

Complaint

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IN THE MATTER OF

GRIFFIN GROCERY COMPANY, J. T. GRIFFIN, BRYAN
COLE, AND BRYAN MATHESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2230. Complaint, Sept. 15, 1934—Decision, Nov. 5, 1934*

Where a wholesale grocery corporation engaged in manufacture and sale of a baking powder under the name "Hi-Lo"; and several individuals, its general officers, purported to demonstrate leavening effect of said powder through so-called water glass test, i. e., amount and duration of effervescence following addition thereto of water, and, in order to deceive and mislead purchasing public and disparage competitive products, advised such test thereon, facts being that effervescence resulting as aforesaid constituted no measure of leavening effect of said powders, but was due to inclusion, for said purpose alone, of small proportion of dried white of egg in product in question, the leavening properties of which were not changed thereby; with capacity and tendency to and probable effect of misleading and deceiving purchasing public as to inherent leavening properties and excellence of their said powder and presence of such qualities in products of competitors, certain of whom do not incorporate in their otherwise similarly composed powders the white of egg, and of diverting trade to them from their said competitors, lessening competition between them, and tending to create a monopoly in them in said line of commerce: *Held*, That such practices were to be prejudice of the public and to competitors, and constituted unfair methods of competition.

Mr. Robt. N. McMillen for the Commission.

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 Griffin Grocery Company, a corporation, and J. T. Griffin, Bryan Cole, and Bryan Mathes, as individuals, 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 this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Griffin Grocery Company is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma. Respondents J. T. Griffin, Bryan Cole, and Bryan Mathes are respectively president, vice president, and secretary of said respondent corporation and as such are able

to, and do, manage and control said corporation and its business transactions. Said respondents J. T. Griffin, Bryan Cole, and Bryan Mathes are able to, and do, accomplish their will and purposes by and through the agency and instrumentality of said corporation so that all acts and business transactions of and by said corporation are also the acts and transactions of said respondents J. T. Griffin, Bryan Cole, and Bryan Mathes as individuals.

Respondents have been and are engaged in offering for sale and selling at wholesale groceries and such articles of merchandise as are usually kept and offered for sale and sold by persons, partnerships, or corporations engaged in business as wholesale grocers.

Respondents' principal office and place of business is located at Muskogee in the State of Oklahoma. Respondents also maintain and operate places of business at McAlester, Seminole, Okmulgee, Pryor, Antlers, Tulsa, Oklahoma City, Miami, Holdenville, Tahlequah, and Wilburton in the State of Oklahoma; at Denison in the State of Texas; and at Forth Smith and Fayetteville in the State of Arkansas.

Respondents, in addition to said business of offering for sale and selling the merchandise above indicated, also maintain and operate the business of manufacturing certain commodities and merchandise, which business of manufacturing they carry on under the name, title, and designation of Griffin Manufacturing Company.

Respondents also are engaged in the manufacture of a certain product, to wit, baking powder. Said baking powder is so manufactured and offered for sale and sold by respondents under the trade name of "Hi-Lo" baking powder and is represented by respondents through the use of labels and otherwise as being manufactured by "Hi-Lo Baking Powder Co." There is no separate corporate or other entity by the name of "Hi-Lo Baking Powder Co.", but said name is used by respondents as a mere trade name under which they manufacture and offer for sale and sell said baking powder.

Respondents have been and are engaged in offering for sale and selling said commodities and merchandise, including said Hi-Lo baking powder, in commerce between and among the several States of the United States and the District of Columbia, and in causing said products when so sold to be transported from respondents' said principal place of business in the State of Oklahoma, or from the place or places where they are so manufactured or may be assembled and stored, into and across the several States of the United States and the District of Columbia to the several purchasers thereof

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located at various places in said several States, or in the District of Columbia.

Respondents so offer for sale and sell said goods and merchandise to retail merchants who resell the same to retail purchasers and ultimate consumers thereof.

PAR. 2. Other persons, firms, and corporations have been and are engaged in selling baking powder and pursuant to such sales ship said merchandise from their respective places of business into and through other States of the United States and the District of Columbia. In the course and conduct of their business, respondents have been and are in competition with all such other persons, firms, and corporations in that they, respondents, are selling and seeking to sell their baking powder in the same territory and to the same retail dealers as those to whom said competitors sell and seek to sell.

PAR. 3. The public purchases and uses baking powder because of, and for the sake of, its leavening properties and power, and is much inclined to judge of its merits by what the public conceives to be its leavening properties and power. The ingredients of respondents' said Hi-Lo baking powder consist almost exclusively of bicarbonate of soda, calcium, acid phosphate, sodium aluminum sulphate and corn starch. These ingredients are also the ingredients of more than three fourths by weight of all baking powders manufactured in the United States. These ingredients furnish the whole of the leavening properties and power of respondents said baking powder.

In addition to said ingredients, respondents incorporate in said baking powder a minute proportion of dried white of egg, the amount of which as indicated upon the labels placed thereon by respondents is ten hundredths of one percentum. Such white of egg does not add to or affect the leavening properties or power of said baking powder in any degree. Its only purpose is to be used in a so-called water-glass test to deceive and mislead the purchasing public into an erroneous belief as to the inherent leavening properties and power of said baking powder, also as to its leavening properties and power in comparison with those of competitive baking powders that do not contain such dried white of egg.

Certain of said competitors of respondents manufacture and offer for sale and sell in said commerce and in competition with respondents, baking powder composed of the constituent elements above enumerated, except that no dried white of egg is incorporated therein. Certain others of said competitors of respondents manufacture and offer for sale and sell in said commerce and in com-

petition with respondents, baking powder composed of the constituent elements above enumerated or of other constituent elements having like and equivalent leavening properties and power, or composed partly of the constituent elements above enumerated and partly of other constituent elements having like and equivalent leavening properties and power, except that no dried white of egg is incorporated therein.

PAR. 4. For the purpose of misleading and deceiving the purchasing public as to the leavening properties and power of their said baking powder, and of creating a purchaser demand for said baking powder by misleading and deceiving the purchasing public into the erroneous belief that the leavening properties and power of said baking powder are vastly greater than they in fact are, respondents cause demonstrations to be made to the public at retail stores at which the said baking powder is kept and sold and at other convenient places, by the use of the so-called water-glass test. The test is simple and requires no skill. The demonstrator (a representative of respondents performing before and to the purchasing public) takes two teaspoonfuls of Hi-Lo baking powder which he mixes with two teaspoonfuls of water. In a short time the ingredients effervesce to the top of and over the glass and will hold in such shape and size for a considerable length of time. Said excessive effervescent action is due to the fact that the white of egg forms a scum or membrane over the top of the product and thus retains the whole of the carbonic dioxide gas generated by the mixture of said baking powder with said water.

The demonstrator explains that the amount of said effervescence and the length of time it holds its form and bulk are proof of the very great leavening properties and power of said baking powder. To all persons not informed as to the real cause of such excessive effervescence and of the length of time the same continues to hold its form and bulk, this demonstration is evidence that respondents' baking powder has unusually great leavening properties and power. The purchasing public is thereby misled and deceived as to the inherent leavening properties and power of said baking powder and as to the effectiveness and excellence of said baking powder for use in the preparation of foods; and is misled and deceived into the purchase thereof in, and because of, such erroneous belief so induced by said misleading and deceptive demonstration.

For the further purpose of misleading and deceiving the purchasing public as to the inherent leavening properties and powers of baking powders offered for sale and sold by respondents' said competitors who do not incorporate dried white of egg in their baking

powders and of disparaging such competitive powders, said representatives of respondents advise the public to try a like experiment with such competitive powders. It requiring no skill to try the experiment with such competitive powders, many of the purchasing public try such experiments. Because of the absence of said dried white of egg, such mixtures of baking powder and water do not effervesce as greatly as does respondents' baking powder and water mixture and the effervescence does not hold its form and size for as long a time. To all uninformed members of the purchasing public, which number embraces a vast majority of the purchasing public, this demonstration is proof that said competitive baking powder has but small and ineffective leavening properties and power and is not desirable or efficient in the preparation of foods. Persons so trying said experiment are thereby misled and deceived into an unwarranted prejudice against such competitive powders and an unwillingness to purchase or use the same, all to the injury of said competitors.

For the further purpose of misleading and deceiving the purchasing public as to the comparative leavening properties and powers of respondents said baking powder and of the several baking powders offered for sale and sold by respondents' said competitors who do not incorporate dried white of egg in their baking powders, respondents at the same time and place make before the public and prospective purchasers of baking powder the aforesaid water-test demonstration as to their own baking powder and also as to the baking powders that are so offered for sale and sold by respondents' competitors in competition with respondents as above alleged, choosing for such demonstrations only baking powders in which no white of egg is incorporated. For the reasons above alleged, the mixture of respondents' said powder with water effervesces as above alleged and the mixture of said competitive baking powder with water also effervesces as above alleged, and the public is thereby misled and deceived into the erroneous belief that the leavening properties and power of respondents' said baking powder are vastly greater than the leavening properties and power of said baking powders so being offered and sold by respondents' said competitors. The public is thereby misled and deceived into the erroneous belief that, as compared with baking powders so offered for sale and sold by respondents' said competitors, respondents' said baking powder is more desirable and more efficient in the preparation of foods, and should be purchased and used in preference to the baking powders of said competitors.

PAR. 5. The use by respondents of said water-test demonstration in the ways above alleged has the tendency and capacity to and probably will mislead and deceive the purchasing public into the following enumerated erroneous beliefs:

1. That the inherent leavening properties and power of respondents' said baking powder are substantially greater than they in fact are.

2. That the inherent leavening properties and power of the baking powders so offered for sale and sold by respondents' competitors are substantially less than they in fact are.

3. That, in comparison with the leavening properties and power of said baking powder so being offered for sale and sold by respondents' said competitors, the leavening properties and power of respondents' said baking powder are great and the leavening properties of said baking powder so being offered for sale and sold by respondents' competitors are small.

4. That because of such larger leavening properties and power of respondents' said baking powder, and of such smaller leavening properties and power of said baking powder so being offered for sale and sold by respondents' competitors, respondents' said baking powder is more desirable and more efficient in the preparation of foods, and ought to be purchased and used in preference thereto.

The use by respondents of said water-glass demonstration has the tendency and capacity to, and probably will, divert trade to respondents from their said competitors, lessen competition between respondents and their said competitors and tend to create a monopoly in respondents by inducing the public to purchase and use respondents' said baking powder in preference to said baking powder so offered for sale and sold by respondents' said competitors, in and because of the above enumerated erroneous beliefs.

PAR. 6. The above alleged acts and practices of respondents are all to the prejudice of the public and of respondents' 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.

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 the Griffin Grocery Company, a corporation and J. T. Griffin, Bryan

Cole, and Bryan Mathes, hereinafter referred to as respondents, charging them with unfair methods of competition in commerce in violation of the provisions of Section 5 of the said Act.

Thereupon the respondent Griffin Grocery Company filed its answer to the complaint, but respondents J. T. Griffin, Bryan Cole, and Bryan Mathes failed to enter appearance or file answer within the time fixed by the rules of practice and procedure of the Federal Trade Commission.

Thereafter respondent Griffin Grocery Company filed a statement that it had no objection to the issuance of a cease and desist order and did not desire to further appear.

Thereafter the proceedings regularly came on before the Federal Trade Commission on such complaint and answer, and the Commission having duly considered the allegations of the complaint and the admissions of the answer, both express admissions and admissions by failure to deny, now makes this report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Griffin Grocery Company is a corporation organized and existing and doing business under and by virtue of the laws of the State of Oklahoma. Respondents J. T. Griffin, Bryan Cole, and Bryan Mathes are, respectively, president, vice president, and secretary of said corporation and as such are able to, and do, manage and control said corporation and its business transactions; said individual respondents are able to and do accomplish their will and purposes by and through the agency and instrumentality of said corporation, so that all acts and business transactions of and by said corporation are also the acts and transactions of said respondents J. T. Griffin, Bryan Cole, and Bryan Mathes.

PAR. 2. Said respondents have been and are engaged in offering for sale and selling at wholesale groceries and such other articles of merchandise as are usually kept and offered for sale and are sold by wholesale grocers.

PAR. 3. Respondent's principal office and place of business is located at Muskogee in the State of Oklahoma. They maintain and operate places of business also at McAlester, Seminole, Okmulgee, Pryor, Antlers, Tulsa, Oklahoma City, Miami, Holdenville, Tahlequah, and Wilburton, all in the State of Oklahoma, at Fort Smith and Fayetteville, in Arkansas, and Denison, in Texas.

PAR. 4. Respondents under the trade name of Hi-Lo Baking Powder Company are engaged in the manufacture and sale of a

certain baking powder under the name "Hi-Lo" and when sold said product is shipped from respondents' places of business in Oklahoma into and across the several States of the United States, to the purchasers thereof. Said sales are made to merchants who resell the same to ultimate consumers.

PAR. 5. There are in business in the various States other persons, firms, and corporations engaged in selling baking powders and who pursuant to such sales ship said merchandise from their respective places of business into and through other States of the United States. In the course and conduct of their business, respondents have been and are in substantial competition with such other persons, firms and corporations above mentioned.

PAR. 6. In the manufacture of their said baking powder respondents incorporate a small proportion of dried white of egg, which does not add to or effect the leavening properties or power of said baking powder, but its only purpose is in connection with a so-called water-glass test to deceive and mislead the purchasing public into an erroneous belief as to the inherent leavening powers and properties of respondents' baking powder and as to its leavening properties and power in comparison with competitive baking powders that do not contain such dried white of egg.

PAR. 7. Certain of respondents' competitors manufacture and offer for sale and sell in interstate commerce and in competition with respondents a baking powder composed of the same or similar constituent elements as respondents' baking powder except that no dried white of egg is incorporated therein.

PAR. 8. The public purchases and uses baking powder because of and for the sake of its leavening properties and power. For the purpose of misleading and deceiving the public as to the leavening properties and power of their said baking powder and of creating a purchaser demand for same, respondents cause demonstrations to be made to the public and to retail and wholesale merchants by the use of the so-called water-glass test. This consists in taking a quantity of Hi-Lo baking powder and mixing the same with an equal quantity by volume of water. In a short time the ingredients effervesce to the top of and over the glass and will hold such shape and volume for considerable length of time, due to the fact that the white of egg forms a membrane over the surface and thus retains the whole of the carbon dioxide gas generated by the mixture. The demonstrator explains that the amount of said effervescence and the length of time it holds its form and bulk are proof of the very great leavening properties and power of respondents' baking powder.

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To persons not informed as to the real cause of such excessive effervescence and the length of time the same continues to hold its form and bulk, this demonstration is evidence that respondents' baking powder has unusually great leavening properties and power.

PAR. 9. The result of such test and representation by respondents' demonstrator is to mislead and deceive uninformed persons as to the inherent leavening properties and power of said baking powder and as to its effectiveness and excellence in the preparation of foods and to lead the public to purchase the same because of such erroneous belief.

PAR. 10. For the further purpose of misleading and deceiving the purchasing public and of disparaging competitive baking powders, said respondents through their demonstrators advised the public to try a like experiment with such competitive powders, and many of the purchasing public tried such experiments. Because of the absence of said dried white of egg from the competitive baking powders so tested by the public, such baking powders do not effervesce to the extent as does respondents' powder, nor does the effervescence hold its form and size for as long a time. To the great majority of the purchasing public this is proof that said competitive baking powder has but small and ineffective leavening properties and power as compared with respondents' baking powder.

PAR. 11. The use by respondents of said water-glass test in the manner and under the circumstances hereinabove set forth has the capacity and tendency to, and probably will, mislead and deceive the purchasing public into the erroneous belief that the inherent leavening properties and power of respondents' said baking powder are substantially greater than they in fact are; that the baking powders offered for sale and sold by respondents' competitors are substantially less than they in fact are; and has the capacity and tendency to, and probably will, divert trade to respondents from their said competitors, lessen competition between respondents and their competitors, and tend to create a monopoly in respondents in that line of commerce.

CONCLUSION

The aforesaid acts and practices of respondents are to the prejudice of the public and of respondents' competitors, and under the conditions and circumstances stated in the foregoing findings constitute 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

Now on this day comes on for consideration the above matter, upon the Commission's complaint and the answer of respondent, Griffin Grocery Company. And the Commission having made its findings as to the facts and its conclusion that the respondents have been and are 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 hereby ordered, That the respondent, Griffin Grocery Company, its officers, agents, and employees, and respondents J. T. Griffin, Bryan Cole, and Bryan Mathes, forthwith cease and desist from the use in, or in connection with, its sales or offering for sale of baking powder in interstate commerce, of the so-called water-glass test, with the representation, or under such circumstances as to amount to a representation, that such test demonstrates the leavening properties or power of respondent company's baking powder or its comparative leavening properties or power as compared with competitive baking powders, or from suggesting or representing to others, distributors, or merchants or members of the consuming public, either through the medium of newspapers or other publications, or the radio or by word of mouth, or otherwise, that said water-glass test is a method of measuring or determining the leavening properties or power of its said baking powder or of competitive baking powders. The water-glass test herein referred to consists of the mixing of baking powder, containing dried white of egg or some other ingredient to increase the surface tension of the mixture, and water and noting or comparing the amount and persistence of the effervescence thereby resulting.

It is further ordered, That said respondents, within 30 days from the date of the service upon them of this order, file with this Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
AMERICAN MEMORIAL 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 2182. Complaint, May 17, 1934—Decision, Nov. 6, 1934

Where a corporation engaged in the manufacture and sale of monuments with core of concrete and outer facing of crushed marble, granite, copper, or mica, mixed with cement and cast in appropriate molds, and so made as to simulate closely monuments of natural granite or marble, carved from the original stone; in advertising the same—

- (a) Represented and implied that said monuments were offered and sold, for advertising purposes, for a limited time, and to selected purchasers in their respective communities, at a greatly reduced price, through such statements in newspapers and magazines of interstate circulation as "\$60 Monument \$19. For a limited time to advertise our wonderful values. We want one in every community", etc., and through such statements in circular letters sent to those making inquiry in response to the aforesaid advertisements, as "In order to get a specimen of our work in every possible locality * * * we are offering to let at least one prominent family in each community secure one of our beautiful designs * * * at about one third of its actual value * * *", "* * *
- As this is a limited time offer being made especially to you, your order should be mailed in promptly if you want a monument at these money saving prices. * * * We are approaching the time when we must recall the extra special advertising prices * * *" "A small deposit will hold the offer open 60 days", and through lists of purported "regular prices" and "special advertising prices", which showed pretended reductions from \$60 to \$19, \$75 to \$28.50, and numerous other comparable purported savings, facts being that it did not make or quote special prices or make special offers for advertising purposes or for a limited time or to selected purchasers, the prices it offered were those regularly made and offered by it to all, regardless of any limitation as to time of acceptance, number of purchasers in a community, or otherwise; and
- (b) Depicted in the cuts used by it, its said monuments, which closely simulated in shape, design, color and appearance those made from natural granite or marble carved from the original stone, and which, as thus depicted, had the same general appearance as natural stone monuments similarly set forth, without stating in its catalogs, circular letters, or advertisements that said products were made from synthetic or cast stone, and were not cut and carved from the natural, original stone as it comes from the quarry, and tended thereby to lead members of the purchasing public to believe that said cuts and pictures were of a product made from natural stone and cut and carved from the original substance;

With tendency and capacity to confuse, mislead, and deceive members of the public into the belief that said monuments were offered at special or introductory or advertising prices, exclusive to the person to whom offered,