

Complaint

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IN THE MATTER OF
EMPIRE PEAT SOIL SPONGE COMPANY

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

Docket 4641. Complaint, Nov. 24, 1941—Decision, June 28, 1943

Where an individual engaged in the mining and the interstate sale and distribution of peat to wholesalers and retailers, and also directly to agricultural purchasers such as nurserymen, florists, farmers, and poultrymen—

Used designation "peat moss" in referring to his said product in newspapers, trade publications and advertising circulars, and featured the name on the boxes or crates in which it was shipped;

When in fact his said peat was not the preferred "moss peat"—derived from Sphagnum moss and found in cool northern regions with relatively high rainfall and fogs of long duration, with its higher absorptive capacity and acidity, its very low ash content and germicidal properties, and its availability for uses for which the other type could not be employed—but was a mixture of sedge and Hypnum peats;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, who understand the term "peat moss" to indicate the preferred moss peat derived from Sphagnum moss, with respect to the character and properties of said product, thereby inducing purchase thereof:

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

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

Mr. James I. Rooney and *Mr. Randolph W. Branch* for the Commission.

Cutler & Males, of New York City, 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 Gaetano Rossitto, hereinafter referred to as respondent, has violated the provisions of the said act, and its 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, Gaetano Rossitto, is an individual doing business under the trade name, Empire Peat Soil Sponge Co., with his principal office and place of business located at 2 Lafayette Street, New York, N. Y.

PAR. 2. Said respondent is now and for more than one year last past has been engaged in the mining, and in the sale and distribution of

commercial peat to wholesalers and retailers for resale, and directly to those engaged in the agricultural industry, such as nurserymen, florists, farmers and poultrymen. Respondent causes said product, when sold, to be shipped from his place of business in Goshen, N. Y., to the purchasers thereof, who are located at points 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 said commercial peat 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 his aforesaid business and for the purpose of inducing the purchase of his product respondent has falsely represented, by various means, such as pamphlets, newspapers and trade publications circulated generally among the purchasing public, and by means of labels on boxes in which his said product is shipped to the purchasing public, that the commercial peat sold and distributed by him is "peat moss."

PAR. 4. There are many forms and varieties of peat. Their characteristics, physical properties, and chemical compositions greatly differ. Peat moss, more correctly described as moss peat, signifies and is commonly understood by those engaged in the agricultural and kindred industries, to be a well-defined variety of peat formed predominately by the small stems and leaves of various species of Sphagnum mosses. Such variety of peat is used extensively as bedding for dairy cattle and horses; as poultry litter; as a source of humus-forming organic matter for the purpose of improving soils and as a packing material for shipping or storing perishable articles such as fruits, vegetables, tubers, bulbs, and seedlings. It possesses certain distinct properties and characteristics not found in other varieties of peat. Among such peculiar properties and characteristics are its high water-absorbing capacity, its strong acid reaction, its uniformly low mineral and nitrogen content, its capacity to prevent infection from disease organisms in plant life, and its ease in handling. Because of these characteristics and qualities moss peat is preferred by the purchasing public over other varieties of peat and commands a higher price.

PAR. 5. Respondent's product designated, described, and advertised as "peat moss" is a peat composed mainly of moderately decomposed rootlets and rhizomes derived from various sedges and the stems from species of Hypnum and is properly identified as "sedge peat." It has a relatively low water-absorbing capacity, varies in reaction from acid to alkaline, and may contain injurious soluble salts. When cultivated for crops it undergoes decomposition and is apt to harbor disease or-

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ganisms. Such variety of peat becomes brittle and powdery when dry and cannot be successfully employed for many of the uses for which moss peat is accepted.

PAR. 6. Respondent, by using the words "peat moss" in describing and identifying his product falsely represents, directly and by implication, that said product is "moss peat" and that it possesses all the beneficial qualities and characteristics of moss peat as heretofore set forth and described.

PAR. 7. The use by the respondent of the false, deceptive, and misleading designation and description of its product, designated as aforesaid, 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 respondent's product is moss peat and that said product possesses all of the qualities and characteristics of moss peat and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

PAR. 8. 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 November 24, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Gaetano Rossitto, an individual, doing business as Empire Peat Soil Sponge Co., charging him with the use of 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 attorneys for the Commission before a trial examiner of the Commission theretofore duly designated by it (no testimony or other evidence being introduced in opposition to the complaint), 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, Gaetano Rossitto, is an individual, doing business under the trade name Empire Peat Soil Sponge Co., with his office and principal place of business located at 1781 Riverside Drive, New York, N. Y. Respondent is now and for some 6 years last past has been engaged in the mining of peat, and in the sale and distribution thereof to wholesale and retail dealers, and also directly to purchasers engaged in agricultural industry, such as nurserymen, florists, farmers, and poultrymen. The mine or pit from which respondent obtains his peat is located near Goshen, N. Y.

PAR. 2. Respondent causes and has caused his product, when sold, to be shipped from his mine or pit 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 maintains and has maintained a course of trade in his product in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent advertises his peat in newspapers and trade publications having a general circulation in the trade and among the purchasing public, and also by means of advertising circulars distributed among prospective purchasers. In all of his advertising, respondent refers to his product as "peat moss," and his name is prominently displayed also on the boxes or crates in which the product is packed and shipped to purchasers.

PAR. 4. There are two general classes of peat: (1) moss peat, and (2) reed, sedge, and Hypnum peats. Moss peat is derived from Sphagnum moss, and is found in cool, northern regions where the rainfall is relatively high and where fogs of long duration occur. Reed, sedge, and Hypnum peats are found principally in the more southerly, moderate temperature regions. There are pronounced differences between the two types of peat. Moss peat possesses a high capacity for absorbing water, a higher degree of acidity, and a very low ash content. It also possesses germicidal properties. Reed, sedge, and Hypnum peats, on the other hand, have a relatively low capacity for water absorption, a lower degree of acidity, and a higher ash content. They are lacking in germicidal properties, and in fact have a tendency, under certain conditions, to harbor insects and microorganisms.

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There is a marked difference, also, in the uses which can be made of the two types of peat. Moss peat is the only type of peat which can be used satisfactorily for stable bedding and as a litter for poultry. Likewise, it is the only type which can be used for surgical dressings, this being due to its high degree of acidity and its germicidal properties. In the shipping or storing of such articles as vegetables, fruits, bulbs, and seedlings, moss peat is preferable because of its germicidal characteristics. Moss peat is also preferable as a mulch and as a soil conditioner because of its high absorptive capacity and high acidity.

PAR. 5. The evidence discloses that respondent's product is not moss peat but is a mixture of sedge and Hypnum peats. It further appears from the evidence that there is a marked preference on the part of users of peat for moss peat over sedge or Hypnum peat, and that such users understand the term "peat moss" as indicating that the product so designated is moss peat derived from Sphagnum moss. The Commission therefore finds that the term "peat moss," as used by respondent to designate and describe his product, is erroneous and misleading.

PAR. 6. The Commission finds further that the use by respondent of this erroneous and misleading term to designate and describe his product has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and properties of respondent's product, and the tendency and capacity to cause such members of the public to purchase respondent's product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found 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.

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 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 having 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, Gaetano Rossitto, individually, and trading as Empire Peat Soil Sponge Co., or trading under any other name, and his 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 peat in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "peat moss" or "moss peat," or any other words of similar import, to designate or describe any peat not derived from Sphagnum moss; or otherwise representing, directly or by implication, that any peat is moss peat when such peat is not derived from Sphagnum moss.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

