

Complaint

IN THE MATTER OF
FAYRO LABORATORIES, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1564. Complaint, Feb. 19, 1929—Decision, April 16, 1931*

Where a corporation engaged in manufacture of a bath salts composed principally of Epsom salt, together with common salt, glauher salt, and oil of pine needles for scent, and in the sale of said preparation as a useful and effective means for removing excess fat, to wholesalers and retail drug stores and direct to consumers,

- (a) Used its trade name containing word "Laboratories" in advertisements in numerous newspapers, magazines and periodicals and printed matter upon the wrappers of the product, booklets enclosed therewith, and on the packages, and on letters, circulars and stationery, together with a picture of a chemist with test tube and other common chemical apparatus; and
- (b) Stated that formula involved was scientific and based on the labors of its chemists and study of analyses of various hot springs, including 22 of the most world famous, and that scientific tests of its laboratory, in which it made its said product, proved the value of the preparation as a solvent of fat;

Notwithstanding facts it employed no chemists or physicians and had no laboratory, formula was not obtained from or through chemists or scientific persons, but an actress, no chemists had ever been involved in connection therewith nor scientific tests, experiments or research, nor any laboratory or analyses;

With capacity and tendency to mislead and deceive purchasing public and ultimate consumers into purchasing said product in belief same was result of many years of scientific research in the United States and foreign countries, and that it maintained laboratories where same was scientifically mixed by chemists, and to divert trade to it from competitors:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Edward J. Hornibrook, for the Commission.

Mr. Cornelius D. Scully and *Mr. H. K. Brooks*, of Pittsburgh, Pa., for respondent.

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 Delaware corporation engaged in the manufacture of a preparation of bath salts, alleged to be effective for the removal of excess flesh, and in the sale thereof to wholesale and retail drug stores, and, chiefly, direct to the users through the mails, and with

office and principal place of business in Pittsburgh, with advertising falsely or misleadingly, and misbranding or mislabeling as to qualities and nature of product, and as to business status, or advantages, connections, 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, makes such statements in its advertisements in newspapers and periodicals, and in its descriptive matter upon the wrappers and labels of the product and in booklets enclosed therewith, as that the user can reduce from 2 to 4 pounds in a night, eating, doing and wearing what the user pleases, taking no risky medicine, and avoiding need for violent exercise, that the product is the concentrate of the natural mineral salts, which make effective the waters of twenty-two hot springs in America, England and Europe, that its use has removed excessive weight, made skins more lovely, bodies more shapely and minds brighter, that through use in a bath it opens the pores, and stimulates perspiration, forcing out surplus fat and bodily poison, that it is invigorating, that "Your physician will tell you that Fayro is certain to do the work and that it is absolutely harmless," that it is recommended by physicians, that while it reduces weight generally its effect can be concentrated on any parts desired, that "The hot springs are now brought to you," that its value is proved by laboratory tests, that it is based on a formula evolved by its chemists through analyses of waters and active ingredients of 22 of the world's most famous hot springs, that it is readily soluble, making it possible, "to recreate a hot springs bath at home" that "it is strong in osmotic value," in other words, "readily enters through the skin and mixes with the water in and around the sweat glands," that "when you put Fayro into the bath water you have recreated a hot springs bath," that it is very helpful "in the early stages of Bright's disease," and that thousands have benefited by it.

The facts are that said product made from Epsom salts, common salt and a small amount of perfume, is not the concentrate and mineral salt making effective the waters of the hot springs and will not create a hot springs bath nor remove fat from the body, and is an unsafe, unscientific, ineffective and undependable nostrum, chemists were never put to work to prepare the formula therefor nor employed by respondent in supervising its preparation, respondent has no laboratory for conducting any such investigations as suggested, and has never made any analyses of any of the hot springs' waters, reliable and skilled physicians do not recommend its use, it will not benefit a case of Bright's disease, and while perspiration

will take place in a hot bath as recommended by respondent, said product does not increase such perspiration in the least, and such a bath may do much injury in certain classes of ailments which may be present in obese persons.¹

According to the complaint "In and throughout the several States of the United States are many persons who are seeking some safe and dependable means whereby they may quickly and permanently rid their bodies of excess fat or of portions of flesh which they now bear and of which they desire to be rid. Said statements and representations in said advertisements, labels, wrappers and booklets have the tendency and capacity to take business from respondent's said competitors and to mislead and deceive the purchasing public into the belief and to cause the ultimate consumer to purchase said compound in the belief that said compound, as such remedial agent for the reduction of excessive fat or flesh, first, is a scientifically accurate method of treatment; second, is the result of many years of scientific research in the United States and foreign countries; and third, is a safe, effective and dependable remedy that may be used by any and all purchasers thereof without inconvenience or danger of harmful results to the physical health"; 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 its complaint upon the respondent, Fayro Laboratories, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed answer to said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter 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:

¹ As to this, complaint avers that "baths taken as recommended by respondent may do much injury, particularly in cases of heart trouble, hardening of the arteries, exophthalmic goiter, chronic Bright's disease and dropsy. One or more of these ailments may be present in obese persons. If the temperature of the bath should be raised too high and the person is unaccustomed to hot bathing material harm is likely to result, especially in a case of bodily impairment."

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business in the city of Pittsburgh in the State of Pennsylvania.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the manufacture, sale and offering for sale of a preparation of bath salts which is advertised and sold by respondent under the trade name of "Fayro"; the principal ingredient of which is Epsom salt and the other ingredients are common salt, glauher salt, and oil of pine needles, the latter ingredient being used only for the purpose of scenting the bath made from Fayro. The proportions of the ingredients used are approximately $7\frac{1}{2}$ to 8 parts Epsom salt, 1 part glauher salt, and from 1 to $1\frac{1}{2}$ parts common salt. Fayro bath salts is not always prepared with sufficient thoroughness to insure an even distribution of each ingredient throughout the mixture and the only analysis of Fayro in evidence is a package that contains no glauher salt but was made up chiefly of Epsom and common salt with 7 parts Epsom to 3 parts common, scented as aforesaid. In making, mixing, packing, storing and selling its product, respondent employs from five to twenty persons, none of whom is a chemist. Respondent maintains in its advertising that Fayro bath salts when used as directed, i. e., dissolved in a tub containing a quantity of hot water and the body immersed therein, is useful and effective in dissolving and removing excessive fat from the human body.

PAR. 3. Respondent sells part of its said product direct to the users of said compound by mail and part to wholesalers and retail drug stores, many of whom reside and have their places of business in States other than the State of Pennsylvania, and cause the same, when so sold, to be transported from its said place of business in the city of Pittsburgh in the State of Pennsylvania into and through other States of the United States to said purchasers at their respective points of location or places of business. Respondent has sold approximately 1,500,000 packages of Fayro.

The retail price of Fayro is \$1 per package of 20 ounces.

PAR. 4. Respondent in the course and conduct of its business, as aforesaid, is in competition with other persons, partnerships and corporations in and throughout the several States of the United States who are likewise engaged in the sale of and offering for sale in interstate commerce other methods, means, preparations and appliances for dissolving or otherwise removing fat from the human

body and many of such in nowise misrepresent their said preparations, means, methods or appliances.

PAR. 5. Respondent has spent the sum of about \$500,000 in advertising said products. Respondent in soliciting sales for Fayro advertises in a large number of newspapers, magazines and periodicals of general circulation in the several States of the United States and in printed matter upon wrappers enclosed in the packages containing Fayro and in booklets enclosed in such packages and on said packages and in letters, circulars and on stationery. In said advertisements respondent holds out that Fayro is a safe, effective, dependable and scientific remedy for the reduction of excessive fat. Respondent in said advertising uses its trade name "Fayro Laboratories, Inc." and uses a picture of a chemist with a test tube in his hand and on a table other apparatus commonly used by a chemist and the words,

"We studied the analysis of the various hot springs when preparing the formula for Fayro."

and

"When we first started to work to prepare the formula for Fayro we obtained analysis of the waters and ingredients of twenty-two of the most famous hot springs throughout the world."

and

"Basically these formula were much alike. All contained various salts, various forms of magnesia, sodium, etc. These were combined in many various proportions and experiments were conducted in the laboratories and upon patients."

and

"Laboratory tests prove the value of Fayro as a solvent of fat."

and

"When we first put chemists to work to prepare the formula for Fayro we obtained analyses of the water and the active ingredients of twenty-two of the most famous hot springs throughout the world."

Respondent in said advertising represents that it maintains a laboratory where Fayro is compounded and scientific tests and experiments of and with the product are made and that Fayro is made from a scientific formula.

PAR. 6. In truth, the formula for making Fayro was obtained from an actress who was neither a chemist nor a scientific person at all; respondent never put chemists to work to prepare the formula for Fayro; respondents never conducted or caused to be conducted any

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scientific tests, experiments or research in connection with the product Fayro or the formula thereof; it does not now and never did employ any chemists or physicians in connection with the preparation of Fayro bath salts; respondent does not now and never did maintain a laboratory for conducting investigations or experiments as to the product Fayro; respondent does not now and never did maintain a laboratory for any purpose; respondent did not conduct or cause to be conducted analyses of the waters of twenty-two or any hot springs, nor did respondent make use of the analyses of the waters of any hot springs in arriving at the formula for making the product Fayro; no chemists or scientists have or have had anything to do with the making, compounding or mixing of Fayro, or with the evolving of the formula of Fayro.

PAR. 7. The statements and representations as set forth in paragraph 5 hereof have the tendency and capacity to mislead and deceive the purchasing public into the belief and cause the ultimate consumers of said product to purchase said product in the belief (1) that said product is the result of many years of scientific research in the United States and foreign countries and that (2) respondent maintains laboratories where Fayro is scientifically mixed by chemists. The respondent's acts and practices hereinabove set forth have the capacity and tendency to divert trade to respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of respondent in the sale and distribution of Fayro, under the circumstances and conditions set forth herein are to the prejudice of the public and of respondent's competitors, and constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent thereto, the testimony, evidence, briefs and arguments of counsel; and the Commission, having made its findings as to the facts and its conclusion that respondent has been, and is, using unfair methods of competition in commerce in violation of 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",

It is now ordered, That respondent, Fayro Laboratories, Inc., its officers, agents, representatives and employees, in connection with the advertising, offering for sale and sale, in commerce among the several States of the United States, of the product Fayro bath salts, shall cease and desist:

(1) From using the word "laboratory" or the word "laboratories" or any other word or words of like import upon containers or wrappers of said bath salts, or on labels or brands thereof, or in booklets, on stationery, in letters, circulars, newspapers, magazines or otherwise;

(2) From representing that respondent maintains or has access to a laboratory in which said Fayro bath salts are mixed or prepared for sale;

(3) From representing that the formula from which Fayro bath salts is prepared is or has been scientifically evolved or is a scientific formula or that Fayro bath salts is scientifically mixed or prepared, or that the same is the result of many years of scientific research or is the result of scientific research at all;

(4) From representing by pictorial devices or otherwise that chemists or other scientists have or have had anything to do with the making, compounding, mixing or preparing of Fayro bath salts or with the evolving of the formula thereof or that they or any of them have made laboratory tests of the product, Fayro;

(5) From representing that respondent has or had put chemists to work to ascertain or obtain the analysis of the water of twenty-two or any of the famous hot springs of the world or that such chemists have made comparison of analyses of any of the waters of such hot springs with Fayro bath salts and from giving the results of such purported analyses and comparisons;

It is further ordered, That the respondent, Fayro Laboratories, Inc., shall within 60 days after the service upon it of a copy of this order to cease and desist, 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.

IN THE MATTER OF

JOHN MCGRAW, E. A. GLENNON, COPARTNERS DOING
BUSINESS UNDER THE NAME OF ROYAL MILLING
COMPANY, ETC., AND INDIVIDUALLY

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

Docket 1597. Complaint, Sept. 3, 1929¹—Decision, Apr. 16, 1931

Where a firm engaged in the purchase, mixing and sale of plain or phosphated, and self-rising, flour, to dealers in the southeastern States particularly, in competition with others similarly engaged, and also with those actually grinding wheat into flour and making and selling such products,

- (a) Adopted trade names including the word "milling", representing themselves as "Royal Milling Co.", "Richland Milling Co.", or "Empire Milling Co.", and as manufacturers of flour, with a daily capacity of 1,000 or 1,500 barrels, as the case might be, and displayed said names on the containers of their products, together with a brand name and designation of type of flour, such as "Silver Dawn. Superlative Self-Rising Flour", "Clover Leaf. Superlative Patent Flour", etc.; notwithstanding fact they ground no wheat and had no machinery or plant (with its many fold greater investment) for so doing and for carrying out the refined, complex and scientific processes involved in modern manufacture of flour, nor laboratory for ascertaining through chemical tests gluten, protein, and other content and characteristics thereof and maintaining the quality, standards, and uniformity of brands, but used regularly only the so-called inadequate and unscientific paddle test, and belonged to that class of concerns long known as blending plants, and were not mills, milling companies or manufacturers of flour, as long generally understood by dealers and consumers, many of whom believe that in purchasing flour directly from the concern grinding the wheat they secure a more uniform product or a better one for less money through elimination of middlemen's profits or costs, and prefer so to deal; and

- (b) Made such false and misleading statements in letters, circulars and literature distributed among the trade as " * * * Half your profit is in the buying; Order direct from the mill and save this yourself * * * ". "The scarcity of soft red wheat of good milling quality is becoming more acute each day * * * It has always been our policy to give our customers opportunity to take care of their requirements before an advance * * *. Nothing can be better than the best, and we handle only the best. This is not a mere dream, but an actual fact—based on chemical analysis * * * When you buy from us we save you money, as we do not sell through salesmen, brokers or jobbers, but go direct to the retail grocer and sell him at jobbing prices and you will find it much to your interest to buy on this plan";

With result that many dealers and consumers purchased their product as and for that of concerns grinding wheat into flour, and with capacity and tendency to divert trade to them from concerns actually so doing and selling their flour in the southeastern section of the United States, and

¹ Amended.