

Complaint

IN THE MATTER OF
ROBERT W. IRWIN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4701. Complaint, Feb. 5, 1942—Decision, June 23, 1942*

Where a corporation engaged in the manufacture of household furniture, and in the competitive interstate sale and distribution thereof—

Represented and implied that certain of its furniture was made in its entirety from walnut through use of words "Wood: Walnut" and other statements containing the word "Walnut" in catalogs, price lists, photogravure sheets, invoices, and labels distributed among prospective purchasers, and by other means; when in fact it used a walnut wood veneer on a portion of the flat surface of said furniture and pecan wood for some of the exposed structural parts, such as the legs and framing for cabinet doors;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such furniture was made entirely from walnut, for which it has a marked preference over that made from a combination of woods such as pecan and walnut, and thereby to induce its purchase of said product, 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 its competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Travis, Merrick, Varnum & Riddering, of Grand Rapids, Mich., 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 Robert W. Irwin 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, Robert W. Irwin Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 23 Summer Avenue, Grand Rapids, Mich.

The respondent is now, and for more than 2 years last past has been, engaged in the manufacture of household furniture, such as

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dining room, bedroom, and living room furniture and in the sale and distribution thereof in commerce between and among the 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 said furniture in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, the respondent is in substantial competition with other corporations, and with partnerships, firms and individuals engaged in the manufacture of household furniture, and in the sale and distribution thereof in said commerce.

PAR. 3. In the course and conduct of its business, and for the purpose of inducing the purchase of its said furniture, the respondent has disseminated, and is now disseminating, false and misleading statements and representations with respect to the kind of wood from which certain of its furniture is made. Such statements and representations are made by means of catalogs, price lists, photo-gravure sheets, invoices and labels distributed among prospective purchasers and by other means. Among the statements so disseminated by the respondent is the statement "Wood: Walnut" to designate, describe, and refer to certain of its furniture which is not composed wholly of the wood known as walnut, but which is made from a combination of the wood commonly known as walnut and the wood commonly known as pecan. Respondent, in the manufacture of said furniture, so designated and described, uses what is commonly known as a walnut wood veneer for a portion of the flat surface of said furniture but uses the wood commonly known as pecan for all of the exposed structural parts, such as the legs and framing for cabinet doors.

Through the use of the statement "Wood: Walnut" and other statements containing the word "walnut" to designate, describe and refer to said furniture manufactured from a combination of the woods commonly known as walnut and pecan, as aforesaid, respondent represents and implies, and the purchasing public is thereby led to believe, that said furniture is manufactured in its entirety from the wood commonly known as walnut.

PAR. 4. There is a marked preference on the part of a substantial portion of the purchasing public for furniture manufactured wholly from walnut wood over furniture manufactured from a combination of woods such as pecan and walnut.

The wood commonly known as pecan is similar in appearance to, and resembles the wood commonly known as walnut when finished

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to be used in furniture with walnut. Under such conditions the greater portion of the public and many dealers in furniture are unable to distinguish the wood commonly known as pecan from the wood commonly known as walnut.

PAR. 5. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who manufacture, sell and distribute the same character of furniture, who do not in any manner misrepresent the material or kind of wood from which such furniture is manufactured or matters pertaining thereto.

PAR. 6. The use by the respondent of the false and misleading statements and representations referred to herein has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and, because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said furniture. As a result thereof, substantial injury has been done, and is being done, by respondent to competition in commerce between, and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and of respondent's 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 the 5th day of February 1942, issued and subsequently served its complaint in this proceeding upon respondent, Robert W. Irwin Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 26, 1942, the respondent filed its answer in this proceeding. Thereafter, at a hearing held in Grand Rapids, Mich., on May 4, 1942, before Clyde M. Hadley, an examiner of the Commission theretofore duly designated by it, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts read into the record may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its findings as to the facts and

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its conclusion based thereon, and issue its order disposing of this proceeding without the presentation or arguments or the filing of briefs. The respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation as to the facts, 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, Robert W. Irwin Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 23 Summer Avenue, Grand Rapids, Mich.

The respondent is now, and for more than 2 years last past has been engaged in the manufacture of household furniture, such as dining room, bedroom, and living room furniture, and in the sale and distribution thereof in commerce between and among the 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 said furniture in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, the respondent is in substantial competition with other corporations, and with partnerships, firms and individuals engaged in the manufacture of household furniture, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its furniture, the respondent has disseminated statements and representations with respect to the kind of wood from which certain of its furniture is made. Such statements and representatives have been made by means of catalogs, price lists, photogravure sheets, invoices, and labels distributed among prospective purchasers, and by other means. Among the statements so disseminated by the respondent was the statement "Wood: Walnut" to designate, describe, and refer to certain of its furniture not composed wholly of the wood known as walnut, but made from a combination of the wood commonly known as walnut and wood commonly known as pecan. Respondent, in the manufacture of said furniture

so designated and described, has used what is commonly known as a walnut wood veneer for a portion of the flat surface of said furniture, but has used the wood commonly known as pecan for some of the exposed structural parts, such as the legs and framing for cabinet doors.

Through the use of the statement "Wood: Walnut" and other statements containing the word "Walnut" to designate, describe, and refer to said furniture manufactured from a combination of the woods commonly known as walnut and pecan, as aforesaid, respondent has represented and implied, and the purchasing public has been thereby led to believe, that said furniture was manufactured in its entirety from the wood commonly known as walnut.

PAR. 4. There is a marked preference on the part of a substantial portion of the purchasing public for furniture manufactured wholly from walnut wood over furniture manufactured from a combination of woods such as pecan and walnut.

The wood commonly known as pecan is similar in appearance to, and resembles the wood commonly known as walnut when finished to be used in furniture with walnut. Under such conditions the greater portion of the public and many dealers in furniture are unable to distinguish the wood commonly known as pecan from the wood commonly known as walnut.

PAR. 5. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who manufacture, sell, and distribute the same character of furniture, who do not in any manner misrepresent the material or kind of wood from which such furniture is manufactured or matters pertaining thereto.

PAR. 6. The use by the respondent of the statements and representations referred to herein has had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said furniture was, in fact, manufactured in its entirety from the wood commonly known as walnut; and because of such erroneous and mistaken belief, a substantial portion of the purchasing public has been induced to purchase respondent's said furniture. As a result thereof, substantial injury has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

On or about November 1, 1941, respondent discontinued the practice of designating, describing and referring to furniture manufactured from a combination of the woods commonly known as walnut and pecan as "Wood: Walnut" or "Walnut" and has since designated,

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described and referred to such furniture as "Wood: Walnut and Pecan."

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's 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, the answer of the respondent, and a stipulation as to the facts made a part of the record herein, 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 said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Robert W. Irwin 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 furniture 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 furniture made from a combination of the wood commonly known as walnut and the wood commonly known as pecan is manufactured from the wood commonly known as walnut.

2. Using the words "Wood: Walnut" or the word "Walnut" to describe, designate, and refer to furniture which is not composed wholly of the wood commonly known as walnut.

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.

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IN THE MATTER OF

SIERRA 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 4758. Complaint, May 7, 1942—Decision, June 23, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of candy, including certain assortments which were so packed and assembled as to involve the use of games of chance, gift enterprises and lottery schemes when sold and distributed to the consumers, typical assortments including, as illustrative, one of 24 one-pound boxes of uniform size and shape, together with a push card for use in sale and distribution thereof under a plan by which amount paid by customers for said boxes was determined by number secured by chance from card, and another of 19 boxes with punchboard, for use under a plan by which customer, for 5 cents, by chance selection of certain designated numbers received one of said boxes, as did also the customer making the last punch in each of the first two sections into which the board was divided, or the last punch on the board, others receiving nothing for their money—
Sold such assortments to wholesalers, to jobbers, and to retailers, by whom they were sold to the purchasing public in accordance with aforesaid plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products under plan in question, involving game of chance to procure candy at much less than normal retail price, in competition with many who do not use any such method;
With the result that many persons were attracted by its said sales method and element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that of competitors aforesaid, whereby trade was unfairly diverted to it from them; to the 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, were contrary to the public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. David Rubenstein, of San Francisco, Calif., 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 Sierra Candy Co., Inc., 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 interest of the