

Complaint

IN THE MATTER OF
HEWITT BROTHERS 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 873. Complaint, Mar. 30, 1922—Decision, Jan. 16, 1923

Where a corporation engaged in the manufacture and sale of soaps and washing compounds;

Named, labeled, and advertised as a naphtha soap, a laundry soap containing no petroleum ingredient other than the petroleum distillate, kerosene, amounting to less than one-sixth of 1 per cent by weight of such soap, designating and labeling the same as "Easy Task White Naphtha Soap," together with the legend "a pure white naphtha soap made of the highest grade soap materials by a * * * combination of naphtha," etc., and featuring the word "naphtha" in customer brands when not sold direct to consumers; notwithstanding the fact that soap products containing a petroleum distillate amounting to 1 per cent or less by weight do not contain the same in an amount sufficient to be effective as a cleansing ingredient nor substantially to enhance the cleansing value of such products to the consuming public, and that the substantially cheaper kerosene is uniformly distinguished from naphtha by the trade and purchasing and consuming public;

With the effect of inducing said public to purchase such soap as and for a product containing genuine naphtha and in a sufficient amount to be effective as a cleansing ingredient, substantially enhancing the effectiveness and value of the soap, and of causing manufacturers of genuine naphtha soap, sold in competition with such product, loss of trade:

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

Mr. Eugene W. Burr and Miss Anna Boyle for the Commission.

McMahon, Corwin, Landis & Markham, of Dayton, Ohio, for respondent.

SYNOPSIS OF COMPLAINT

Reciting the public interest involved in such a proceeding by it, the Commission charged respondent, an Ohio corporation, engaged in the manufacture and sale of soaps and other commodities, either direct to the consuming public through its salesmen, or to chain store and other large retail establishments, and with principal place of business in Dayton, and with branch selling office in Chicago, with using unfair methods of competition in commerce, in naming product misleadingly, misbranding or mislabeling, and advertising falsely or misleadingly, in violation of the provisions of section 5 of the Federal Trade Commission Act.

Findings

11 F. T. C.

Respondent, as charged, designated a soap manufactured and sold by it and containing no naphtha but a petroleum distillate other than naphtha (to the extent, at the start, of 1 per cent or less of the whole constituent ingredients thereof, substantially all lost by volatilization before reaching the ultimate consumer, so as to then contain no appreciable amount thereof or so little as to be ineffective as a cleansing ingredient) as "Easy Task White Naphtha Soap," and imprinted said designation upon each cake thereof and upon the wrappers of such cakes, along with its own name and address, when sold to the consumer direct, together with the language, on the inside of the wrapper, "Hewitt Easy Task White Naphtha Soap. A pure white naphtha soap made of the highest grade soap materials by a new process and combination of naphtha, coconut oil and other cleansing ingredients," employed the designation "White Naphtha Soap" in referring to its said soap in handbills and coupons distributed by it from house to house, upon a large scale, offering a cake thereof free with each purchase of one package of its "Thrift Flakes," and, when sold to mail-order houses and other concerns, used the brand and label "White Naphtha Laundry Soap," or "White Naphtha Soap," together with the name of the vendee concern upon its aforesaid soap; with the capacity or tendency to mislead or deceive the purchasing public into believing such soap to contain a substantial amount of naphtha, a well-known cleansing ingredient.

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, 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 its complaint herein upon the respondent corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act:

The respondent filed its answer to the said complaint, and subsequently thereto the proceeding was ordered suspended by the Commission pending action of the United States courts upon Docket No. 852, being a proceeding by the said Commission against The Procter & Gamble Co., which involved in part the same issues as the instant proceeding. After denial of writ of certiorari to the United States

Circuit Court of Appeals, Sixth Circuit, by the Supreme Court of the United States,¹ the present proceeding, on the 21st day of June, 1927, was removed from the suspense calendar of the Commission, in order that it might proceed to such final disposition as might be ordered. Thereafter, negotiations were undertaken for the settlement of the instant proceeding without the expense incident to a trial thereof, and a stipulation as to the facts was entered into between counsel for the Federal Trade Commission and counsel for the respondent, subject, however, to final approval by the Federal Trade Commission, it being thereby stipulated that the statement of facts thus agreed upon might be taken in lieu of evidence before the Commission in support of the charges stated in the complaint and in opposition thereto, and that the Commission might proceed further thereupon to make its report in the said proceeding and to enter its order disposing thereof.

Accordingly, the Commission having approved said stipulation and being now fully advised in the premises makes this its findings as to the facts and conclusion :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Hewitt Brothers Soap Co., is a corporation organized in 1884 under the laws of the State of Ohio, with its principal place of business at Dayton, in said State, with a branch establishment, for sales purposes only, at Chicago, Ill. At the time of the issuance of the complaint herein, prior thereto, and since that time, the respondent has been engaged in the business of manufacturing laundry soaps, washing compounds and also a toilet soap.

PAR. 2. Respondent corporation sells and distributes these commodities direct to the consumer through house-to-house canvassing, employing for such purpose about fifty salesmen in various centers, including Cleveland and Detroit, and also sells to chain stores, mail order houses, jobbers, and canvassing houses, under brands selected by the respective purchasing concerns. It causes these commodities, either sold by it direct or through channels named above, to be transported, pursuant to prior negotiations and sales, to the purchasers thereof, from the State of Ohio, or from its branch office at Chicago, Ill., through and into other States of the United States, and carries on its business in direct and active competition with other persons, partnerships, and corporations also engaged in the manufacture,

¹273 U. S. 717, 718.

Findings

11 F. T. C.

negotiation for sale, sale and transportation of soap and soap products among the States.

PAR. 3. Respondent, in the course of the business described in paragraph 2 above, manufactures, and has manufactured since its incorporation, laundry soaps and compounds for household use, said laundry soap being designated by it "Easy Task White Naphtha Soap," together with other brands relating to soap manufacture having no relation to the charges in the complaint herein. It has caused the following to be printed upon the wrappers enclosing same:

Hewitt Easy Task White Naphtha Soap a pure white naphtha soap made of the highest grade soap materials by a new process and combination of naphtha, coconut oil and other cleansing ingredients.

Respondent corporation during portions of the time covered by the complaint, and subsequently, sold soap manufactured by it to the Victor Tea Co. of Cleveland, Ohio, the Jewel Tea Co. of Chicago, New York, New Orleans, and San Francisco, the Northern Jobbing Co. of Chicago, Ill., and to others, under the customers' brands, to wit, "Victor White Naphtha Laundry Soap," "Jewel White Naphtha Soap," "N. J. C. Brand Washing Powder, with Naphtha," respectively, and other cartons.

PAR. 4. Respondent company has incorporated in its laundry soap, designated as aforesaid, "Easy Task White Naphtha Soap," and designated in part as "naphtha" in brands made for customer concerns, as aforesaid, in the manufacture thereof, no other petroleum ingredient than a petroleum distillate in the amount of less than one-sixth of 1 per cent by weight of such soap. Representative samples comprising 30 cakes of respondent's "Easy Task White Naphtha Soap" in the form and condition in which it was then being offered for sale and being sold to the consuming public, were purchased in 1922 in the normal course of retail distribution, were analyzed by experts of the United States Bureau of Standards and found to contain a petroleum distillate in amounts ranging from not less than forty-seven thousandths of 1 per cent to not more than thirteen hundredths of 1 per cent by weight of such soap. Such soaps and soap products containing a petroleum distillate in an amount of 1 per cent or less by weight thereof, do not contain the same in an amount sufficient to be effective as a cleansing ingredient nor substantially to enhance the cleansing value of such soaps or soap products to the consuming public. Said petroleum distillate, however, was in each said case not naphtha, but kerosene. Kerosene is uniformly distinguished from naphtha by the trade and by the

purchasing and consuming public in the United States, which distinction existed during and through the period of the manufacture and sale of "Easy Task White Naphtha Soap" and of the soap manufactured by respondent and sold as aforesaid under customers' brands. The market price of kerosene is, and for a period greater than seven years last past has been, substantially less than that of naphtha.

PAR. 5. Respondent sells its "Easy Task White Naphtha Soap" with said brand conspicuously imprinted upon each cake of soap and conspicuously printed upon the wrapper enveloping the same, and by coupons and handbills, and otherwise, advertises its said soap as a naphtha soap, and formerly sold its said soap with the aforesaid customers' brands, including the word "naphtha," conspicuously printed upon the cartons containing the same, with the effect of inducing the public to purchase said soap and with the effect of causing the public to believe that such soap contains genuine naphtha and in an amount sufficient to be effective as a cleansing ingredient, and that the naphtha ingredient substantially enhances the cleansing power and the value of said soap. The description and designation of the aforesaid products of respondent as naphtha soap is a misrepresentation and deception upon the public purchasing such soap.

PAR. 6. There are producers of so-called "naphtha" laundry soaps in various States of the United States negotiating sales and selling, and in pursuance thereof transporting their products from the State of manufacture to other States, whose products contain genuine naphtha as an effective and substantial ingredient. These naphtha soaps are sold to the public in competition with the "Easy Task White Naphtha Soap" of the respondent and with the soap manufactured by respondent and sold as aforesaid under various brands of respondent's customers. The use of the term naphtha by respondent, while using kerosene as a substitute and in the minute quantities above stated, results in loss of trade by manufacturers of genuine naphtha soap. Certain consumers purchase the products of respondent in the belief that they are securing a product having genuine naphtha in substantial quantity incorporated therein as a cleansing ingredient.

PAR. 7. Petroleum distillates incorporated as ingredients in soaps or soap products have a tendency rapidly to volatilize and this tendency differs in rapidity among soaps and soap products of varying ingredients and properties.

Order

11 F. T. C.

CONCLUSION

The practices of the said respondent corporation, under the conditions and circumstances described in the foregoing findings, 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 come before the Commission upon complaint, answer and stipulation as to the facts, and the Commission having made its report based upon said stipulation, in which it stated its findings as to the facts and reached the conclusion that respondent corporation has violated 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,"

Now, therefore, it is ordered, That the respondent, Hewitt Brothers Soap Co., its officers, agents, representatives, servants, and employees do cease and desist, in the course of commerce, as defined in the said act of Congress from:

Using the word "Naphtha," or its equivalent in the brand name of any soap or soap product offered for sale or sold by the respondent, either under respondent's own brand or under the brand name of any customer or customers of respondent, and from using the said word "Naphtha," in any manner incidental to the presentation of any of its soap or soap products by salesmen, in advertisements, or otherwise, if and when such soap or soap products contain a petroleum distillate known and sold as "Kerosene," and when the word "Naphtha" is so used to designate the addition of "Kerosene" to or its presence in such soap or soap product.

It is further ordered, That respondent file a report in writing with the Commission within 60 days from the date of service upon respondent of this order, setting forth in detail the manner and form in which it has complied with the order herein set forth.

It is further ordered, That jurisdiction be, and the same is hereby retained, by this Commission to the end that if respondent corporation shall reconsider its present determination not to continue the manufacture and sale of any soap or soap product to be known, distributed or sold as "Naphtha" soap or soap product, and shall hereafter elect to resume the manufacture and sale of any such so-called "Naphtha" product, the Commission, either upon its own motion or pursuant to

the filing with the Commission of respondent's notification of intention to resume, as specified and required by the aforesaid stipulation, may investigate and ascertain the following matters of fact:

(a) The rapidity of the volatilization of the naphtha content of such soap or soap product so to be manufactured by respondent as aforesaid, and,

(b) The length of time required in the normal course of the distribution of said soap or soap product from manufacture by respondent until sale to the ultimate consumer.

The Commission may thereafter enter an order, supplemental hereto, which shall define the minimum percentage of naphtha content which the respondent shall thereby be required to incorporate in its said "naphtha" soap or soap product, in such event to be manufactured and sold by respondent, to the end that an amount of naphtha in excess of 1 per cent by weight shall persist and be retained, in the said soap or soap product of respondent, at the time when the same, in the normal course of distribution, shall reach the ultimate consumer.

IN THE MATTER OF
THE METEOR COAL 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 1447. Complaint, Mar. 23, 1927—Decision, Jan. 21, 1928

Where a bituminous coal of high quality and value, mined exclusively in the southwestern portion of West Virginia, and contiguous Virginia, had long been known as "Pocahontas" coal, and enjoyed a widespread popularity among dealers and consumers, and was considered by many of the trade and consuming public as superior in quality and value to other competitive bituminous coals, and the best bituminous coal for certain purposes in the United States; and thereafter a corporation engaged in the sale of an inferior and cheaper coal produced at and near Pocahontas, Ill., named, designated, and conspicuously advertised said coal as "Pocahontas" in newspapers, trade journals, and other publications of general circulation, and otherwise so represented the same in the selling and marketing thereof; with the capacity and tendency to mislead, and with the effect of misleading many among the trade and consuming public with reference to the source of said coal, and of inducing the purchase thereof, as and for that first named, and with the tendency to divert business from and otherwise injure and prejudice competitors dealing in such coal and properly naming, designating and representing the same as "Pocahontas," and competitors dealing in other coals without so misrepresenting the same:

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

Mr. W. T. Chantland 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 Missouri corporation engaged in the sale of coal to dealers and consumers in various States, and with principal place of business in St. Louis, with naming product misleadingly 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.

Respondent, as charged, for about 10 years last past, called a coal dealt in by it as above set forth, "Pocahontas" coal, featured said name and designation in its advertisements thereof in newspapers, trade journals and other publications of general circulation throughout the United States and in sundry sections thereof, and otherwise represented the same as "Pocahontas" coal in connection with the sale and marketing thereof, notwithstanding the fact that the coal