

Complaint.

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FEDERAL TRADE COMMISSION

v.

M. G. GIBBS, TRADING UNDER THE NAME AND STYLE OF
PEOPLES DRUG STORES.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 784—May 9, 1922.

SYLLABUS.

Where a corporation dealing in drugs and toilet articles, advertised as "Imperial Pyralin Ivory Toilet Sets" articles composed of nitrated cellulose or "pyralin," and resembling ivory in color and in general appearance, but not otherwise; with a capacity and tendency thereby to mislead and deceive the purchasing public as to the value or quality thereof, and to induce the purchase thereof in the mistaken belief that they were made of ivory:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that M. G. Gibbs, trading under the name and style of Peoples Drug Stores, hereinafter referred to as respondent, has been and is using unfair methods of competition in 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 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 owns and operates a chain of retail drug stores in the city of Washington, D. C., under the name and style of Peoples Drug Stores, and sells drugs, merchandise and commodities at retail in the District of Columbia, and in the conduct of such business is in competition with other individuals, copartnerships and corporations similarly engaged.

PAR. 2. That respondent, in the course of his business as described in Paragraph 1 hereof and for the purpose of bringing his merchandise and commodities to the attention of the purchasing public, causes advertisements of said merchandise and commodities to be inserted in newspapers and other advertising mediums having a general circulation in the District of Columbia; that many such advertisements contain false and misleading statements concerning the mer-

chandise and commodities offered for sale and sold by him; that among such false and misleading statements are statements to the effect that certain toilet articles offered for sale and sold by him are "Pyralin Ivory"; whereas, in truth and in fact, such toilet articles are not made of ivory, but are made of nitrated cellulose, or some other compound, so manufactured as to more or less closely resemble ivory in appearance; and that such false and misleading statements are intended and calculated to, and actually do, deceive and mislead the public as to the quality of said articles.

PAR. 3. That by reason of the facts recited respondent is using unfair methods of competition in commerce within the intent and meaning 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions 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," the Federal Trade Commission issued and served a complaint upon the respondent, M. G. Gibbs, trading under the name and style of Peoples Drug Stores, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, M. G. Gibbs, trading under the name and style of Peoples Drug Stores, has entered its appearance and filed its answer herein, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before Warren R. Choate theretofore duly designated an examiner of the Federal Trade Commission, at which hearings the respondent appeared and was represented by counsel.

And thereupon this cause came on for final hearing before the Commission upon the complaint and the answer thereto, the testimony and evidence and stipulation of facts theretofore entered into by the counsel for the Commission and counsel for the respondent and upon the report of the trial examiner, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That at the time of the issuance and service of the complaint herein, there had been organized under the laws of the State of Delaware, a corporation under the name and style of Peoples

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Drug Stores, Inc., which corporation took over the property and succeeded to the business theretofore owned and controlled by M. G. Gibbs, trading under the name and style of Peoples Drug Stores.

That said M. G. Gibbs was at the time of service of the complaint, the president of said Peoples Drug Stores, Inc., and he was also owner of more than a majority of the capital stock of the Peoples Drug Stores, Inc., and also a director in said corporation and made answer to the complaint of the Federal Trade Commission in the name of Peoples Drug Stores, Inc., by himself as president thereof.

PAR. 2. There has been filed in this cause a stipulation as to facts entered into by and between W. H. Fuller, chief counsel of the Federal Trade Commission and the Peoples Drug Stores, Inc., by M. G. Gibbs, the president thereof, and Fred Beall, its counsel, under which it is stipulated and agreed that the corporation was formed for the purpose of taking over and succeeding to the business and property theretofore owned and operated in the District of Columbia by said respondent under the name and style of the Peoples Drug Stores, Inc., as set forth in the complaint filed in this cause, and further stipulations as to facts as more particularly appear in the said stipulation, as follows:

It is stipulated and agreed that in December, 1920, M. G. Gibbs, the respondent above named, caused to be organized under the laws of the State of Delaware a corporation, under the name of "Peoples Drug Stores, Incorporated," for the purpose of taking over and succeeding to the business and property theretofore owned and operated in the District of Columbia by said respondent under the name and style of Peoples Drug Stores, as set out in the complaint herein, and on January 1, 1921, said Delaware corporation did in fact take over said business and become, and still is, the successor in business to the respondent above named.

It is further stipulated and agreed that the complaint in this case shall stand and be regarded as having been duly issued and served upon said Peoples Drug Stores, Inc., the successor in business to M. G. Gibbs, trading under the name and style of Peoples Drug Stores, as aforesaid, and that throughout the proceedings herein, where the respondent herein is described and referred to as M. G. Gibbs, trading under the name and style of Peoples Drug Stores, the same shall be treated as including the said successor in business, the Peoples Drug Stores, Inc., to the same extent and as though an amended complaint had been issued and duly served herein, in which the said Delaware corporation, Peoples Drug Stores, Inc., had been named as respondent; that the answer herein may be considered as relating to such an amended complaint.

It is further stipulated and agreed that on May 17, 1920, at a conference called by the Federal Trade Commission, of representatives of the Pyroxylyn plastic industry, a resolution was passed by such representatives adopting the report of a committee of such representatives and appointed by them, for the purpose of making such report, which report was thereafter accepted by the Federal Trade Commission and ordered placed on file, as set out in its order of May 20, 1920; that section 3 of said report contained the following:

"Use of designating terms.—We are opposed to the use of the words 'Ivory,' 'Shell,' 'Amber,' 'Jade,' 'Jet,' 'Coral,' etc., in any other than an adjective sense, and then only when coupled with the name of the material or some other qualifying term, such as color, finish, etc. Illustrative of the foregoing, the following, and similar terms should be permissible: 'Ivory Celluloid,' 'Ivory Pyralin,' 'Ivory Fiberloid,' 'Ivory Viscoloids,' 'Ivory Zynolite,' 'Ivory Acwalite,' etc., 'Ivory Color Celluloid,' etc., 'Ivory Color,' 'Ivory Color Dressing Combs,' 'Ivory Finish Combs,' 'Imitation Ivory,' 'Imitation Shell,' etc. The following, and similar terms, would be objectionable terms: 'French Ivory,' 'Parisian Ivory,' 'Tortoise-shell,' 'Tortoise-shell Eyeglasses,' 'Ivory Combs,' 'Florentine Shell,' 'Ivory Toilet Sets,' 'Pyralin Ivory,' 'Jade Necklaces,' 'Coral Necklaces,' 'American Ivory,' etc."

In witness whereof, the chief counsel for the Federal Trade Commission, and the People's Drug Stores, Inc., have caused this stipulation to be executed, at Washington, D. C., this 31st day of January, 1922, and have caused same to be filed with the examiner heretofore appointed to take testimony and receive evidence concerning the charges stated in the complaint herein, such stipulation to be received by such examiner as supplementary to the evidence heretofore received by him in this proceeding.

(Signed)

W. H. FULLER,

Chief Counsel for Federal Trade Commission.

PEOPLES DRUG STORES, INCORPORATED,

By (Signed)

M. G. GIBBS, *President.*

(Signed)

FRED BEALL, *Counsel for Respondent.*

PAR. 3. That said Peoples Drug Stores, Inc., since January 1, 1921, has been engaged in the business of operating a chain of drug stores in the District of Columbia which stores prior to January 1, 1921, had been owned and operated by M. G. Gibbs, trading under the name and style of Peoples Drug Stores, and in which stores there were sold and offered for sale to the purchasing public in the regular course of retail trade, drugs, drug sundries, toilet articles and other commodities, which said business was carried on by the Peoples Drug Stores, Incorporated, and its predecessor in business as aforesaid in direct, active competition with other persons, partnerships and corporations similarly engaged; that, for the purpose of bringing merchandise and commodities so offered for sale to the attention of the purchasing public, said Peoples Drug Stores, Inc., and its predecessor in business caused advertisements to be published in the newspapers published in the District of Columbia, and of general circulation therein, in one of which advertisements which appeared in the Washington Herald, issue of February 15, 1921, certain toilet articles offered for sale by said Peoples Drug Stores, Inc., were described as "Imperial Pyralin Ivory Toilet Sets," although such articles were not made of ivory either in whole or in part, but were made of nitrated cellulose or pyroxylin plastic, sometimes known commercially as pyralin. That the description of said toilet sets, in said advertise-

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ments as "Imperial Pyralin Ivory Sets" had the capacity or tendency to mislead and deceive the purchasing public by creating in the minds of the public, false or erroneous beliefs concerning the value or quality of said articles and in some instances to induce the public to purchase said articles upon the mistaken belief that such articles were made of ivory.

PAR. 4. That the toilet articles offered for sale and sold by the Peoples Drug Stores, Inc., and its predecessor in business as set out in Paragraph 3 hereof, resemble somewhat in color and in general appearance similar articles made of ivory, although the material from which said articles were made had none of the other characteristics of ivory but was highly inflammable, and as an example of the relative value of ivory and the material of which said articles were made, it appears that the cost of an ivory fine-tooth comb, approximately 1 inch square, would be 75 cents, whereas such an article made of pyroxylin plastic would cost 6 or 7 cents.

PAR. 5. That the said respondent, the Peoples Drug Stores, Inc., immediately after becoming advised that its previous wording of advertisements covering sale of the articles hereinbefore referred to was objectionable, changed the wording of same so that they were descriptively advertised as "Ivory Colored Pyralin," and such advertisements appeared in the Washington Post of February 20, the Evening Star of February 24, and the Washington Herald of the same date, in the year 1922, all of said publications being newspapers having a wide circulation in the city of Washington, D. C.

CONCLUSION.

That the actions and conduct of respondent, prior to February 20, 1921, as set forth in the above findings as to the facts are unfair methods of competition in interstate commerce and in violation 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission under the pleadings, the stipulation and the testimony and evidence received by an examiner duly appointed by the Commission and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties

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and for other purposes," which said report is hereby referred to and made a part hereof,

Now, therefore, it is ordered, That the respondent, the Peoples Drug Stores, Inc., its officers, directors, agents and employees cease and desist from directly, or indirectly advertising, representing, labeling, or branding as "Ivory," articles offered for sale, or sold by said respondent, its agents or employees if such articles are not in fact made or composed of ivory.

It is further ordered, That the said respondent shall within 90 days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

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