

Complaint

IN THE MATTER OF
PARKER-McCRORY MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4707. Complaint, Feb. 10, 1942—Decision, Apr. 29, 1943¹*

Where a corporation engaged in the manufacture and competitive interstate sale of its electric-fence controllers, designated as "Parmak Electric Fencers"; by advertisements in newspapers and trade journals, and by means of folders, pamphlets, circular letters, and other advertising media distributed generally to prospective purchasers, directly or by implication—

- (a) Represented that the use of a single wire with its electric-fence controller would positively hold all livestock, and that its electric-fence controller would hold livestock as effectively as a steel or concrete enclosure; and was a positive, sure, and certain method to confine livestock, would prevent its escape under all conditions, and would hold the worst of fence breakers; and
- (b) Represented that use of said product cut fencing costs to less than \$10 per mille and effected a saving of 90 percent in fencing costs;

Facts being that said "Parmak Electric Fencer" equipped with a single wire would not confine any animal of a size which would permit it readily to pass under or over the wire without coming in contact therewith, or any animal whose natural covering or coat would insulate it from electric shock at the point of contact; nor confine fence breakers unless said fence breakers had received prior and proper training; or otherwise accomplish economies and results as above claimed therefor;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such misleading representations were true and into the purchase of said product because of such erroneous belief, whereby trade was diverted unfairly to it from its competitors, many of whom did not misrepresent their products; to the substantial injury of competition:

Held, That said acts and practices, as above 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. Jesse D. Kash for the Commission.

Mr. Alfred D. Hillman, of Kansas City, Mo., 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 Parker-McCrory Manufacturing Co., a corporation, hereinafter referred to as re-

¹ Findings as to the facts and order to cease and desist issued by the Commission on Jan. 13, 1943 (not published), were vacated and set aside by the Commission on Mar. 20, 1943.

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spondent, 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, Parker-McCrory Manufacturing Co., is a corporation, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 2609-2615 Walnut Street, Kansas City, Mo.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing and selling electric-fence controllers, designated as "Parmak Electric Fencers." Respondents causes its said product, when sold by it, to be transported from its aforesaid place of business in the State of Missouri to purchasers thereof located in various other 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 electric-fence controllers, designated as "Parmak Electric Fencers," in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and at all times mentioned herein, has been in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution of electric-fence controllers in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said electric-fence controllers, the respondent has circulated and is now circulating among prospective purchasers throughout the United States, by United States mails, by advertisements inserted in newspapers and trade journals, and by means of advertising folders, pamphlets, circular letters, and other advertising media, distributed generally to prospective purchasers, many false, misleading, and deceptive statements and representations concerning its said product. Among and typical of such statements and representations, are the following:

A single wire on light stakes three rods apart holds the stock.

Cuts fencing costs to less than \$10.00 per mile.

Save up to 90% of fencing.

One wire on light stakes holds stock like steel and concrete.

Gives a sting that holds the stock just as surely as any fence you ever built.

The dry weather intensifier has increased voltage and affords positive stopping power under all weather conditions.

See how a single wire holds the worst fence breakers.

PAR. 5. Through the use of statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly or by implication, that the use of a single wire with its electric-fence controller will positively hold all livestock; that the use of said product cuts fencing costs to less than \$10 per mile; that by using said product, a saving in fencing costs of 90 percent is effected; that its electric-fence controller will hold livestock as effectively as a steel or concrete-enclosure; that its electric-fence controller is a positive, sure, or certain method to confine livestock and will prevent the escape of livestock under all conditions; that its electric-fence controller will hold the worst fence breakers.

PAR. 6. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's Parmak Electric Fencer equipped with a single wire will not confine all livestock and particularly will not confine any animal of a size which would permit it to readily pass under or over the wire without coming in contact with the same, and will not confine any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its body that would come in contact with the wire. The use of said product will not cut fencing costs to less than \$10 per mile and will not effect a saving of 90 percent in fencing costs, under all situations, conditions, and circumstances. An electric-fence controller cannot confine animals as effectively as a fence of concrete or steel. The use of respondent's electric-fence controller is not a positive, certain, or sure method of confining livestock and will not prevent escape of livestock under all conditions. An electric fence equipped with respondent's electric-fence controllers will not confine fence breakers and will not confine animals of any kind or nature without prior and proper training of such animals by causing them to come into contact with a wire or wires charged with electricity.

PAR. 7. The use by the respondent of the foregoing false, misleading, and deceptive representations and statements with respect to its said product 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 false statements and representations are true, and into the purchase of respondent's product because of said erroneous and mistaken belief. Thereby trade has been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent the qualities, efficiency, and characteristics of their products. As a result, 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. 8. The aforesaid acts and practices of 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 February 10, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Parker-McCrory Manufacturing Co., 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 said act. On March 2, 1942, the respondent filed its answer. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent through its counsel and Richard P. Whiteley, Assistant Chief Counsel, for the Federal Trade Commission, subject to the approval of the Commission, 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 said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, 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, Parker-McCrory Manufacturing Co., is a corporation, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 2609-2615 Walnut Street, Kansas City, Mo.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing and selling electric-fence controllers, designated as "Parmak Electric Fencers." Respondent causes its said product, when sold by it, to be transported

from its aforesaid place of business in the State of Missouri to purchasers thereof located in various other 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 electric-fence controllers, designated as "Parmak Electric Fencers," in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution of electric-fence controllers in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said electric-fence controllers, the respondent has circulated among prospective purchasers throughout the United States, by United States mails, by advertisements inserted in newspapers and trade journals, and by means of advertising folders, pamphlets, circular letters, and other advertising media, distributed generally to prospective purchasers, many misleading and deceptive statements and representations concerning its said product. Among and typical of such statements and representations are the following:

A single wire on light stakes three rods apart holds the stock.

Cuts fencing costs to less than \$10.00 per mile.

Save up to 90% of fencing.

One wire on light stakes holds stock like steel and concrete.

Gives a sting that holds the stock just as surely as any fence you ever built.

The dry weather intensifier has increased voltage and affords positive stopping power under all weather conditions.

See how a single wire holds the worst fence breakers.

PAR. 5. Through the use of statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly or by implication, that the use of a single wire with its electric-fence controller will positively hold all livestock; that the use of said product cuts fencing costs to less than \$10 per mile; that by using said product, a saving in fencing cost of 90% is effected; that its electric-fence controller will hold livestock as effectively as a steel or concrete enclosure; that its electric-fence controller is a positive, sure, and certain method to confine livestock and will prevent the escape of livestock under all conditions; that its electric-fence controller will hold the worst fence breakers.

PAR. 6. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's "Parmak

Electric Fencer" equipped with a single wire will not confine all livestock and particularly will not confine any animal of a size which would permit it to readily pass under or over the wire without coming in contact with the same, and will not confine any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its body that would come in contact with the wire. The use of said product will not cut fencing costs to less than \$10 per mile and will not effect a saving of 90 percent in fencing costs, under all situations, conditions, and circumstances. An electric-fence controller cannot confine animals as effectively as a fence of concrete or steel. The use of respondent's electric-fence controller is not a positive, certain, or sure method of confining livestock and will not prevent escape of livestock under all conditions. An electric fence equipped with respondent's electric-fence controllers will not confine fence breakers unless said fence breakers have received prior and proper training.

The respondent discontinued the practices complained of prior to the issuance of complaint herein but subsequent to the date upon which respondent was contacted by the Commission's investigators with respect to the practices charged in the complaint.

PAR. 7. The use by the respondent of the foregoing misleading and deceptive representations and statements with respect to its said device has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such misleading and deceptive statements and representations are true, and into the purchase of respondent's product because of said erroneous and mistaken belief. Thereby trade had been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent the qualities, efficiency, and characteristics of their products. As a result, substantial injury has been done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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 respondent,

and a stipulation as to the facts entered into by and between counsel for the respondent and Richard P. Whiteley, Assistant Chief Counsel, for the Federal Trade Commission, 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Parker-McCrory Manufacturing 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 its electric-fence controller designated Parmak Electric Fencers, or any other device of substantially similar composition or possessing substantially similar properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the use of a single wire with its electric-fence controller will hold all livestock, including fence breakers; or that use of its device is a positive, sure and certain method of confining livestock.

2. That the use of its said device cuts fencing costs to less than \$10 per mile or results in a saving of 90 percent, or any other specific percentage of saving in excess of that ordinarily obtained; or that the cost of fencing through the use of said device and the savings resulting therefrom are other than is actually the fact.

3. That its said device will hold livestock as effectively as a steel or concrete enclosure.

4. That the use of said device will hold or confine fence breakers without clearly and conspicuously disclosing that such fence breakers must first have received prior and proper training.

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

CHARLES D. HUSTEAD, TRADING UNDER THE NAMES
TERMINAL MESSENGER SERVICE AND PIONEER IN-
HERITANCE SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4897. Complaint, Jan. 29, 1943—Decision, Apr. 20, 1943*

Where an individual engaged in interstate sale and distribution of forms, form letters, and envelopes for use by creditors and collection agencies in obtaining information concerning debtors, some of which forms, (1) intended for use of debtor and calling for such information as his name and address and that of his employer or banker, displayed trade name, "Terminal Messenger Service" and such words and legends as "We Deliver Anything Any Time Anywhere," "Try Us On Messenger Service Distributing Package Delivery Expressing and Baggage or Rush Deliveries," "We have a prepaid package which we wish to deliver to the above named party. Send us your new address and references if you are the party who should receive this. * * *," and "If no information is available within 30 days our files will be closed" and "Satisfactory deliveries are not possible to General Delivery or Post Office Box Address"; while others (2), intended for persons other than the presumptive debtor, contained in addition to the trade name and other matter above set forth, such matter as "Can you inform us as to the present whereabouts of * * * who formerly lived at * * * We have a prepaid package which we wish to deliver to the above named party. * * *," followed by blank spaces for the debtor's name, address, employment, and employer;

Making use of a scheme under which (1) he placed upon such forms code numbers to identify to him his respective purchasers, (2) purchasers inserted the names and last known addresses of the persons concerning whom information was sought, and (3) enclosed the forms in envelopes from said purported "Terminal Messenger Service," etc., addressed to said individual, together with another envelope addressed to "Terminal Messenger Service," etc., and caused such outer envelopes and their enclosures to be delivered to aforesaid individual, who mailed them and sent replies, identified by the aforesaid code numbers, to the customers, and to each of those from whom a reply was received, a pasteboard-covered notebook of trivial value; employing substantially the same methods as above described in handling forms sent to other than alleged debtors—

- (a) Falsely represented through said forms and envelopes, and placed in the hands of his customers the means of falsely representing, directly and by implication, to the customers, debtors, and others from whom information was sought, that his place of business was in a terminal building close to a railroad station or other transportation agency, and that his business was in some fashion connected with the transportation and delivery of goods;