

prices,

4. Refusing to sell to dealers who fail to adhere to such prices upon the same terms as to dealers who do so adhere;

5. Furnishing or affording any advantage to dealers who adhere to such prices while refusing similar treatment to dealers who do not so adhere.

FEDERAL TRADE COMMISSION *v.* BLOCK & CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 38.—June 6, 1918.

SYLLABUS.

Where a manufacturer for 24 years made and sold a salve under the trade name of "Mentholatum," which trade name had acquired a well-defined meaning and reputation with the purchasing public, and put such preparation up in paper cartons with said trade name prominently displayed thereon, and subsequently a competing manufacturer, with knowledge of these facts, began to make and sell a similar preparation, put its preparation up in cartons similar to those used by the original manufacturer, adopted the trade name "Mentholanum," displayed the same on such cartons, and advertised such preparation for similar uses, which simulation was calculated to, and did, deceive and mislead the purchasing public and cause them to believe that the later manufacturer's preparation was one and the same as the original:

Held, That the simulation of name and dress of goods, under the circumstances set forth, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Block & Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Block & Co., is a corporation, organized, existing and doing business under and by virtue of the laws of New York, having its principal office and place of business at the city of Brooklyn, in said State, and is now, and was at all times hereinafter mentioned, engaged in the manufacture and sale of soaps, toilet and pharmacal preparations, among which is a mentholated petrolatum, to which it has applied the name "Mentholanum," and which is adopted and intended to be used in treating various ailments and diseases of the skin, tissues and muscles, and that such mentholanum is manufactured and sold at all times hereinafter mentioned by the respondent, in direct competition with manufacturers and dealers of similar preparations used for like purposes.

PAR. 2. That in the conduct of its business, the respondent, Block & Co., purchases the component ingredients used in the manufacture of mentholanum in various States and Territories in the United States, and transports the same through other States and Territories in and to the city of Brooklyn, State of New York, where they are assembled and made into such mentholanum, which is from there sold and shipped to dealers in different States and Territories of the United States and the District of Columbia, for resale to the public, and that there is continually, and has been at all times herein mentioned, a constant current of trade and commerce in said preparation between and among the vari-

ous States and Territories of the United States and the District of Columbia, and more particularly from other States and Territories of the United States and the District of Columbia, to and through the city of Brooklyn, State of New York, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the Metholatum Co., hereinafter referred to as the applicant, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at the city of Buffalo, in said State, and for 24-years last past has been engaged in the business of manufacturing and selling a preparation in the form of a salve, adapted for the use of treating different ailments and diseases of the skin, tissues and muscles, to which it has applied the trade name Mentholatum; that said preparation is sold by dealers in different States and Territories of the United States and the District of Columbia, in paper cartons, upon which Mentholatum is printed in large and distinct letters, and such trade name, through years of sale and advertising, has acquired a well defined meaning and reputation with the purchasing public, all of which is, and was, well known to the respondent.

PAR. 4. That the respondent, within the year last past, began the manufacture and sale of its preparation, as aforesaid, and with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of preparations similar to its, has adopted the trade name of Mentholanum, displaying the same in large and distinct letters upon the cartons in which the same is sold and which are similar to those used by the applicant herein, and advertises this preparation for uses similar to those in a like advertisement by the applicant; all of which simulation is designed and calculated to, and does, deceive and mislead the purchasing public and cause purchasers to believe that respondent's preparation is one and the same as that of the applicant herein.

REPORT, FINDINGS AS TO THE FACTS, AND
ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Block & Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondent, having entered its appearance by Louis Klatzkie, its treasurer, duly authorized to act in the premises, and having filed its answer admitting that the matters and things alleged in the said complaint are true, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts, and its order disposing of this proceeding.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Block & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its home office located at the city of Brooklyn in the said State of New York, now and for more than one year last past engaged in the business of manufacturing and selling toilet and pharmacal preparations among which is a mentholated petrolatum to which it has applied the name Mentholanum, generally in commerce throughout the States and Territories of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the conduct of its business, Block & Co. have purchased the component ingredients used in manufacturing Mentholanum in various States and Territories of the United States, and the same are transported through said States and Territories to the city of Brooklyn, State of New York, and there are assembled and made into Mentholanum,

which is from there sold and shipped to the trade in different States and Territories of the United States and the District of Columbia.

PAR. 3. That the Mentholatum Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of Buffalo, in said State, and for 24 years last past has been engaged in the business of manufacturing and selling a preparation in the form of a salve adapted for the use of treating different ailments and diseases of the skin, tissues, and muscles, to which it has applied the trade name Mentholatum; that said preparation is sold by dealers in different States and Territories of the United States and the District of Columbia in paper cartons, upon which "Mentholatum" is printed in large and distinct letters, and such trade name through years of sale and advertising has acquired a well-defined meaning and reputation by the purchasing public, all of which is, and was, well known to the respondent.

PAR. 4. That the respondent, within the year last past, began the manufacture and sale of its preparation as aforesaid and did adopt the trade name of Mentholanum, applying the same in large and distinct letters upon the cartons in which the same is sold and which are similar to those used by the Mentholatum Co., and advertises this preparation for uses similar to those in a like advertisement by the Mentholatum Co., all of which simulation is designed and calculated to, and does, deceive and mislead the purchasing public and cause purchasers to believe that respondent's preparation is one and the same as that of the Mentholatum product.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts in paragraph 4 is, under the circumstances therein set forth, an unfair method of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having entered its appearance by Louis Klatzkie, its treasurer, duly authorized to act in the premises, and having filed its answer admitting that the matters and things alleged and contained in the said complaint are true, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding; and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and is made a part hereof. Now, therefore,

It is ordered, that the respondent, Block & Co., of the city of Brooklyn, State of New York, and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly employing, using, adopting or applying the name "Mentholanum" to the preparations or articles manufactured and sold by it, or any other name so similar to the trade name "Mentholum" as to be likely to deceive and mislead the purchasing public and cause purchasers to believe that respondent's preparation is one and the same as that made and sold under the trade name "Mentholum."
