

Complaint.

FEDERAL TRADE COMMISSION

v.

ALBANY CHEMICAL COMPANY.

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

Docket 700—April 19, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of drugs, including acetyl salicylic acid, popularly known as "aspirin," registered the word as a general trade-mark in a large number of States, accompanying its applications for registration with affidavits that it alone had the right to use the word, and thereafter—

- (a) Advertised generally that "Acco Aspirin," its product, was the only genuine aspirin;
- (b) Advertised that the word was its general trade-mark; and
- (c) Threatened numerous druggists and dealers with suits for infringement if they used the word on the products of any other concern;

Notwithstanding the fact that long prior to such attempted appropriation thereof, the word had been continuously, openly, and notoriously applied by numerous other manufacturers and dealers to the product acetyl salicylic acid and the exclusive right there to openly asserted and pressed by the successor to another company, the original patentee of the product and registrant of the word:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Albany Chemical Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition 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 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the city of Albany in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling drugs, chemicals, pharmaceutical supplies, etc., and

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causes said commodities to be transported to the purchasers thereof, from the State of New York through and into other States of the United States and to foreign countries, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That among the commodities sold by respondent is acetyl salicylic acid, for which letters patent of the United States No. 644,077 was issued on February 27, 1900, which was subsequently assigned to The Bayer Co. (Inc.), a New York corporation, and which patent expired on February 27, 1917; that for a number of years prior to February 27, 1917, acetyl salicylic acid, made by The Bayer Co. and the original owner of said patent No. 644,077, was designated by the respective manufacturers thereof and became known to the general public as "aspirin"; that the word "aspirin" was registered in the Patent Office of the United States on May 2, 1899, as a trade-mark, and the right thereto, if any existed, was acquired by The Bayer Co. (Inc.) by assignment on June 12, 1913; that on March 3, 1917, the Patent Office of the United States upon petition canceled the registration of such trade-mark, upon the ground, among others, that upon the expiration of said patent No. 644,077 the word "aspirin" became the descriptive name of acetyl salicylic acid and therefore not the exclusive trade-mark property of The Bayer Co. (Inc.).

PAR. 4. That in January, 1920, respondent made application to the secretary of state of numerous States of the United States for registration of the word "aspirin," and the claim was made by respondent for "the word 'aspirin' as a general trade-mark," and upon issuance to it by the secretary of state of the various States of certificates of registration as applied for, respondent thereupon started an extensive campaign of newspaper advertising, in which advertising it made numerous erroneous and deceptive statements of and concerning aspirin and respondent's right to the use of the word "aspirin" in connection with the manufacture and sale of acetyl salicylic acid products; that among such erroneous and deceptive statements were statements to the effect that "aspirin" is the registered trade-mark property of respondent; that respondent manufactured the genuine "aspirin"; that only by using respondent's "aspirin" could the public secure the medicinal value for which it paid and expected to get.

PAR. 5. That in addition to the advertising campaign carried on by respondent as described in paragraph 4 hereof, respondent wrote letters to numerous dealers in drugs and medicines in which the

claim was made that any use by them of the trade-mark "aspirin" alone or associated with any other word, except upon the product of respondent, will be regarded by respondent as in violation of and an infringement of its property rights in said trade-mark.

PAR. 6. That by reason of the facts recited the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Albany Chemical Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance by its attorneys, without filing an answer herein, and an agreed statement as to the facts having been made and filed, in which the taking of testimony in this proceeding is specifically waived and in which it is agreed that said statement as to the facts may be accepted by the Commission in lieu of testimony and that upon consideration thereof the Commission may make and enter such order as it may deem proper herein.

And thereupon this proceeding came on for final hearing without oral argument, and the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Albany Chemical Co., is and was at the times herein mentioned, a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Albany, in said State.

PAR. 2. That the respondent is and was at the times herein mentioned, engaged in the business of manufacturing and selling drugs, chemicals, and pharmaceutical supplies, and in the course of such business causes said commodities to be transported to purchasers thereof from the State of New York through and into other States of the United States, and to foreign countries, and that in the con-

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duct of its said business the respondent is in direct, active competition with other persons, copartnerships and corporations similarly engaged.

PAR. 3. That among the commodities manufactured and sold by the respondent in the course of its business is acetyl salicylic acid, more correctly described as the acetyl derivative of salicylic acid, which it manufactures and sells and causes to be transported in interstate commerce in the manner set forth in paragraph 2 hereof.

PAR. 4. That in the month of January, 1920, respondent made application to the secretary of state of numerous states of the United States for the registration of the word "aspirin" as a general trade-mark, and that pursuant to such application certificates of registration for said word "aspirin" as a general trade-mark were issued by the proper officers of each of the following States:

Colorado.	Minnesota.	Oregon.
Connecticut.	Missouri.	Pennsylvania.
Delaware.	Montana.	Rhode Island.
Florida.	Nebraska.	South Carolina.
Idaho.	Nevada.	South Dakota.
Illinois.	New Hampshire.	Tennessee.
Louisiana.	New Jersey.	Vermont.
Maine.	North Carolina.	Washington.
Maryland.	North Dakota.	West Virginia.
Massachusetts.	Ohio.	Wisconsin.
Michigan.	Oklahoma.	Wyoming.

PAR. 5. That in each application for the registration of said word "aspirin" as a general trade-mark, respondent claimed to have used it as a trade-mark, or stated it intended to use it as a trade-mark, on the following class of merchandise: "Chemicals, medicinal, pharmaceutical, veterinary, biological, and household preparations, compounds, waters, and the like that may be used internally and externally for humans and other purposes, and in one or more of the following forms or combinations thereof: Ampuls, crude materials, crystals, liquids, lozenges, mixtures, ointments, powders, solids, solutions, spirits, sirups, tablets (in round, square, or oblong shapes or otherwise), tinctures, prepared, if desired, in sanitary packing, in type and style for tablets, powders, and the like, and in other forms. (The foregoing class of products are mentioned by way of illustration.)" In such applications claim was made for "the word 'aspirin' as a general trade-mark" and also "claim is made for the word 'aspirin'" and "for the arbitrary word 'aspirin' as generally arranged as shown in the counterpart, but other forms of type may be employed or it may be differently arranged without materially altering the character of the said trade-mark."

PAR. 6. That each of said applications mentioned in paragraph 4 hereof was accompanied by an affidavit signed by the president of respondent, which affidavit contained a sworn statement to the effect that the respondent has a right to use the trade-mark "aspirin," and that no other person, firm, union, or corporation has a right to such use, either in the identical form described in such application, or in any such near resemblances thereto as may be calculated to deceive, and contained also further sworn statement to the effect that the word "aspirin" is the exclusive property of the respondent.

PAR. 7. That immediately upon registering the said word "aspirin" as a general trade-mark, respondent entered upon an advertising campaign and caused to be inserted and published in various newspapers and other publications which circulate generally throughout the United States, advertisements to the effect that "Acco aspirin" is the only genuine aspirin, and that "aspirin" is the general trade-mark property of respondent; and that annexed to said agreed statement of facts (marked "Exhibits 1" to "14," inclusive) and made a part thereof are true copies of some such advertisements to which reference is hereby made for the dates of said several publications and the contents of said advertisements.

PAR. 8. That the respondent during the month of April, 1920, and other times by the use of letters threatened numerous druggists and dealers in drugs and medicines with suits for infringement, if such druggists and dealers used the trade-mark "aspirin" on the products of any person other than those of respondent.

PAR. 9. That among the articles manufactured and sold by respondent under the trade-mark "aspirin" in interstate commerce, as set forth in paragraph 2 hereof, is a certain chemical known as acetyl salicylic acid, more properly described as the acetyl derivative of salicylic acid; that on May 2, 1899, the Farbenfabriken of Elberfeld Co., a corporation of Germany, caused to be registered in the United States Patent Office its trade-mark "aspirin," as applied to its preparation of acetyl salicylic acid, and thereafter, viz, on February 27, 1900, a United States patent was issued to said Farbenfabriken of Elberfeld Co. covering its formula for the preparation of said acetyl salicylic acid or the acetyl derivative of salicylic acid, and said Farbenfabriken of Elberfeld Co. continuously, from 1899 to the month of June, 1913, manufactured, sold, and caused to be shipped in interstate and foreign commerce the said chemical acetyl salicylic acid under the name of "aspirin," claiming said word as its trade-mark property.

PAR. 10. That in June, 1913, The Bayer Co. (Inc.), the capital stock of which was owned by subjects of the Emperor of Germany,

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claims to have acquired said trade-mark and said patent from the Farbenfabriken of Elberfeld Co., and since that date The Bayer Co. (Inc.) has caused to be manufactured, sold, and transported generally throughout the several States of the United States and the Territories thereof, and the District of Columbia, under said trade-mark "aspirin," at all times claiming said word as its trade-mark property, the said acetyl salicylic acid, or the acetyl derivative of salicylic acid; that after the declaration of war by the United States against Germany, the Alien Property Custodian, pursuant to said declaration of war and in conformity with the provisions of the act of Congress known as the trading with the enemy act, and the Executive orders issued pursuant thereto, seized the shares of capital stock and other property of said The Bayer Co. (Inc.), and on December 12, 1918, sold the same at public auction to Sterling Products Co., a corporation whose stockholders are citizens of the United States; and said The Bayer Co. (Inc.), under the ownership of Sterling Products Co., has continued since said last-mentioned date to manufacture, sell, and cause to be shipped throughout the several States of the United States and the Territories thereof, and the District of Columbia, said acetyl salicylic acid under the name "aspirin," claiming said word as its trade-mark property.

PAR. 11. That the patent referred to in paragraph 9 hereof expired on February 27, 1917, and in December, 1917, upon an application made for that purpose, the United States Patent Office canceled the registration of said word "aspirin" as a trade-mark, on the ground that the word has become by common use descriptive of said acetyl salicylic acid or the acetyl derivative of salicylic acid, and that upon the expiration of said patent the word became the property of all who make and use acetyl salicylic acid or the acetyl derivative of salicylic acid; and that thereupon, and prior to the time respondent caused the word "aspirin" to be registered as its trade-mark, as set forth in paragraph 4 hereof, many manufacturers of chemicals and drugs and like products commenced to manufacture, sell, and cause to be transported in interstate commerce, preparations of acetyl salicylic acid, labeling the same "aspirin," and have since continued to manufacture said acetyl salicylic acid and sell the same and cause the same to be transported throughout the several States of the United States and the Territories thereof, and the District of Columbia, and foreign countries in interstate commerce under said name "aspirin."

PAR. 12. That the use of said word "aspirin" as applied to acetyl salicylic acid by said Farbenfabriken of Elberfeld Co., and The Bayer Co. (Inc.), prior to February 27, 1917, and by The Bayer

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Co. (Inc.), and numerous other manufacturers and dealers in chemicals, drugs, and like products since said date, as applied to said chemical, has been continuous, open, and notorious, and The Bayer Co. (Inc.) has continuously and publicly claimed the exclusive right to use the said word "aspirin" as its trade-mark property and has at all times since June, 1913, used said word and advertised it generally throughout the United States as its trade-mark.

PAR. 13. That a suit is now pending in the United States District Court for the Southern District of New York, brought by The Bayer Co. (Inc.) against the United Drug Co., the object of which is to enjoin the United Drug Co. from using the word "aspirin" in connection with the manufacture and sale of acetyl salicylic acid.

CONCLUSIONS.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation 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.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission and the agreed statement as to the facts made and filed herein in lieu of testimony and evidence, and the Commission having made its findings as to the facts, with its conclusions that the respondent has violated the provisions 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,"

It is now ordered, That the respondent, Albany Chemical Co., its officers, agents, and employees do cease and desist from:

(1) Advertising that it has or claims to have the exclusive right to the use of the word "aspirin," either by itself or in connection with any other word as its trade-mark property.

(2) Advertising or representing to the trade or to the public that said respondent is the manufacturer of the only "genuine aspirin."

(3) Advertising or claiming in any manner that the word "aspirin" either by itself or used in connection with other words is its registered trade-mark.

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(4) Threatening dealers or others with suits for infringement if such dealers or other persons use the word "aspirin" on the products of any person other than those of respondent.

It is further ordered, That within 30 days from date of the service of this order the said respondent report to the Commission how and in what manner it has complied with the terms of this order.

VACUUM CLEANER SPECIALTY CO., INC.

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