

Complaint

IN THE MATTER OF
ANNA M. GIBBIN

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

Docket 2064. Complaint, Sept. 28, 1932—Decision, Dec. 20, 1932

Where an individual engaged in sale and transportation of plants, flowers and bulbs to purchasers pursuant to mail order, chiefly; in advertising said plants, etc., in pamphlets and newspapers,

- (a) Falsely represented same as of superior quality and variety, and of a large variety, and that bulbs would produce flowers of such a variety, facts being said plants, etc., were in many cases inferior in said respects, bulbs would not produce as represented, and shipments to customers frequently did not supply variety advertised and ordered and were often short of amounts requested and paid for;
- (b) Represented that she imported and offered Holland bulbs and operated a large floral establishment, growing most of her stock, supplying many notable florists with cut flowers, and offering her surplus to flower lovers, facts being she raised only a few of the flowers, etc., dealt in, and representations made by her as aforesaid in other respects were false;
- (c) Guaranteed that unsatisfactory goods might be returned and others would be given in place thereof or money refunded, and that orders would be filled promptly, facts being she frequently failed or refused to replace purchases brought to her attention as unsatisfactory or to return amount paid therefor, and made it her practice not to refill orders or make refunds upon complaint unless threatened with suit, and frequently received money in payment for orders without filling same at all (or until threatened with suit), or returning the money; and
- (d) Falsely represented that she offered her plants, flowers and bulbs at prices greatly reduced from those usually charged by her, facts being prices charged were sometimes those usually demanded by her and sometimes in excess thereof;

With tendency and capacity to deceive the purchasing public into believing said statements and representations to be true and induce purchasers to buy said plants, etc., in such belief and unfairly divert trade to her from competitors and otherwise injure the same:

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

Mr. E. J. Hornibrook 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, engaged as Wren's Nest in the town of Pemberton, N.J., in the sale of flowers and bulbs to purchasers pursuant to orders

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usually received through the mail, with advertising falsely or misleadingly as to nature, quality, and source of products, business status, guarantees, shipments and prices; in that respondent falsely represents (a) quality and variety of her plants, flowers and bulbs, and variety produced thereby; and (b) her operations as a large floral establishment, (c) supplying many notable florists with cut flowers, and (d) herself as an importer of and dealer in Holland bulbs; also (e) her guarantees of satisfaction or money back, (f) prompt filling of orders, and (g) sale of flowers and bulbs at greatly reduced prices¹; with tendency and capacity to deceive purchasing public into believing such representations to be true, and induce purchase of her aforesaid products in such belief, and thus unfairly divert trade from and otherwise injure her competitors; all to their prejudice and that of the public.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission on the 28th day of September, 1932, issued complaint against the above named respondent and caused the same to be served on the 29th day of September, 1932, in which complaint respondent was charged with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

By notice contained in said complaint respondent was notified and required, within thirty days from the date of service of same, unless the time therefor was extended by order of the Commission, to file with the Commission an answer to said complaint; and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answer and failure to answer, said provisions being set forth in said notice and providing in part as follows:

Failure of respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused its appearance to be entered in this proceeding, nor has it during the thirty-day period of time specified in the said complaint herein, or at any time, made or filed answer to said complaint.

¹ The allegations of the complaint in the foregoing respects are set forth verbatim or substantially so in the findings *infra*.

Thereupon this proceeding came on for final hearing and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid rules of practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Anna M. Gibbin, is an individual trading under the name of Wren's Nest in the town of Pemberton, State of New Jersey. She is now and for more than three years last past has been engaged, under said trade name, in the business of selling and transporting plants, flowers, and bulbs at and from said town of Pemberton. Orders of purchasers of such plants, flowers or bulbs are usually received by respondent through the mails and when such orders are received such plants, flowers or bulbs are packed at said town of Pemberton and shipped by mail to such purchasers, many of whom reside outside the State of New Jersey.

PAR. 2. In the course and conduct of said business respondent is in competition with individuals, copartnerships, and corporations likewise engaged in the sale and transportation of plants, flowers and bulbs between and among various States of the United States.

PAR. 3. In the aid of the sale of said plants, flowers and bulbs respondent advertises in pamphlets, sent through the mails, and in newspapers having interstate circulation, some of which newspapers are printed and published outside the State of New Jersey, and it is through such media that respondent makes contact with her customers who, generally, are people desiring such plants, flowers or bulbs for the purpose of beautifying their own gardens and homes. In advertising, as aforesaid, respondent makes the following, among other false and misleading statements and representations:

That her plants, flowers and bulbs are—

- (a) Of superior quality and variety;
- (b) Are of a large variety and the bulbs will produce flowers of a large variety;
- (c) Respondent supplies many notable florists with cut flowers and offers her surplus of bulbs and plants to flower lovers;
- (d) She imports Holland bulbs and offers them for sale;
- (e) She operates a large floral establishment, growing most of the stock sold by her;

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(f) Guarantees that if goods are not satisfactory they may be returned and other goods will be given in place of same or money refunded;

(g) Orders will be promptly filled;

(h) Offere said plants, flowers and bulbs at greatly reduced prices from the usual price.

PAR. 4. The statements and representations set forth in the preceding paragraphs are false and misleading in that:

(a) The plants, flowers, and bulbs sold by respondent are not of a superior quality or variety and many of them are inferior as to quality and variety;

(b) The plants and flowers so sold are not of the large variety and bulbs so sold will not produce flowers of a large variety and often the variety shipped to a customer is not the variety of the plant or flower or bulb advertised in its said pamphlets and said newspapers and ordered by said purchasers; and in many instances the shipment is short of the amount ordered and paid for by said purchasers;

(c) Respondent supplies no flowers to leading or other florists and respondent raises only a few flowers, plants, and bulbs and purchases the major portion of such flowers, plants, and bulbs, so shipped to such purchasers, in the open market;

(d) Respondent does not now and has not for many years imported bulbs from Holland or any other country for the purpose of sale to her said customers nor has she shipped imported bulbs to them;

(e) Respondent does not operate a large floral establishment but raises only a few gladiolas and dahlias;

(f) In many instances respondent, although notified by said purchasers that said flowers, plants, or bulbs were unsatisfactory, failed or refused to replace the same or to refund the purchase price thereof. It is the practice of respondent not to refill said orders and not to refund the purchase price thereof upon complaint of the purchaser unless threatened with suit;

(g) In many instances the money in payment of orders for said plants, flowers and bulbs is received by respondent and the orders are not filled and the money not returned and in other instances the orders are not filled until suit is threatened;

(h) Respondent does not offer or sell said plants, flowers or bulbs at a greatly reduced price from the usual price and the price asked by her is sometimes the usual and sometimes in excess of the usual price thereof.

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PAR. 5. The aforesaid use by the respondent of the statements and representations described in paragraph 3 hereof has and has had the tendency and capacity to deceive the purchasing public into the belief that such statements and representations are true and to induce purchasers to buy such plants, flowers, and bulbs in such belief and to unfairly divert trade from respondent's competitors to the respondent and otherwise injure them.

CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing are to the prejudice and injury of the public and to said 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

Pursuant to 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", the Federal Trade Commission on the 28th day of September, 1932, issued its complaint against Anna M. Gibbin, respondent herein, and caused the same to be served upon the said respondent on the 29th day of September, 1932, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. The respondent not having filed an answer to the complaint and failure to file answer within the time provided by the rules of practice and procedure of the Commission being deemed an admission of the allegations of the complaint and to authorize the Commission to find them to be true and to waive hearings on the charges set forth in the complaint, of all of which the respondent had due notice and knowledge, 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, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is ordered, That the respondent, Anna M. Gibbin, her agents, representatives, and employees do cease and desist from doing directly or indirectly any and all of the acts designated and set forth

in paragraph 1 hereof in connection with the sale or offering for sale of plants, flowers, or bulbs in interstate commerce, or within the District of Columbia as follows:

PARAGRAPH 1. Advertising or representing—

(a) Said plants, flowers, and bulbs as of superior quality or variety when such is not the fact;

(b) that such bulbs will produce flowers of a large variety, when such is not the fact;

(c) that respondent supplies many notable florists with cut flowers and offers her surplus bulbs and plants to flower lovers when such is not the fact;

(d) that she imports bulbs from Holland or any other foreign country and offers same for sale when such is not the fact;

(e) that she operates a large floral establishment in which she grows most of the stock of plants, flowers and bulbs so sold when such is not the fact;

(f) guaranteeing that if such goods are not satisfactory they may be returned and other satisfactory goods will be supplied in place of the same or money refunded without fulfilling such guarantee;

(g) that orders will be promptly filled unless they are filled promptly;

(h) that said plants, flowers and bulbs are offered at greatly reduced prices from the usual price when such is not the fact.

PAR. 2. *It is further ordered*, That respondent, within 60 days from and after the date of service upon it of this order shall file with the Commission a report or reports, in writing, setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
TIFFANY LABORATORIESCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2001. Complaint, Jan. 25, 1932—Order, Jan. 18, 1933*

Consent order requiring respondent corporation, its officers, etc., in connection with the sale, offer, or advertisement in interstate commerce, of its massage cream or so-called tissue builder, to cease and desist from—

- (a) Representing, advertising, or stating that (1) tissue can be built by application of said cream, (2) sunken cheeks, thin necks, etc., can be abolished or any part of the body be developed, by use of said cream, without exercise, (3) it contains tissue building oils and will remove wrinkles; (4) said qualities are established by certain formulae and tests, and (5) it is compounded in a laboratory owned or controlled by the corporation, which (6) has or had a person named Jean H. Tiffany connected therewith; and from—
- (b) Using as a part of its corporate name, or as a trade name, the word "Laboratories", in connection with sale of said cream as aforesaid, unless and until it actually "maintains and operates an establishment where scientific investigations are conducted."

Mr. Edward L. Smith for the Commission.

COMPLAINT

Acting in the public interest, pursuant to 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", the Federal Trade Commission charges that Tiffany Laboratories, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Tiffany Laboratories, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the city of Cleveland in said State of Ohio. Respondent is now and has been for more than four years last past engaged in the business of selling cosmetics, among which cosmetics is a massage cream designated and named by respondent as "Tiffany Tissue Builder." Respondent's sales are and have been since its organization direct to the purchasing public as the result of mail orders obtained by respondent from the purchasing public. Respondent has caused and still causes said massage cream, when so