

Complaint.

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FEDERAL TRADE COMMISSION

v.

CROFTS & REED COMPANY AND POLONIA SOAP
COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 862—October 13, 1923.

SYLLABUS.

Where corporations engaged in the manufacture and sale of soaps used such names as "Medicinal Toilet", "Olive Bouquet", "Olive Casteel", "Per-oxide", "Palm Cocoa", "Palmo", "Buttermilk", "Victory Palm", "Witch Hazel", etc. in branding said soaps and labeling the wrappers thereof and in describing the same in their catalogues, notwithstanding the fact that said soaps contained no medicament and little if any of the ingredients indicated; with the capacity and tendency thereby to mislead and deceive purchasers and prospective purchasers with reference to the composition and virtues of said soaps, and to induce the purchase thereof in preference to comparable products of competitors, not deceptively characterized:

Held, That such misbranding, mislabeling, and false and misleading advertising, 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 Crofts & Reed Company and the Polonia Soap Company, hereinafter referred to as the respondents, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions 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," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent, Crofts & Reed Company is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the City of Chicago in said State, and for more than one year last past has been and now is engaged in the manufacture and sale of soaps and toilet articles; that respondent, Polonia Soap Company, is a corporation organized and doing business under and

by virtue of the laws of the State of Illinois with its office and principal place of business in said City and State and for more than one year last past has been and now is engaged in the manufacture and sale of soaps and toilet articles.

PAR. 2. That respondents and each of them manufacture soaps and toilet articles in said City of Chicago, Illinois and sell and deliver said products to purchasers including wholesale and retail dealers and house to house peddlers, resident at various points in various States of the United States, by sending the products so sold from their said place of business in the City of Chicago, State of Illinois, into and through various States of the United States to the purchasers of said products at their several places of residence; that in the course and conduct of their said businesses respondents and each of them continuously have been and now are in competition with other persons, firms and corporations engaged in the manufacture and sale of soaps and toilet articles.

PAR. 3. That respondent, Crofts & Reed Company, in the course of its said business sells and distributes in various States of the United States, in the manner hereinbefore set out, certain soaps which it calls and names "Olive Bouquet", "Olive Castillo", "Medicinal Toilet Soap", "Peroxide Soap", "Palm Coco", "Witchazel Soap", "Palmo" and "Buttermilk", respectively; that said respondent brands each cake of each said soap with its said name and wraps and packs the same in wrappers and boxes upon which respondent has, in each instance, caused said name to be printed and delivers said soaps so branded wrapped and packed to the hereinbefore mentioned purchasers thereof; that aforesaid names so branded upon and applied to said soaps, are false, misleading and deceptive, in that said "Olive Bouquet" soap contains no olive oil, said "Olive Castile" soap contains no olive oil; said "Medicinal Toilet Soap" contains no medicine and no drug, substance or agent of any curative or remedial value whatsoever; said "Peroxide Soap" contains no peroxide of hydrogen and no appreciable quantity of the peroxide of any other element or substance; said "Palm Coco" soap contains no palm oil, said "Palmo" soap contains no palm oil; said "Witchazel" soap contains no appreciable quantity of witchazel nor the extract thereof and said "Buttermilk" soap contains no buttermilk nor any derivative thereof; that there is a general belief amongst the public throughout the United States that soaps made of olive oil, palm oil or a combination of said oils are of better quality and milder than soaps made of animal fats and possess certain qualities beneficial and emollient to the human skin not possessed by soaps made of animal fats, that peroxide means peroxide of hydrogen, that such perox-

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ide has substantial value as a germicide, a disinfectant and a bleach, that witchazel and buttermilk and their derivatives have each a curative emollient and beneficial effect upon the human skin and that soaps containing such substances or any of them have the same effect when applied to the skin as such substances have when alone so applied; that by reason of the premises, the aforesaid false branding by said respondent of the said soaps manufactured and sold by it as above set out, misleads and deceives the aforesaid purchasers thereof and the vendees and prospective vendees of such purchases into the belief that said soaps are made of and contain, respectively, the substances set out in or indicated by aforesaid names, whereby large number of persons, residing in various States of the United States, including aforesaid purchasers, are induced to and do purchase said soaps.

PAR. 4. That in connection with its aforesaid business and to further sales and induce purchases of its aforesaid falsely named and branded soaps, respondent, Crofts & Reed Company, has caused to be printed and sends out from its aforesaid place of business in the City of Chicago, State of Illinois, to large numbers of persons residing at various points in various States of the United States, including aforesaid purchasers, contain catalogs describing said soaps, detailing the virtues thereof and containing printed reproductions of the several cakes of said soaps bearing their respective names branded upon said cakes as hereinbefore set out; that said contents of said catalogs mislead and deceive the recipients thereof into the belief that said soaps are made of and contain, respectively, the substances appearing in or suggested by said names; that by reason of the premises and of the belief existing amongst the general public regarding the properties, virtues and value of aforesaid substances, as hereinbefore set out, large numbers of aforesaid persons are induced to and do purchase said soaps from said respondent and said respondent delivers the soaps so purchased by sending the same from its said place of business in the City of Chicago, State of Illinois into and through various States of the United States to said persons at their several places of residence.

PAR. 5. That in the sale of its said soaps, as hereinbefore set out respondent, Crofts & Reed Company, comes into direct competition with other persons, partnerships and corporations who manufacture soaps and who sell and distribute the same in interstate commerce and who do not name and brand the soaps made by them with false, misleading and deceptive names, and further, by means of its practices hereinbefore set out, said respondent enables and causes its dealer customers, referred to in paragraph 2 hereof, to directly

compete, when reselling said respondent's said soaps, with dealers engaged in selling other soaps, including dealers engaged in selling the soaps of said other manufacturers.

PAR. 6. That about the first day of July, 1921, respondent Polonia Soap Company, acquired the entire capital stock of respondent Crofts & Reed Company and the ownership thereof; that ever since said acquisition respondent, Polonia Soap Company, has directed, controlled and conducted the entire business of respondent, Crofts & Reed Company, and has aided, abetted and participated in all the hereinbefore alleged acts and things done by said last named respondent and still so aids, abets and participates.

PAR. 7. That above alleged acts and things done by respondents and by each of them constitute 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, 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 respondents, Crofts & Reed Company and Polonia Soap Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answer, the testimony of witnesses was taken and evidence was received, both in support of the charges stated in the complaint and on behalf of respondents, before an examiner of the Federal Trade Commission theretofore duly appointed, whereupon the trial examiner made his report upon the facts with proposed findings as to the facts, to which counsel for respondents filed exceptions.

Thereupon the matter came on for final hearing before the Commission, upon the complaint, the answer thereto, the evidence adduced, the report of the trial examiner and exceptions thereto by respondents, briefs by counsel for the Commission and counsel for respondents, and was orally argued by counsel, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

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FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent Crofts & Reed Company is a corporation organized under and existing by virtue of the laws of the State of Illinois, having its principal office and place of business in the City of Chicago in said State, where for twenty years prior to 1921 it had been engaged in the manufacture of soap and toilet articles and their sale in the several states of the United States.

(a) Respondent Polonia Soap Company is a corporation organized under and existing by virtue of the laws of the State of Illinois, having its principal office and place of business in the City of Chicago in said State, where it has been engaged in the manufacture of soap and its sale in the several states of the United States.

(b) In 1920 respondent Polonia Soap Company contracted to purchase, and later did purchase, the stock of respondent Crofts & Reed Company, and through such purchase respondent Polonia Soap Company secured and exercised full control over the assets, plants and business of respondent Crofts & Reed Company and in 1921, and for some time subsequent thereto, operated and conducted said business under the trade name of Crofts & Reed Company.

(c) Respondent Polonia Soap Company, at the time of the purchase by it of respondent Crofts & Reed Company stock, had an authorized capital stock of \$500,000. Said respondent Polonia Soap Company, through its attorney of record in open hearing in this proceeding, announced that it was turning its business over to Crofts & Reed Company and was winding up its affairs. Respondent Crofts & Reed Company, sometime prior to March 22, 1923, the date of the hearing in this proceeding, increased its capital stock to \$600,000 which it is exchanging for the stock of respondent Polonia Soap Company, and respondent Crofts & Reed Company is now conducting, and through its attorney of record in open hearing in this proceeding has expressed the intention of hereafter conducting, in its own name, the business heretofore conducted at the times named herein by respondent Crofts & Reed Company and at the times mentioned herein by Polonia Soap Company.

PAR. 2. Respondents as above set forth have been and the respondent Crofts & Reed Company is now engaged in the manufacture of soaps and toilet articles in the City of Chicago, State of Illinois, and the sale and delivery of such products to purchasers in many of, if not all, the several states of the United States, and such products in the course of such sale and delivery are transported from respondents' place of business in said City of Chicago to, into and through the several states of the United States to purchasers in their

several places of residence. In the course and conduct of their said business as hereinabove set forth, respondents have been and are in competition with other persons, partnerships, firms, and corporations in the manufacture and sale of soaps and toilet articles.

(a) Prior to November 1, 1922, respondents, in the course of said business as hereinabove set forth, sold their products to purchasers who were dealers at wholesale and to other purchasers who were dealers at retail, and also to house-to-house peddlers. Said sales to said peddlers were made by the so-called mail order method, including the advertising of the products and the mailing out of catalogues, the receiving by respondents of orders by mail and the shipping out of said products to said peddlers who in turn sold said products by house-to-house canvass or by such other methods as such peddlers employ. About November 1, 1922, said respondents sold said mail order branch of their business to Western Products Company of Chicago, a sales agency. Respondents, through their attorney of record in open hearing in this proceeding, have announced their intention of issuing no catalogues hereafter, nor selling hereafter to purchasers other than wholesale or retail dealers, giving as reasons for such determination the fact that dealers would not purchase the products of respondent while they sold by the mail order method, and that respondents have contracted with such dealers not to sell by such methods hereafter.

PAR. 3. Respondents, in the course of their said business as hereinabove set forth, sell and distribute in many of, if not all, the several states of the United States soaps which they designate as "Olive Bouquet", "Olive Castile", "Medicinal Toilet Soap", "Peroxide Soap", "Palm Cocoa", "Witch Hazel Soap", "Palmo" and "Buttermilk Soap", respectively. Each cake of such soap and each wrapper and each carton containing such soaps are branded with the brand name of the soap involved.

(a) Said soap designated by respondents as "Olive Bouquet Toilet Soap" and described in their catalogue as "A pure vegetable oil soap" contains 5 to 10 per cent of olive oil, the bulk of its fatty ingredients being cocoanut oil and tallow. It is not a pure vegetable oil soap.

(b) Said soap designated by respondents as "Olive Castile" contains from 5 to 10 per cent olive oil, the bulk of the fats used in the manufacture of said soap being cocoanut oil and tallow. It is not an olive castile soap. The olive oil used in the making of "Olive Bouquet" and "Olive Castile" soaps is not tested for purity, is of low grade and may be impure, containing cottonseed oil, so that the actual olive oil content in these soaps may be less than 5 per cent.

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(c) Said soap designated by respondents as "Medicinal Toilet Soap" contains no medicament. Its manufacture by respondents was discontinued about one year prior to the date of the hearing in this proceeding, March 22, 1923.

(d) Said soap designated by respondents as "Peroxide Soap" contains no peroxide. Peroxide of hydrogen in small quantities is placed in the soap at the time of manufacture but, as is well known to respondents, it disintegrates leaving in the soap no medicinal ingredient.

(e) Said soap designated by respondents as "Witch Hazel Soap" contains no witch hazel when placed upon the market, the alcohol, an essential element of the small amount of witch hazel placed in the soap at the time of manufacture, having evaporated and disappeared.

(f) Said soap designated by respondents as "Buttermilk Soap" contains no buttermilk when ready for market, although a small amount of buttermilk powder or powdered buttermilk is placed therein at the time of manufacture.

(g) Said soap formerly designated by respondents as "Palm Cocoa" and now designated by them as "Victory Palm", had for its fatty acid content five per cent palm oil, fifteen per cent cocoanut oil, and the balance tallow.

PAR. 4. The use by respondents as set forth in paragraph 3 hereof of the term "Olive Bouquet Toilet Soap" in connection with the catalogue statement "A Pure vegetable oil soap", has the tendency and capacity to mislead and deceive purchasers of said soap in the belief that its fatty ingredient was olive oil only and such belief may be an inducement to the purchase of said soap.

(a) The use of the term "Olive Castile" as set forth in paragraph 3 hereof, applied to soap containing fatty ingredients other than olive oil, has the tendency and capacity to mislead and deceive purchasers of said soap into the belief that its fatty ingredient was olive oil only and such belief may be an inducement to the purchase of said soap.

(b) The use of the term "Medicinal Toilet Soap" as set forth in paragraph 3 hereof, has the capacity and tendency to mislead and deceive purchasers into the belief that such soap has medicinal qualities which would add to the value of said soap.

(c) The use by the respondents of the terms "Peroxide Soap," "Witch Hazel Soap" and "Buttermilk Soap" has the capacity and tendency to mislead and deceive purchasers into the belief that said soaps actually contain the respective ingredients thus named or indicated and that such ingredients, because of qualities healing or soothing to the skin, would add to the value of said soaps.

(d) The use by respondents of the term "Palm Cocoa" or any combination of words which included the word "palm" or the word "cocoa" as a brand name for soap, has the capacity and tendency to mislead purchasers into the belief that the fatty acid content of such soap is entirely composed of the oil or oils indicated by such brand name.

PAR. 5. Purchasers of soaps, especially women, consider soaps containing olive oil as their fatty ingredient to be more desirable for toilet use than soaps made from animal fat, so that the use of the term "Olive" tends to aid in the sale of such soap. Olive oil is far more expensive than the animal fats used in soap making.

PAR. 6. Prior to November 1, 1923, respondents, as an inducement in the sale of their said soaps, printed and circulated in the several states of the United States catalogues listing their soaps designated and described as hereinabove set forth, with cuts of the bars of said soaps and their wrappers and containers. Such circulars listed, described, and advertised "Olive Bouquet," "Olive Castile," "Medicinal Toilet," "Peroxide," "Witch Hazel" and like brands of soaps sold by respondents, to an extent, had the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that said soaps so listed had the virtues implied or suggested by the names under which such soaps were listed, thus tending to induce persons to purchase such soaps rather than soaps of other manufacturers, of like quality not thus deceptively listed, designated or advertised.

CONCLUSION.

That the practice of the respondents as set forth in the foregoing findings as to the facts are in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and the evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon the briefs and argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated 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,"

Order.

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Now, therefore, it is ordered, That the respondents, Crofts & Reed Company, and Polonia Soap Company, their officers, directors, representatives, agents and employes cease and desist,

(1) From employing or using as labels or brands on soap sold by them, the fatty ingredient of which is not composed entirely of olive oil, or on the wrappers and containers in which such soap is delivered to customers, the word "Olive" alone or in combination with any other word or words, unless accompanied by a word or words designating the constituent elements other than olive oil constituting in part the fatty ingredient of the soap (e. g., "Olive Oil, Cocoanut Oil and Tallow Base"; "Olive Oil and Tallow Base") or by a word or words otherwise clearly indicating that the fatty ingredient of such soap does not consist entirely of olive oil (e. g., "5 per cent Olive Oil Base").

(2) From employing or using as labels or brands on soap sold by them, which contains no medicament, or on the wrappers or containers in which such soap is delivered to customers the word "Medicinal" alone or in combination with any other word or words.

(3) From employing or using as labels or brands on soap sold by them, or on the wrappers or containers in which such soap is delivered to customers, the word "Peroxide," "Buttermilk," or "Witch-Hazel," either alone or in combination with another word or words, which soap when purchased by the consumer in the usual and regular course of commerce, contains none of the ingredient or ingredients indicated by such labels or brand names.

(4) From employing or using as labels or brands on soap sold by them, the fatty ingredient of which is not composed entirely of palm oil or on the wrappers or containers in which such soap is delivered to customers, the word "Palm," either alone or in combination with any other word or words unless accompanied by a word or words designating the material other than palm oil, constituting in part the fatty ingredient of the soap (e. g., "Palm Oil, Cocoanut Oil and Tallow Base"; "Palm Oil and Tallow Base") or by a word or words otherwise clearly indicating that the fatty ingredient of the soap does not consist entirely of palm oil (e. g., "5 per cent Palm Oil Base").

It is further ordered, That the respondents shall file with the Federal Trade Commission, within ninety days from the date of this order, their report in writing, stating the manner and form in which this order has been conformed to and shall attach to such report two copies of all circulars, advertisements, devices or labels distributed or displayed to the public by the respondents in connection with the sale of their product in interstate commerce subsequent to the date of this order.

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