

IN THE MATTER OF
COOPER TIRE AND RUBBER COMPANY AND THE COOPER
CORPORATION

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

Docket 5581. Complaint, Sept. 17, 1948—Decision, Mar. 28, 1949

Where a corporation engaged in the manufacture and, through its wholly owned subsidiary, interstate sale and distribution of first-grade tires, and of "seconds," the latter consisting of blemished and "obsolete" tires, namely, tires in which the thickness at some point or points was below standard, discontinued or slow moving sizes or designs, and tires with discolored or black-marred white side-walls;

In selling said second-grade tires in accordance with the practice whereby (1) the serial number or a part thereof is buffed off the blemished tire, and a paper sticker bearing word "blemish"—easily pulled off when the tire is mounted—is affixed to the tread, (2) the brand mark "XX" is affixed to the bead of the obsolete tire, either on the side or top, and, (3) said seconds are wrapped in strip paper before shipment to dealers for sale at substantially lower prices than the first-grade tires to the general public, which is unaware of the significance of the aforesaid brand mark or of the buffing off of the serial number—

Offered, sold and delivered said tires without adequately and conspicuously marking them so that the public might be informed as to their second grade nature; with the result of placing in the hands of unscrupulous dealers a means and instrumentality whereby they might lead the public into the mistaken belief that said tires were in fact first grade, and into the purchase thereof as such:

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.

Mr. Charles S. Cox 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 Cooper Tire & Rubber Co., a corporation, and The Cooper Corp., a corporation, herein-after referred to as respondents have 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. Cooper Tire & Rubber Co. is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Delaware and has its principal office and place of business at Findlay, Ohio. Prior to July 1, 1946, the corporate name of said company was Master Tire & Rubber Corp. The Cooper Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio and has its principal office and place of business at Findlay, Ohio.

PAR. 2. Respondent, Cooper Tire & Rubber Co., is now and for more than 10 years last past has been engaged in the manufacture of rubber tires for use on motor vehicles. Respondent, The Cooper Corp., is now and for more than 10 years last past has been a wholly owned subsidiary of the said Cooper Tire & Rubber Co., by and through which the said Cooper Tire & Rubber Co. sells its said tires. Such tires are ordinarily sold to dealers for resale to the public.

Respondents cause said products, when sold by them, to be transported from their aforesaid place of business in the State of Ohio to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said automotive tires and tubes in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their businesses, respondent, Cooper Tire & Rubber Co., manufactures, and The Cooper Corp. sells and distributes, among other things, first grade tires and second grade tires commonly known as "seconds." The "seconds" consist of blemished tires, that is, tires whose thickness at some point or points is below standard as a result of the rubber not properly filling out the mold, and "obsolete" which consist of either discontinued or slow moving sizes or designs and white side-wall tires which have been discolored or marred with black rubber. In order to distinguish the blemished tires, the serial number or a part thereof is buffed off and a paper sticker bearing the word "blemished" is affixed to the tire tread. In the case of obsolete tires the brand mark "XX" is affixed on the bead either on the side or top. In both cases the tires are wrapped in strip paper before shipment to dealers. Because of the fact that these tires are wrapped when received by the dealers, all markings are concealed. After removing the wrapper the "blemished" sticker is easily pulled off and when mounted on motor vehicle wheels, the brand mark "XX" is concealed. The general public is not aware of the significance of such brand mark or the buffing off of the serial number.

Neither of these classes of tires are classified as first-grade tires and are less desirable than first-grade tires and are billed to dealers and

are intended to be sold to the public at substantially lower prices than first-grade tires.

PAR. 4. The failure of the respondent, Cooper Tire & Rubber Co., to adequately and conspicuously mark such tires sold by The Cooper Corp. so that the public may be informed that they are second-grade places in the hands of unscrupulous dealers a means and instrumentality whereby such dealers may lead the public into the mistaken belief that such tires are in fact first-grade tires and to purchase such tires as first-grade tires.

PAR. 5. The aforesaid practices of the respondents 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 September 17, 1948, issued and thereafter served upon the respondents, Cooper Tire & Rubber Co. and The Cooper Corp., both corporations, its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On October 26, 1948, the respondents filed their joint answer, in which they admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; 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 Cooper Tire & Rubber Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Findlay, Ohio. Prior to July 1, 1946, the corporate name of said company was Master Tire & Rubber Corp. Respondent The Cooper Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business also located at Findlay, Ohio.

PAR. 2. Respondent Cooper Tire & Rubber Co. is now, and for more than 10 years last past has been, engaged in the manufacture of rubber tires for use on motor vehicles. Respondent The Cooper Corp. is now, and for more than 10 years last past has been, a wholly owned subsidiary of the said Cooper Tire & Rubber Co., by and through which the said Cooper Tire & Rubber Co. sells its said tires. Such tires are ordinarily sold to dealers for resale to the public.

Respondents cause their tires, when sold by them, to be transported from their aforesaid place of business in the State of Ohio to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, respondent Cooper Tire & Rubber Co. manufactures, and The Cooper Corp. sells and distributes, among other things, first-grade tires and second-grade tires commonly known as "seconds." The "seconds" consist of blemished tires, that is, tires the thickness of which at some point or points is below standard as a result of the rubber not properly filling out the mold, and "obsolete" tires which consists of either discontinued or slow moving sizes or designs and white side-wall tires which have been discolored or marred with black rubber. In order to distinguish the blemished tires, the serial number or a part thereof is buffed off and a paper sticker bearing the word "blemished" is affixed to the tire tread. In the case of obsolete tires the brand mark "XX" is affixed on the bead either on the side or top. In both cases the tires are wrapped in strip paper before shipment to dealers. Because of the fact that these tires are wrapped when received by the dealers, all markings are concealed. After the wrapper is removed the "blemished" sticker is easily pulled off and when the tire is mounted on motor vehicle wheels, the brand mark "XX" is concealed. The general public is not aware of the significance of such brand mark or of the buffing off the serial number.

Neither the "blemished" nor the "obsolete" tire is classified as a first-grade tire and both of these types of tires are less desirable than first-grade tires. They are both billed to dealers and are intended to be sold to the public at substantially lower prices than first-grade tires.

PAR. 4. The failure of the respondent Cooper Tire & Rubber Co. to adequately and conspicuously mark such tires sold by The Cooper Corp., so that the public may be informed that they are second-grade, places in the hands of unscrupulous dealers a means and instrumen-

Order

45 F. T. C.

tality whereby such dealers may lead the public into the mistaken belief that such tires are in fact first-grade tires and to purchase such tires as first-grade tires.

CONCLUSION

The aforesaid practices of the respondents as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the joint answer of the respondents, in which answer the respondents admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Cooper Tire & Rubber Co., and The Cooper Corp., and said respondents' officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of rubber tires for use on motor vehicles, do forthwith cease and desist from:

Offering for sale, selling or delivering to dealers, or to others for sale to the public, any second-grade, blemished, or obsolete tire, or any tire which for any reason is not of first-grade quality, which does not have permanently stamped or molded thereon or affixed thereto and to the wrappings in which said tire is encased, in terms of sufficient size and clarity and in such location as to be plainly legible to and understood by a purchaser of said tire both before and after it has been mounted on a motor-vehicle wheel, a legend or statement to the effect that said tire is second-grade, blemished or obsolete, or stating the reason why it is not of first-grade quality.

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

Syllabus

IN THE MATTER OF

AMERICAN SHUTTLE MANUFACTURERS' ASSOCIATION
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 5593. Complaint, Oct. 7, 1948—Decision, Apr. 6, 1949

Where 11 corporate and partnership concerns, which, as of January, 1947, included all but about 4 of the manufacturers in this country of shuttles—commodities specially constructed in a wide variety of sizes to customers' specifications for weaving cloth; made and sold about fifty percent of such products; were in competition except insofar as competition had been hindered as below set out; and were members of an association which they had created as successor to a much older organization, and which they made use of in furtherance of the unlawful acts and practices below set forth; Acting among themselves and through their said association, and beginning more than 10 years ago, continuously engaged in and carried out an unlawful understanding and conspiracy, with the intent and effect of eliminating competition in the interstate sale and distribution of said products; and pursuant thereto—

- (a) Concertedly established, fixed and maintained prices, discounts and extra charges to be applied by each in the sale and distribution of shuttles;
- (b) Agreed to and did from time to time hold meetings under the auspices and supervision of duly elected representatives and agents of their said association, at which they informed each other concerning the intimate details of the business of each, including prices to be quoted and charged in current and future sales transactions; and
- (c) Exchanged among themselves current and future quotations of prices, terms and conditions of sale offered to the trade;

Whereby they acquired a common understanding of what each was expected to do in the establishment and maintenance of prices and pricing policies, and there existed a tacit understanding among them that they would and should adhere to the price lists or quotations exchanged and discussed until different price lists and quotations were issued or exchanged;

Capacity, tendency and effect of which understanding, etc., and acts and practices performed pursuant thereto, were to substantially restrain and eliminate competition between and among them in the sale and distribution of said products in commerce; to unreasonably restrict and restrain trade and commerce therein; and to tend dangerously to create in them a monopoly in the sale and distribution of shuttles:

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

Mr. Paul R. Dixon for the Commission.