

Complaint

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IN THE MATTER OF

HARRY GABOVITCH, DOING BUSINESS AS BANNER
NOVELTY COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF
AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2507. Complaint, Aug. 1, 1935—Order, Oct. 1, 1935*

Consent order requiring respondent, doing business as aforesaid, his agents, etc., in connection with the sale or offer for sale in commerce among the several States and in the District of Columbia, of general merchandise and peddlers' supplies, including soaps, flavoring compounds, toilet articles, and household novelties, to cease and desist from—

- (a) Advertising or marking any of the products specified as aforesaid with fictitious, and exaggerated prices, and making any false, fictitious, or misleading statements concerning the value or the prices at which said products, or any of them, are sold or intended to be sold in the usual course of trade, or representing such soaps, food flavorings, or other products, sold in combination deals or otherwise, to have regular retail prices which were and are fictitious and greatly in excess of the prices at which such or similar products are usually sold, or were intended to be sold, and representing to buyers values greatly in excess of the values of such or similar products;
- (b) Using the words "vanilla", "lemon", "walnut", "almond", "maple", "banana", "orange", "strawberry", or similar words descriptive of certain fruits, nuts, berries, or beans, in combination or in connection with the word "extract", until and unless the product is composed of genuine ingredients as distinguished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol; or
- (c) Stating or representing in advertisements and advertising matter, by the use of printed words or pictorial representations, that he owns and occupies a large office and warehouse building, until he does own and operate such a building.

Mr. J. T. Welch for the Commission.

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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 Harry Gabovitch, doing business under the trade name and style of Banner Novelty Company, hereinafter designated as respondent, is now, and has been, 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent, Harry Gabovitch, is an individual who is now, and has been at all times mentioned herein, doing business

under the trade name and style of Banner Novelty Company at 727 West Madison Street, Chicago, Ill. Respondent is now, and has been, engaged in the business of selling peddlers' supplies, including soaps, flavoring compounds, toilet articles, and household novelties, to peddlers and small retailers for resale, and to others, for personal use and consumption, in commerce as herein set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said peddlers' supplies, including soaps, flavoring compounds, toilet articles, and household novelties, when sold, to be transported from his principal office and place of business in the State of Illinois to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above described products sold by respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of selling peddlers' supplies, including soaps, flavoring compounds, toilet articles, and household novelties as herein set out, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of his business, as detailed in paragraphs 1 and 2 hereof, has had printed and circulated, through the United States mails, to his customers and prospective customers in the various States of the United States, a combination catalog and price list. The catalog and price list so circulated purports to be descriptive of the merchandise offered for sale and sold by the respondent.

Many articles and items of merchandise listed in said catalog and offered for sale by the respondent are described as possessing retail values many times in excess of the actual selling price by the respondent to the peddler, retailer, or other purchaser, and many times in excess of the actual value thereof. A number of the said items and articles of merchandise, described in said catalog, have retail prices stamped or printed thereon, on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public. The retail prices, so stamped or printed as aforesaid are many times in excess of the actual selling price of the said items or articles of merchandise by the peddler or retailer to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed as aforesaid, are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

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Among the items advertised in the aforesaid catalog in connection with which false and fictitious retail prices have been affixed, either to the article itself or to the container thereof, are the following:

(1) Castile Soap, Satin Skin Soap, Mona Mentholated Skin Soap, Medicated Skin Soap, Dr. Clark's Health Soap. An outstanding assortment of soaps that will bring you repeat business. Packed three bars to a beautiful lithographed box. All boxes have price mark of 75 cents. Do not confuse these soaps with smaller guest sizes. Box (three bars) 7½ cents.

(2) Seven Cake Assortment. An attractive printed box of seven soaps comprised of Castile Soap, Lemon Soap, Vegetable Oil Soap, Rose Toilet Soap, Violet Soap, Germicide Soap and Shaving Soap. Each, \$1 price marked. Box complete, 12½ cents.

(3) Dental Cream. Marked 25 cents and 35 cents. Assorted brands. Royal Blue, Dr. Sachs, D. D. S. Gential Grandeur, Milk of Magnesia and peppermint type. All fine quality creams, dozen 65 cents.

(4) Dental Cream. Large Size. Marked 50 cents and 60 cents. Same assortment as above (referring to Item 3). Dozen 90 cents.

(5) Shaving Cream. Marked 35 cents. Assorted Brands. Stetson, Sterling, etc. Brushless or lather type. Packed in highly lithographed boxes. Dozen 65 cents.

(6) Honor Brushless Shaving Cream. 60-cent size. A cream of merit, dozen 84 cents.

(7) Elgin Shaving Cream. 60-cent size. Lather type. Only one brand, but the best. Contains bay rum which prevents irritation and leaves a soothing and cool feeling to the most tender skin. Dozen \$1.20.

(8) Flavoring extracts. Vanilla, Lemon, Walnut. Fruit flavoring of lasting merit, 4 ounce size label priced 50 cents. Dozen 60 cents. 8-ounce size label priced \$1. Dozen 78 cents.

(9) Goodrich Razor Blade Sharpener. Best Sharpener made, known from coast to coast for its extraordinary ability. Price mark on one box \$1. Dozen 72 cents.

(10) Five piece set. Set consists of 8-ounce bottle vanilla extract, priced \$1; one 8-ounce bottle lemon extract, priced \$1; a jar of cold cream and a box of face powder in fancy box, fastest selling deal on the market today. Complete 27 cents.

The retail prices, as indicated above, appearing on the items of merchandise or on the containers thereof, were not intended by either the respondent or the purchaser purchasing for resale, to be the true retail price or the true retail value of the merchandise so price marked. The retail prices, as indicated, appearing on the items of merchandise or on the containers thereof, were intended by the respondent and by the purchaser purchasing for resale, to be far in excess of the price intended to be charged and actually charged on a sale of merchandise to the ultimate consumer purchasing in the usual course of trade, and far in excess of the true value of the various items of merchandise so price marked.

PAR. 5. Further, said respondent, in his catalog and price list, distributed as aforesaid, has used the term "flavoring extracts" to de-

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scribe imitation flavoring compounds which lack the necessary alcohol content required as a vehicle for carrying genuine flavoring extracts. The said flavoring compounds, misleadingly and falsely described by the respondent in his catalog as "flavoring extracts", are truthfully and correctly labeled by the manufacturer thereof as follows:

A BEST VALUE product. Imitation vanilla flavoring. No alcohol. 8 fluid ounces. Composed of vanillin, coumarin, caramel color. Price, \$1. Distributed by Best Value Sales Company, New York and Chicago.

The flavoring compounds above described are correctly and truthfully labeled by the manufacturer thereof as imitation flavorings composed of chemical substitutes suspended in oils or gum emulsions and do not contain either alcohol or extractions of juices from berries, beans, or nuts. Over a period of many years the trade and the public generally have been led to, and they now do, believe and consider a "flavoring extract" to be a flavoring compound wherein the flavoring is secured by extraction of juices from beans, berries, nuts, or fruits. These juices are then suspended in alcohol which is recognized as the most valuable and desirable vehicle that can be used for dissolving and preserving extractions of juice from beans, berries, nuts, or fruits.

PAR. 6. Respondent, in circulating his said catalog and price list, as aforesaid, has caused to be depicted on the front cover thereof a picturization of a large building several stories in height and having a large street frontage. Under the picturization above referred to there appears the following words: "General Offices and Warehouse." The picturization of the said building, used as aforesaid in connection with respondent's catalog, serves as a representation that respondent either owns, operates, or occupies the building thus picturized and is, in truth and in fact, operating his business on a large scale.

In truth and in fact, respondent does not own the building thus depicted on the front cover of his catalog and occupies only a very small portion of the building above referred to, if he occupies any part of it at all, and the picturization of said building, purported to represent the size and character of respondent's business operations, is a gross exaggeration and is false and misleading.

PAR. 7. Over a period of many years manufacturers have, in many trades, formed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer and retailer and, consequently, to represent the approximate retail sale value of the item. The range of the

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suggested retail price is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item is manufactured. The public generally understands the custom herein detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has expressed, and has had, a marked preference for soaps, dental creams, shaving creams, toilet articles, flavoring extracts and similar household novelties that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary ingredients or with inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as in indication of the superior quality and character of the product and its resulting higher value. Whenever a genuinely superior product, so stamped or marked with the retail price thereof, is offered for sale at a substantially reduced price, the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof, over ordinary products sold for the regular price which is lower than the normal retail price of the superior product in the customary course of trade.

Also, a substantial portion of the purchasing public has expressed and has had, a marked preference for genuine "flavoring extracts", as that term is known and used by the trade and public generally, over any imitation flavoring compounds composed of synthetic substitutes and chemicals suspended in inferior oils or emulsions. The cost of producing genuine flavoring extracts is greatly in excess of the cost of producing imitation flavoring compounds.

Also, a substantial portion of the purchasing public has a marked preference for dealing with and purchasing items of merchandise from manufacturers or distributors who operate on a large scale and do a large volume of business, believing that superior quality and closer prices can be secured by dealing with such distributor.

PAR. 8. The false and misleading advertising and representations hereinabove set out, together with the false and fictitious price markings herein set out, on the part of the respondent, places in the hands

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of the aforesaid peddlers and retailers, buying for resale, an instrument and a means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent and offer for sale, and sell, the said peddlers' supplies, including soap, shaving cream, dental cream, flavoring extract, and household novelties, hereinabove described in detail in paragraph 4, as genuinely superior products produced by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for a retail price stamped on the products or on their containers.

In truth and in fact the same merchandise described in paragraph 4 is not a superior product normally sold in the usual channels of trade for the retail price stamped on the product itself or on the container thereof, or for any price closely approaching the said stamped retail price.

There are among the competitors of respondent many who do not advertise or represent through their catalogs that the merchandise offered for sale by them is stamped or marked with price marks greatly exceeding the actual intended retail sale value or retail sale price of the merchandise offered for sale, and who do not advertise or represent through their catalogs that various flavoring compounds are "flavoring extracts", as that term is known and understood by the trade and public generally. There are many among respondent's competitors who manufacture, distribute and sell flavoring compounds composed of synthetic materials and suspended in oils or gum emulsions, and who do not advertise said products as "flavoring extracts"; and many of respondent's competitors manufacture, distribute and sell food flavorings that are properly and lawfully designated as "extracts" and are composed of superior ingredients and suspended in the proper alcoholic vehicles.

PAR. 9. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale items of merchandise as described in paragraph 4, with false and fictitious price marks stamped thereon, in representing himself to be a large scale distributor by the picturization of a large warehouse on his catalog, and in representing certain products to be "flavoring extracts" when said products were merely flavoring compounds, is to mislead a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

(1) That the various items of merchandise described in respondent's catalog, as shown herein in paragraph 4, were and are superior products manufactured with the intent and purpose on the part of the manufacturer that said products would be

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sold at retail at a price closely approximating the price stamped thereon.

(2) That said products above described and referred to, because of the price marks affixed or stamped thereon, are products composed of superior ingredients and are products that ordinarily retail, in the usual course of trade, for prices closely approximating the prices stamped on said merchandise.

(3) That the respondent is a large scale operator and distributor and conducts his business on such a scale as to assure purchasers of superior quality and closer prices by trading with such operator.

The effect of the foregoing false and misleading representations of the respondent with respect to describing certain of its products as "flavoring extracts" is to mislead a substantial number of peddlers and retailers, as well as a substantial portion of the consuming public, to believe that the products so advertised are composed of genuine flavoring extracts and suspended in alcohol, and that said products fall within the class of products commonly known to the trade and public generally as "extracts".

The foregoing false and misleading statements and representations on the part of respondent are added inducements for a substantial number of peddlers and retail merchants, as well as consumer purchasers, to buy the products distributed and offered for sale by respondent, and have a tendency and capacity to, and do, divert a substantial volume of trade from competitors of respondent engaged in similar businesses, with the result that substantial quantities of said products, as described in paragraph 4, are sold to said peddlers and retailers and to the consuming public on account of said beliefs induced by said false and misleading representations, and as a consequence thereof, a substantial injury has been done to substantial competition in commerce among the several States of the United States and in the District of Columbia, as hereinabove detailed.

PAR. 10. The above and foregoing acts, practices, and representations of respondent have been, and are, all to the prejudice of the public and respondent's competitors, and have been, and are, unfair methods of competition within the meaning and intent 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

Harry Gabovitch, trading and doing business as "Banner Novelty Company", the respondent herein, having filed his answer to the complaint in this proceeding, in which answer he states that he desires to waive hearing on the charges set forth in the complaint herein and

not to contest the proceeding, consenting in and by his said answer that as provided in paragraph (b) of Rule V of the Commission's Rules of Practice, the Commission may, without trial, without evidence and without findings as to the facts or other intervening procedure, 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 considered the said answer and being fully advised in the premises—

It is now ordered, That the respondent, Harry Gabovitch, trading and doing business as "Banner Novelty Company", and his agents, servants, representatives, and employees, in connection with the sale and offering for sale, in commerce between and among the several States of the United States and in the District of Columbia, of general merchandise and peddlers' supplies, including soaps, flavoring compounds, toilet articles, and household novelties, cease and desist from:

(1) Advertising or marking any of the products, such as soaps, flavoring compounds, toilet articles and household novelties, sold by him with fictitious and exaggerated prices, and from making any false, fictitious or misleading statements concerning the value or the prices at which said products, or any of them, are sold or intended to be sold in the usual course of trade.

(2) Representing soaps, food flavorings or other products, sold in combination deals or otherwise, to have regular retail prices which were and are fictitious and greatly in excess of the prices at which such or similar products are usually sold, or were intended to be sold, and representing to buyers values greatly in excess of the values of such or similar products.

(3) Using the words "vanilla", "lemon", "walnut", "almond", "maple", "banana", "orange", "strawberry", or similar words descriptive of certain fruits, nuts, berries or beans, in combination or in connection with the word "extract", until and unless the product is composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol;

(4) Stating or representing in advertisements and advertising matter, by the use of printed words, or pictorial representations, that he owns and occupies a large office and warehouse building, until he does own and operate such a building.

It is further ordered, That respondent shall, within 60 days from the date of the service upon him of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which he has complied with the order herein set forth.

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IN THE MATTER OF

S. BENSON STUDIOS, INC., DOING BUSINESS AS BENSON
STUDIO AND BENSON'SCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2533. Complaint, Aug. 30, 1935—Order, Oct. 1, 1935*

Where a corporation engaged in the sale and distribution of women's coats and furs; in advertising and soliciting the sale thereof through circulars and circular letters sent to various persons in the different States and through newspaper advertisements of wide interstate circulation and through the radio—

(a) Represented that it sold at its place of business genuine fur coats and scarfs and beautiful cloth coats which had been slightly used for posing and fashion work only at an extraordinarily low price and for a fraction of what purchasers and potential purchasers intended spending, facts being commodities thus advertised and represented did not consist wholly or substantially of "sample" or "model" coats and furs, but mainly of garments which had never been worn, and prices charged therefor were no lower than those at which other dealers sold comparable garments never worn or used as samples or models;

(b) Represented that magnificent genuine fur coats of exceptionally beautiful, selected skins, guaranteed never to have been worn on the street, could be bought from it for as little as \$39.50 and that lovely fur scarfs in silvers, reds, pointed, brouns, and all the new shades could be bought from it for \$10, and that such garments would be guaranteed in writing by it for five years and free repairs and free storage given with every purchase, facts being genuine fur coats of the newest advance models and made of selected skins could not be purchased for as little as \$39.50, nor "lovely fur scarfs" in all the new shades and in the variety of furs named for \$10;

With tendency to mislead and deceive the buying public by causing said public to believe that it could purchase from such corporation fur garments slightly used for sample or model purposes at a price greatly less than the market price thereof, and that genuine fur coats of exceptionally beautiful selected skins could be bought from it for as little as \$39.50, and with tendency and capacity unfairly to divert trade to it from other individuals and concerns engaged in similar business, but honestly and truthfully advertising and representing their goods:

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

Mr. John W. Hildrop for the Commission.

Kaye, Scholer, Fierman & Hays, 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