

Complaint

IN THE MATTER OF
DICKSON WEATHERPROOF NAIL CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4700. Complaint, Feb. 5, 1942—Decision, Nov. 2, 1943*

Where an individual engaged in the manufacture and interstate sale and distribution of various kinds of roofing nails, for use principally for fastening sheet metal roofing to wooden roofs—

Represented that the holding strength of its "Dickson Lock Screw Shank Lead Head Nail" was 25 percent greater than that of plain drive screw nails, through such statements in advertising circulars and advertisements in trade journals as "Dickson Lock Screw Shank Lead Head Nail. This nail turns as it is driven. The tapered locking projections cause it to have 25 percent more holding strength than a plain drive screw";

The facts being that results of tests by the Bureau of Standards and other evidence disclosed that there was little difference, if any, in holding strength between its said product and that of plain drive screw nails;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and to cause it to purchase substantial quantities of such product as a result of the mistaken belief so engendered:

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

Before *Mr. Edward E. Reardon* and *Mr. John W. Addison*, trial examiners.

Mr. R. P. Bellinger for the Commission.

Mr. Robert B. Dickson, of Evanston, Ill., 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 the Dickson Weatherproof Nail 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, Dickson Weatherproof Nail Co., is a corporation, organized and existing by virtue of the laws of the State of Delaware, with its principal office and place of business at 1615 Sherman Avenue, Evanston, Ill., and a branch office and factory located at Birmingham, Ala. Respondent is now, and for more than 4 years

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last past has been, engaged in the manufacture and sale of various kinds of lead head roofing nails used principally for fastening galvanized sheet metal roofing to wooden roofs. Respondent makes and sells a nail, called by it, "Dickson Long Screw Shank Lead Head Nail." Respondent causes said product, when sold, to be transported from its places of business in the States of Illinois and Alabama 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 said product in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its roofing nails designated as "Dickson Long Screw Shank Lead Head Nail," respondent has made false and misleading statements with respect to the claimed superiority and efficiency of its said product by means of circulars disseminated to prospective purchasers through the United States mails and distributed to prospective purchasers in connection with samples of said product. Among and typical of the statements and representations so used and circulated is the following:

Dickson Long Screw Shank Lead Head Nail. This nail turns as it is driven. The tapered locking projections cause it to have 25% more holding strength than a plain drive screw.

PAR. 3. Through the use of the foregoing statement and representation and others of similar import and meaning not set out herein, the respondent has represented and now represents that the holding strength of its Dickson Long Screw Shank Lead Head Nail is 25 percent greater than a plain drive screw nail under all conditions and circumstances.

PAR. 4. The above and foregoing statement and representation is false, misleading and deceptive. The holding power of the Dickson Long Screw Shank Lead Head Nail is not 25 percent greater than plain drive screw nails manufactured and sold by competitors. In truth and in fact, there is little difference, if any, between the holding power of respondent's Long Screw Shank Lead Head Nail and plain drive screw roofing nails.

PAR. 5. The use by the respondent of the foregoing false and misleading statement and representation respecting 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 mistaken and erroneous belief that such statement and representation is true, and causes a substantial portion of the purchasing public, because

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of such mistaken and erroneous belief, to purchase substantial quantities of respondent's product.

PAR. 6. The aforesaid acts and practices of the 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 February 5, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Dickson Weatherproof Nail Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by respondent. Thereafter, testimony and other evidence in support of and in opposition to the complaint were introduced before trial examiners 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. Subsequently, the matter came on for final hearing before the Commission on the complaint, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being not 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, Dickson Weatherproof Nail Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1515 Sherman Avenue, Evanston, Ill., and with a branch office and factory located in Birmingham, Ala. Respondent is now, and for a number of years last past has been, engaged in the manufacture and sale of various kinds of roofing nails, such nails being used principally for fastening sheet metal roofing to wooden roofs. Among respondent's products is a nail designated by it as "Dickson Lock Screw Shank Lead Head Nail."

PAR. 2. Respondent causes and has caused its products, when sold, to be shipped from its places of business in the States of Illinois and Alabama 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 its products in commerce among and between 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 Dickson Lock Screw Shank Lead Head nails, respondent has made various representations with respect to such nails, such representations having been disseminated among prospective purchasers by means of advertising circulars and also by means of advertisements inserted in trade journals which have wide circulation throughout the United States. Among such representations are the following:

Dickson Lock Screw Shank Lead Head Nail. This nail turns as it is driven. The tapered locking projections cause it to have 25% more holding strength than a plain drive screw.

Through the use of these representations and others of similar import, respondent has represented that the holding strength of its Dickson Lock Screw Shank Lead Head nail is 25 percent greater than the holding strength of plain drive screw nails.

PAR. 4. At the instance of the Commission, tests were made by the National Bureau of Standards to determine the holding strength of respondent's nail as compared with that of plain drive screw nails, and the results of the tests are in evidence in this proceeding. These tests, as well as other evidence in the record, disclose that the holding strength of respondent's nail is not 25 percent greater than the holding strength of plain drive screw nails. In fact, there is little difference, if any, between the holding strength of respondent's nail and that of plain drive screw nails. The Commission therefore finds that respondent's representations with respect to its nail, as set forth above, are erroneous and misleading.

PAR. 5. The Commission finds further that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such 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 on the complaint of the Commission, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (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, Dickson Weatherproof Nail Co., 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's "Dickson Lock Screw Shank Lead Head" nails, or any other nails of substantially similar design, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That said nails possess 25 percent or any other substantial percentage or amount of greater holding strength than plain drive screw nails.

2. That said nails possess any holding strength in excess of that actually possessed by them.

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
**JOHN C. LUCAS, TRADING AS FOX STUDIOS, AND
FORMERLY TRADING AS UNITED STUDIOS, ET AL.**

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

Docket 4807. Complaint, Aug. 10, 1942—Decision, Nov. 3, 1943

A drawing is a representation produced by the art of drawing, and a painting is a likeness, image or scene depicted with paints without the aid of photography, a water color being a painting with pigments for which water and not oil is used as a solvent, and an oil painting being a painting done by hand with brushes and plastic oil colors on canvas, or other materials, without the aid of photography.

A portrait in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil.

Where an individual trading as "United Studios" and "Fox Studios" and his associate, engaged in interstate sale and distribution of photographs and, particularly, tinted or colored enlargements and miniatures thereof, in competition with others similarly engaged and with those engaged in the sale of genuine original paintings; contacting customers and prospective customers through newspaper advertising and through house-to-house salesmen canvassing various towns in crews, supplied with attractive samples of said individuals' work and with order coupons displaying aforesaid trade name "Fox Studios," and obtaining signatures to contracts for photographs—

- (a) Falsely represented that the tinted or colored photographs and the tinted enlargements or miniatures made therefrom, were "portraits in oil," "oil paintings," "oil portraits," "hand paintings," "hand colored paintings," or "paintings" through so describing them in order blanks, advertisements in newspapers, price lists, and representations employed by their canvassers;
- (b) Represented as the customary prices for their said pictures, prices which were in excess of those at which they were customarily offered, through salesmen's representations or statements in certificates that said so-called paintings, etc., were of a "\$7.50 value" or "\$5.00 value," etc.; represented that said pictures were being sold as "special introductory offers," "special opening bargains," "special Easter values," "Mother's Day specials" or at a reduced price for a limited time and to a limited number of customers; and, in soliciting from those who had already placed orders, sale of additional photographs at higher prices, represented through said salesmen that they could not make any money unless additional orders were given and would be forced out of business since the original offer was at less than cost or at the "special" offer price.

The facts being that photographs in question were of the sort ordinarily sold by popular price coupon photographic studios for \$1.00 each, and their aforesaid "special introductory" offers, etc., were not limited or special, but comprised part of a continuous scheme of solicitation in the regular course of their business;