated among prospective purchasers of said devices through advertisements in trade catalogues, circulars and letters, many statements concerning the efficiency and merits of said devices, statements concerning the length of time respondents have been in business, and statements disparaging certain of their competitors, and statements that their products have been approved by certain laboratories and associations which test products of similar character as those manufactured and sold by respondent. Among the statements so used and circulated among prospective purchasers by the respondents, with reference to their products, their business and their competitors, are the following:

For the past 10 years we have specialized in the manufacture of these products, have our own molding equipment and machine shop facilities for their complete fabrication.

Our products have been approved by the Underwriter Laboratories, Electrical Testing Laboratories, and the Hydro-Electric Commission of Ontario.

There is another outfit here in Cleveland who call themselves Ericson Manufacturing Co., who will give you no worth-while competition. Their name is a false and misleading representation of their business as they do not now, and never have, manufactured anything except lies concerning this company, and own

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not a stitch of machinery for the manufacture of their rubber handles or lamp guards.

The respondents also place, on certain of their products, letters and designs indicating that such products have been tested by Underwriters Laboratories or Electrical Testing Laboratories.

Through the use of the foregoing statements, letters and designs, and others of similar import and meaning not herein set out, the respondents represent and imply that they have been in the business of manufacturing said products for a period of ten years and that their products have been inspected, tested and approved by Underwriters Laboratories, Electrical Testing Laboratories, and the Hydro-Electric Commission of Ontario, Canada; that the Ericson Manufacturing Co., of Cleveland, Ohio, a competitor of respondents, is a small, insignificant concern not worthy of mention as a competitor of the respondents and that the use of a name by this concern indicating that it is a manufacturer is false and misleading, that this concern has circulated falsehoods concerning respondents' business and that it has no machinery of any kind for the manufacture of the products sold by it.

PAR. 3. The above and foregoing representations and implications are false, misleading and deceptive, for in truth and in fact respondents have not been engaged in business for a period of ten years but only since 1933; their products have not been submitted to, inspected, tested or approved by, Underwriters Laboratories, Electrical Testing Laboratories, or the Hydro-Electric Commission of Ontario, Canada. The statements and representations aforesaid concerning the Ericson Manufacturing Co., a competitor of respondents, are false, misleading and deceptive, and falsely defame and disparage that company and its products. In truth and in fact, the Ericson Manufacturing Co. is a substantial, growing concern, actively engaged in manufacturing rubber handles and lamp guards on machinery owned and operated by it, which products are sold in competition with those sold by respondents, and said Ericson Manufacturing Co. has not circulated falsehoods concerning the respondents or their business.

A substantial portion of the purchasing public prefers rubber handles for safety lights, lamp guards and other electrical devices that have been tested, inspected and approved by laboratories, or governmental agencies, equipped and qualified to make scientific tests of such products. Both Underwriters Laboratories and Electrical Testing Laboratories are well known to the purchasing public as agencies equipped and qualified to make scientific tests of such products. The belief on the part of the purchasing public that either of these concerns has tested and approved the products is a substan-

tial and material factor in inducing the public to purchase said products.

PAR. 4. The acts and practices of respondents in circulating and using the aforesaid statements, representations and implications in connection with the offering for sale, sale and distribution of their products in said commerce have had, and now have, the tendency and capacity to, and did and do, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements, representations and implications are true, and cause a substantial portion of the purchasing public because of such mistaken and erroneous belief, to purchase said products.

PAR. 5. The aforesaid acts and practices of the respondents, 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 November 30, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Frank G. Huntington, an individual, Joseph Posterhofer, an individual, and Herman Posterhofer, an individual, charging them 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 (no answer having been filed by respondents thereto) testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before examiners of the Commission theretofore duly designated by it and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, testimony and other evidence, report of the trial examiners, and briefs in support of the complaint and in opposition thereto (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. Respondents, Frank G. Huntington and Herman Pusterhofer (the person referred to in the complaint as Herman Pusterhofer) are brothers and have for several years last past traded and carried on business under the name, Euclid Rubber & Manu-

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facturing Co., with their principal office and place of business at 19730 Tyronne Avenue, Cleveland, Ohio. It was testified that Joseph Pusterhofer (the person referred to in the complaint as Joseph Posterhofer), a brother of the two respondents named, has had no connection with the business for more than five years. The identity of respondent Louis Walton was not established either as being Louis Pusterhofer or any other individual. Respondents Frank G. Huntington and Herman Pusterhofer during several years last past have been engaged in the sale and distribution of electric lamp guards, rubber handles for safety lights, and other electrical devices, and respondents have caused said articles, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located at various points in the United States other than the State of Ohio. Respondents have maintained, and now maintain, a course of trade in said devices in commerce between and among the several States of the United States.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of aiding in the sale of and inducing the purchase of various electrical devices, respondents have circulated among prospective purchasers of such devices various representations such as the statement on page 5 of the catalog distributed to prospective purchasers:

SPRING ACTION

Safety Attachment Plugs

Approved by Underwriters Laboratories, Electrical Testing Laboratories, and Hydro-Electric Power Commission of Ontario.

By means of letters such as that of February 27, 1939, to the Chandler-Boyd Company of Pittsburgh, Pennsylvania, they have represented to prospective purchasers that:

Our products have been approved by the Underwriters' Laboratories, Electrical Testing Laboratories, and Hydro-Electric Power Commission of Ontario.

They have sold and distributed electrical devices on which they have placed the letters "U L," which letters signify to dealers and other purchasers in the trade, and are understood to mean, that the product so marked has been tested and approved by the Underwriters' Laboratories. One of the respondents testified that the letters "U L" had been used to determine whether their use would result in easier or readier sale of such products.

Respondents have not, in fact, submitted their products to the Underwriters' Laboratories, Inc., Electrical Testing Laboratories, or the Hydro-Electrical Power Commission of Ontario for testing, nor have such products been approved by any of the testing organizations

named, nor have respondents been authorized to mark any of their products in any manner signifying that they have been tested or approved by any of said organizations.

PAR. 3. Respondents, in the sale and distribution of their said products, are in competition with other concerns engaged in the sale and distribution of similar products, including the Ericson Manufacturing Co., of Cleveland, Ohio. Respondents have circulated letters to dealers and other prospective purchasers of products offered for sale by Ericson Manufacturing Co., which letters contained statements substantially similar to those contained in a letter of May 16, 1939, to McKinley-Mockenhaupt Co. of Chicago, Ill., a dealer handling Ericson products:

Our business is not a monopoly built up around patents. We have two long established active competitors, namely the McGill Manufacturing Co., Valparaiso, Ind., and the Daniel Woodhead Co., of your city. There is another outfit here in Cleveland who call themselves the Ericson Manufacturing Co., who will give you no worth-while competition. Their name is a false and misleading representation of their business, as they do not now, and never have manufactured anything but lies concerning this company, and own not a stitch of machinery for the manufacture of their rubber handles or lamp guards. All their "manufacturing" is jobbed out to the lowest bidder and they merely pack and ship the goods.

Ericson Manufacturing Co., is a concern doing a substantial business in electrical devices similar to those sold by respondents and whose annual sales amount to approximately \$125,000. The Ericson Manufacturing Co., manufactures certain of the products which it offers for sale, including some of the rubber handles used by it on its products, the extent of such manufacture approximating 15 to 20 percent of its total sales.

4. The acts and practices of respondents in using and circulating the statements and representations set out above in connection with the sale and distribution of their products have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and statements are true, and cause a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said products.

CONCLUSION

The aforesaid acts and practices of 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.

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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 examiners of the Commission theretofore duly designated by it, report of the trial examiner, and briefs filed herein in support of and in opposition to the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Frank G. Huntington, an individual, and Herman Pusterhofer, an individual, jointly or severally, trading as the Euclid Rubber & Manufacturing Co., or under any other name, directly or through any corporation or other device, in connection with the offering for sale, sale, and distribution of electric lamp guards, handles for safety flights, and other electrical devices in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that any product or products not tested or approved by Underwriters' Laboratories, Inc., Electrical Testing Laboratories or Hydro-Electric Power Commission of Ontario have been so tested or approved.

2. Representing directly or by implication that any product or products have been tested or approved by any organization when such product or products have not been so tested or approved.

3. Disparaging the Ericson Manufacturing Co., or any other competitor, by representing that its manufacturing facilities, or the size and scope of its business, are less than is the fact, or by making other false representations with respect to any such competitor or its business operations.

It is further ordered, That respondents shall, within 60 days after the 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.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to respondents Joseph Pusterhofer and Louis Walton for the reasons set out in the findings as to the facts herein without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Syllabus

IN THE MATTER OF
**INDIANAPOLIS SOAP COMPANY, WILLIAMS SOAP COM-
 PANY, ET AL.**

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

Docket 3971. Complaint, Dec. 13, 1939—Decision, Apr. 6, 1942

Where two corporations, under common family ownership and control, and their three officers and owners, engaged in interstate sale and distribution of soap and soap products largely to "medicine and street men," which type of trade they solicited in a periodical of national circulation, offering among other things, their "NATURE'S WONDER * * * golden yellow soap * * * put up in attractive cartons bearing price mark of 25¢ per carton" at \$3.95 per gross, their "CUTICLEAR * * * pure white cocoanut oil soap" in cartons bearing price mark of 25¢ per cake, and their "Velvatex Cream Compound" and "Marie Martell * * * luxurious cleansing preparation," in one carton combination deals marked "75¢" and also packaged separately or in combination with other soaps such as laundry or cleaning powders—

- (a) Represented and implied that said soap had the retail value and price of figure marked on such cartons, through such practice; and
- (b) Placed in the hands of canvassers, peddlers and others, means and instrumentality whereby they were enabled to mislead and deceive members of the purchasing public who generally placed confidence in such price markings and representations as to retail values and prices; and
- (c) Placed on their soaps and on the cartons in which they were packed such statements as "Made from mineral and vegetable oils, nature's own products compounded with other pure materials by the most improved methods of modern soap making * * * absolutely free from impure or rancid animal fats or greases, chemicals, strong alkalies or other harmful substances * * * purifies and invigorates the skin, opens up the pores and gives nature the opportunity to function properly;"

Notwithstanding fact products in question were inferior in quality and contained an excessive proportion of water, increasing the size and weight without adding to the actual quantity, which type of soap soon dries out, shrinks and hardens so as to become substantially unsuited for the use intended; and external application of no soap can "open up the pores," etc., as above claimed;

With effect of misleading and deceiving a substantial portion of purchasing public into the mistaken belief that said soaps had a value greatly in excess of their actual retail price and value, and possessed qualities which they did not in fact possess; of placing in the hands of others a means to mislead and deceive said public, and of inducing it, because of its mistaken belief, to purchase substantial quantity of the soaps in question:

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.