

Complaint

19 F. T. C.

IN THE MATTER OF
**THAYER PHARMACAL COMPANY AND THAYER SALES
CORPORATION**

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

Docket 2196. Complaint, June 12, 1934—Decision, Oct. 23, 1934

Where a corporation engaged in the manufacture and sale of toilet preparations including a face cream designated and advertised as "Old Egyptian Turtle Oil Cream", and its corporate selling agency, engaged in the advertisement, sale, and distribution thereof to and through retail and chain and department stores, represented upon the labels that said cream would rejuvenate the skin, its retail selling price was \$2.50 per jar, and it was an "Old Egyptian Cream", facts being it did not have the effect claimed, said sum, used to create the impression of a bargain in the mind of the purchaser at a lower figure, was far in excess of the retail price contemplated and charged, and said cream was not one of the more or less preferred old Egyptian creams or products made from an old or other Egyptian formula; with tendency and capacity to mislead and deceive the purchasing public, into the belief that the various aforesaid statements and representations were true, and induce the purchase of said product in reliance on such erroneous beliefs, and unfairly divert trade from competitors to it:

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

Mr. John W. Hilldrop for the Commission.

Mr. Gustav E. Beerly, of Chicago, Ill., for respondents.

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 Thayer Pharmacal Company, a corporation, and Thayer Sales Corporation, have been and are 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Thayer Pharmacal Company, is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the city of Chicago, in said State. It is now, and for several years last past has been, engaged at said city in the business of manufacturing and selling

perfumes, powders, lotions, and other toilet articles, among which is a face cream called by respondent, "Old Egyptian Turtle Oil Cream", which is sold as a massage cream for use in beautifying the face.

Respondent Thayer Sales Corporation is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, of said State. It is associated with respondent Thayer Pharmacal Company in the sale and distribution of the said "Old Egyptian Turtle Oil Cream."

Old Egyptian Turtle Oil Cream is packed by respondents in jars and shipped by them to their customers, which are department stores, drug stores and beauty shops, into and through various States of the United States, to the places of business of said customers, many of which are in States other than the State of Illinois. Such stores and beauty shops sell Old Egyptian Turtle Oil cream direct to the consuming public, with the representations on the jars containing same as hereinafter described.

PAR. 2. In the course and conduct of their said business respondents are in substantial competition with individuals, copartnerships, and corporations engaged in the manufacture and sale, or the sale, and transportation between and among the various States of the United States, of lotions, face creams, and other preparations for use in beautifying of the face.

PAR. 3. In aid of the sale of the said "Old Egyptian Turtle Oil Cream", respondents represent upon the labels of the jars containing the same, that:

(a) Said cream, used as directed, will rejuvenate the skin, correct crowsfeet, lines, wrinkles, and excessive dryness.

(b) Its retail selling price is stamped on the labels of the jars as \$2.50.

(c) Said cream is Old Egyptian Cream.

Said representations are false and misleading, in that:

(a) Said cream, used as directed, will not rejuvenate the skin, nor correct crowsfeet, nor remove lines or wrinkles from the face, nor will it prevent excessive dryness thereof.

(b) The \$2.50 appearing upon the label, as aforesaid, was never intended by respondents to be the retail price of said cream, but is far in excess of the price intended by the respondents to be charged, and actually charged, by retailers therefor; said price of \$2.50 is placed on said label by respondents with the intent and purpose of deceiving purchasers into the belief that when said cream is sold to them by retailers at a less price they are obtaining a bargain.

(c) Said cream is not Old Egyptian Cream and is not made from an old, or other, Egyptian formula.

Findings

19 F. T. C.

There is a preference on the part of some consumers of facial creams for Old Egyptian Cream or products made from old Egyptian formulas, and the aforesaid use by respondent of the words "Old Egyptian" has the tendency and capacity to deceive the purchasing public into the belief that the product "Old Egyptian Turtle Oil Cream" is Egyptian, or is made from an old Egyptian formula.

PAR. 4. Each and all of the false and misleading statements and representations referred to in paragraph 3 hereof, had and have the capacity and tendency to mislead and deceive the consuming public into the belief that they are true, and to induce it to purchase said cream in said belief, and to unfairly divert trade from said competitors to the respondents, and to otherwise injure said competitors.

PAR. 5. The acts and practices set forth in paragraph 3 hereof are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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 issued and served a complaint upon Thayer Pharmacal Company, a corporation, and Thayer Sales Corporation, hereinafter referred to as respondents, charging them with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

The respondents, having entered their appearance and having filed their answers herein, hearing was held and evidence was thereupon introduced on behalf of the Commission, the respondents introducing no evidence, before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon, this proceeding coming on for final hearing on the record, the respondents having waived in writing briefs and oral arguments, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Thayer Pharmacal Company, is a corporation organized and existing under the laws of the State

of Illinois, with its principal place of business in the city of Chicago in said State; being now and for several years last past engaged in the business of manufacturing and selling among the several States of the United States, perfumes, powders, lotions, and other toilet articles, among which is a face cream called and advertised by respondent as "Old Egyptian Turtle Oil Cream", which is sold as a massage cream for use in beautifying the face.

Respondent, Thayer Sales Corporation, is a corporation likewise organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, Ill.; being associated with respondent Thayer Pharmacal Company as its selling agent in the advertisement, sale and distribution of the said Old Egyptian Turtle Oil Cream in interstate commerce among the several States of the United States, and each of the respondents, Thayer Pharmacal Company and Thayer Sales Corporation, is in competition with individuals, firms, and corporations likewise engaged in manufacturing and selling in commerce, among the several States of the United States, lotions, face creams, and other preparations for use in the beautifying of the face.

PAR. 2. The methods of the distribution and sale of the said Old Egyptian Turtle Oil Cream are as follows: It is sold by respondents to retail stores, chain stores and department stores among the several States of the United States, and which said retail, chain and department stores sell same by retail to the purchasing public.

PAR. 3. In aid of the sale of Old Egyptian Turtle Oil Cream respondents represent upon the labels of the jars containing the same that: (a) said cream used as directed will rejuvenate the skin; (b) its retail selling price is \$2.50 per jar; (c) that said cream is "Old Egyptian Cream".

Said representations are false and misleading in that: (a) said cream used as directed will not rejuvenate the skin; (b) the sum of \$2.50 appearing upon the labels on the jars containing the cream, as aforesaid, was never intended by respondents to be the retail price of the cream, but is far in excess of the price intended by the respondents to be charged and actually charged by retailers therefor; (c) said price of \$2.50 is placed on said labels by respondents with the intent and purpose of deceiving purchasers into the belief that, when the said cream is sold to them by retailers at a less price, they are obtaining a bargain; (d) said cream is not old Egyptian cream and is not made from an old or other Egyptian formula.

PAR. 4. There is a preference on the part of some of the consumers of facial creams for old Egyptian cream or products made from old Egyptian formulas, and the aforesaid use by respondents of

Order

19 F. T. C.

the words, "Old Egyptian" has a tendency and capacity to deceive the purchasing public into the belief that the product, "Old Egyptian Turtle Oil Cream", is Egyptian or is made from an old Egyptian formula.

PAR. 5. Each and all of the false and misleading statements and representations referred to in paragraph 3 hereof, have a capacity and tendency to mislead and deceive the consuming public into the belief that they are true, and to induce it to purchase said cream in said belief, and to unfairly divert trade from said competitors to the respondents.

CONCLUSION

The acts and practices set forth in paragraphs 2 and 3 hereof are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce within the intent and meaning 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the record, and the Commission having made its findings as to the facts and its conclusion that the respondents have 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 respondents, Thayer Pharmacal Company, a corporation, and Thayer Sales Corporation, in connection with the sale or offering for sale in commerce between and among the several States of the United States and within the District of Columbia, of a certain face cream or lotion by said respondents, advertised and sold under the name of "Old Egyptian Turtle Oil Cream" do cease and desist from representing by labels or in advertisements, or otherwise: (a) that the use of the said cream as directed will rejuvenate the skin, or by representing that any cream manufactured and sold by respondents, under any other name or designation will rejuvenate the skin; (b) from the use of the word "rejuvenate" in the advertising of any other cream now sold or hereafter to be sold by respondents in interstate commerce; (c) from representing that the sum of \$2.50, or any other sum greater than the actual, usual and customary selling price charged the buying public therefor, is the selling price of said cream; (d) from the use of the word "Egyptian" in the phrase "Old Egyptian Cream", and from

286

Order

using the word "Egyptian" in connection with and as descriptive of said cream.

It is further ordered, That the respondents shall, within 60 days after the service upon them of a copy of this order, file with the Commission their reply in writing, setting forth in detail the manner in which they have complied with the order to cease and desist, hereinbefore set forth.

IN THE MATTER OF
UCANCO CANDY COMPANY, INC.

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

Docket 1795. Complaint, Apr. 29, 1930—Decision, Oct. 29, 1934

Where a corporation engaged in manufacture and sale of candy, including (a) three so-called "break and take" assortments with explanatory display cards, composed of (1) forty bars of uniform quality, size and shape, within the individual wrappers of which there was concealed a slip containing thereon "1¢", "2¢", "3¢", "4¢", or "5¢", as the case might be, as the price to be paid by the consumer to the retailer, depending on former's chance selection, (2) forty-eight bars of uniform quality, etc., within the individual wrappers of which there was concealed a slip containing the figure 1¢, 2¢ or 3¢, as the price to be paid, as above set forth, and (3) forty bars of candy, within the wrappers of ten of which there was concealed a slip bearing the word "free" and entitling the chance purchaser to such piece without payment of the 5 cents charged the purchasers of the other thirty bars; and, (b) two assortments with punch boards consisting of (1) forty bars of uniform size, shape and quality, the retail price of which was 1, 2, 3, 4, or 5 cents depending upon the figure contained upon the punch selected and pushed from the accompanying board, and, (2) forty bars of uniform size, etc., which were secured either without charge, or for payment of 5 cents, depending upon chance selection of a punch bearing the number "1" or "2" in the case of the former, or "3", "4", or "5" in the case of the latter;

Sold said various assortments, together with said display cards or punch boards, as the case might be, so packed and assembled that they might and would be resold through such lottery or gaming devices, and could not be sold otherwise, without unpacking, disassembling, and rearranging the same, with knowledge that they would thus be resold to the consuming public by lot or chance, to wholesalers, jobbers, and retailers, in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers, who sell candy by such methods, with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With the result that some of its competitors, who can compete on even terms only through following such practices to meet the growing demand for candy thus sold from small retailers near schools, and the preference of largest class of purchasers and consumers of such candy, i. e., the children, were put to a disadvantage by reason of their refusal to make use thereof, and others felt constrained to adopt the same, trade was diverted from the