

Syllabus

IN THE MATTER OF

PABST PHARMACEUTICAL COMPANY, INC., DOING BUSINESS UNDER THE NAME AND STYLE OF PABST 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 2210. Complaint, July 19, 1934—Decision, Jan. 22, 1935

Where a corporation engaged in carrying on under the same trade name long theretofore employed (with the management of which corporation there was actively associated the owner of the former business, who became its president and treasurer), the sale to wholesale and retail druggists, of its "Pabst's Okay Special", a preparation theretofore long and extensively advertised on tin signs, in the papers, periodicals, circulars, directions and otherwise, and widely sold through hundreds of jobbers and thousands of druggists, as "Pabst's Okay Specific", as a definite and positive cure for various venereal diseases and ailments, and thereby associated by the trade and public, through said long used trade names, with such claims, notwithstanding fact it was not a specific, and had no direct curative effect on the diseases for which principally offered, and was not efficacious or beneficial in the treatment of a certain woman's ailment, for which recommended—

Advertised said preparation over the old business trade name, continued by it, as aforesaid, as "Pabst's Okay Specific", and, as later changed as "Pabst's Okay Special", by means of said signs, framed placards, and gummed stickers displayed in public places, and on pocket match packets distributed to the public, as a cure, remedy or competent and adequate treatment for the aforesaid diseases and ailments, through such statements as "Has the reputation of giving satisfactory results, no matter whether used in new cases or those of long standing * * * take it strictly according to directions and you *will not be disappointed*", etc., "When in trouble use the Okay Specific", "It does the work", "Chronic cases * * * is especially beneficial in * * *", "These cases * * * which frequently refuse to yield to other kinds of treatments, generally disappear after using the Okay Specific", and thus designated and referred to its said product in letterheads used in correspondence, and in said letterheads and in folders of directions sent to those making inquiry, or enclosed with the product, set forth and displayed the old well known trade name of the former business, thus continued by it.

Facts being said change in name was of such character as still to suggest to the trade and purchasing public the old name of the product, especially as used by it in connection with the previously established trade name of the business, and said product did not constitute a specific, cure, remedy, or competent and adequate treatment for the diseases and ailments for which recommended, as aforesaid, and to represent it as such was inaccurate, exaggerated and untrue;

With tendency and capacity to mislead and deceive members of the public as to the qualities or properties of said medicine and induce purchase and use

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thereof by them, because of such erroneous belief, and divert trade to it from competitors engaged in the sale in interstate commerce of preparations intended and used for the treatment of the same diseases and ailments, including among such competitors those who in nowise misrepresent the therapeutic effects of their products, and with effect of so diverting, to said competitors, substantial injury and prejudice:

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

Mr. Harry D. Michael for the Commission.

Langworthy, Stevens & McKeag, of Chicago, Ill. and *Mr. Daniel R. Forbes*, of Washington, D. C., 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, an Illinois corporation engaged in the business of compounding a medical preparation, known and described as "Pabst's Okay Special", and in the sale thereof to wholesale and retail druggists for ultimate resale to the purchasing public, and with principal office and place of business in Chicago, with advertising falsely or misleadingly as to qualities or properties of product, 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, engaged in carrying on the sale of said product under the same trade name theretofore used for many years by its president and principal owner in selling said product as "Pabst's Okay Specific" through hundreds of jobbers and thousands of retail druggists, associated by the aforesaid names through long and extensive advertising on public signs and in papers, periodicals, and circulars, with the claims made therefor as a definite cure and remedy for certain venereal diseases and ailments, advertised said preparation as "Pabst's Okay Specific" and as a positive, definite and unfailing cure for the aforesaid remedies and ailments, on said tin signs, and on letterheads, and in circulars of directions, sent to those making inquiry or enclosed with the package, displayed the trade name of the old business, thus continued by it.¹

Said preparation, as alleged, is not such a cure, remedy or competent and adequate treatment, and its representation as such is grossly inaccurate, greatly exaggerated, and not a true statement of the therapeutic uses and effects of said preparation, and aforesaid change in name of product to "Pabst's Okay Special", in view of prior sale

¹ Respondent's advertisements, as alleged and quoted in the complaint, are set forth in the findings, *infra*.

and advertising under the old name, and association of trade and public therewith, and the claims long made therefor, as such, is of such a character as still to suggest the former name, especially when taken in connection with corporation's continued use of the previously established trade name used by the old business.

Respondent's representations, as alleged, have "the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said medicine is a cure, remedy, or competent and adequate treatment for the diseases and ailments of the human body for which said preparation is recommended by respondent, as aforesaid, and to induce them to buy and use the same because of such erroneous belief so engendered, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of medicinal preparations intended for and used for the treatment of the diseases and ailments for which respondent represents its said preparation to be a cure, remedy, or competent and adequate treatment as aforesaid"; all to the injury and prejudice of the public and competitors.

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, 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 its complaint upon the respondent, Pabst Pharmaceutical Company, Inc., a corporation, doing business under the name and style of Pabst Chemical Company, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint. At the conclusion of said hearings on behalf of the Commission, respondent elected in writing not to introduce any evidence in its behalf and asked that the case be submitted to the Commission on the record without further proceedings.

Thereupon, this proceeding came on for final hearing, briefs and oral argument having been waived by counsel for respondent and counsel for the Commission, 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:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pabst Pharmaceutical Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, and has its office and principal place of business in the city of Chicago in said State.

PAR. 2. Respondent is now and has been engaged for more than two years last past in the business of compounding a certain medical preparation known and described as "Pabst's Okay Special" and of selling the same to wholesale and retail druggists located in various States of the United States for ultimate resale to members of the purchasing public. Said respondent, in the course and conduct of its said business, causes its said preparation to be transported in interstate commerce from its said place of business in Illinois to, into and through States of the United States other than Illinois, to the buyers thereof to whom or to which it is, or has been sold.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the compounding, sale and distribution in interstate commerce of medicinal preparations intended and used for the same general purposes and for the treatment and alleviation of the diseased conditions of the human body for which respondent represents its said medicine to be a treatment as hereinafter set out, and such other individuals, firms, and corporations have caused and do now cause their said preparations, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Said respondent has been, during the aforesaid time, in direct and substantial competition in interstate commerce in the sale of its said preparation with such other individuals, firms, and corporations.

PAR. 4. Said preparation, compounded and sold by respondent as aforesaid, was formerly known as "Pabst's Okay Specific" and was compounded and sold for many years under said name by one Edmund Friedolin Pabst doing business under the name and style of Pabst Chemical Company until the name of said preparation was changed to "Pabst's Okay Special". The sale of said preparation under said new name began on January 1, 1931, and was continued by said Pabst under said trade name until December 1931, when the respondent corporation was formed and took over the ownership, compounding and sale of said preparation and continued said business under the same trade name, Pabst Chemical Company, formerly used by said Pabst. Said Pabst is now the president and treasurer of respondent corporation, and is actively identified with

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the management of said business. Respondent herein represents as hereinafter set out that said preparation is a cure, remedy, or a competent and adequate treatment for gonorrhea and gleet, for chronic seminal and mucous discharges of the sexual organs, and also for leucorrhea. Since the organization of respondent company the public advertising of said preparation has been done by means of tin signs and gummed stickers displayed in public places, usually in public or semi-public water closets, in various States of the United States. These signs and stickers are seen and read by the purchasing public. Pocket match packets with advertising matter thereon have also been distributed to the purchasing public and are yet used by respondent as an advertising medium.

Said tin signs are the same as used by said Pabst before the name of the preparation was changed and before said corporation was formed. The wording on said sign is as follows:

YOU KNOW
PABST'S OKAY (O. K.) SPECIFIC
HAS THE REPUTATION OF GIVING
SATISFACTORY RESULTS
NO MATTER WHETHER USED IN
NEW CASES OR THOSE OF LONG STANDING

It is an internal remedy and will not cause complications. No other treatment required with this remedy. Contains nothing injurious to the constitution and can be taken without inconvenience or detention from business.

TAKE IT STRICTLY ACCORDING TO DIRECTIONS AND YOU

WILL NOT BE DISAPPOINTED

PRICE \$3.00

FOR SALE AT

ALL FIRST-CLASS DRUG STORES

EVERYWHERE

MANUFACTURERS AND PROPRIETORS

PABST CHEMICAL Co.,

CHICAGO, ILL.

Recently, the word "Specific" on said tin signs has been changed to "Special."

The wording on said gummed stickers until recently was as follows:

YOU KNOW PABST'S OKAY (O. K.) SPECIFIC
TAKE IT STRICTLY ACCORDING TO DIRECTIONS AND

YOU WILL NOT BE DISAPPOINTED

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It is an Internal Remedy and can be taken without inconvenience or detention from Business.

PRICE \$3.00. FOR SALE AT
ALL FIRST-CLASS DRUG STORES
MANUFACTURERS AND PROPRIETORS
PABST CHEMICAL CO.
CHICAGO, ILL.

Recently, respondent has had new gummed stickers printed for general use as aforesaid on which the word "special" is used instead of "specific" and at the bottom a space is provided for the name and address of the druggist who has the product for sale under the heading, "for sale by." Otherwise the wording is the same as quoted above.

The wording on the match packets referred to above was formerly as follows:

WHEN IN TROUBLE
USE PABST'S OKAY SPECIFIC
PABST CHEMICAL COMPANY, CHICAGO, ILL.

which was printed on the front while on the back the wording was as follows:

WHEN IN TROUBLE
USE THE OKAY SPECIFIC

On the top fold of the match packet the following statement appeared:

IT DOES THE WORK

Recently the word "Specific" has been changed to the word "Special" on said match packets but otherwise the wording remains the same.

In addition to the above, respondent makes use of a printed framed cardboard sign under glass with the same wording as the tin signs above referred to but with a space for the name and address of the local drug store where the product is sold.

In addition, respondent uses letterheads having at the top thereof said trade name "Pabst Chemical Company" underneath which is the following statement: "Owned and operated by Pabst Pharmaceutical Co., Inc." In addition to other printed matter, said letterhead also has thereon the following statement: "Proprietors of the Celebrated Pabst's Okay Specific." Said letterheads are used by respondent in its correspondence with its customers.

Respondent sends out to members of the public, who inquire about its preparation, copies of its folder containing directions. This

folder is also enclosed in the package containing the medicine. Said directions are given over the trade name "Pabst Chemical Co."

Said preparation has been manufactured, advertised and sold for more than forty years. During such time the trade name "Pabst Chemical Co." has been used to designate the manufacturer of said medicine and the proprietor of said business and such trade name became associated in the minds of the trade and the consuming public with "Pabst's Okay Specific" as well as with its purported uses and effects. There was formerly distributed to the general public and also included in the package a folder of directions headed "Pabst's Okay Specific" and containing among other statements the following:

CHRONIC CASES

Pabst's Okay Specific is especially beneficial in chronic cases. These cases, which are usually of long standing, and which frequently refuse to yield to other kinds of treatments, generally disappear after using the Okay Specific.

During the period of time said preparation has been on sale as aforesaid, it has been handled by at least 300 jobbers and at least 12,000 druggists located in the various States of the United States. Said product has had a wide and extensive sale. It was formerly advertised in the newspapers and magazines. At one time a circular was used to advertise said product to the public which, in addition to using the trade name "Pabst Chemical Co." and the name of the product "Pabst's Okay Specific" in various places therein, also contained, among other statements, the following:

PABST'S OKAY SPECIFIC
THE ONLY RELIABLE AND SAFE REMEDY FOR
GONORRHOEA AND GLEET
CHRONIC, SEMINAL AND MUCOUS DISCHARGES, ALSO
LEUCORRHOEA IN WOMEN

Pabst's Okay Specific has an unparalleled record as a medicine of the highest curative merits. It stands absolutely unequalled among all known medicines for Gonorrhoea and Gleet. While others pretend to cure, Pabst's Okay Specific never fails to cure completely and permanently. It has never failed to cure the most stubborn cases . . .

You are not trying an experiment by taking this remedy for you are taking an absolute cure . . .

By such prior sales and advertising the trade and members of the public became familiar with the name of said company under which respondent has conducted its said business as well as with the name of the said product and its represented purposes and effects. The change in name of the preparation, as referred to above, was of such

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a character as to still suggest the former name to the trade and purchasing public, especially when taken in connection with the previously established trade name used by respondent.

The word "specific" imports a cure and the use of said term by respondent as aforesaid implies to the purchasing public that respondent's preparation is a cure. The prior advertising of the product above referred to together with the wording on the tin signs quoted above and the usual place of their display indicate to the public that the so-called "specific" is intended for the treatment and cure of venereal disease.

PAR. 5. In truth and in fact, said preparation is not a cure, remedy or competent and adequate treatment for gonorrhea, gleet, chronic seminal and mucous discharges of the sexual organs, leucorrhea or of any venereal disease. To represent it as such is inaccurate, exaggerated and not a true statement of the therapeutic effects of said preparation.

An internal medication containing oleoresins and oils such as respondent's may be and is often used in the treatment of gonorrhea as an adjunct to other measures or treatment such as local treatment. Such a medication taken internally will not kill the gonococcus, the germ present in gonorrhea. Such a medication would tend to relieve pain and burning in some cases and to act as a diuretic but would have no direct curative effect on the disease of gonorrhea. It would not be efficacious or beneficial in the treatment of leucorrhea.

PAR. 6. The representations of respondent, as aforesaid, have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said medicine is a cure, remedy, or competent and adequate treatment for the diseases and ailments of the human body for which said preparation is recommended by respondent, as aforesaid, when in truth and in fact such is not the case, and to induce them to buy and use the same because of such erroneous belief so engendered, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of medicinal preparations intended for and used for the treatment of the diseases and ailments for which respondent represents its said preparation to be a cure, remedy, or competent and adequate treatment, as aforesaid.

PAR. 7. There are among the competitors of respondent in the sale of its said medicine those who in nowise misrepresent the therapeutic effects of their medicines, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and are in violation 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 duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and testimony in support of the charges of said complaint, respondent having elected not to introduce any evidence in its behalf, and the filing of briefs and the presentation of oral argument having been waived by the attorney for the Commission and the attorneys for respondent, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That respondent, Pabst Pharmaceutical Company, Inc., a corporation, doing business under the name and style of Pabst Chemical Company, or doing business under any other trade name or under its own name, its officers, directors, agents, representatives, servants, and employees, in connection with the sale, offering for sale or distribution in interstate commerce and the District of Columbia, of its preparation known and described as "Pabst's Okay Special" or of the same or substantially the same preparation under any other name or names, cease and desist from representing directly or indirectly, in advertisements or by radio, or in any manner or mode, that said preparation is a specific, cure, remedy or competent and adequate treatment for gonorrhea, gleet, chronic seminal or mucous discharges of the sexual organs, leucorrhea, or of any venereal disease.

It is further ordered, That respondent, within 60 days from and after the date of the service upon it of this order, shall file with the Commission a report 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
WASHINGTON SEA FOOD DEALERS' ASSOCIATION, ITS
OFFICERS AND MEMBERS

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

Docket 2189. Complaint, May 29, 1934—Decision, Jan. 23, 1935

Where an association of brokers, commission merchants, and wholesale and retail dealers engaged in the sale of sea foods in the District of Columbia, together constituting a large and influential factor therein in the sale, and purchase for resale, of said products; and aforesaid brokers, etc., in competition between and among themselves and with other brokers, commission merchants, and wholesale or retail dealers similarly engaged; with intent of eliminating price competition among themselves, and between themselves and other persons and concerns so engaged, entered into and carried out an agreement, combination and conspiracy to fix and maintain prices of said products; and, in pursuance of aforesaid agreement, etc.—

- (a) Fixed and established from time to time, and for designated periods of time, minimum prices to be charged by all association members for various articles of sea food, to designated purchasers or groups or classes of purchasers; and
- (b) Agreed, on the part of the association officers or certain members, to furnish, and furnished, statements or schedules of minimum prices to each association member, and not to sell said articles to any such purchasers or group or class at a price below the aforesaid minimums;

With intent and effect of lessening and restraining competition in said business between and among themselves, and denying to purchasers the benefit thereof, and of lessening, hindering, restraining, and preventing price competition in said business between themselves and all other persons and concerns similarly engaged:

Held, That such acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hildrop for the Commission.

Brandenburg & Brandenburg, of Washington, D. C., for R. W. Claxton, Inc., Harry L. Claxton, S. W. Russell, John Neitzey, Mrs. George W. Carroll, Robert M. Meehan, and J. H. Neitzey.

Peysen, Strasburger & Jacobson, of Washington, D. C., for W. H. Carter, Daisy Carter Lanhardt, Potomac Fish Market, Inc., R. L. Faunce, Inc., and Mrs. Emma Thomford.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged