

## Complaint

IN THE MATTER OF  
COTY, INCORPORATED

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

*Docket 1688. Complaint, Aug. 23, 1929—Decision, Apr. 27, 1931*

Where a corporation engaged in importing perfumes, extracts, essences, powders and other cosmetics from France, and in packing and selling same to wholesale and retail dealers in various States; in pursuance of a policy adopted and directed to the maintenance and enforcement of prices suggested by it for resale of said products by customers,

- (a) Announced said policy publicly and furnished vendees with suggested prices for observance by wholesale and retail dealers and made it generally known to the trade through letters, telegrams, and interviews that it expected and required its dealers to maintain said prices;
- (b) Insisted upon such maintenance to wholesale and retail dealers brought to its attention as price cutters in their respective cities or territories and secured their agreements to maintain prices in the future; and
- (c) Refused to sell to price cutting wholesale and retail dealers failing to give assurances of price maintenance in the future and supplied names of those thus cut off to dealers maintaining its prices, and actual or potential sellers in territory served by aforesaid price cutters, and advised former of discontinuance of sales by it to latter by reason of their price cutting and failure to give assurances of future price maintenance;

With direct result of substantially lessening and suppressing competition between dealers in distribution and sale of its products, constraining them to sell same at prices fixed and established by it, preventing them from selling same at such lower prices as they might desire, and depriving their purchasers of advantage in price and otherwise, obtainable from natural and unobstructed flow of commerce in said products under conditions of free competition among such dealers, and of unduly hindering and obstructing competition in sale and distribution of said products in interstate commerce, and with tendency so to do:

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

*Mr. Robert H. Winn* for the Commission.

*Coudert Brothers*, of New York City, 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 Coty, Inc., a Delaware corporation engaged in the importation of perfumes, extracts, essences, powders and other cosmetics from France, and packaging and sale thereof to wholesale

and retail dealers in several States, and with principal office and place of business in New York City, with maintaining resale prices, 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 more than three years last past, in the course and conduct of its aforesaid business has enforced, and still enforces, a merchandising system adopted by it of establishing and maintaining certain specified prices at which its said products shall be resold by dealers handling the same, and respondent enlists and secures the support and cooperation of said dealers and of respondent's officers, agents and employees in enforcing said system.

"In order to carry out said system, respondent during said time has employed and still employs the following means whereby respondent and those cooperating with it have undertaken to prevent and have prevented dealers handling respondent's said products from reselling same at prices less than aforesaid resale prices established by respondent":

(a) Adopting and publicly announcing a resale price maintenance policy, with suggested prices to be observed by its wholesale distributors and retail dealers;

(b) Making it generally known to the trade by letters, telegrams, interviews with respondent's agents and by other means that it expects and requires dealers handling its said products to maintain and enforce its said suggested prices;

(c) Seeking and securing assurances from dealers that they will not in the future sell its products at prices other than those approved by it;

(d) Refusing to sell dealers direct who will not give it their assurances to maintain its said resale prices, and furnishing their names, as price cutters, with the statement that they can no longer buy direct from it, to cooperating distributors who are selling or might sell in the territory in which such price cutters are located.

As a result of said acts and practices, as charged, respondent's said resale prices have been generally maintained, and the direct effect and result thereof have been "to substantially lessen and suppress competition between dealers in the distribution and sale of respondent's products; to constrain such dealers to sell said products at prices fixed and established by respondent and to prevent them from selling said products at such less prices as they may desire; and to deprive the purchasers from such dealers of the advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said products under conditions of free competition among such dealers.

"Wherefore, said acts and practices of the respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

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, Coty, 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 its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed, and thereafter this proceeding came on for consideration, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs, and having argued the case before the Commission, and the Commission having duly considered the record 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 is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the City of New York in the State of New York. It is now and at all times hereinafter mentioned has been engaged in the business of importing from France, and packaging perfumes, extracts, essences, powders, and other cosmetics which are then sold to wholesale and retail dealers located at points in various States of the United States.

PAR. 2. Respondent causes the said products when so sold to be transported from its place of business in the City and State of New York into and through other States of the United States to the vendees thereof at their respective points of location.

PAR. 3. In the course and conduct of its said business, respondent is in competition with other corporations, individuals and partnerships engaged in the importation and sale or manufacture and sale of perfumes, extracts, essences, powders and other cosmetics in commerce between and among various States of the United States.

PAR. 4. In 1925 in connection with the distribution and sale of its products, respondent adopted and enforced and still enforces a policy whereby its customers were and are required to resell its said products at certain suggested resale prices. Respondent enlisted and secured and enlists and secures the support and cooperation of its vendees and of respondent's officers, agents and employees in enforcing the said policy.

PAR. 5. Respondent has publicly announced its resale price maintenance policy and has furnished its vendees with suggested prices to be observed by wholesale distributors and retail dealers.

PAR. 6. Respondent has made it generally known to the trade by letters, telegrams and interviews with respondent's agents that it expects and requires dealers handling its said products, to maintain its suggested prices. When information has been received by the respondent indicating that vendors of Coty products in a certain city or territory are not maintaining the suggested prices, the respondent has sent its agents to such city or territory for the purpose of interviewing dealers in its products. In such instances respondent's agents have pointed out to the vendees respondent's resale price maintenance policy and have insisted that the said vendees maintain the respondent's suggested prices, and have secured agreements from the said wholesale dealers and the said retail dealers whereby the said wholesale dealers and said retail dealers have agreed to maintain respondent's suggested resale prices.

PAR. 7. Respondent, acting through its agents, has sought and secured assurances and agreements from wholesale dealers and from retail dealers engaged in selling respondent's products, that they will not in the future sell respondent's products at prices less than those suggested by respondent.

PAR. 8. Respondent has refused to sell its products to wholesale dealers and to retail dealers who have not maintained the suggested resale prices of respondent and who will not agree and give their assurances that they will in the future maintain the suggested resale prices of respondent. Respondent has furnished the names of such wholesale dealers and retail dealers whom it has refused further to supply with its products direct to those wholesale dealers and retail dealers who maintained respondent's suggested resale prices and who were selling, or might sell, in the territory where dealers who had been cut off by respondent were located, together with a statement that the dealers whose names were furnished could no longer buy respondent's products direct from the respondent because said dealers had failed to observe respondent's suggested resale price. Since September, 1928, respondent has not made a practice of notifying

its vendees when such price-cutting dealers were cut off for failure to observe respondent's suggested resale price.

PAR. 9. The direct effect and result of these acts and practices of respondent has been and now is to substantially lessen and suppress competition between dealers in the distribution and sale of respondent's products; to constrain such dealers to sell such products at prices fixed and established by respondent and to prevent them from selling said products at such lower prices as they may desire; and to deprive the purchasers through such dealers of the advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said products under conditions of free competition among such dealers. Respondent's said practices tend to and do unduly hinder and obstruct competition in the sale and distribution of its products in the course of interstate commerce.

#### CONCLUSION

The methods of competition set forth in the foregoing findings are, under the circumstances herein set forth, unfair methods of competition in interstate commerce in violation of 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."

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and briefs and oral argument by counsel, and the Commission having made its findings as to the facts and its conclusion 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, Coty, Inc., its officers, directors, agents, servants and employees, cease and desist, in connection with the sale or offering for sale of its products in interstate commerce, from directly or indirectly carrying into effect or attempting to carry into effect by agreements, contracts or cooperative methods, a system of suggested resale prices at which the articles manufactured by it shall be resold by its customers and distributors and more particularly by any or all of the following means:

1. Entering into or procuring from wholesale dealers or retail dealers handling respondent's products, contracts, agreements, or

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understandings that respondent's products or any of them are to be resold by such dealers at prices specified or fixed by respondent.

2. Procuring either directly or indirectly from wholesale dealers or retail dealers promises or assurances that the prices fixed by respondent for the resale of respondent's products will be observed by such dealers.

3. In any manner seeking and procuring the cooperation of wholesale dealers or retail dealers in the maintenance of resale prices suggested by respondent for its products.

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

## Complaint

## IN THE MATTER OF

## MAURICE TALMAGE, INDIVIDUALLY AND DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF DEBESTT CHEMICAL 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 1876. Complaint, Nov. 18, 1930—Decision, Apr. 27, 1931*

Where a chemical entity, the disodium salt of dibromoxymERICURI-fluorescein, made under patent process, known as "Mercurochrome", and sold, as required by the makers, under said name and the letters "H. W. D.", their initials, and in the form of a 2 per cent solution, had been on the market and been sold to and used by the public as a general antiseptic and first aid prophylactic, and had come to be recognized and identified by medical profession and public by its aforesaid trade name, letters, and striking natural deep cherry color; and thereafter an individual designated as "Mercurochrome H. W. D. 2 per cent solution" a preparation dealt in by him, and described his said product as "Mercurochrome" in circulars, post cards, letters, pamphlets, magazine, newspaper and other advertising, and as "H. W. & D. 2 per cent Solution Dibrom OxymERICURI Fluorescein, General Antiseptic in place of Iodine", fact being preparation was a spurious product of inferior quality containing little if any genuine mercurochrome, and possessing little of any antiseptic qualities; with capacity and tendency to mislead, deceive, and confuse, and inevitable result of misleading and deceiving purchasing public into belief that said product was the genuine, widely known and generally used antiseptic, mercurochrome, and with effect of unfairly diverting trade of competitors dealing in the genuine solution, and with capacity and tendency so to do:

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

*Mr. Richard P. Whiteley* 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 Maurice Talmage, engaged as DeBestt Chemical Co., in the sale of a product represented to be a general antiseptic for use in place of iodine, and with principal office and place of business in Chicago, with appropriating trade name of product of competitor, and advertising falsely or misleadingly as to source of product, in violation of the provisions of section 5 of said act prohibiting the use of unfair methods of competition in interstate commerce in connection with the application of the words "Mer-