

Complaint

36 F. T. C.

IN THE MATTER OF
D. M. ALACHUZOS COMPANY

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

Docket 4051. Complaint, Mar. 7, 1940—Decision, Feb. 17, 1943

Where a corporation, engaged in interstate sale and distribution of sponge and chamois-skin products—

Represented that it was a sponge "producer" and placed said term upon its letterheads, price lists, cards, and other advertising material; when in fact it was not such, but purchased raw sponges from the captains of various sponge-fishing boats and cleaned, graded, and compressed them into bales for sale to the trade;

With tendency and capacity to mislead and deceive a substantial number of purchasers and prospective purchasers as to the nature and extent of its business and thereby cause purchase of its said product:

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* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Merle P. Lyon and *Mr. Carrel F. Rhodes* 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 D. M. Alachuzos Company, 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, D. M. Alachuzos Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 336 South Fourth Street, in the city of Philadelphia, of said State. Respondent now is, and for more than 1 year last past has been, engaged in the business of offering for sale, selling, and distributing sponge and chamois-skin products in commerce among and between the various States of the United States and in the District of Columbia. Respondent has maintained, and maintains, a course of trade in said products in said commerce and has

caused, and now causes, said products, when sold or ordered, to be shipped and transported from its place of business in the State of Pennsylvania to jobbers, retailers, and purchasers thereof located in various States of the United States other than the State of Pennsylvania and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, and for the purpose of inducing the purchase of its said products from respondent, it has been, and is, the practice of respondent to state and represent to prospective purchasers and purchasers located in the various States of the United States and in the District of Columbia that respondent is a "producer" of sponges; that it is a "packer" of sponges; that it maintains and operates its own packing houses for the processing and packing of its sponge products at Tarpon Springs in the State of Florida, at Nassau in the Bahama Islands, and at Calymnos in the Aegean Sea; that it maintains its own force of trained workmen expert in selecting and grading sponges and that it is a "member of sponge exchange markets."

Demonstrative of the said statements and representations, among others, so made by respondent, and appearing on its letterheads and price lists, are the following:

PACKING HOUSES AT THE FISHERIES

Nassau, Bahamas, N. P.

Calymnos, Aegean Sea Island

Tarpon Springs, Florida.

D. M. ALACHUZOS COMPANY

Sponge Producers—Importers of Chamols

336 South Fourth St., Philadelphia, Pa., U. S. A.

MEMBERS OF SPONGE EXCHANGE MARKETS

Demonstrative of said statements and representations, among others, so made by respondent in the body of letters to prospective purchasers is the following:

We are Producers and Packers of sponges. We maintain in our own Packing House at the Sponge Fisheries with a force of trained workmen expert in selecting and grading sponges.

PAR. 3. The aforesaid statements and representations are false and misleading in that respondent has not been and is not a "producer" of sponges; has not been, and is not, a "packer" of sponges and has not maintained or operated, and does not maintain or operate, its own packing houses for the processing and packing of its sponge products at the places mentioned or elsewhere; has not maintained, and does not

maintain, a force of trained workmen expert in the selecting and grading of sponges and was not a member of any market exchange at points where it purchased sponges or sponge products at the time said representation was made.

Among buyers and sellers of sponge products, the term "sponge producer," or "producer," as applied to the sponge trade, means and signifies, and has heretofore meant and signified, one who engages in all the functions of gathering or harvesting sponges from marine beds and thereafter processing the same into a finished commercial product and who owns or controls and operates all the equipment and facilities therefor. A "processor" of sponges is one who merely performs the function of cleaning and otherwise converting the raw sponge product into a finished commercial sponge product and who owns or controls and operates all the equipment and facilities therefor. At no time during the making of the statements and representations here complained of has respondent owned or controlled and operated the facilities and equipment of a producer or processor of the facilities and equipment employed in the production, processing, finishing, and packing of the sponges respondent offered for sale and sold.

PAR. 4. The aforesaid false and misleading statements and representations made by respondent, as hereinabove alleged, have had, and have a tendency and capacity to mislead and deceive a substantial number of purchasers and prospective purchasers of sponge products into the false and erroneous belief that the said statements and representations are true and into the purchase of respondent's sponge products in reliance on such erroneous belief.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice 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 March 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, D. M. Alachuzos 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 said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly

recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, D. M. Alachuzos Co., is a corporation, organized and existing under, and by virtue of, the laws of the State of Pennsylvania, with its principal office and place of business located at 336 South Fourth Street in the city of Philadelphia, State of Pennsylvania. Respondent is now, and for several years last past has been, engaged in the business of offering for sale, selling, and distributing sponge and chamois-skin products in commerce among and between 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 products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business and for the purpose of inducing the purchase of its said products, the respondent represents that it is a sponge producer and causes such term "sponge producer" to be placed upon its letterheads, price lists, cards, and other advertising material.

PAR. 3. In truth and in fact, respondent is not a sponge producer, but, instead, the respondent purchases raw sponges from the captains of various sponge-fishing boats, which sponges the respondent then cleans, grades, and compresses into bales for sale to the trade.

PAR. 4. The aforesaid false and misleading statements and representations made by the respondent have had a tendency and capacity to mislead and deceive a substantial number of purchasers and prospective purchasers of sponge products as to the nature and extent of respondent's business and to cause the purchase of respondent's sponge products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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.

Order

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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, answer of the respondent, testimony and other evidence, in support of and in opposition to the allegations of the complaint, taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, D. M. Alachuzos Co., a corporation, and 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 sponge products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that the respondent is a producer of sponges.
2. Using the term "producer" in advertising or in any other manner when such use represents that respondent is a sponge producer.

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.

Syllabus

IN THE MATTER OF
NORTHWEST FILM AD SERVICE, INC., AND
FRANK D. ATKINS

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

Docket 4007. Complaint, Feb. 1, 1940—Decision, Feb. 20, 1943

Where a corporation and its president, engaged in the competitive interstate sale and distribution of an advertising film service which consisted of advertising films displaying such nationally advertised articles as automobiles, refrigerators, washing machines, and automobile tires, to which were attached advertising trailers with the name and address of the purchaser of the film service and such other information as purchaser might request; contracting with retailers to deliver films advertising the dealer's products to theaters named for a specified price, and dealer agreeing to purchase from them a moving picture trailer containing his name, address and other advertising material—

(a) Represented that corporation in question was the producer of said films and trailers, and that their business was nation-wide in scope, placing upon various orders and advertising material such notations as "General Offices 505 Guardian Bldg., Portland, Oregon" and "Offices in Portland, New Orleans, Chicago, Cleveland, Kansas City, New York, Dallas, Minneapolis";

When in fact they were not engaged in the production of any film, but solely in the distribution of films produced by a Kansas City concern, and they had no branch office or any place of business other than that in Portland, Oreg.;

(b) Represented that they had made arrangements with various automobile, refrigerator, washing-machine, and tire manufacturers or distributors to co-operate with purchasers of their advertising film service, and to pay a portion of the cost thereof;

The facts being no such agreement had been entered into and they were not authorized to make any such representations; and

(c) Falsely represented, in some cases, that they would not solicit or sell any competitive dealer, notwithstanding fact they did so, and supplied advertising films covering competitive products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true and into purchase of said film service; whereby trade was diverted unfairly to them from competitors:

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.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. B. G. Wilson* for the Commission.