

Report

IN THE MATTER OF
THE PROCTER & GAMBLE COMPANY AND THE PROCTER & GAMBLE DISTRIBUTING COMPANY

SUPPLEMENTAL REPORT, FINDINGS AS TO THE FACTS, AND ORDER
PURSUANT TO MANDATE OF COURT

Docket 852—December 28, 1928

Original findings and order in *Procter & Gamble Co. et al.*, 8 F. T. C. 143 et seq., relating to the sale of soap, soap powder, and soap chips containing no naphtha, but a petroleum distillate of kerosene amounting to one-half of 1 per cent by weight, in the case of the soap, and 1 per cent in the case of the powder, upon manufacture, and not sufficient in the case of any, substantially to enhance their value upon use by the public, and sold under brands, designations, and advertisements including and/or featuring the alleged naphtha content and the pretended merits of the products, by reason thereof, modified and supplemented, pursuant to court mandate and stipulations entered into subsequent and incidental thereto, and respondents required to cease and desist entirely from the use of the word naphtha or its equivalent in the brand name, description in advertising, or otherwise in offering for sale (1) soap products in the form of powder or chips, or (2) its "P & G the white naphtha soap", as made under the formula selected and submitted to the Commission, unless said soap shall have had incorporated therein, at time of manufacture, a quantity of naphtha equal to or in excess of 1.25 per cent by weight thereof; jurisdiction being retained over the proceeding to permit such changes in the order as changes in formula or method of manufacture may require or permit, while still insuring retention at time of sale to consumer, in naphtha named soaps and soap products sold by respondent in interstate commerce, of more than 1 per cent by weight of naphtha.

The above-entitled proceeding heretofore came on for hearing before the Federal Trade Commission, and the Commission, on August 6, 1924, made its findings as to the facts and conclusion, and caused its order to issue requiring the respondents above named, to cease and desist from the use of certain practices therein set out¹, whereupon the respondents applied to the United States Circuit Court of Appeals for the Sixth Circuit, to review such order, and said court, on January 5, 1926², by its opinion and decree affirmed paragraph 1

¹ See case reported in 8 F. T. C. at 143, relating to and condemning the use of the words "P & G The White Naphtha Soap", "Star Naphtha Washing Powder", and "P & G The White Naphtha Soap Chips" as the designations and brands for soap, soap powder, and soap chips containing no naphtha but the petroleum distillate consisting of kerosene, and amounting, at time of manufacture, to one-half of 1 per cent, and 1 per cent, in the case of the first two products, subject to complete or partial loss by volatilization subsequent to manufacture and prior to sale in the normal course of trade, to the consuming public, and not present in any of the three in an amount substantially to enhance their value in cleansing power to the public; and also relating to and condemning advertisements stressing the supposed efficiency and time and strength saving qualities of the products in question by virtue of their naphtha content.

² Reported in 11 F. (2d) 47.

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of said order and vacated paragraph 2 of said order^a and remanded the cause to the Commission with instructions to take such further evidence as it may think necessary and pertinent and to make such further order, if it so desires, in reference thereto as it may conclude to be necessary and proper; and pursuant to such mandate, stipulations were made and entered into by and between counsel for the Commission and counsel for said respondents concerning facts not disclosed by the original record herein, which stipulations have been filed herein as a part of the record in this proceeding.

Thereupon this proceeding came on for further hearing upon the original record herein, and the stipulations as to facts not disclosed by such original record, and the Commission now being fully advised in the premises adopts and reaffirms its findings as to the facts made herein on August 6, 1924, except in so far as such findings may be modified by these findings, and makes the following additional findings as to the facts:

ADDITIONAL FINDINGS AS TO THE FACTS

1. The soap products heretofore manufactured and sold by respondents, under the brand names of "Star Naphtha Washing Powder" and "P & G The White Naphtha Soap Chips" do not contain naphtha to the amount of more than 1 per cent by weight thereof when such products reach the consuming public in the usual course of retail trade. That soap products in the form of powder or chips because of their nature, being composed of finely divided particles, will not retain a volatile ingredient such as naphtha to the extent of more than 1 per cent by weight thereof, up to the end of the period required for the distribution of such products to the ultimate users thereof in the usual and ordinary course of retail trade.

2. That at least 90 per cent of the bar laundry soap manufactured and sold by respondents under the brand name of "P & G The White Naphtha Soap" is distributed to the consuming public through retail dealers whose average sales approximate $17\frac{1}{3}$ boxes of such soap per year each, or approximately 1 box every 21 days; that such soap is

^a The original order (omitting period fixed for compliance) required respondents, their agents, etc., to cease and desist from—

1. Using the word "Naphtha", or its equivalent, in the brand name of any soap or soap product offered for sale or sold by respondents, or otherwise incidental to its advertisement and sale, if and when such soap or soap product contains the petroleum distillate known and sold as kerosene and the word "Naphtha" is so used to designate the addition of said kerosene to or its presence in such soap or soap product;

2. Using the word "Naphtha", or its equivalent, in the brand name of any soap or soap product offered for sale or sold by respondents, or otherwise incidental to its advertisement and sale, if and when such soap or soap product normally contains at the time of and upon its sale to the consuming public, no naphtha or naphtha in an amount of 1 per cent or less by weight thereof.

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in the factories and warehouses of respondents, after being packed in boxes and before shipment, and in transit to warehouses of respondents or warehouses of wholesale dealers to whom it is sold, and in storage in such warehouses and in transit from such warehouses to retail dealers, for a period not exceeding 53 days. That the distribution of 90 per cent of the output of the soap so manufactured and sold by respondents, is deemed to be normal distribution of such soap in the usual course of retail trade.

3. That the normal rate of evaporation of naphtha put into "P & G The White Naphtha Soap" as now constituted, up to the end of the period required for its normal distribution in the usual course of retail trade, is 16.92 per cent, and if said soap as now constituted, has incorporated into it upon manufacture, a quantity of naphtha equal to 1.25 per cent by weight thereof, such soap will retain a quantity of such ingredient, exceeding 1 per cent of the weight thereof, up to the end of the period required for its distribution to the ultimate consumers in the usual course of retail trade.

4. That the bar laundry soap heretofore manufactured and sold by respondents under the brand name of "P & G The White Naphtha Soap", has not contained naphtha to the amount of more than 1 per cent by weight thereof, when such soap reached the consuming public in the usual course of retail trade.

CONCLUSION

The practices of said respondents, 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".

SUPPLEMENTAL ORDER TO CEASE AND DESIST PURSUANT TO
MANDATE OF COURT

This proceeding coming on for further hearing before the Federal Trade Commission, pursuant to the terms of the mandate of the United States Circuit Court of Appeals for the Sixth Circuit, issued on May 13, 1926, and the Commission having made its report in which it stated its findings as to the facts, and reached the conclusion that the respondents have 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",

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Now, therefore, it is ordered, That the respondents, the Procter & Gamble Co. and the Procter & Gamble Distributing Co., their respective officers, agents, representatives, servants, and employees, do cease and desist, in the course of commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, from:

1. Using the word "Naphtha", or its equivalent, in the brand name, or in describing in advertising or in otherwise offering for sale, of soap products in the form of powder or chips offered for sale or sold by respondents.

2. Using the word "Naphtha", or its equivalent, in the brand name, or in describing in advertising or in otherwise offering for sale, of its "P & G The White Naphtha Soap" as constituted and made under the same general formula as the soap from which samples were selected and submitted by respondents to the Commission for analysis on or about February 9, 1928, made into bars or cakes for household use offered for sale or sold by respondents, unless such soap has had incorporated therein, at the time of manufacture, a quantity of naphtha equal to or in excess of 1.25 per cent by weight thereof.

3. Since the evidence in this proceeding shows that the quantity of naphtha which must be put into bar soap at the time of manufacture in order that it may retain more than 1 per cent by weight at the time it is sold to the consumer varies with the composition, formula, and methods of manufacture of the soap, jurisdiction of this proceeding is retained in order that such change may be made in the terms of the order as changes in formula or methods of manufacture may require or permit while still insuring the retention, at the time of sale to the consumer, in naphtha-named soaps and soap products sold by the respondent in interstate commerce, of more than 1 per cent by weight of naphtha.

4. This order shall take effect upon service thereof, except that the respondents are allowed 60 days within which to use up labels and advertising matter now printed for use in connection with the sale or offering for sale of its naphtha-named soap powder and soap chips which may be violative of the provisions of this order.

It is further ordered, That the respondents file a report in writing with the Commission within 60 days after the date of service upon them of this order, setting forth in detail the manner and form in which they have complied with such order.

Syllabus

IN THE MATTER OF

MARSAY SCHOOL OF BEAUTY CULTURE, O. C. MILLER,
A. J. WEBER AND IGNATIUS BARNARDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1504. Complaint, Mar. 16, 1928—Decision, Jan. 16, 1929*

Where a corporation engaged in furnishing courses of instruction by mail in various branches of beauty culture to students throughout the United States, and in the sale to pupils of equipment, supplies, and cosmetics, and its president, manager, and principal stockholder; in advertising its aforesaid courses in magazines and other publications of general circulation, and in catalogues, pamphlets, circular letters, and other printed, written, or mimeographed matter mailed to prospective pupils,

- (a) Invited them to write "for sample lessons of the wonderful Marsay Practice Method which turns out expert operators in a few months, at home in spare time", and advised those replying that it required "a year or less to prepare at home in spare time", and that a "Marsay Trained Beauty Culturist" could "earn a big salary as an all-around beauty operator", the fact being that the training and education offered would not make the pupil or graduate an "Expert Beauty Culturist or Expert Operator" or "all-around Beauty Culturist", and that such or similar terms and descriptions could not accurately and truthfully be applied to a graduate;
- (b) Represented that an expert beauty culturist commanded from \$50 to \$100 a week, that the pupil could make from \$10 to \$20 a week while preparing, and, when a Marsay trained beauty culturist could earn a big salary, that plenty of positions were open, and invited the prospective pupil to get a "Marsay license—join the Great National Organization—make profits of \$5,000 to \$25,000 a year", the fact being that earnings or profits were grossly exaggerated, and that in "closed" States the graduate could earn nothing by reason of the fact of graduation, and was likely to receive, in other States, upon graduation, wages, commissions, or profits of less than \$25 a week, and that amounts in excess thereof were unusual and improbable;
- (c) Represented that its school afforded the only home training meeting the requirements of many State laws calling for a minimum of 625 hours of study and practice, and advised pupils in "closed" States that while they were not allowed to charge for practice work, there was no law against persons given treatment paying pupils such sums as they wished, the fact being that the laws of some twenty closed States prohibited, under penalty, the practice of beauty culture, whether for pay or not, except by a duly examined and licensed beauty culturist, and that, under the provisions thereof, a course in a nonresident school did not and could not, in and of itself, qualify the graduate for the State examination for beauty culturist, or for practice as an apprentice; and
- (d) Falsely represented that a certain alleged professional expert beauty culturist of one of the large cities was a graduate of its school and was by the education so received, enabled to establish and maintain a highly successful and profitable business;