

## Complaint

## IN THE MATTER OF

## HOOSIER MANUFACTURING COMPANY, UNION SOAP COMPANY, CRESCENT SOAP COMPANY, C. A. WOCHER, ROBERT WANDS, AND ROSE K. WANDS

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 1480. Complaint, Oct. 10, 1927—Decision, Apr. 25, 1929*

Where three corporations, operated as a common enterprise by as many individuals, the stockholders, officers, and directors thereof; and said individuals, engaged in the manufacture of soap containing nearly 2 per cent free alkali and 20 per cent sodium silicate and, by reason of said ingredients' effect upon the skin, not suitable for toilet or bath, and in the sale thereof, under different brand names and designations, to house-to-house peddlers and other vendees, in three cake lots, in small, fancy paper boxes,

- (a) Conspicuously labeled the aforesaid boxes with the legend "FOR THE TOILET BATH SHAMPOOING", "BATH AND SHAMPOO SOAP", or "FOR THE TOILET BATH SHAMPOO" and offered and sold their product as and for a toilet and bath soap, with the capacity and tendency to mislead and deceive substantial numbers of the purchasing and consuming public into believing said product to be intended and suitable for such use, with no injurious effect, and to cause them to purchase the same in such belief; and
- (b) Conspicuously labeled wrappers and containers of large quantities of their soap containing no product derived from the fruit of the lemon tree "NATURE'S LEMON-COCOA SOAP" and so sold the same, with the capacity and tendency to deceive and mislead substantial numbers of the trade and consuming public in respect of the composition thereof, and to cause them to purchase the same as and for a soap containing as a substantial ingredient a product derived from said fruit;

With the capacity and tendency to unfairly divert trade and business from their competitors, and to the injury and prejudice of the trade, consuming public, and said competitors:

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

*Mr. Henry Miller* for the Commission.

*Mr. Chester L. Zecheil*, of Indianapolis, Ind., for respondents.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents Hoosier Manufacturing Co., Union Soap Co., and Crescent Soap Co., Indiana corporations, and respondents C. A. Wocher, Rose K. Wands, and Robert Wands, president, vice president, and secretary and treasurer of the aforesaid corporations and owners of

all the stock thereof, with offices at Indianapolis, with naming products misleadingly, misbranding or mislabeling and misrepresenting prices, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged in a common enterprise to produce "certain cheap products resembling soap" and designated as such, and to sell the same to purchasers and peddlers among the several States, and in pursuance of their joint undertaking so to do "and thereby mislead and deceive a portion of the public among the several States as to the origin, quality, nature, and ingredients of such products", sell their said products under brands, names, and labels which are false and deceptive and tend to deceive purchasers and consumers among the several States, said brands, names, and labels including the following:

Products designated as toilet soaps are called "Natures Lemon Cocoa" and "Marvola Vegetable Cream" and "Rosemary Scented", together with the legends on the cartons (in the case of the first two brands, respectively) "Pure Vegetable Oil Combined with Mineral Salts" and "Combination of Pure Vegetable Oil and Mineral Salts", notwithstanding the fact that none of said products was composed of lemon cocoa, the ingredients thereof were not pure vegetable oils combined with mineral salts, and none of said products, which were cheap imitations of soap and not entitled to be called soap, contained either lemon or cocoanut oil or consisted of a combination of pure vegetable oil and mineral salts.

Cheap products (produced by respondent Hoosier Manufacturing Co. in pursuance of an understanding with the other respondents and for a time sold and distributed by respondents Crescent Soap Co. and Union Soap Co.—which do no manufacturing—under their respective names, but later distributed only by said last named company) resembling soap, designated as such and given names and brands which are deceptive and tend to mislead and deceive purchasers and a portion of the public as to the origin, nature, and ingredients thereof; some of said products being misdescribed and misrepresented through use of the phrase "Toilet Soap" on the wrappers, cartons and containers thereof, though containing from 50 per cent to 60 per cent of ingredients other than toilet soap and ingredients not usable as toilet soaps without injury to the users.

Products as laundry soaps sold under the brand names "Foam White Family" and "Savetyme" and in cartons or containers which mislead and deceive and tend to result in deception to purchasers

and consumers, said products being cheap imitations of soap and not entitled to be so called.

Respondents further, as charged, sold products (made by respondent Hoosier Manufacturing Co., as above set forth, for the others) not suitable for toilet, bath, and shampoo, nor a combination of pure vegetable oil and mineral salts, but containing in some cases from 50 per cent to 60 per cent of ingredients other than soap ingredients and not susceptible for use as a toilet soap without injury to the user, falsely designated as toilet soaps, and in wrappers, cartons, and containers, some of which contain such statements as "For Toilet, Bath and Shampoo"; "Combination Price 75¢"; "Crescent Soap Company", the fact being, in addition to those above set forth, that said price was fictitious and much in excess of the contemplated actual price of the product; all with the tendency to deceive purchasers as to the nature, use, price, and producer thereof.

The manufacture and sale, as charged, by respondents of their aforesaid products, as above set forth, were done by them "in pursuance of a joint undertaking or agreement to affect and influence interstate trade and commerce. The brands, names, and labels on the wrappers, cartons, and containers of the products manufactured and sold by the respondents were devised, intended and used to affect and influence the sale among the several States of soaps suitable for toilet and laundry purposes, and such brands, names, and labels did affect and influence the sale among the several States of such soaps. The brands, names, labels, and printed statements used by the respondents as set forth in this complaint, were intended to mislead and deceive purchasers and portions of the consuming public, and such statements tended to mislead and deceive as set forth herein, and in divers other respects. The acts of the respondents, and each of them, as stated in this complaint, constitute unfair methods of competition in commerce within the meaning of the act of Congress herein mentioned."

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 respondents Hoosier Manufacturing Co., Union Soap Co., Crescent Soap Co., C. A. Wocher, Robert Wands, and Rose K. Wands, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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Respondents having entered their appearances herein and filed answer to said complaint, hearings were had at which testimony was taken and evidence introduced by counsel for the Commission in support of the allegations of the complaint and by counsel for respondents in opposition thereto before an examiner of the Commission theretofore duly appointed. Said evidence, including a transcript of the testimony taken, was filed of record in the office of the Commission; and thereafter briefs were submitted by counsel for the Commission and for the respondents, and oral argument before the Commission was waived by counsel for the respondents.

Thereupon this proceeding came on regularly for decision, and the Federal Trade 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 its conclusions drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Hoosier Manufacturing Co., Union Soap Co., and Crescent Soap Co. are corporations severally organized and existing under and by virtue of the laws of the State of Indiana. Respondents C. E. Wocher, Robert Wands, and Rose K. Wands are individuals and are the stockholders, officers, and directors of each of said corporate respondents, respondent Wocher being president, respondent Robert Wands being secretary and treasurer, and respondent Rose K. Wands being vice president of each of said corporate respondents. Pursuant to a common understanding and agreement among themselves, respondents are and for more than three years last past have been continuously engaged, as hereinafter set forth, in carrying on and conducting, as a joint undertaking and enterprise, the business of manufacturing, selling and distributing soap to itinerant house-to-house peddlers and other vendees throughout the several States of the United States, jointly maintaining and operating in said business, and for the business of each of them, but one set of employees, manufacturing and other business equipment and a single office and place of business in the city of Indianapolis, Ind. They advertise and offer said soap for sale to their customers and prospective customers throughout the United States, and thereby many members of the purchasing public are from time to time induced to purchase, and they do purchase, said soap from respondents, and cause their purchase orders and remittances therefor to be transmitted and delivered from their respective points of location in States other than the State of Indiana to respondents at their aforesaid place of business in Indianapolis, Ind. Upon receipt of and

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## Findings

pursuant to such purchase orders respondents complete the respective sales and deliveries of said soap by causing the soap so sold to be transported in commerce from their place of business in Indianapolis, Ind., through and into other States of the United States to the respective purchasers thereof in such other States. In so conducting said business respondents are, and at all times mentioned herein have been engaged in interstate commerce, and in direct, active competition with many persons, partnerships, and corporations engaged in the business of selling and distributing soap in and among the several States of the United States.

PAR. 2. Exclusive of a small percentage of coloring matter and perfumery, said soap sold and distributed by respondents consists substantially of the following ingredients in the proportions named:

|                                      | Per cent |
|--------------------------------------|----------|
| Water.....                           | 61.30    |
| Anhydrous soap.....                  | 14.00    |
| Free alkali as sodium hydroxide..... | 0.65     |
| Free alkali as sodium carbonate..... | 0.95     |
| Salt from total chloride.....        | 3.01     |
| Sodium silicate.....                 | 19.75    |

In manufacturing and preparing said soap for the market respondents cause the same to be molded into small cakes of the customary size, and each cake to be wrapped in paper and packed in three-cake lots in small, fancy paper boxes. Said soap is offered for sale, sold and distributed by respondents and by their customers to the purchasing and consuming public under several different brand names and designations, with the wrappers and boxes of each brand bearing in conspicuous letters the respective designation and name used. In addition to the respective brand name used and other descriptive terms, each three-cake box of said soap also carries in large and conspicuous print one of the following phrases:

FOR THE TOILET BATH SHAMPOOING  
BATH AND SHAMPOO SOAP  
FOR THE TOILET BATH SHAMPOO

The soap, packed and branded as aforesaid is displayed, offered for sale, sold and distributed by respondents and by their vendees to the purchasing and consuming public as and for toilet and bath soap; whereas, in truth and in fact, said product is not suitable for use as soap for the toilet and bath, and when used as such has a tendency to produce a caustic, injurious, or deleterious effect upon the human body because of the presence in said soap of aforesaid free alkali and sodium silicate in the proportions hereinbefore set forth. Because of their deleterious effect upon the human skin, free

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alkali or sodium silicate are not used or found in the proportions used by respondents as aforesaid, or in any other substantial proportions, in soap generally and widely marketed in the United States by the soap industry for use upon the human body as toilet or bath soap.

PAR. 3. Respondents' use of the words "toilet" and "bath" and the sale and distribution of said soap as and for toilet and bath soap, as above stated, is deceptive; has and had the capacity and tendency to mislead and deceive substantial numbers of the purchasing and consuming public into, and to cause them to purchase said soap in and because of, the erroneous belief that said product as marketed is intended and suitable for use as soap for the toilet and bath, and that when used as such will not injure or have any deleterious effect upon the human body.

PAR. 4. For more than two years last past respondents caused and still cause to be sold and distributed as hereinbefore set forth to the purchasing and consuming public large and substantial quantities of their said soap described in paragraph 2 hereof under the brand name, designation, and description of, and as and for, "NATURE'S LEMON-COCOA SOAP"; and in so doing respondents cause said brand name to be displayed in conspicuous print upon aforesaid containers and wrappers in which the soap is marketed by them and by their deal-vendees. Such use by respondents of the word "lemon" in said name "NATURE'S LEMON-COCOA SOAP" is deceptive, has and had the capacity and tendency to deceive and mislead substantial numbers of the trade and consuming public into, and to cause them to purchase said soap in and because of, the erroneous belief that it contains as a substantial ingredient a product derived from the fruit of the lemon tree; whereas, in truth and in fact no such product is contained in said soap.

## CONCLUSION

The acts and practices of respondents in the sale and distribution of said soap as and for toilet and bath soap and as "NATURE'S LEMON-COCOA SOAP" have the capacity and tendency to unfairly divert trade and business from respondents competitors, and said acts and practices, under the conditions and circumstances set forth in the foregoing findings as to the facts, are to the injury and prejudice of the trade, consuming public, and respondents' competitors, 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 other purposes".

ORDER TO CEASE AND DESIST<sup>1</sup>

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of 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", and the Commission having heretofore, to wit, on April 25, 1929, entered and served its order upon respondents requiring them to cease and desist from certain practices; and it appearing to the Commission upon reconsideration of the matter that the said order should be modified in certain respects,

*Now comes, therefore,* The Federal Trade Commission under and by virtue of the provisions of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", and hereby orders that the order to cease and desist, heretofore made in this proceeding on the 25th day of April, 1929, be and the same is hereby modified so that said modified order shall read as follows:

*It is now ordered,* That respondents, their agents, representatives, servants, and employees cease and desist from the following acts and practices, in connection with or in aid of, offering for sale or selling such product in interstate or foreign commerce, to wit;

(1) From using the word "toilet" or the word "bath" with which to advertise, describe, brand, label, or otherwise designate or refer to any soap that is composed of the particular ingredients specifically set forth in paragraph 2 of the said findings as to the facts herein, used in the same proportions as set forth in said paragraph 2, or of substantially the same ingredients used in substantially the same proportions.

(2) From using the word "lemon" with which to advertise, describe, brand, label, or otherwise designate or denote a constituent of any soap unless such soap shall contain in substantial proportions an ingredient derived from the fruit of the lemon tree.

*It is further ordered,* That respondents shall within 60 days after the service upon them 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.

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<sup>1</sup> Modified order made as of Jan. 13, 1930.

IN THE MATTER OF  
GEORGE M. RUBINOW, AN INDIVIDUAL DOING BUSI-  
NESS UNDER THE TRADE NAME AND STYLE OF  
RUBINOW EDGE TOOL WORKS

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

*Docket 1342. Complaint, May 4, 1926.—Decision, May 1, 1929*

Where an individual engaged in the manufacture of hammers, hatchets, axes, and similar hand tools of malleable iron, and in the sale thereof to wholesale dealers, described said tools in catalogues and other trade literature as "Warranted Cast Steel" and "Cast Steel" and so labeled and sold the same to customer dealers, by whom said tools were designated as "steel" in catalogues to customers, and sold thus labeled to the purchasing public; with the effect of misleading and deceiving the trade and consuming public into believing the metal parts thereof to be composed of steel, with its recognized different characteristics and understood greater tool value, and with the capacity and tendency so to do and to induce the purchase thereof in such belief, and with the result of placing in the hands of others the means of consummating a fraud through such use of the aforesaid designations, and of diverting business from and otherwise injuring and prejudicing competitors dealing in products the metal parts of which are steel, and those dealing in products of which said parts are not so composed, and with the tendency so to do:

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

*Mr. William A. Sweet* 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 Newark, N. J., in the manufacture and sale of tools, with misbranding or mislabeling 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, engaged as above set forth, for about five years last past has conspicuously labeled certain tools made by him and containing no steel but composed, as to the metal parts thereof, of metal other than steel, with various legends and statements containing the words "Steel," including such legends and statements as "Cast Steel," "All Steel" and "New Process Converted Steel," and sells said tools so labeled to wholesalers, by whom the same are sold, thus labeled, to retailers in various States, and, by said retailers, still