

Complaint

IN THE MATTER OF

THE PRIME MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4978. Complaint, June 8, 1943—Decision, June 13, 1944*

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Prime Electric Fence Controller"; in advertising in trade journals, folders, circular letters and other advertising material, directly or by implication—

Falsely represented that its said electric fence controllers were free of trouble; that use thereof ended fencing worries; that said controller was a positive, sure or certain method of confining livestock, and would prevent the escape of livestock under all conditions; and that only an electric fence equipped with a "Prime Electric Fence Controller" was respected by animals;

The facts being it was not the only fence controller respected or feared by livestock, and an electric fence equipped with its electric fence controller would not confine fence breakers without prior and proper training of such animals by causing them to come in contact with the wire or wires charged with electricity, nor confine all livestock and particularly any animal of a size which would permit it to pass readily under or over the wire without contact, nor any animal whose natural covering or coat would serve to insulate it from electric shock at the point of contact with the wire;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of its product because of such mistaken belief:

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

Mr. Jesse D. Kash for the Commission.

Lecher, Michael, Spohn & Best, 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 The Prime Manufacturing 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. The Prime Manufacturing Company, is a corporation, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1669 S. First Street, Milwaukee, Wis. The respondent is now, and for more than two years last past has been, engaged in the business of manufacturing and selling electric fence controllers, designated "Prime Electric Fence Controller." Respondent causes its said product, when sold, to be transported from its aforesaid place of business in the State of Wisconsin to

Complaint

38 F. T. C.

purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said electric fence controllers 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 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 trade journals, by means of advertising folders, pamphlets, circular letters and other advertising material, 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:

PRIME Electric Fence Controller

—a wartime “natural” helping protect your business by giving you merchandise to sell now . . . at a profit . . . without headaches . . . to people who want and need it as never before. * * * The electric fence they use must be safe, dependable, trouble-free. That's where Prime comes in. * * *

No more fence worries.

PRIME Electric Fence Controllers

HOLD ALL of your livestock ALL of the time ALL over the farm.

Prime is the only fence he respects.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, the respondent has represented, directly or by implication, that its electric fence controllers are free of trouble; that the use of its electric fence controllers ends fencing worries; that it is a positive, sure or certain method of confining livestock, and will prevent the escape of livestock under all conditions; that only an electric fence equipped with a Prime Electric Fence Controller is respected by animals.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's electric fence controllers are not free from trouble and do not end fencing worries; the use of its fence controllers is not a positive, sure or certain method of confining livestock, and will not prevent the escape of livestock under all conditions; it is not the only fence controller respected or feared by livestock. An electric fence equipped with respondent's electric fence controller 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 in contact with the wire or wires charged with electricity.

PAR. 6. 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 such erroneous and mistaken belief.

PAR. 7. 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 June 8, 1943, issued and served its complaint in this proceeding upon the respondent, The Prime Manufacturing Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On July 28, 1943, the respondent filed an answer in this proceeding and thereafter a stipulation was entered into whereby it was stipulated and agreed that the statement of facts signed and executed by the respondent, The Prime Manufacturing Company, by H. E. Wild, President, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Federal Trade 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 said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereof, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; and the respondent expressly waives the filing of the report upon the evidence by the Trial Examiner. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation. Said stipulation has been approved, accepted and filed and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Prime Manufacturing Company, is a corporation, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 1667 South First Street, Milwaukee, Wis. The respondent is now and for more than two years last past has been engaged in the business of manufacturing and selling electric fence controllers, designated "Prime Electric Fence Controller." Respondent caused its said product, when sold, to be transported from its aforesaid place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said electric fence controllers 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 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, advertisements inserted in trade journals, by means of advertising folders, pam-

Conclusion

38 F. T. C.

phlets, circular letters and other advertising material, distributed generally to prospective purchasers, many misleading and deceptive representations concerning its said product. Among and typical of such statements and representations are the following:

PRIME Electric Fence Controller—a wartime “natural” helping protect your business by giving you merchandise to sell now . . . at a profit . . . without headaches . . . to people who want and need it as never before. * * * The electric fence they use must be safe, dependable, trouble-free. That’s where Prime comes in. * * *

No more fence worries.

Prime Electric Fence Controllers HOLD ALL of your livestock **ALL** of the time **ALL** over the farm.

Prime is the only fence he respects.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, the respondent has represented, directly or by implication, that its electric fence controllers are free of trouble; that the use of its electric fence controllers ends fencing worries; that it is a positive, sure or certain method of confining livestock, and will prevent the escape of livestock under all conditions; that only an electric fence equipped with a Prime Electric Fence Controller is respected by animals.

PAR. 5. The foregoing representations are grossly exaggerated and misleading. In truth and in fact, respondent’s electric fence controllers are not free from trouble and do not end fencing worries; the use of its fence controllers is not a positive, sure or certain method of confining livestock, and will not prevent the escape of livestock under all conditions; it is not the only fence controller respected or feared by livestock. An electric fence equipped with respondent’s electric fence controller will not confine fence breakers without prior and proper training of such animals by causing them to come in contact with the wire or wires charged with electricity. An electric fence equipped with respondent’s electric fence controller 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.

PAR. 6. The use by the respondent of the foregoing 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 statements and representations are true, and into the purchase of respondent’s product because of such erroneous and mistaken belief.

CONCLUSION

The foregoing acts and practices of the respondent, The Prime Manufacturing Company, 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 the respondent, and the stipulation of the facts entered into by the respondent, The Prime Manufacturing Company, and Richard P. Whiteley, Assistant Chief Counsel, for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent 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 conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Prime Manufacturing Company, a corporation, its agents, employees and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of an electric fence controller designated Prime Electric Fence Controller, or any other electric device of similar construction, whether sold under the same or any other name or names, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That such electric fence controllers are free of trouble.
2. That such controllers eliminate fence worries.
3. That the use of such controllers is a positive or sure method of confining livestock and will prevent the escape of livestock under all conditions.
4. That only a fence equipped with respondent's controller is respected by animals.
5. That the use of such controllers will hold or confine fence breakers without clearly and conspicuously disclosing that such fence breakers must first have received 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

SAMUEL B. SMITH

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 5030. Complaint, Aug. 18, 1943—Decision, June 13, 1944

Where an individual engaged in interstate sale and distribution of printed mailing cards, designed and intended for use by creditors and collection agencies in obtaining information concerning debtors, which, captioned "Identification" on the detachable stub at the top, followed by words "Identification No." and "Divisional Office," advised addressee to "Please Retain This Stub," called on the part below for his name and address and those of his employer, for his monthly earnings, minimum salary desired, information as to car and home ownership, the number of his dependents, length of time in present position, name and place of employment of spouse, if married, invited him "to describe briefly type of work for which you are best fitted," and gave as return address "Central Clearing Office Occupational Information";

Making use of a plan under which purchasers addressed the cards—identified by numbers he placed thereon—to the persons concerning whom information was sought at their last known address, inserted opposite the words "Divisional Office" a geographical designation such as "Western" or "Central," and stamped and mailed them and he sent to purchasers such reply cards as were filled out and mailed back—

Falsely represented through use of said cards and name "Central Clearing Office Occupational Information," and placed in the hands of his customers means of falsely representing, directly and by implication, to those to whom said cards were sent, that he was engaged in the business of conducting an employment agency and placing individuals in gainful positions;

When in fact the whole scheme was an attempt to obtain by deceit and subterfuge, information for the sole purpose of facilitating the collection of alleged delinquent accounts;

With effect of misleading and deceiving many persons to whom the said cards were sent into the mistaken belief that said representations were true and that the said name truthfully indicated the character of the concern requesting the information, and, by reason thereof, into giving information which they would not have otherwise supplied:

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. Arthur F. Thomas*, trial examiner.

Mr. Randolph W. Branch 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 Samuel B. Smith, an individual, 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