

Complaint

IN THE MATTER OF

F. BURKHALTER, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE ROYAL SOAP COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1289. Complaint, Feb. 17, 1925—Decision, Nov. 29, 1926

Where an individual engaged in the sale of a soap which was neither medicated nor contained ingredients having a curative and healing effect upon the skin; branded and labeled the same and the wrappers thereof "Royal Medicated Cuticle Doctor Soap", and represented said soap as being medicated and containing various ingredients having the aforesaid effect, in soliciting the sale thereof and advertising the same in newspapers in the communities of his retail dealer vendees; with the effect of causing many of the trade and public to purchase such soap as and for a medicated product possessing curative and healing qualities not possessed by ordinary toilet soap, and of diverting business from competitors dealing in soaps having such qualities, and from competitors dealing in ordinary toilet soaps, and selling the same under truthful representations:

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

Mr. Otto R. Stites and Mr. Alfred M. Craven for the Commission.

Lathrop, Morrow, Fox & Moore and Mr. John S. Bates, of Kansas City, Mo., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, engaged in the sale of an unmedicated toilet soap to retail dealers in various States and with place of business in Kansas City, with misbranding or mislabeling and misrepresenting product dealt in, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, for more than a year preceding the complaint, stamped each cake of the aforesaid soap "Royal Medicated Cuticle Doctor Soap" and so labeled the wrappers thereof, and falsely represented the same to dealers solicited by him as a high-grade toilet soap of the regular value of twenty-five cents per cake, and as medicated and containing ingredients having a curative and healing effect upon the skin, and so advertised said soap in local papers in communities in which he sold the same, the facts being that said soap was of the

Findings

11 F. T. C.

reasonable value of not more than ten cents a cake and was habitually sold by him to retail dealers for resale at such price, and had no further curative and healing effect than ordinary toilet soaps; with the effect of causing many of the trade and public to purchase the aforesaid soap as and for one possessing the qualities above set forth, and of diverting business from and otherwise prejudicing competitors selling toilet soaps to retailers without representing the same as medicated or otherwise superior to ordinary soaps and as offered at lower than the ordinary and usual retail prices, and with the capacity and tendency so to do; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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 a complaint upon the respondent, F. Burkhalter, doing business under the trade name of Royal Soap Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress.

Respondent having entered his appearance, but not having filed an answer, hearings were had and evidence was thereupon introduced on behalf of the Commission before William F. Dinnen, an examiner of the Federal Trade Commission theretofore duly appointed. Thereupon this proceeding came on for decision and the Commission having considered the record and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is now and since the year 1922, has been, doing business under the trade name and style "Royal Soap Co." with his place of business in the city of Kansas City, State of Missouri, and engaged in the business of selling toilet soap to retail dealers located at points in various States of the United States. He causes said soap when sold to be transported from his place of business or from various places where said soap is manufactured into and through States other than the States wherefrom said soap is so shipped, to said purchasers at their respective points of location. In the course and conduct of his said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of toilet soap in interstate commerce between and among various States of the United States.

PAR. 2. The soap dealt in by respondent in the course of his business as set out in paragraph 1 hereof, is named and denominated by respondent "Royal Medicated Cuticle Doctor Soap," which said name and designation respondent causes to be stamped upon each cake of his said soap and to be printed upon the wrappers wherein said soap is wrapped, and respondent delivers said soap so stamped and wrapped to his aforesaid vendees.

PAR. 3. Upon soliciting and making sales to aforesaid vendees respondent represents to said dealers that said soap is medicated and contains various ingredients having a curative and healing effect upon human skin. Further, upon making a sale respondent causes to be inserted in a newspaper or newspapers of general circulation in the community wherein the dealer is located advertisements offering said soap for sale by said dealer, in which advertisements respondent causes to be inserted aforesaid representations and others of similar import.

PAR. 4. In truth and in fact respondent's said soap is not medicated and contains no ingredients having a curative and healing effect upon the human skin. The representations referred to in paragraphs 2 and 3 hereof have been made by the respondent continuously since some time in the year 1922 down to the present time, during which period of time respondent has never sold a soap containing medicaments or any ingredients of a curative or healing nature.

PAR. 5. The stamping and wrapping by respondent of his said soap with the name and designation "Royal Medicated Cuticle Doctor Soap," and the representations made by respondent to his dealer vendees and in his advertising, all as set out in paragraphs 2 and 3 hereof, have the capacity and tendency to cause and have caused many of the trade and public to purchase respondent's said soap in the belief that said soap is a medicated soap possessing curative and healing qualities not possessed by ordinary toilet soap.

PAR. 6. Among the competitors of respondent referred to in paragraph 1 hereof are many manufacturers of and dealers in soap who sell and have sold soap in competition with respondent which contains ingredients having healing and medicinal qualities. There were and now are many other competitors who sell ordinary toilet soap having no medicinal or healing qualities. Both classes of said competitors as a rule make truthful representations in regard to the soap offered for sale by them. The respondent's misrepresentations as found in paragraphs 2 and 3 hereof tend to and have diverted business from both classes of said competitors.

Order

11 F. T. C.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors and are unfair methods of competition in 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 the complaint of the Commission, and the evidence received in support of said complaint, the respondent, not having offered any evidence, 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, and for other purposes",

It is now ordered, That the respondent, F. Burkhalter, his agents and employees do cease and desist from using the words "Doctor Soap" or "Medicated Soap" on soap, labels, wrappers, boxes, or other containers, or in newspapers, circulars, or other printed matter in connection with the sale of respondent's soap, or representing in any other manner soap sold or offered for sale by respondent as "Doctor Soap" or "Medicated Soap."

It is further ordered, That the respondent, F. Burkhalter, shall within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

A. HERSKOWITZ, MORRIS GOLDBERG, AND SAMUEL BELL, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE, BELL CAP COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1315. Complaint, May 21, 1925—Decision Dec. 8, 1926

Where a firm engaged in the manufacture and sale of shop caps, advertised the same in its price lists and catalogues as "union made shop caps with union labels", notwithstanding the fact that recognition of its shop or factory as a union shop had theretofore been withdrawn, it did not employ union labor, and had no right to advertise that it was conducting a union shop, or to use the union label; with the capacity and tendency to mislead many of the trade and purchasing public into believing that its caps had been made by union labor and to induce the purchase thereof in such belief, and with the result that competitors conducting recognized union shops lost business due to cancellation of orders in many instances and refusal thereof in others, on account of its aforesaid representations, with offers to sell its caps at prices below those of competitors:

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

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

J

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged in the manufacture of shop caps, not made by union labor, for artisans, craftsmen, and laborers, and in the sale thereof to wholesale and retail dealers in various States, and with place of business in New York City, with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that they, for more than a year preceding the complaint, featured the words "Union Made" upon catalogues, price lists and other trade literature sent to customers and prospective customers, and describing and offering said caps for sale, with the effect of misleading many of the trade and consuming public into believing said caps to have been made by union labor and to purchase the same in such belief and with the capacity and tendency so to do, and to divert business from and otherwise injure and prejudice competitors making and fabricating their caps with