

Complaint

IN THE MATTER OF

SAMUEL DACH, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE COLUMBIA NOVELTY 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 1439. Complaint, Feb. 19, 1927—Decision, Feb. 20, 1928

Where an individual engaged in the sale of liquid perfume and miscellaneous novelties or premiums therewith, directly to the consuming public; advertised certain articles offered as premiums for the purchase of a certain number of bottles of the perfume, for subsequent resale by the vendees thereof (mostly children), in circulars, magazines and newspapers of general circulation, as a "ring watch", studded with 14 brilliant sparkling reproduction diamonds, or, in some cases, with "blue-white raysola diamonds," and a penknife (offered as part of a "school box and outfit"), as a "gold fountain pen and gold knife", the fact being that the so-called ring watch contained neither watch, nor diamonds of any kind, but consisted of a ring with a simulation of the face of a watch, with no precious stones but only particles of glass, and that the pen and knife contained no gold whatever, but were made of a base metal shell or covering simulating gold in color only; with the capacity and tendency to mislead and deceive members of the purchasing public into purchasing said perfume and premiums in the erroneous belief thereby induced as to the nature of the latter, to the prejudice of the business of its competitors and the public:
Held, that such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

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 individual, engaged at East Boston, Mass., in the sale of perfumery direct to consumers residing at points in various States, 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.

Respondent, as charged, for about two years last past, in advertisements by him in newspapers, periodicals and other publications of general circulation throughout the United States and in certain sections thereof, through which advertisements he sought and se-

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cured persons, mostly children, to act as his agents in the sale of his said perfumery by house-to-house canvass, by offer of certain articles of merchandise as "premiums" as a reward for services in selling said perfume, made many false and misleading assertions and representations concerning the nature, quality and value of said premiums, said assertions and representations including the following, among many others of like tenor and effect, concerning various premiums offered.

That a certain ring watch was ornamented with diamonds and engraving and composed in part of platinum, and that a certain "School Box and Outfit", both of which articles were depicted in said advertisements, contained a gold fountain pen and gold pen-knife, the facts being that the first-named article was not ornamented or composed as represented, and that the only pen and knife contained in said box and outfit contained no gold.

By means of such false and misleading assertions and representations, as alleged, "respondent induces and procures many persons, for the most part children, to become aforementioned sales agents for respondent, which said agents accept such employment acting in the belief that said statements and representations are true", all to the prejudice of the public and of 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 Samuel Dach, doing business under the trade name and style Columbia Novelty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent entered his appearance in said proceeding, and thereafter, the matter being ready for the taking of proofs with respect to the charges in said complaint, a stipulation as to the facts was entered and agreed upon by and between respondent and counsel for the Federal Trade Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts of the proceeding before the Federal Trade Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement, without further hearings, to make its report in said proceeding, stating its findings as to the facts and conclusion and entering its order disposing of the proceeding.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Samuel Dach is an individual doing business under the trade name and style Columbia Novelty Co. with his place of business in the city of East Boston, State of Massachusetts. He is and for more than two years last past has been engaged in the business of selling and distributing liquid perfume and miscellaneous novelties, hereinafter referred to as premiums, directly to the consuming public throughout the various States of the United States. He causes said products when sold to be transported from his place of business in East Boston, Mass., through and into other States of the United States to the respective purchasers thereof in such other States, and throughout the course and conduct of such business he has been and still is in direct active competition with many other individuals, partnerships, and corporations engaged in the business of selling and transporting similar and like products in commerce between and among the various States of the United States.

PAR. 2. Respondent's aforesaid business is, and for more than two years last past has been, conducted by him as hereinafter set forth. He causes advertisements to be published through circular letters and in magazines and newspapers of general circulation throughout the United States and in various sections thereof in which he deals, and offers to sell and deliver said premiums to the purchasing and reading public for and in consideration of the reader's purchasing from respondent, or selling as agent for and on behalf of the respondent a certain number of bottles of liquid perfume at a stated price per bottle and remitting to respondent the amount of the selling price of such perfume. As a result of said advertisements many hundreds of persons annually, for the most part children, accept respondent's offer in said advertisements stated and communicate by letter their acceptance of such offer to respondent at East Boston, Mass., whereupon respondent causes the stated number of bottles of his perfume to be shipped and transported from his place of business in East Boston, Mass., through and into other States of the United States to each of such respective purchaser-readers. Within a certain time after the receipt of said perfume, usually fifteen days, said purchaser-readers are required, under the terms of respondent's

offer, to, and they do, remit to respondent the amount of money stated in said advertisements. Said purchaser-readers have the privilege of making said remittance and keeping said perfume for their own consumption or may, in their discretion, and in most instances they do, raise the amount of money necessary for said remittance by selling the perfume, as respondent's agent and for and on behalf of respondent, at the stated prices per bottle. Upon receipt of such remittances and in consideration thereof respondent causes the respective premiums so advertised to be transported from his place of business in East Boston, Mass., through and into other States of the United States to each of such purchaser-readers making such remittances.

PAR. 3. Among the premiums so advertised, sold and distributed, as stated above, is a certain novelty denominated, described, and represented by respondent in his aforesaid advertisements as a "Ring Watch" consisting of a finger ring with a large set or ornament in imitation of and simulating in general appearance a small open-faced lady's watch studded around the dial with fourteen brilliants. In said advertisement respondent caused said so-called ring watch and said brilliants to be depicted, described, and represented as a "ring watch studded with fourteen brilliant sparkling reproduction diamonds." In some of the circular letters referred to in paragraph 2 hereof respondent represented said novelty as a "ring watch studded with fourteen brilliant blue-white Raysola diamonds." In truth and in fact said so-called "Ring Watch" contains neither a watch nor diamonds of any kind or character but the face thereof is a simulation and imitation of the face of a watch and said brilliants described as "reproduction diamonds" and "Raysola diamonds" are not diamonds nor any other precious stones, but are only particles of glass.

PAR. 4. Another premium extensively advertised, sold, and distributed by respondent as set forth in paragraph 2 hereof is a novelty designated and described by respondent as a "School box and Outfit" consisting of a small box which contains a fountain pen, pencils, penholder, knife, and eraser. Respondent caused said so-called "School Box and Outfit" to be depicted in sundry advertisements aforesaid and therein represented and described the fountain pen and knife contained in said box as a "Gold Fountain Pen and Gold Knife." In truth and in fact said pen and knife are not made of gold and do not contain any gold whatever, but are made of a base metal shell or covering simulating gold in color only.

PAR. 5. The advertisements and representations of respondent as set forth in paragraphs 3 and 4 hereof are false and misleading and have had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous belief that said representations were and are true in fact, and to purchase respondent's perfume and premiums in such erroneous belief, to wit, that said so-called "ring watch" is a watch and is studded with a certain kind of diamonds or precious stones and that said fountain pen and knife are in fact made of or contain gold, all to the prejudice of the business of respondent's competitors and the public.

CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate 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 stipulation as to the facts in lieu of testimony executed and filed by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusions 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 Samuel Dach, his agents, representatives, servants, and employees, cease and desist—

(1) From representing, describing or advertising as "diamonds" or as any other precious stones or gems, any stones, brilliants, ornaments or other parts of any jewelry or similar articles of merchandise sold and distributed in interstate commerce, unless said stones, brilliants, ornaments or other parts are in fact diamonds or other precious stones or gems as represented;

(2) From representing, advertising or describing as a "watch" any article of jewelry or other merchandise simulating in general appearance a watch and sold and distributed in interstate commerce, unless said jewelry or other merchandise so represented is in fact a timepiece known as a watch;

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(3) From representing, advertising or describing as being made of or containing gold, any fountain pen, knife or other article of merchandise sold and distributed in interstate commerce, unless said fountain pen, knife or other article of merchandise is in fact made of gold or contains gold as represented.

It is further ordered, That the respondent, Samuel Dach, 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 he has complied with the order to cease and desist hereinabove set forth.

Modified order

IN THE MATTER OF
THE GOOD GRAPE COMPANY

MODIFIED ORDER TO CEASE AND DESIST¹

Docket 1186. February 27, 1928

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony in support of the complaint and in opposition thereto, and on brief and argument of counsel, and the Commission having made its findings as to the facts, with its conclusion that the respondent has and is violating 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 ordered, That the respondent, The Good-Grape Co., its officers, representatives, agents, servants, and employees, cease and desist from—

(1) Using or authorizing the use by others, in interstate commerce, of "Good-Grape," the phrase or slogan "Fruit of the Vine," or the

¹ The complaint, findings and original order in this matter, relating to the use of the words "Good Grape," and such phrases as "Fruit of the Vine" in connection with the sale of an imitation grape beverage product, containing substantially less than 1 per cent of the product of the grape, but with a pronounced grape flavor, color and odor, artificially derived and a concentrate for use of bottling plants in the manufacture of such beverage, are reported in 10 F. T. C. 99.

The original order, Commissioner Thompson dissenting, required respondent, its officers, etc., to cease and desist from—

(1) Using or authorizing the use of the name "Good-Grape" whether on advertising matter relating to the concentrate "Good-Grape" or the beverage "Good-Grape" or on bottles or other containers thereof, or on labels, or crowns, or stoppers of such bottles or containers, or otherwise, unless and until the name "Good-Grape" is in every instance accompanied with an explanation in close proximity to the name "Good-Grape" in letters at least one-half as high and one-half as wide as the letters used in the accompanying name "Good-Grape," and of heaviness of color and style of lettering which will render them at least equally as conspicuous in proportion to their height and width as the letters in the accompanying name "Good-Grape," which explanation shall contain the statement that the concentrate "Good-Grape" or the beverage "Good-Grape" is an imitation and is not grape juice. The following may be used for this explanation: "Imitation Grape—Not Grape Juice."

(2) Using or authorizing the use by others in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, or at all, the phrase or slogan "Fruit of the Vine," in connection with the sale of (a) a concentrate or concentrates not made from grapes and not containing the juice from the natural fruit of grapes from which a beverage is made, or (b) a beverage, not made from grapes and not containing juice from the natural fruit of grapes.

(3) Using or authorizing the use by others in advertising or upon business stationery or on bottles or other containers or on labels, crowns, stoppers, or otherwise, or at all, any word or words, pictures or symbols falsely representing or suggesting (a) that a concentrate or concentrates from which a beverage is made, is made from grapes and contains the juice from the natural fruit of grapes, or (b) that a beverage, is made from grapes and contains the juice from the natural fruit of grapes.