

IN THE MATTER OF
COPPER ROOFS CORPORATION

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

Docket 4651. Complaint, Dec. 3, 1941—Decision, Dec. 29, 1942

Where a corporation, engaged in competitive interstate sale and distribution of copper roofing material which, made to its specifications by another concern, it sold to dealers, roofing contractors and supply houses, supplying to purchasers detailed instructions describing the patented method of application, and frequently assisting the dealer in connection with the application of the first order or first few orders; in advertising its said product through leaflets, circulars, and other printed matter which it furnished to its salesmen and to dealers who used it in soliciting the purchase of the roofing by the public—

(a) Represented, directly or by implication, that its said product was impervious to all weather and climatic conditions, being proof against wind, hurricane, storm, and hail; afforded permanent protection against rain; was everlasting and earthquakeproof; that the copper used therein was the same as that used in the roofs of the ancient European cathedrals; and that the roofing possessed insulating properties and made houses warmer in winter and cooler in summer;

The facts being that while the standard weight of copper ordinarily used for roofing purposes is 16 ounces per square foot, its roofing weighed 3 ounces per square foot, and as such was not of sufficient thickness and strength, in the opinion of the trade, to provide a satisfactory roofing material; copper used by it therein could not properly be compared with that used to roof ancient cathedrals in which the material was much thicker and heavier; and the other claims made by it, as above set forth, were false and misleading; and

(b) Represented that the roofing was applied by factory-trained men only, and that it itself applied the roofing material and was responsible for defects in material or workmanship;

The facts being it was usually applied by employees of local dealers or roofing contractors, very few of whom had ever had any factory training; and it did not itself apply the roofing in the usual case, or ordinarily assume responsibility for defects in material or workmanship;

With tendency and capacity of misleading and deceiving a substantial number of dealers and members of the purchasing public into the mistaken belief that said roofing possessed qualities and characteristics which it did not, thereby causing such public to purchase substantial quantities of the roofing; whereby trade was diverted unfairly to it from competitors:

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

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. James I. Rooney and *Mr. R. P. Bellinger* for the Commission.

Quarles, Spence & Quarles, of Milwaukee, Wis., 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 Copper Roofs Corporation, 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, Copper Roofs Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in Rooms 5058-5060 Plankinton Building, 161 West Wisconsin Avenue, Milwaukee, Wis.

PAR. 2. Respondent now is, and since the date of its incorporation in January 1936, has been, engaged in the business of selling copper roofing material manufactured for it, in accordance with its detailed specifications, at Waterbury, Conn. Respondent causes said product, when sold, to be shipped from the place of manufacture thereof in the State of Connecticut to the purchasers thereof at their respective points of location in States other than the State in which such shipments originate, and in the District of Columbia. Respondent now 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. 3. Respondent's product consists of 12-inch copper squares weighing 3 ounces and is known in the trade as 3-oz. copper roofing. Said copper squares are backed with a felt preparation. Respondent is the owner of patents covering the method of applying the said copper roofing known as "Double-lock Method" and has adopted the name "Double-lock" copper roofs for said product. Detailed specifications and instructions describing the said patented methods are furnished by respondent to the purchasers of said product for their use and instruction in applying such roofs.

PAR. 4. Respondent has adopted various methods of selling its product to the general public. Such methods include sales through subsidiary companies, distributors, applying dealers, independent roofing concerns, and by salesmen. Under all of such methods it was and is necessary for such subsidiary companies, distributors, dealers, and independent roofers to secure a license from the respondent in order to qualify them to sell said product. Such a license relates to the method of applying said copper material to roofs.

Complaint

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PAR. 5. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said product by the purchasing public, respondent, in leaflets, circulars, and other written or printed matter furnished to its various kinds of dealers and salesmen and circulated and distributed by them in soliciting business from the general public has made many false, misleading, and deceptive statements and representations with reference to its said product. Among and typical of the statements and representations used and caused to be disseminated are the following:

"DOUBLE-LOCK"

COPPER ROOFS

"DOUBLE-LOCKED"

To Keep Out Wind, Rain and Snow **PERMANENTLY**

You can forget **ROOF TROUBLES** when you Roof with **EVERLASTING COPPER**

In connection with a picture purporting to be that of Hildesheim Cathedral in Germany respondent states:

FOR CENTURIES Copper Roofs have protected Sacred Shrines. Among the many which have long survived wars and turmoil is Hildesheim Cathedral, built in Germany in 1320. After 619 years of exposure to the elements this beautiful copper roof is still giving perfect service.

EARTHQUAKE PROOF Weighing only sixty pounds to the hundred square feet, "Double-lock" is the lightest permanent roof you can buy * * * A heavy supporting structure is not needed.

The whole range of climatic conditions which might exist in any country is spanned by thousands of "Double-lock" copper roofs which have been built in every part of the country, from the Atlantic to the Pacific, from the Great Lakes to the tip of Florida, and from rocky mountain tops to desert valleys. Copper Roofs Companies for years have built more copper roofs than the rest of the field combined, thus the main "proving ground" for "Double-lock" copper roofs is **ACTUAL EXPERIENCE**.

WIND PROOF

FIRE PROOF

HAIL PROOF * * *

Only factory trained men are used.

INSULATES—Saves dollars on winter fuel. Keeps out summer heat.

You can avoid the almost certain expense of interior damage resulting from leaks by roofing now with a "Double-lock" Copper Roof.

In connection with pictures depicting two houses, on one of which the roofing material is other than copper, the other purporting to be roofed with respondent's "Double-lock" copper roofing, wherein the roof purporting to be of material other than copper is shown blow-

ing away while the roof purporting to be roofed with respondent's product remains intact, there appears the following:

HURRICANE! .

SWEEPS NEW ENGLAND!

Thousands of Roofs Damaged.

September 21, 1938, .

Not a single "Double-lock" Copper Roof was reported damages by this devastating hurricane * * * An unequalled record.

PAR. 6. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent, directly and by implication, represents, and has represented, to customers and prospective customers that its product, Double-lock Copper Roof, is everlasting, earthquakeproof, hurricaneproof, stormproof, fireproof, hailproof, and weatherproof; that respondent's copper roofing is of the same kind and quality as that used on the roofs of ancient cathedrals in Europe; that only factory trained men apply said roofing material; that leaks will be prevented by applying respondent's material to roofs; that the application of "Double-lock" Copper Roofs results in keeping houses cooler in summer and warmer in winter by reason of the insulating properties of said copper.

PAR. 7. The statements and representations so made and used by respondent are false, deceptive and misleading. In truth and in fact, roofs constructed of respondent's "Double-lock" copper product are not everlasting but are subject to destruction by corrosion under certain conditions and to other damage and deterioration. Such roofs are not earthquake proof, hurricaneproof, stormproof, fireproof, hailproof, or weatherproof. Roofs constructed with respondent's product are not comparable to copper roofs on ancient cathedrals, as indicated by the use of the photographs in connection with the representations made, since the copper used on the roofs of said cathedrals is several times thicker than that sold by respondent and consequently is much more desirable, durable, and lasting. Leaks will not in all cases be prevented by applying respondent's material to roofs. Factory trained men are not used in applying respondent's roofing material. Houses roofed with respondent's material are not kept cooler in summer and warmer in winter by reason of the insulating properties of copper. Of all metals, copper is one of the best known conductors of heat and cold and is inferior as an insulator to other materials even when backed with felt.

PAR. 8. In addition to the false and misleading statements and representations set forth in paragraph 5 hereof, the advertising matter

furnished by the respondent to its distributors, dealers, and salesmen contains many testimonials as to the merits of said "Double-lock" Copper Roofs, purporting to be testimonials which have been voluntarily furnished by the signers thereof, whereas in truth and in fact said testimonials have not been voluntarily furnished by the signers thereof but have been solicited by the respondent.

PAR. 9. In addition to the foregoing false and misleading statements and representations, and in connection therewith, the respondent states in certain of its advertising matter as follows:

COPPER ROOFS COMPANY

Builders of those internationally famous "Double-lock" roofs of "everlasting" Copper * * *

Said respondent also allows its distributors, either operating under a charter of incorporation or under a trade name, to use its own corporate name in conjunction with the name of the State within which said distributor does business, and places its own corporate name and address on circulars and pamphlets furnished by it to its distributors, salesmen, and agents for distribution to purchasers and prospective purchasers.

Through the use of the above quoted statement and acts and practices hereinabove set forth, respondent represents, directly and by implication, that it is the builder of "Double-lock" Copper Roofs and is directly responsible to the purchasers of such roofs for all defects of material and workmanship. In truth and in fact, said copper roofs are not built by respondent or under its supervision and control and respondent has repeatedly disclaimed liability for defects of both materials and workmanship.

PAR. 10. In the course and conduct of its said business as herein alleged, respondent Copper Roofs Corporation is now, and at all times herein mentioned has been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of roofing materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. The acts and practices of the respondent as hereinabove set forth have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. As a result of such erroneous and mistaken belief engendered as herein set forth, the purchasing public has been induced to and has purchased substantial quantities of respondent's product. In consequence, trade has been unfairly diverted to the respondent from its competitors and thereby substantial injury has been done, and

is being done, by the respondent to competition in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 12. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public and 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 December 3, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Copper Roofs Corporation, a corporation, charging it 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 that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such 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 thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and 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. The respondent, Copper Roofs Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan; with its principal office and place of business located at 5058-5060 Plankinton Building, 161 West Wisconsin Avenue, Milwaukee, Wis. From 1936 until some time in 1941, respondent was engaged in the sale and distribution of copper roofing material, such material being manufactured for it and in accordance with its detailed specifications by a manufacturing concern located in Buffalo, N. Y. The discontinuance of the business in 1941 was due to respondent's inability, because of the war, to obtain copper.

Findings

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PAR. 2. In the course and conduct of its business respondent caused its roofing material, when sold, to be shipped from the place of manufacture in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintained a course of trade in its product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the sale and distribution of its product, respondent was in substantial competition with other corporations and with individuals and firms engaged in the sale and distribution of roofing materials in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent's roofing was customarily sold direct to independent dealers, roofing contractors, and supply houses, although at one time respondent marketed some of its material through subsidiary companies owned or controlled by it. When selling its material, respondent supplied to the purchaser detailed specifications and instructions describing the patented method of application. In connection with the first order or first few orders sold to a dealer, respondent frequently assisted the dealer in the application of the material, such assistance being rendered through respondent's salesmen or other representatives.

In promoting the sale of its roofing, respondent furnished to its salesmen various pieces of advertising literature, such as leaflets, circulars, and other printed matter. Such advertising material was also supplied by respondent to the dealers purchasing its material, and the dealers in turn used such material in contacting the public and soliciting the purchase by the public of the roofing. Among and typical of the statements and representations appearing in such advertising material were the following:

HURRICANE!

SWEEPS NEW ENGLAND!

Thousands of Roofs Damaged

September 21, 1933.

Not a single "Double-lock" Copper Roof was reported damaged by this devastating hurricane * * * An unequalled record. (Com. Ex. 2)

You can forget

ROOF TROUBLES

When you Roof with

"EVERLASTING COPPER" (Com. Ex. 1)

For CENTURIES * * *

Copper Roofs have Protected Sacred Shrines Among the many which have long survived wars and turmoil is Hildesheim Cathedral built in Germany in 1320. After 619 years of exposure to the elements this beautiful copper roof is still giving perfect service. (Com. Ex. 2)

EARTHQUAKE PROOF—Weighing only sixty pounds to the hundred square feet, "Double-lock" is the lightest permanent roof you can buy. A heavy supporting structure is not needed. (Com. Ex. 4Z30.)

The whole range of climatic conditions which might exist in any country is spanned by the thousands of "Double-lock" Copper Roofs which have been built in every part of the country, from the Atlantic to the Pacific, from the Great Lakes to the tip of Florida, and from rocky mountain tops to desert valleys. Copper Roofs Companies for years have built more copper roofs than the rest of the field combined, thus the main "proving ground" for "Double-Lock" Copper Roofs is ACTUAL EXPERIENCE. (Com. Ex. 4Z34.)

* * * WIND-PROOF * * * HAIL-PROOF * * * (Com. Ex. 4Z39)

* * * Only factory trained men are used. (Com. Ex. 4Z31)

INSULATES—Saves dollars on winter fuel. Keeps out summer heat. (Com. Ex. 1)

You can avoid the almost certain expense of interior damage resulting from leaks by roofing now with a "Double-lock" Copper Roof. * * * (Com. Ex. 4Z42)

COPPER ROOFS COMPANY

Builders of those internationally famous "Double-lock" roofs of Everlasting Copper (Com. Ex. 4Z39)

PAR. 5. Through the use of these representations and other of a similar nature, respondent represented, directly or by implication, that its roofing was impervious to all weather and climatic conditions, being proof against wind, hurricane, storm, and hail; that it afforded permanent protection against rain; that it was everlasting; that it was earthquakeproof; that the copper used in such roofing was of the same kind and quality as that used on the roofs of ancient European cathedrals; that the roofing was applied by factory-trained men only; that the roofing possessed insulating properties and was capable of making houses cooler in summer and warmer in winter; and that respondent itself applied the roofing material, or was responsible for defects in material and workmanship.

PAR. 6. Respondent's roofing consisted of copper strips 12 inches wide and .004 inch thick, each roll of the roofing having a length of 246 feet. The copper was backed with a felt material. The roofing was of the type known in the trade as "3-oz. copper roofing," being so designated because 1 square foot of the copper weighed 3 ounces. The roofing was applied by a patented method known as the "Double-Lock" method, which involved a process whereby the several sections of a roof were fastened together by means of a crimping or locking operation. The roofing was advertised and sold by respondent under the trade name "Double-Lock Copper Roofs."

The evidence discloses that the standard weight of copper ordinarily used in the trade for roofing purposes is 16 ounces per square foot, which means that such copper has some five times the thickness of the 3-ounce copper used by respondent. The general opinion in the trade is that 3-ounce copper is not of sufficient thickness and strength to provide a satisfactory roofing material. It is apparent from the record that respondent's roofing was not impervious to weather and climatic conditions, and was not proof against wind, hurricane, storm, or hail. It did not afford permanent protection against rain. It was not earthquakeproof, nor could it properly be described as "everlasting." Numerous instances are disclosed⁹ by the record in which the roofing failed to give satisfactory service. While some of these failures appear to have been due to defective workmanship in applying the material, others were unquestionably due to the inability of the roof to withstand weather and climatic conditions. Corrosion was present in a number of instances, while in other cases the roof developed cracks and holes.

The copper used by respondent could not properly be compared with the copper used to roof ancient cathedrals, the material in the latter instances being so much thicker and heavier than respondent's material. Respondent's roofing was not applied by factory-trained men exclusively, but was usually applied by employees of local dealers or roofing contractors, very few of whom had ever had any factory training. The roofing did not possess insulating properties to any appreciable extent and was incapable of making houses cooler in summer or warmer in winter. Respondent did not itself apply the roofing in the usual or customary case, nor did it ordinarily assume responsibility for defects in material or workmanship. Aside from occasionally assisting in the application of the roofing, respondent left to the local dealer or contractor the work of applying the material.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to its roofing, as set forth in paragraphs 4 and 5 hereof, were erroneous and misleading.

PAR. 8. The Commission further finds that the use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public into the erroneous and mistaken belief that respondent's roofing possessed qualities and characteristics which it did not in fact possess, and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondent's roofing as a result of the erroneous and mistaken belief so engendered. In consequence thereof, sub-

stantial trade was diverted unfairly to the respondent from its competitors.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice 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 respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Copper Roofs Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's copper roofing in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's roofing is windproof, hurricaneproof, stormproof, hailproof, weatherproof, or earthquakeproof.
2. That said roofing affords permanent protection against rain.
3. That said roofing is "everlasting."
4. That said roofing, or the copper used therein, is comparable with the copper roofing of ancient cathedrals or other ancient structures.
5. That said roofing is applied by factory-trained men exclusively.
6. That said roofing possesses insulating properties, or is capable of making houses cooler in summer or warmer in winter.
7. That respondent itself applies the roofing, or assumes responsibility for defects in material or workmanship, when respondent does not in fact make such application or assume such responsibility.

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.

