

Complaint

IN THE MATTER OF
BAYER COMPANY, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2192. Complaint, June 8, 1934—Order, Sept. 14, 1934*

Consent order requiring respondent, its officers, etc., in connection with sale and offer in interstate commerce and in District of Columbia of aspirin, to cease and desist from—

- (a) Representing that "Aspirin is the trade mark of Bayer manufacture of Monoaceticacidester of Salicylicacid" and from using said phrase in its advertising in newspapers, periodicals, or other publications or printed matter, or by radio broadcasting or in any other way, and from using any other phrase or statement of similar import; provided, that where the word "aspirin" has been held in certain foreign countries to be respondent's directly or indirectly owned valid trade mark therein, this order shall not apply to advertising or packages intended for circulation or sale in such countries;
- (b) Making such representations, without proper qualification or explanation, concerning its product, in advertising, radio broadcasting or otherwise, as that "no harmful after-effects follow its use", "does not upset the stomach", "cannot harm the heart", "anyone can take Bayer Aspirin", "you could take it every day without harm", "Take enough to assure your complete comfort", "If it is genuine aspirin, it cannot possibly hurt you", "Genuine Bayer Aspirin tablets promptly relieve headaches, neuritis", provided that nothing aforesaid shall be construed as preventing respondent from making proper therapeutic claims or recommendations, based upon reputable medical opinion or recognized medical or pharmaceutical literature; and
- (c) Advertising or representing in newspapers or otherwise that aspirin not made by respondent is counterfeit or spurious.

Mr. Edward L. Smith for the Commission.

Mr. Edward S. Rogers, of New York City, for respondent.

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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, having reason to believe that Bayer Company, Inc., a corporation hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the

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public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bayer Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at 170 Varick Street in the City of New York in said State. Respondent, for more than four years last past has been and still is engaged in manufacturing a certain pharmaceutical preparation commonly called and known as "Aspirin." Aspirin is made of a drug technically known as acetyl salicylic acid for which drug the said respondent uses a substituted name monoaceticacidester of salicylicacid", and in offering said product for sale, and selling the same, in commerce between the State of New York and the several States of the United States and the District of Columbia. When said aspirin is sold, respondent causes the same to be transported from its place of manufacture thereof within said State of New York through and into the several States of the United States and the District of Columbia to the purchasers thereof in the State of New York, the several States of the United States and the District of Columbia.

There has been for more than four years last past and still is a constant current of trade and commerce in said product so manufactured by respondent, between and among the various States of the United States and the District of Columbia. In the course and conduct of its said business respondent is now and for more than four years last past has been in substantial competition with other corporations, firms, persons and partnerships engaged in the manufacture of aspirin and in the sale thereof between and among the various States of the United States and the District of Columbia, shipping such aspirin when sold by them to be transported from their respective places of manufacture to purchasers thereof in States other than the States in which such aspirin is manufactured.

PAR. 2. The predecessor of the respondent, a German corporation, first engaged in the manufacture of the drug acetyl salicylic acid which was its own invention. The importation of said product into the United States first began during the year 1899. On August 1, 1898, respondent's predecessor applied for a patent in the United States covering said invention and therein described the said product as acetyl salicylic acid. The patent issued on February 27, 1900, and expired on February 27, 1917. In May 1899 respondent's predecessor registered the name "Aspirin" as a trade mark in the United States. At the time of the issuance of the patent and for some years thereafter, but prior to the year 1915, said product was sold under the

name "Aspirin" in the form of powder to manufacturing chemists, retail druggists, and physicians. During this period of time said product was only sold to the public on prescriptions of physicians.

On or about 1904 respondent's predecessor began to sell said product under the name aspirin in powder form to manufacturing chemists for the purpose of making it into tablets for sale to the retail trade for resale to the consuming public. Said manufacturing chemists sold said product in tablet form to the retail trade under the name aspirin and in no case did the name of the respondent or its predecessor appear upon the containers of the said product. Said manufacturing chemists in each case, in connection with such sales, used his own name upon the container or the name aspirin or his own name in connection with the name aspirin. The consuming public purchased the said product from retail druggists under the name aspirin.

Prior to the year 1915 respondent or its predecessor made no sales of said product as aspirin or under the name aspirin to the trade for resale to the consuming public or to the consuming public direct and prior to the year 1915 no literature of the respondent or its predecessor advertising said product reached the consuming public. Late in the year 1915 the respondent or its predecessor ceased selling said manufacturing chemists and began marketing said product made in tablet form under the name aspirin to the retail drug trade for resale to the consuming public.

Upon the expiration of the said patent on February 27, 1917, the said product passed into the public domain and with it in connection with sales to the consuming public the word aspirin which by usage had become the name for the drug acetyl salicylic acid and descriptive of same and thereby the right to use the name aspirin in connection with sales of said product to the consuming public became free to all marketers or sellers and upon the expiration of said patent on February 27, 1917, all marketers or sellers acquired the lawful right and became free, in connection with sales to the trade for resale to the consuming public, to market, pack, and ship acetyl salicylic acid in containers for public sale, use, and consumption, labeled aspirin, provided such containers were marketed, packed, and shipped to said retail trade in containers or outer wrappers which did not bear or carry the name aspirin, and provided correspondence, invoices, and bills of lading in connection with such sales to the retail trade, referred to the said product or drug only as acetyl salicylic acid.

On November 30, 1918, the United States Patent Office declared the said trade mark registered by respondent or its predecessor in May, 1899, was no longer valid and ordered its cancellation.

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PAR. 2. Respondent distributes its said product to the ultimate purchasers or consumers thereof largely through wholesale dealers, jobbers, and retail merchants. In aid of its sales to such dealers for ultimate use by the consuming public, and for the purpose of creating a demand upon the part of the consuming public for its said product, respondent now causes, and for more than four years last past has caused, advertisements to be issued, published and circulated to and among the general public of the United States in newspapers, magazines and other publications, and in other forms of printed matter, and by radio broadcasting, and in other ways.

In said ways and by said means respondent makes and has made to the general public many unfair, exaggerated, false, and misleading statements, as will be more particularly set forth hereinafter.

PAR. 4. By and in the ways hereinabove referred to, respondent has represented and still represents to the general public, among other things, as follows: "Aspirin is the trademark of Bayer manufacture of monoaceticacidester of salicylicacid." In truth and in fact, so far as concerns the general public, and so far as relates to the rights of respondent's competitors to sell said product to the public by and under the name of "Aspirin", said representation is unfounded in fact and is false and misleading for the reasons set forth in paragraph 2 hereof.

Said representation has the tendency and capacity to mislead and deceive the public into the belief that no one other than respondent has the right to sell aspirin to the public, and that acetyl salicylic acid offered for sale and sold to the public by anyone other than respondent under the name aspirin or for and as aspirin, is offered for sale and sold unlawfully and without right and is spurious, ineffective, or dangerous and is not acetyl salicylic acid. By said false and misleading statement and representation trade is diverted to respondent from its competitors to the disadvantage and injury of such competitors, and to the unfair advantage of respondent.

PAR. 5. In the ways and by the means hereinbefore alleged, respondent makes to the general public the following and many other similar and equivalent statements and representations with reference to the therapeutic value of its said product, and its effect upon the users thereof:

- No harmful after-effects follow its use.
- It does not depress the heart.
- It does not upset the stomach.
- It does nothing but stop the pain.
- It cannot harm the heart.
- Bayer aspirin is always safe.

But a more important advantage to the tablets of Bayer manufacture is their absolute safety.

Perfectly harmless.

Anyone can take Bayer Aspirin.

You could take it every day without harm.

Take Bayer Aspirin for any ache or pain, and take enough to end it. There is no harm in its free use.

Take enough to assure your complete comfort. If it is genuine aspirin, it cannot possibly hurt you.

There is no quicker form of relief for a bad headache, neuralgia, neuritis, or other severe pain.

From a grumbling tooth-ache to those rheumatic pains which seem almost to bend the bones, Bayer Aspirin is ready with its quick relief—and always works.

Genuine Bayer Aspirin tablets promptly relieve headaches, neuritis, colds, toothache, neuralgia, sore-throat, lumbago, rheumatism.

Take one tablet—and go to sleep.

This applies particularly to nervous patients in whom aspirin not only relieves suffering, but acts as a sedative and induces rest at night.

The statements above set forth have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's aspirin:

(1) That the tablets will quickly relieve any and every pain from which the user is suffering;

(2) That the tablets will relieve any and every enumerated ailment or disease from which the user may be suffering;

(3) That any user may safely take as many of respondent's tablets as may be necessary to give relief from the disease or pain from which the user is suffering—and continue to take them, until relieved;

(4) That as a cure for sleeplessness, the tablets not only relieve pain, but act as a sedative and always induce sleep;

(5) That the use of the tablets is absolutely safe in every case and cannot possibly result in harm to any user in any amount or in any case;

(6) That aspirin made by any other manufacturer is harmful, unsafe, and will not produce any beneficial results that may be obtained by the use of respondent's aspirin.

Whereas in truth and in fact:

(1) There are persons by whom said tablets may not safely be taken even in small or moderate doses;

(2) There are many persons who may not safely take into the system amounts in excess of the prescribed or usual dose;

(3) There are many persons to whom the use of such tablets in excessive amounts is highly dangerous and may be fatal;

(4) There are pains and enumerated ailments or diseases that the use of respondent's tablets will not relieve and for which their use is not proper treatment;

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(5) The use of said tablets will not relieve all users of sleeplessness or any user from all cases of sleeplessness, and said tablets may not safely be used by all until sleep is induced thereby. Said drug may relieve pain, but has no sedative or hypnotic properties, and has no direct effect upon inducing sleep;

(6) Buyers and users of respondent's tablets do not know in advance, and may not by any available means ascertain, that in their respective cases the use of respondent's tablets cannot be injurious, or that they may safely use the same in any and all quantities, in any and every case, and until relieved from pains or from any or all of the ailments enumerated by respondent as above alleged;

(7) At most, said tablets may be effectively used as indicated for the relief of pain and discomfort incident to or resulting from the several ailments, infections or diseases so enumerated by respondent, but they are not adequate treatment for the pathology underlying the several enumerated conditions, and will not relieve, check, remove, or cure the same;

(8) Acetyl salicylic acid manufactured by competitors of respondent and sold by them as aspirin is as safe and as harmless as is respondent's aspirin and will produce whatever beneficial results may be produced by respondent's aspirin.

PAR. 6. In the ways and by the means hereinbefore alleged, respondent makes to the purchasing public certain false and misleading statements in relation to said products of respondent's said competitors, and in disparagement thereof. Such statements and representations have been and are in the words hereinafter set forth, also in words similar or equivalent thereto, to wit:

Warning! If you're told some other preparation is the same as Genuine Bayer Aspirin, Beware!

Take Care! Counterfeit Aspirin! Thousands of boxes of counterfeit aspirin have been put on the market. Watch out. Take no chances and flatly refuse to accept any box not marked "Genuine Bayer Aspirin". Don't put any tablet not marked "Bayer" into your stomach. Tell your family and your friends this. Refuse any preparation offered you as the "same" or "like" Genuine Bayer Aspirin.

Said false and misleading statements have the capacity to and are calculated to mislead and deceive the purchasing public into the beliefs that only aspirin sold by respondent is true aspirin, and that aspirin sold by its competitors is not aspirin, has none of the properties of the aspirin sold by the respondent, and is not as beneficial as is respondent's aspirin, is not chemically the same as respondent's aspirin, and is counterfeit aspirin and spurious aspirin, whereas in truth and in fact as hereinbefore alleged, acetyl salicylic acid manufactured and sold by competitors of the respondent as aspirin has all

of the properties of acetyl salicylic acid sold by the respondent as aspirin and is as beneficial as is respondent's aspirin and is the same as respondent's aspirin, and is not counterfeit or spurious, and is aspirin just as respondent's aspirin is aspirin.

PAR. 7. The above alleged act and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the beliefs described in paragraphs 4, 5, and 6 hereof, and to purchase respondent's aspirin in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce and as a consequence thereof substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 8. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning 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", approved September 26, 1914.

ORDER TO CEASE AND DESIST

Bayer Company, Inc., the respondent herein, by its counsel, Edward S. Rogers, Esq., having filed its answer to the complaint in this proceeding, in which answer it states that it desires to waive hearing on the charges set forth in the complaint herein and not to contest the proceeding, consenting in and by its said answer that as provided in paragraph 2 of rule III of the Commission's Rules of Practice, the Commission without trial, without evidence and without findings as to the facts or other intervening procedure may make, enter, and serve upon said respondent an order to cease and desist from the methods of competition alleged in the complaint;

And the Commission having duly considered the said answer and being fully advised in the premises—

Now, therefore, it is hereby ordered, That said Bayer Company, Inc., the said respondent, its officers, agents, servants, and employees, in the sale and offering for sale by it in interstate commerce and in the District of Columbia of aspirin forthwith cease and desist:

1. From representing that and from using the phrase "Aspirin is the trade mark of Bayer manufacture of Monoaceticacidester of Salicylicacid" in its advertising in newspapers, magazines, or other publications or in any other form of printed matter or by radio broadcasting or in any other way and from using any other phrase or statement of similar import, tenor, or substance. Provided, however, that where the word "Aspirin" has been held in certain foreign countries to be respondent's directly or indirectly owned valid trade

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mark therein, this order shall not apply to advertising or packages intended for circulation or sale in such countries.

2. From making unless properly qualified, limited or explained, any of the following representations concerning respondent's product, or any other similar representation or any representations of similar tenor, import or substance, in newspapers, magazines, or other publications or in any other form of printed matter or by radio broadcasting or in any other way, to wit:

No harmful after-effects follow its use.

It does not depress the heart.

It does not upset the stomach.

It does nothing but stop the pain.

It cannot harm the heart.

Bayer aspirin is always safe.

But a more important advantage to the tablets of Bayer manufacture is their absolute safety.

Perfectly harmless.

Anyone can take Bayer Aspirin.

You could take it every day without harm.

Take Bayer Aspirin for any ache or pain, and take enough to end it. There is no harm in its free use.

Take enough to assure your complete comfort. If it is genuine aspirin, it cannot possibly hurt you.

There is no quicker form of relief for a bad headache, neuralgia, neuritis, or other severe pain.

From a grumbling toothache to those rheumatic pains which seem almost to bend the bones, Bayer Aspirin is ready with its quick relief—and always works.

Genuine Bayer Aspirin tablets promptly relieve headaches, neuritis, colds, toothache, neuralgia, sore throat, lumbago, rheumatism.

Take one tablet—and go to sleep.

This applies particularly to nervous patients in whom aspirin not only relieves suffering, but acts as a sedative and induces rest at night.

Nothing in this order shall be construed as preventing the respondent from making proper therapeutic claims or recommendations which are based upon reputable medical opinion or recognized medical or pharmaceutical literature.

3. From advertising or representing in newspapers, magazines, or other publications or in any other form of printed matter or by radio broadcasting or in any other way that aspirin not manufactured by the said respondent is counterfeit or spurious.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report in writing, setting forth the manner and form in which it has complied with this order.

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IN THE MATTER OF
UNITED STATES ENVELOPE COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2208. Complaint, July 13, 1934—Order, Sept. 22, 1934*

Consent order requiring respondent, its agents, etc., in connection with the sale, advertisement, and offer of paper in interstate commerce, to cease and desist from use of the words "Japan", "Milano", or "Oxford", or any other words which may imply or import foreign origin of the paper, as the brand name or as part of the brand name or designation of paper made in the United States, either in the watermark of the paper or in advertisements in newspapers, periodicals, sample books, or other publications, or otherwise, unless and until the words or phrase, "Made in U. S. A." be printed in legible letters immediately in connection therewith; and *Ordered further*, That the charges in the complaint of the use of unfair practices, in connection with the sale in interstate commerce, of paper branded or marked "hand-made", be, and the same are hereby dismissed for the reason that such paper is in fact hand made.

Mr. Edward E. Reardon for the Commission.

Mr. Henry A. Wise, of Kiptopeke, Va., for respondent.

COMPLAINT

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, having reason to believe that the United States Envelope Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, United States Envelope Company, is a corporation, incorporated on or about August 18, 1898, under the laws of the State of Maine, and having its principal place of business in Springfield, Mass.

PAR. 2. The respondent is and has been at all times since its incorporation engaged in the business of the manufacture and of the importation and of the sale of paper for various purposes of use, including bookprint paper and paper which respondent has previously converted into writing paper and stationery and sells for use for social and mercantile correspondence and other business purposes