

Complaint

IN THE MATTER OF

MARYLAND GLASS & MIRROR CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5165. Complaint, May 24, 1944—Decision, Mar. 12, 1948*

Where glass used for window purposes was customarily sold by the manufacturers and sellers marked "Grade A" or "Grade B" according to its quality, and as "Double Strength" or "Single Strength" according to its strength or thickness, upon each sheet or pane, and upon the container in which packed; and thereafter a corporation engaged in the competitive interstate sale and distribution of said product to dealers and users, and in receiving, as thus engaged, "Grade B" glass, the individual sheets or panes of which were unlabeled—

- (a) Obliterated or altered the "Grade B" stamp, mark, or label upon the boxes or packages thereof and substituted therefor the term "Grade A," and sold and shipped or delivered such boxes or packages of "Grade B" window glass to dealers and users who had ordered and paid for "Grade A"; and
- (b) Affixed also to the unmarked individual sheets or panes of "Grade B" window glass a "Grade A" mark or label, and sold said "Grade B" window glass in less than case lots as and for "Grade A";

With the effect of misleading and deceiving customers and the purchasing public and inducing a substantial portion thereof to purchase its "Grade B" window glass as "Grade A" quality, whereby substantial trade was diverted unfairly to it from its competitors who did not thus misrepresent the quality of their products, to the serious injury of competition in commerce:

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

Mr. John L. York for the Commission.

Mr. Joseph Schottland, 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 Maryland Glass & Mirror 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, Maryland Glass & Mirror Co., is a corporation organized and existing under the laws of the State of Maryland, with its office and principal place of business at 1834 South Charles Street, in the city of Baltimore, Md.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of window glass to dealers, purchasers, and users thereof located in the various States of the United States and in the District of Columbia; and respondent causes and has caused its window glass, when so sold, to be transported from its principal place of business in Baltimore, Md., to the respective receiving points and places of business of such dealers, purchasers, and users in the various States of the United States other than the State of Maryland, and in the District of Columbia. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such window glass between and among the States of the United States and in the District of Columbia. In the course and conduct of its business respondent is, and was at all times herein referred to, in substantial competition with other corporations, individuals, firms and partnerships likewise engaged in the sale and distribution of window glass in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. The glass used generally for window purposes is sold customarily by the manufacturers and sellers thereof according to its quality, indicated by "Grade A" or "Grade B"; and its strength or thickness, indicated by "Single Strength" or "Double Strength." The higher and better quality of window glass is designated as "Grade A" and the lower and inferior quality of such glass as "Grade B." The stronger and thicker window glass is designated as being of "Double Strength" and the weaker and thinner window glass as being of "Single Strength." Sellers of window glass receive higher prices from the sale of window glass of grade A quality than from the sale of window glass of grade B quality and receive higher prices for double strength glass than for single strength glass. Such window glass is sorted customarily by its manufacturer according to grade and strength which is indicated by a stamp, mark, or label upon each sheet or pane of glass and upon the container in which it is packed.

PAR. 4. Respondent is a distributor of window glass for Fourco Glass Co., a West Virginia corporation, which in turn is owned and operated by and is sales agent for a group of glass manufacturers.

Through arrangement with said sales agent and group of manufacturers, the stamp, mark, or label customarily placed upon each sheet or pane of glass received by respondent and showing its grade and strength has been omitted, and because dealers and users of window glass generally lack the training, skill and experience requisite for grading window glass, such omission enables respondent to substitute the stamp, mark, or label of grade A window glass upon the container of window glass which is in fact of grade B quality; and to sell and dispose of such window glass in said commerce as, and at and for the higher price of, grade A window glass. Such omission to stamp, mark, or label the grade upon each sheet or pane of glass also enables respondent to sell and dispose of grade B window glass in less than case lots as, and at and for the higher price of, grade A window glass.

PAR. 5. During the month of April 1943, and both prior and subsequent thereto, respondent has pursued a method of competition and has followed a practice which consists of (1) receiving boxes or packages of window glass which have been and are appropriately stamped, marked, or labeled as grade B window glass upon the box or package but the individual sheets or panes of glass contained therein are not stamped, marked, or labeled with their grade, (2) altering the stamp, mark, or label upon the box or package without opening it and substituting thereon the words "Grade A" for the words "Grade B" and (3) selling and shipping or delivering such box or package of grade B window glass in said commerce as grade A window glass to purchasers and users who have ordered and paid for the higher grade. Respondent also sells grade B window glass in less than case lots as grade A window glass.

PAR. 6. The acts and practices of respondent and its method of competition herein described are calculated to, and do have the capacity and tendency to, and do mislead and deceive customers and prospective customers of respondent and the purchasing public by creating the erroneous belief that the stamps, marks, and labels substituted by respondent upon the containers and packages of window glass are true and that the product so represented is of grade A quality; and to cause a substantial number of such customers, prospective customers and the purchasing public, acting on such erroneous belief, to buy said respondent's window glass, thereby diverting trade to said respondent from its competitors who do not misrepresent the quality of their products, and thereby doing serious injury to substantial competition in said commerce.

Findings

44 F. T. C.

PAR. 7. Each and all of the acts and practices of respondent as herein alleged prejudice and injure the purchasing public and 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 May 24, 1944, issued and subsequently served its complaint in this proceeding on the respondent, Maryland Glass & Mirror Co., charging said respondent 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 that act. On July 1, 1944, the respondent filed its answer in which it admitted in part and denied in part the allegations of said complaint. The respondent subsequently filed a motion for permission to withdraw said original answer and to file in lieu thereof a substitute answer, and on February 10, 1948, this motion was granted and the substitute answer was received and filed. In this substitute answer the respondent admitted all of the material allegations of fact set forth in the complaint, except the allegation of paragraph 4 thereof to the effect that the omission of the stamp, mark, or label from each sheet or pane of window glass received by the respondent occurred through an arrangement with others, which the respondent denied, and the respondent expressly waived all intervening procedure and further hearing as to said facts and expressly consented for the Commission to make its findings as to the facts and its conclusion and to issue such order as it may determine to be appropriate on the basis of the complaint and the substitute answer. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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, Maryland Glass & Mirror Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 1834 South Charles Street, in the city of Baltimore, State of Maryland.

PAR. 2. The respondent is now and for several years last past has been engaged in the sale and distribution of window glass to dealers and users thereof located in the various States of the United States and in the District of Columbia. The respondent causes its window glass, when sold, to be transported from its place of business in Baltimore, Md., to such dealers and users in the various States of the United States other than the State of Maryland and in the District of Columbia, and it maintains and for several years last past has maintained a regular course of trade in such window glass among and between the various States of the United States and in the District of Columbia.

In the course and conduct of its business the respondent is and at all times herein mentioned was in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution of window glass in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Glass used for window purposes is sold customarily by the manufacturers and sellers thereof according to its quality, indicated by the terms "Grade A" or "Grade B," and according to its strength or thickness, indicated by the words "Double Strength" or "Single Strength." The higher and better quality of window glass is designated as "Grade A" and the lower and inferior quality of such glass is designated as "Grade B." The stronger and thicker window glass is designated as being of "Double Strength" and the weaker and thinner window glass as being of "Single Strength." Sellers of window glass receive higher prices for glass of grade A quality than for glass of grade B quality, and they receive higher prices for glass of double strength than for glass of single strength.

PAR. 4. Before being sold, or distributed, window glass is sorted customarily by its manufacturer according to its grade and strength, which is indicated upon each sheet or pane of glass and upon the container in which it is packed by a stamp, mark, or label. In the case of glass received by the respondent, however, the stamp, mark, or label showing the grade and strength of such glass is usually omitted from the individual sheets or panes of grade B glass, and because dealers and users of window glass generally do not possess the training, skill, or experience requisite for the grading of window glass, such omission enables the respondent to remove the grade B stamp, mark, or label on the container of such glass and to substitute therefor a grade A stamp, mark, or label and to sell and dispose of such grade B glass in commerce as and for, and at the higher price of, grade A

window glass. Such omission of the stamp, mark, or label from each sheet or pane of glass also enables the respondent to affix to individual sheets or panes of grade B window glass the grade A stamp, mark, or label, and to sell and dispose of such grade B glass in less than case lots as and for, and at the higher price of, grade A glass.

PAR. 5. In this connection, during the month of April 1943, and both prior and subsequent thereto, the respondent has pursued a method of competition and has followed a practice which consists of (1) receiving boxes or packages of window glass which have been and are appropriately stamped, marked, or labeled on the boxes or packages as grade B window glass, but which were not and are not stamped, marked, or labeled on the individual sheets or panes of glass contained therein, (2) obliterating or altering the grade B stamp, mark, or label upon the boxes or packages and substituting for the term "Grade B" thereon the term "Grade A," and (3) selling and shipping or delivering in commerce such boxes or packages of grade B window glass as grade A window glass to dealers and users who have ordered and paid for grade A glass. The respondent also affixes to the unmarked individual sheets or panes of grade B window glass a grade A stamp, mark, or label, and sells such grade B window glass in less than case lots as and for grade A window glass.

PAR. 6. The use by the respondent of the acts and practices and the method of competition herein described has the tendency and capacity to, and does, mislead and deceive customers and prospective customers of the respondent and the purchasing public into the erroneous and mistaken belief that the window glass of grade B quality sold and distributed by the respondent with the grade A stamp, mark, or label thereon is in fact window glass of grade A quality, and to cause a substantial portion of such customers, prospective customers, and the purchasing public, acting on such erroneous and mistaken belief, to purchase the respondent's product. In consequence thereof substantial trade has been and is diverted unfairly to the respondent from its competitors who do not so misrepresent the quality of their products, and serious injury to competition in commerce is thereby effected.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and to the 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 and the substitute answer of the respondent, in which answer the respondent, with certain exceptions, admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts; 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, Maryland Glass & Mirror 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 or distribution of window glass in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Removing or obliterating any stamp, mark, or label placed on containers of window glass by the manufacturer thereof to indicate the grade, strength, or quality of such glass, and substituting therefor a stamp, mark, or label indicating that such window glass is of a higher or different grade, strength, or quality.

2. Using the term "Grade A," or any equivalent term or designation, on individual sheets or panes of window glass, or on the containers in which window glass is sold or delivered, to indicate the grade or quality of window glass which is in fact of a lower grade or quality.

3. Representing through the use of any stamp, mark, or label on window glass, or on the containers thereof, or by any other means, that any of respondent's window glass is of a higher grade or quality or of greater strength than actually is the fact.

4. Selling or disposing of any window glass that is stamped, marked or labeled in such a manner as to indicate that such glass is of a higher grade or better quality than actually is the fact.

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
H. WALLACE JOHNSTON

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

Docket 5337. Complaint, June 21, 1945—Decision, Mar. 12, 1948

Where an individual engaged, through his son-in-law and daughter, in the interstate sale and distribution of the leaves of the Aloe Vera plant, represented by him as of value in the cure, mitigation, and treatment of various diseases; in advertising the same through the mails and by circulars, leaflets, and other advertising literature—

- (a) Represented that the external application of the jelly obtained from the leaf of said plant was a competent and adequate treatment for external sores, infections, swelling, and ulcers, and for sprains, bruises, burns, eczema, and other skin diseases, cuts, skin tumors, and boils;

The facts being that the value of said product in the treatment of eczema and other skin diseases was limited to its soothing effect by providing a moist, mucilaginous coating which would also keep dressing from adhering and was of some use as a skin protective, and, in the case of X-ray burns, might serve to alleviate pain; and use of the leaves had only a limited value in the treatment of burns, including X-ray and third-degree burns; and, except as above noted, and in excess of giving a soothing effect, use thereof was not a competent or effective treatment for conditions above noted; and

- (b) Represented that the juice or extract of the leaf of said plant, when taken internally, was a competent and adequate treatment for stomach ulcers, arthritis, rheumatism, gout, diabetes, colitis, constipation, chronic constipation, indigestion, dyspepsia, amenorrhea, atonic dyspepsia, and all disorders resulting from an excess of acidity or sugar, and would clear the blood of all germs and poisons;

The facts being that said juice was a laxative; its treatment of constipation was limited to its laxative effect and it might temporarily relieve dyspepsia when due to an atonic colon, though it did not constitute a treatment for any underlying condition; and otherwise it had no therapeutic value in the treatment of ailments and conditions above set-out;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby induce purchase of substantial quantities of his said leaves:

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.

In said proceeding in which the complaint also charged that respondent's advertisements of its said product, which was a laxative, were false in that they failed to reveal that such product might be potentially dangerous when taken as directed, or under customary conditions, the Commission was of the