

IN THE MATTER OF

SOL BARNETT TRADING AS
AMERICAN ANTIMONY COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6387. Complaint, June 30, 1955—Decision, Jan. 6, 1956*

Consent order requiring a seller of household paints in Los Angeles, Calif., to cease advertising falsely in newspapers, etc., that he was forced to sell a limited amount of high-grade paint at a special reduced price.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Louis Licht and *Mr. Bernard Kriegel*, of Los Angeles, Calif., 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 Sol Barnett, an individual, trading as American Antimony Company, 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 Sol Barnett is an individual trading as American Antimony Company. Respondent is now, and for more than one year last past has been, engaged in the promotion, sale and distribution of interior and exterior household paints. Respondent's office and principal place of business is located at 1417 South Robertson Boulevard, Los Angeles, California. Said paints are sold directly to purchasers by the respondent from his Los Angeles office.

PAR. 2. In the course and conduct of his business, respondent now causes and has caused said products, when sold, to be transported from his place of business in the State of California and from public warehouses in States other than California to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade, in commerce, in said products.

PAR. 3. Respondent at all times mentioned herein has been in substantial competition, in commerce, with other persons and with

corporations, firms and partnerships engaged in the sale of paints.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said paints, respondent has made various statements and representations concerning his said paints and business methods through advertisements inserted in newspapers, circular letters and other advertising literature circulated generally among the purchasing public. Typical representations made by respondent in the aforesaid advertisements, circular letters and other advertising literature, but not all inclusive, are as follows:

We have 148 gallons exterior white paint and 44 gallons interior white paint in a public warehouse that must be moved immediately. Inasmuch as this paint is so near you, we will accept \$2.75 per gallon for the exterior and \$3.00 per gallon for the interior delivered to your door. You may take all or any part of this lot.

In a public warehouse near you we have 104 gallons of our high quality Genuine outside White Paint." * * * This paint must be moved immediately. Special price \$2.75 per gallon, delivered. You may take all or any part of this lot.

An expensively formulated pure Linseed Oil and Titanium Base Paint for exceptional durability, protection and beauty.

A scientifically balanced combination of only the best titanium pigment and Pure linseed oil is used in Amanco brand.

Because this paint is identical to nationally sold brands at twice this price, we suggest you order the maximum quantity you can use.

Amanco Brand: Must dispose of 48 gals. white high grade house paint, located in local warehouse. Sells for \$4.75, sacrifice for \$2.75 per gal. Minimum order 4 gals.

PAR. 5. Through the use of the statements set forth in Paragraph 4 and others similar thereto but not specifically set out therein, respondent has represented and does now represent, directly or by implication, that:

1. Respondent has only a limited and specified amount of paint in a public warehouse located near the address of the recipient of respondent's literature and that he is forced to sell such paint immediately.

2. That the paint offered for sale is an expensive, superior and high grade paint and that the base consists of the best grade of titanium and that there is sufficient linseed oil in the vehicle to justify the paint being designated as a linseed oil paint.

3. That the paint is offered for sale at a special and reduced price from respondent's usual and customary retail price.

4. That respondent's paint is identical to nationally sold brands selling at twice the price at which respondent offered his paint for sale.

PAR. 6. The foregoing representations and implications are grossly exaggerated, false and misleading. In truth and in fact:

1. Respondent did, in some cases but not in all, have the specified amount of paint stored in a public warehouse at the time he disseminated his circular letter and placed his advertisements. However, respondent accepted and will accept unlimited orders for his paint from any and all persons who forward an order to him irrespective of the total amounts of such orders. Said amounts far exceed the limited and specified amount respondent represented as being offered for sale. Respondent is not forced to sell his paint at any time.

2. The paint offered for sale is not an expensive or superior or high-grade paint. The base does not consist of the best grade of titanium and there is not sufficient linseed oil in the vehicle to justify the designation of said paint as a linseed oil paint.

3. The price at which respondent offered his paint for sale is not a special or reduced price but such price is his usual and customary retail price.

4. Respondent's paint is not identical to nationally sold brands selling at twice the price at which respondent offered his paint for sale.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and practices, in connection with the offering for sale and the sale and distribution in commerce of said paints, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of said paint because of such erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondent from his competitors and substantial injury has been done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent Sol Barnett, an individual trading as American Antimony Company, with his office and principal place of business located at 1417 South Robertson Boulevard, Los Angeles, California, is now, and for more than one year last past has been, competitively engaged with other persons, corporations, firms and partnerships, in the promotion, sale and distribution

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of interior and exterior household paints in commerce; and that he has falsely and deceptively misrepresented his paints and business methods, to the prejudice and injury of the public and of respondent's competitors, in violation of the Federal Trade Commission Act. After the issuance of the complaint and the filing of answer thereto, respondent, his counsel, and counsel supporting the complaint, on October 24, 1955, entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that respondent's answer to the complaint shall be considered as having been withdrawn, and that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent waives any further procedure before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent, Sol Barnett, an individual trading as American Antimony Company, 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

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sale, sale or distribution of interior or exterior paint, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent has only a limited amount of paint available for sale;
2. That respondent is forced to sell his paint;
3. That the paint offered for sale is expensive, superior, or high grade paint or is identical to nationally sold paints selling at a higher price than that charged by respondent;
4. That the base of respondent's paint consists of the best grade of titanium;
5. That respondent's paint is a linseed oil paint, unless and until the major constituent in the vehicle of said paint consists of linseed oil;
6. That the price at which respondent's paint is offered for sale is a special or reduced price unless such price is substantially lower than his customary and usual price for the same paint.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of January, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Sol Barnett, an individual trading as American Antimony Company, shall, within sixty (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 the order to cease and desist.

Complaint

IN THE MATTER OF

BROCHERS TRADING CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS*Docket 6403. Complaint, Aug. 24, 1955—Decision, Jan. 6, 1956*

Consent order requiring importers in New York City to cease violating the Flammable Fabrics Act by importing into the United States from Japan and selling in commerce silk scarves which were so highly inflammable as to be dangerous when worn.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Brockman Horne for the Commission.

Barnes, Richardson & Colburn, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Brochers Trading Corporation, a corporation, Gregory Pasteur and Hershel Milner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated thereunder, 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 Brochers Trading Corporation, is a New York corporation. Respondents Gregory Pasteur and Hershel Milner are president and secretary-treasurer, respectively of respondent Brochers Trading Corporation. The individual respondents formulate, direct, and control the policies of said corporation. The business address of all respondents is 1412 Broadway, New York, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have imported into the United States articles of wearing apparel, as the term "articles of wearing apparel" is defined in the Flammable Fabrics Act, which, under the provisions of Section 4 of the said Act, as amended, were so highly flammable as to be dangerous when worn by individuals. Respondents have sold, offered for sale, introduced, delivered for introduction, and