

Complaint

IN THE MATTER OF

X LABORATORIES, INC.

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

Docket 2564. Complaint, Sept. 30, 1935—Order, Nov. 27, 1935

Where a corporation, engaged in the manufacture, compounding and sale of a cleaning fluid designated as "X Odorless Dry Cleaner", set forth upon the labels on the containers thereof that such cleaner was "Non-injurious to any fabric or color", and represented in advertisements, pamphlets and circulars that it would remove certain types of spots from fabrics, no matter how delicate, and leave no ring on materials upon which used, facts being that use thereof on fabrics dyed with fugitive or non-fast dyes impaired and affected the colors by causing same to bleed or run, and use thereof on certain fabrics and under certain conditions resulted in appearance of a spot or ring; with capacity to mislead purchasing public by causing it to believe that said cleaner removed grease and other spots without injury to fabrics or color and induce it to buy said product in such erroneous belief, and to divert trade to it from competitors engaged in the sale of similar cleaners:

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. R. L. Kennedy for the Commission.

Underwood & Kilpatrick, of Washington, D. C., for respondent.

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 X Laboratories, Inc., a corporation, hereinafter referred to as the respondent, has been and is 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, and states its charges in that respect as follows:

PARAGRAPH I. The respondent is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York, N. Y., and a factory in Cambridge, Mass. Respondent is now and for more than two years last past has been engaged in the manufacture, compounding and sale of a cleaning fluid, designated as "X Odorless Dry Cleaner", and, in the distribution thereof, in commerce between and among the various States of the United

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States and the District of Columbia, causes and has caused said product, when sold, to be transported in interstate commerce from its places of business in the States of New York and Massachusetts to purchasers thereof, some located in said States, and others located in various other States in the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now and has been, for more than two years last past, in substantial competition with other corporations and with individuals, partnerships, and firms, engaged in the manufacture, sale, and distribution of cleaning fluids and similar products, in interstate commerce between and among the various States in the United States and the District of Columbia, used for purposes similar to the purposes for which respondent's products are used.

PAR. 3. In the course and conduct of its said business as hereinabove described, the respondent in soliciting the sale of and selling, in interstate commerce, a cleaner manufactured and sold by it under the name of "X Odorless Dry Cleaner", caused and still causes its said product to be placed in cans or containers, of half pint, pint or gallon capacity, upon each of which appears the statement that "X Odorless Dry Cleaner is absolutely non-inflammable, non-explosive and non-injurious to any fabric or color", and in advertisements, pamphlets, and circulars has stated that said cleaner will remove certain types of spots from fabrics, no matter how delicate, and that it leaves no ring on materials upon which it is used.

PAR. 4. In truth and in fact the respondent's product hereinabove described, labeled and sold by respondent is not absolutely non-injurious to any fabric or color, and said misrepresentation is false, extravagant, misleading, and deceptive. The use of said product on fabrics, dyed with certain kinds of dyes, such as non-fast dyes, does impair, harm, and affect the colors of such fabrics, by causing the same to bleed or run. The use of said product on certain fabrics, and under certain conditions or circumstances, does result in the appearance of a spot or ring on such fabrics, and in either or both of these ways such fabrics are in fact injured by the use of said product thereon.

PAR. 5. Said advertisements and labels have had and still have the tendency and capacity to mislead and deceive; do mislead and deceive, and have misled and deceived the purchasing public, by causing it to believe that respondent's cleaner removes grease spots and other spots without injury to fabric or color; and to induce the purchasing public to buy respondent's cleaner, hereinabove described, in such erroneous belief; afford retail merchants an opportunity to perpetrate a fraud on the purchasing public, have the capacity and tendency to divert, have unfairly diverted, and do unfairly divert trade to respondent from competing individuals, partnerships, and corpora-

tions engaged in the sale of like or similar cleaners in interstate commerce, who truthfully and honestly advertise and label their cleaners.

PAR. 6. The acts, practices, and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and the competitors of the respondent, 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 its complaint upon the respondent herein, X Laboratories, Incorporated, a corporation organized and doing business under and by virtue of the laws of the State of New York, and charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent, having entered its appearance and having filed its answer herein, entered into a stipulation whereby it was stipulated and agreed that a statement of facts signed and executed by respondent, by its counsel, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, are the facts in this proceeding and shall be taken by the Federal Trade Commission as such and in lieu of testimony before the Commission in support of the charges stated in the complaint, or in opposition thereto, and that said Commission may proceed further upon said statement of facts, stating its findings as to the facts and conclusion thereon and entering its order disposing of the proceeding:

And thereupon, this proceeding came on for final hearing and the respondent, having waived the filing of briefs and the hearing of oral argument herein before the Commission, and said Commission having approved and accepted said stipulation as to the facts and having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York, N. Y., and a factory in Cambridge, Mass.; and respondent is now and since September 28, 1934, has been engaged in the

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manufacture, compounding and sale of a cleaning fluid designated as "X Odorless Dry Cleaner", and, in the distribution thereof, in commerce between and among the various States of the United States and the District of Columbia, causes and has caused said product, when sold, to be transported in interstate commerce from the places of business in the States of New York and Massachusetts to purchasers thereof, some located in said States, and others located in various other States in the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now and has been, for more than two years last past, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture, sale and distribution of cleaning fluids and similar products, in interstate commerce between and among the various States in the United States and the District of Columbia, used for purposes similar to the purposes for which respondent's products are used.

PAR. 3. In the course and conduct of its said business as hereinabove described, the respondent in soliciting the sale of and selling, in interstate commerce, a cleaner manufactured and sold by it under the name of "X Odorless Dry Cleaner", caused and still causes its said product to be placed in cans or containers, of half pint, pint or gallon capacity, upon each of which appears the statement that "X Odorless Dry Cleaner" is "Non-inflammable, non-explosive, non-injurious to any fabric or color", and in advertisements, pamphlets, and circulars has stated that said cleaner will remove certain types of spots from fabrics, no matter how delicate, and that it leaves no ring on materials upon which it is used.

PAR. 4. In truth and in fact the respondent's product hereinabove described, labeled, and sold by respondent is not absolutely non-injurious to any fabric or color; the use of said product on fabrics dyed with certain kinds of dyes, such as fugitive or non-fast dyes, does impair, harm, and affect the colors of such fabrics, by causing the same to bleed or run; the use of said product on certain fabrics, and under certain conditions or circumstances, does result in the appearance of a spot or ring on such fabrics; and in either or both of these ways such fabrics may in fact be injured by the use of said product thereon.

PAR. 5. Said advertisements and labels have had and still have the capacity to mislead the purchasing public, by causing it to believe that respondent's cleaner removes grease spots and other spots without injury to any fabric or color, and to induce the purchasing public to buy respondent's cleaner, hereinabove described, in such erroneous belief; and said advertisements have the capacity to divert

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trade to respondent from competing individuals, partnerships, and corporations engaged in the sale of like or similar cleaners in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondent, X Laboratories, Incorporated, are each and all 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 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 a complaint of the Commission, the answer of the respondent, and a stipulation entered into between the respondent herein, X Laboratories, Inc., a corporation, by its counsel, H. C. Kilpatrick, and counsel for this Commission, 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",

Now, therefore, it is hereby ordered, That the respondent, X Laboratories, Inc., a corporation, its officers, agents, representatives, and employees, in connection with the distribution, offering for sale, and sale of X Odorless Dry Cleaner, in interstate commerce, forthwith cease and desist from:

Advertising or labeling its X Odorless Dry Cleaner as non-injurious to any fabric or color, as leaving no ring on materials upon which it is used, or as a cleaner of spots from fabrics no matter how delicate, or other statements having the same or similar meaning, or which may have the capacity or tendency to lead purchasers to the belief that the colors or fabrics of materials dyed with fugitive dyes, will not be injured by the use of said product, or that it will under no circumstances leave a ring on material on which it is used.

It is further ordered, That the respondent shall within 60 days after the service upon him of this order, file with the Commission, a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

G. H. SOEFFING AND E. H. EISLER, TRADING AS JOHN ALDEN COMPANY AND L. M. STONE, MGR.; AND VICKERY & HILL PUBLISHING CO.

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

Docket 2364. Complaint, Apr. 13, 1935—Order, Nov. 30, 1935

Where a firm, engaged in the business of operating a magazine subscription agency to solicit subscriptions, and conducting, pursuant to said purpose, and under the name of an office employee as "Mgr.", a so-called "Auto Boosters Club" or plan or scheme, which had for its purpose the procuring of subscription solicitors for the periodical in question, and which involved the giving of prizes to such solicitors on the basis of specified voting credits for subscriptions secured, in addition to the payment thereto of commissions based on subscriptions received, and acting under a contract with an individual, with whom periodical publisher concerned had theretofore separately contracted for subscription promotion, and in which later contract said publisher had had no part—

Represented, in puzzle prize advertisements directed to securing persons to solicit subscriptions for offer and sale in interstate commerce of said publisher's periodical, that mere solution of problem or puzzle entitled one solving it to a prize consisting of \$1500 in cash or choice of a Ford, Plymouth or Chevrolet automobile, that plan cost "nothing to try"—"send no money"—"\$750 cash" would be paid to the winner of first prize for being prompt, and that one must "act at once" and "rush answers" in order to qualify for the "promptness prize";

The facts being that said statements were false and fictitious, and purpose to secure solicitors for sale of magazine in question became known to contestants only after they had submitted solutions which did not entitle anyone to any prize, and no prize or other thing of value was paid by reason of any solution, or \$750 in cash for being prompt or for any other reason in connection with the solution of the puzzle:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. P. C. Kolinski for the Commission.

Mr. John E. Nelson, of Augusta, Me., for Vickery & Hill Publishing Co.

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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",