

Complaint

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IN THE MATTER OF
CARLTON SOAP COMPANY, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1360. Complaint, Jan. 12, 1926—Decision, Nov. 14, 1927

Where toilet and bath soaps manufactured in Great Britain had long enjoyed widespread popularity, good will and demand among the consuming public throughout the United States, and were purchased by many thereof in preference to the domestic product; and thereafter a corporation engaged in the sale and distribution of toilet and bath soaps named and described a soap made for it by an American manufacturer, "British Bath," and sold the same to wholesale and retail dealers with said words conspicuously impressed upon each cake thereof and in containers resembling in general appearance those in which many British-made soaps are offered and sold throughout the United States, and bearing in large and conspicuous letters the phrase and slogan "BRITISH BATH, the bath and toilet soap de luxe," for display and sale by them to the consuming public, thus named, branded, and packed; with the capacity and tendency to mislead and deceive many of the consuming public into purchasing said soap as and for an imported British-made product, and to cause many dealers so to offer and sell the same, and with the effect of thereby placing in the hands of customer dealers the means, with or without further representations, of misleading the consuming public into purchasing said soap as and for a British product, and of diverting business from and otherwise injuring the business of competitors dealing in genuine imported British soaps and rightfully and truthfully so representing the same, and competitors dealing in domestic soaps and in no wise representing the same as imported from Great Britain or any other foreign country:

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

Mr. Charles Melvin Neff and Mr. Henry Miller for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of toilet and bath soaps to retail dealers in various States, and with principal office and place of business in New York City, with misbranding or mislabeling in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition, in interstate commerce in that respondent for about five years preceding the complaint stamped in large and conspicuous let-

ters the designation "British Bath" upon each cake of certain soap dealt in by it, and so labeled the containers thereof, together with the words "the bath and toilet soap de luxe," notwithstanding the fact that said soap was manufactured in the United States and not in England, and was not a genuine English soap, long popular among the consuming public throughout the United States, among whom many believed bath and toilet soaps there manufactured to be superior to those made in the United States, and purchased the same in preference to the domestic product; with the capacity and tendency to mislead and deceive, and with the effect of misleading and deceiving many of the consuming public into believing said soap to have been manufactured in England and imported into the United States, and causing the purchase thereof in such belief, and with the effect of placing in the hands of others the instrument and means of committing a fraud upon the consuming public, by enabling unscrupulous dealers to represent, offer, and sell said soap as soap made in England, and with the tendency to divert and with the effect of diverting business from and otherwise injuring competitors, many of whom deal in genuine English soaps, rightfully and lawfully represented by them as such, and others of whom deal in domestic soaps without in anywise representing the same as manufactured in England; 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 Carlton Soap Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having failed to file an answer to said complaint, hearings were had upon due notice to respondent, and evidence and testimony was received in support of the allegations of the complaint before a trial examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon, this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Carlton Soap Co., Inc., is a corporation organized in July, 1920, and existing under and by virtue of the laws

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of the State of New York with its principal office and place of business in the City and State of New York. It has at all times since the date of its organization been engaged in the business of selling and distributing toilet and bath soaps to wholesale and retail dealers throughout the several States of the United States, offering for sale and selling its soaps through and by means of traveling salesmen who, in respondent's employ, call upon and solicit trade from its customers and prospective customers throughout the New England, Middle West, Southern, and Pacific Coast States of the United States. In carrying on its said business and throughout the conduct thereof respondent caused its said soaps when so sold to be transported in commerce from its place of business in the city and State of New York through and into other States of the United States to the respective purchasers thereof in such other States; and in so carrying on its said business respondent has been and still is engaged in direct active competition with many individuals, partnerships, and other corporations similarly engaged in the sale and distribution of toilet and bath soaps in commerce between and among various States of the United States.

PAR. 2. Among the toilet and bath soaps sold and distributed by respondent among the various States of the United States, as set forth in paragraph 1 hereof, was a certain soap named, designated, described, and sold by respondent as "British Bath", which soap was manufactured for respondent at Camden, N. J., by an American manufacturer. Said so-called "British Bath" soap was marketed by respondent continuously for more than three years next preceding and including the year 1925. Its annual sales thereof amounted to approximately 300 gross cakes, which constituted about one-third of respondent's total volume of business. The retail prices to the consumers of said soap ranged from 18 cents to 25 cents per cake. Since the latter part of the year 1925 respondent has not marketed said so-called "British Bath" soap, but its contract with the manufacturer under which said soap was manufactured for respondent at Camden, N. J., is still in full force and effect. Respondent is in a position to resume the sale of said soap at any time, and there is no assurance that it will not again indulge in the use of the brand "British Bath" in connection with soap not manufactured in Great Britain. Each cake of said so-called "British Bath" soap when and as sold by respondent bore stamped and embedded therein in large and conspicuous letters the words "British Bath", which respondent caused to be placed thereon. Respondent also caused said soap to be packed in containers, holding 12 cakes each, upon which

it caused to be printed in large and conspicuous letters the phrase and slogan "BRITISH BATH, the bath and toilet soap de luxe". Respondent displayed, offered for sale, and sold said soap stamped and packed as above stated to its customers, wholesale and retail dealers; and in accordance with respondent's intention and in the regular course of business said soap was displayed, offered for sale, and sold to the consuming public still so stamped, packed, and branded and as, and under the name and description of, "British Bath" soap. Said packages of respondent's so-called "British Bath" soap were similar in general appearance to the typical packages or containers in which many British-made soaps are offered for sale and sold throughout the United States.

PAR. 3. Toilet and bath soaps manufactured in Great Britain or British-made soaps, have for many years enjoyed widespread popularity, good will and demand among the consuming public throughout the United States, many of whom prefer bath and toilet soaps manufactured in Great Britain, or British-made soaps, to bath and toilet soaps manufactured in the United States. Many of the consuming public throughout the United States purchase bath and toilet soaps manufactured in Great Britain and imported into the United States in preference to bath and toilet soaps manufactured in the United States.

PAR. 4. The use by respondent of the word "British" in naming, describing, branding, and labeling its aforesaid soap as set out in paragraph 2 hereof was false and had the capacity and tendency to mislead and deceive many of the consuming public into, and to thereby cause purchasers to buy said soap in, the erroneous belief that said soap was British-made soap or soap manufactured in Great Britain and imported into the United States; whereas in truth and in fact said soap was not a British-made soap or soap manufactured in Great Britain but same was, as hereinbefore stated, manufactured wholly within the United States and by an American manufacturer.

PAR. 5. Respondent's use of the word "British" in packing, describing, branding, and labeling its soap, as set forth in paragraph 2 hereof, also had the capacity and tendency to cause many dealers to offer for sale and sell said soap to the consuming public as and for British-made soap or soap manufactured in Great Britain; and respondent thereby placed in the hands of its customer-dealers an instrument and the means by which they could, with or without further representations, mislead the consuming public into purchasing said soap as and for British-made soap.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof many who dealt in and sold in active competi-

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tion with respondent bath and toilet soaps manufactured in Great Britain and imported into the United States and who rightfully and truthfully represented said soaps to be British-made or soaps manufactured in Great Britain. There are also among said competitors of respondent many who dealt in and sold in competition with respondent bath and toilet soaps manufactured in the United States and who in nowise represented that such soaps were manufactured in or imported from Great Britain or any other foreign country. The use by respondent of the words "British Bath" in connection with its soap manufactured in the United States, as hereinbefore set forth, tended to and did divert trade from, and otherwise injured the business of, said competitors and were to the prejudice of the public.

CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing findings were to the injury and prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce in 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, the testimony and evidence in respect thereto, 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 respondent Carlton Soap Co., Inc., its officers, directors, agents, servants, and employees cease and desist from using the word "British" or word or words of similar import, alone or in conjunction with the word "bath" or other word or words, in describing, advertising, branding, labeling, or otherwise representing any soap or similar product sold and distributed by respondent in interstate commerce, unless such soap was manufactured in Great Britain.

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

Syllabus

IN THE MATTER OF
WHOLESALE GROCERS' ASSOCIATION OF NEW
ORLEANS, ITS OFFICERS AND MEMBERS

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

Docket 1343. Complaint, Aug. 6, 1925—Decision, Nov. 17, 1927

Where an association of wholesale grocers; and the officers and members thereof; in pursuance of an agreement, understanding, or conspiracy to confine distribution of the products dealt in to the so-called regular and legitimate channels of trade, i. e., manufacturer to wholesaler to retailer to consumer, and to prevent irregular and illegitimate dealers, i. e., dealers doing both a wholesale and retail business, or a retail business only, and purchasing enterprises of retail dealers buying the products concerned in wholesale quantities directly from the manufacturer and producer, from so obtaining such products, and thereby to suppress competition;

- (a) Held meetings for the interchange of information and the discussion and adoption of plans and measures for the carrying out of their undertaking;
- (b) Notified manufacturers and producers thereof, and its purposes, and sought to procure and procured many of them to abide by and adhere thereto;
- (c) Sought to compel and compelled many of the aforesaid manufacturers and producers, by boycott and threats thereof, and by other means of intimidation and coercion, to sell their products only to regular and legitimate wholesalers, thereby practically confining their sales to members of the association, and to refrain from selling the same to irregular and illegitimate dealers;
- (d) Sought and secured names of irregular and illegitimate dealers and reported the same to the aforesaid manufacturers and producers, and induced and compelled the same by the means and methods above set forth to cease dealing with and refuse to open new accounts with such dealers;
- (e) Sought and ascertained instances of sales by said manufacturers and producers to irregular and illegitimate dealers, together with the names of the vendees, by means of espionage at wharves, freight stations, warehouses, and other places, and sought to compel and compelled them by boycott and threats thereof to refrain from selling and supplying their products to said dealers thereafter; and
- (f) Sought to induce and induced and compelled many brokers and agents, by abusive language, intimidation, threatened boycott, and other means of coercion to refrain in the future from soliciting business from and supplying products to irregular and illegitimate dealers, and induced and compelled many of them to urge and advise their principals so to do, many of whom thereafter did so refrain;

With the result that certain outlets in the territory concerned for the direct and immediate sale of groceries by manufacturers and producers in other States were closed; commerce was regulated by eliminating therefrom so-