

Complaint

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IN THE MATTER OF
ALFRED MENDELLCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2585. Complaint, Oct. 17, 1935—Order, Nov. 18, 1935*

Consent order requiring respondent, his agents, etc., in connection with the sale or offer of candy in interstate commerce, forthwith to cease and desist from—

- (a) Representing in and on cartons, labels, or in any other way that a brand of candy designated by him as "Fruit Pops" is 100 percent pure, until and unless the candies so designated are made entirely of ingredients all of which are 100 percent pure; and
- (b) Designating on cartons, labels, or in any other way candies not 100 percent pure, but synthetically colored and flavored, as "Fruit Pops" until and unless such designation "Fruit Pops" is followed conspicuously, wherever used, with the statement that such candies are artificially colored and artificially flavored.

Mr. Edward L. Smith 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 Alfred Mendell, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, 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. Respondent Alfred Mendell is an individual having his place of business in Ozone Park, State of New York, and is now, and for more than one year last last, has been engaged in the manufacture of confectionery and in the sale thereof to wholesalers and retailers, between and among the various States of the United States and in the District of Columbia, causing such confectionery when sold by him to be shipped from his place of business in Ozone Park, in the State of New York, to the purchasers thereof, some located in the State of New York and others located in various other States of the United States and in the District of Columbia. In the course and conduct of his business, respondent has been for more

than one year last past, and still is, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of confectionery to wholesalers and retail dealers in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent has manufactured, assembled, sold and distributed, and still manufactures, assembles, sells, and distributes to wholesalers and retailers between and among the various States of the United States and in the District of Columbia, an assortment of confectionery under the name "Fruit Pops". Upon the ends of both the inside and outside sections of the cartons containing such assortments designated as "Fruit Pops", respondent has caused and still causes the words "Delicious Flavored Fruit Pops" to be printed, and on both sides of the lower inside section of such cartons has caused and still causes to be printed the following:

Pineapple	Raspberry	Lime	Orange	Lemon	Chocolate
Delicious Flavored					
F R U I T			P O P S		
5 for 5 cents			100 percent Pure		

Such confectionery is sold to the trade and to the purchasing public in and from the cartons so labelled.

In truth and in fact, the products in such assortment and so described have not been and are not flavored with the fruits mentioned, or with the juices thereof, but have been and are flavored and colored with synthetic flavors and with ingredients other than the fruits and juices of the fruits mentioned and are not 100 percent pure.

PAR. 3. The aforesaid representations made by respondent as set out in paragraph 2 hereof, and the use by respondent of the name "Fruit Pops" for said confectionery, have the capacity and tendency to mislead and deceive wholesalers and retailers and the purchasing public into the beliefs that such confectionery so described is flavored and colored with the fruits mentioned, or with the juices thereof, and is 100 percent pure, and to purchase said products of respondent in such erroneous beliefs.

There are among the competitors of respondent mentioned in paragraph 1 hereof, manufacturers and dealers who flavor and color the

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products in which they deal with the fruits or the juices thereof, and who truthfully represent their said products to be so flavored and colored and 100 percent pure. There are also among such competitors others who flavor and color their products with synthetic flavors and with ingredients other than fruits or juices, but who do not represent that their products are flavored or colored with fruits or juices thereof, or that they are 100 percent pure. By the aforesaid representations of the respondent, trade is diverted by respondent from his aforesaid competitors and thereby substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 4. The above alleged acts and practices of respondent are to the prejudice of the public and to the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

The respondent herein having filed his answer to the complaint in this proceeding, and having subsequently filed with this Commission his motion that he be permitted to withdraw his said answer and that he be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

It is hereby ordered, That the said motion be and the same is hereby granted; that the said answer be and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by his said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in his said substituted answer that he does not contest the said proceeding, and having consented in his said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue, and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises—

It is hereby further ordered, That the respondent, Alfred Mendell, his agents, servants, and employees, in connection with the sale or offering for sale of candy in interstate commerce, forthwith cease

and desist (1) from representing in and on cartons, labels, or in any other way that a brand of candy designated by him as "Fruit Pops" is 100 percent pure, until and unless the candies so designated are made entirely of ingredients all of which are 100 percent pure; and (2) from designating on cartons, labels, or in any other way candies not 100 percent pure, but synthetically colored and flavored, as "Fruit Pops" until and unless such designation "Fruit Pops" is followed conspicuously, wherever used, with the statement that such candies are artificially colored and artificially flavored.

And it is hereby further ordered, That the said respondent, Alfred Mendell, shall within 60 days from the day of the date of the service upon him of this order, file with this Commission his report in writing, setting forth in detail the manner and form in which he shall have complied with this order.

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IN THE MATTER OF

WESTPHALIA MANUFACTURING COMPANY, INC., AND
POLY CHEMICAL LABORATORIES, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2566. Complaint, Oct. 2, 1935—Order, Nov. 22, 1935*

Consent order requiring respondent corporations, and each of them, their agents, etc., to cease and desist, directly or indirectly, in connection with offering for sale or selling in interstate commerce their cleaning fluid, known and described as Rid-O-Spot, from representing on labels affixed to the container or containers of such product, or in advertisements, oral, printed, or written, that Rid-O-Spot, when used for cleaning purposes leaves no rings or that it removes all grease spots without injury to the most delicate fabric or color.

Mr. James M. Brinson 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 the Westphalia Manufacturing Company, Inc., a corporation, and the Poly Chemical Laboratories, Inc., a corporation, hereinafter designated as respondents, 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. Respondent Westphalia Manufacturing Company, Inc., has been for several years last past and now is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey.

Respondent Poly Chemical Laboratories, Inc., is also a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey.

The main offices and principal places of business of said respondent corporations are located at Jersey City in the State of New Jersey.

Respondents are now and have for several years last past been engaged in the sale and distribution of a cleaning fluid which they have described and designated as "Rid-O-Spot", in commerce among and between the State of New Jersey and the various other States of the United States and the District of Columbia. It has been