

Complaint

IN THE MATTER OF
WEBSTER ELECTRIC COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4456. Complaint, Feb. 1 1941—Decision, June 8, 1942*

Where a corporation, engaged in the manufacture and interstate sale and distribution to oil burner manufacturers of fuel units for oil burners—

Falsely represented, through letters and circulars and advertisements in periodicals of general circulation, that its fuel unit was the only device of its kind which had the outboard bearing outside of the seal, and that it had the largest capacity of any on the market;

With effect of misleading and deceiving the purchasing public in such respects and thereby inducing it to purchase, in preference to others, such fuel units and oil burners equipped therewith;

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. James A. Purcell*, trial examiner.

Mr. D. E. Hoopingarner for the Commission.

Fischel, Kahn & Heart, 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 Webster Electric 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Webster Electric Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office, factory, and place of business at DeKoven Avenue and Clark Street, Racine, Wis.

For more than 2 years last past respondent has been, and is now, engaged in the manufacture, sale, and distribution of fuel units for oil burners. Fuel units are purchased by oil burner manufacturers who take such units and the various other units or parts making up an oil burner, and assemble them into oil burners, and thereupon sell the completed oil burners to dealers and consumers. In the course and conduct of its said business, respondent has been and is now caus-

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ing its said fuel units, when sold, to be transported from its said factory in the State of Wisconsin to purchasers thereof located in various 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 its said fuel units in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent has made, published, and caused to be made and published, by means of letters and circulars transmitted by United States mails and otherwise into various States of the United States and the District of Columbia, and by means of advertisements in periodicals having a general circulation, statements, claims, and representations with reference to its said fuel units, among which are those following, for the purpose of inducing, and which were likely to induce, directly and indirectly, the purchase of its said fuel units:

(a) The Webster Electric Fuel Unit is the only device of its kind which has the outboard bearing outside of the seal.

(b) The Webster Electric has the largest capacity of any unit on the market.

(c) An Improved Two-Stage Fuel Unit embodying all the characteristic Webster Electric features plus, an exceptional ease of servicing that is not to be had in any similar device in the oil burner field.

(d) No other has proven itself so unfailingly dependable in performance.

(e) This year more oil burners will be equipped with the Webster Electric Two-Stage Fuel Unit than with any other.

Through said statements, claims and representations, made and published as aforesaid, and others of similar import and meaning not herein set out, respondent has represented and implied that its said fuel unit is the only device of its kind having the outboard bearing outside of the seal; that the capacity of its said unit is greater than that of any other fuel unit on the market; that its said fuel unit is more easily serviced than are all similar devices; that the dependability of its said fuel unit exceeds that of similar devices; and that, during the year that the last statement above was made by respondent, more oil burners would be equipped with its said fuel unit than would be equipped with the fuel unit of any competing manufacturer during such year.

PAR. 3. In truth and in fact, respondent's fuel unit is not the only device of its kind which has the outboard bearing outside of the seal. The capacity of respondent's fuel unit does not exceed that of any of a number of other units on the market, it is not easier to service than all similar devices, and it is not more dependable than all similar devices. The claim that more oil burners would be equipped,

during the year that the claim was made, with its two-stage fuel unit than with the fuel unit of any competing manufacturers is deceptive and misleading insofar as it imports or implies that more oil burners would be equipped during such year with respondent's fuel unit than with the fuel unit of any competing manufacturer.

The aforesaid representations and implications made and published by respondent as aforesaid are grossly exaggerated, false, misleading, and deceptive.

PAR. 4. The use by the respondent of the acts and practices hereinabove mentioned in connection with the sale and distribution of its said fuel units in commerce has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and implications are true, and cause many members of the purchasing public, because of said mistaken and erroneous belief, to purchase respondent's fuel units, and oil burners equipped with them.

PAR. 5. The aforesaid acts and practices of 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 February 1 A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondent, Webster Electric 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 the complaint and filing of respondent's answer, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced by the attorneys for the Commission and the attorneys for the respondent, before James A. Purcell, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. 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, the answer, the testimony, and other evidence, the trial examiner's report thereon, and briefs in support of the complaint and in opposition thereto: 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, Webster Electric Co., is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business at Racine, Wis. Respondent, for more than 2 years prior to February 1, 1941, has been and now is engaged in the manufacture, sale, and distribution of fuel units for oil burners. Fuel units are purchased by oil burner manufacturers, who take such units and the various other units or parts making up an oil burner and assemble them into oil burners, and thereupon sell the completed oil burners to dealers and consumers.

Respondent, in the conduct of its business, has been and now is causing its said fuel units, when sold, to be transported from its place of business in Wisconsin to purchasers thereof located in various 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 its said fuel units in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in order to promote the sale of its fuel units, represented that its fuel unit is the only device of its kind which has the outboard bearing outside of the seal, and that its unit has the largest capacity of any unit on the market. These representations were made by respondent up to the fall of 1938, in letters and circulars transmitted by means of the United States mails and otherwise, into various States of the United States, and in advertisements placed by it in periodicals having a general circulation.

PAR. 3. The representations and implications made and published by respondent, as set forth in paragraph 2 hereof, are grossly exaggerated, false and misleading, and deceptive. Respondent's fuel unit, in fact is not the only device of its kind which has the outboard bearing outside of the seal; the capacity of respondent's fuel unit does not, in fact, exceed that of any other unit on the market.

PAR. 4. Respondent, by its acts and practices herein set forth, has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's fuel unit is the only device of its kind which has the outboard bearing outside of the seal, and that its fuel unit has the largest capacity of any unit on the market; and as a result, many members of the purchasing public, because of such erroneous and mistaken belief have purchased

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respondent's fuel units, and oil burners equipped with them in preference to other fuel units and oil burners equipped with other fuel units.

CONCLUSION

The aforesaid acts and practices of respondent, as set forth in the foregoing findings as to the facts, are 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.

ORDER TO CEASE AND DESIST

This proceeding, having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony and other evidence in support of and in opposition to the allegations of the complaint introduced by the attorney for the Commission and attorney for respondent before James A. Purcell, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, the report of the trial examiner and briefs in support of and in opposition to the complaint. And the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Webster Electric Co., a corporation, its officers, directors, agents, representatives, and employees, jointly or severally, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fuel units for oil burners, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by means of letters, circulars, advertisements, or by any other means, directly or by implication—

(a) That respondent's product is the only device of its kind which has the outboard bearing outside of the seal.

(b) That respondent's product has the largest capacity of any unit on the market.

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.

IN THE MATTER OF
SHEPHERD'S TAILORING COMPANY, INC., 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 4716. Complaint, Feb. 26, 1942—Decision, June 8, 1942

Where a corporation and two individuals, its officers and directors, engaged in competitive interstate sale and distribution of men's wearing apparel and other merchandise—

- (a) Sold and distributed garments by means of sales plans which involved the operation of a game of chance, gift enterprise, or lottery scheme, and included a so-called "Club Plan" under which they furnished each participating purchaser with a contract providing for the sale by them to him of a suit for the sum of \$39, of which \$1 was to be paid when the contract was delivered and \$1 each week thereafter until the full sum had been paid, each contract being printed with a so-called "Ledger No." for use as a lottery number under an agreement by which those purchasers whose numbers, or last three digits thereof, corresponded with the last three digits of the Treasury report as published in a Philadelphia paper, would be entitled to a suit or overcoat without additional payment, all others paying the full \$39 retail selling price;

With the result that many persons were attracted by the element of chance involved in their said sales plan, under which the amount paid by the ultimate consumer was determined wholly by lot or chance, and there was involved a game of chance to procure an article of merchandise at less than contract price, and trade was unfairly diverted from many competitors who do not use any such plan or method; and

- (b) Falsely represented price of their merchandise, nature of their business and merchandise itself through such statements as "One \$39.00 price"; "Custom Tailors since 1907"; "Our stock consists of hundreds of patterns of fine imported and domestic suitings and overcoatings for \$39.00"; facts being they did not always sell the garments in question for said sum, but in many instances required additional payments; they had been in business only since 1940; and they did not carry hundreds of patterns, or any large number from which their customers might select a suit or overcoat for said price;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing it to purchase said products, as a result whereof trade was unfairly diverted to them from their competitors:

Held, That said lottery sales plan violated the public policy of the United States Government, and 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. J. W. Brookfield, Jr. for the Commission.

Mr. Harris I. Weisbord, of Philadelphia, Pa., for respondents.