

Complaint

21 F. T. C.

IN THE MATTER OF

GOTHAM ASEPTIC LABORATORY CO., INC.

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

Docket 2600. Complaint, Oct. 28, 1935—Order, Dec. 4, 1935

Consent order requiring respondent, its officers, etc., in the course of or in connection with the sale or offer for sale or distribution of absorbent cotton in interstate commerce, to cease and desist from, directly or indirectly—

- (a) Advertising, branding, labeling, designating, or otherwise representing cotton as sterilized, or using any other word or words to the effect that such cotton is sterilized, unless said cotton is sterile and free of bacteria after having been packaged and while contained in original unbroken package, or when in fact said cotton is not and has not been sterilized and rendered free from bacteria, after having been packaged and while contained in original unbroken package, respectively;
- (b) Advertising, etc., cotton as manufactured under the strictest sanitary conditions, when in fact such cotton has not been manufactured or packed under strictest sanitary conditions, or when such cotton has been manufactured or packed under conditions in which full and strictest sanitary precautions have not been provided for or followed for the removal and exclusion from such cotton of all bacteria; or
- (c) Advertising, etc., absorbent cotton as being manufactured from the finest quality cotton obtainable, unless such cotton was manufactured from the finest selected quality of said product.

Mr. Astor Hogg for the Commission.

Mr. William L. Carns, of New York City, 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 Gotham Aseptic Laboratory Co., Inc., a corporation, hereinafter referred to as 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, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Gotham Aseptic Laboratory, Co., Inc., is and at all times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at Long Island City in said State. It is now and for more than one year last past has been engaged in the manufacture, sale and distribution of surgical supplies including absorbent cotton. Its sales are made chiefly to retail drug stores, jobbers and members of the medical profession located throughout the various States of the United States and in the District of Columbia, and, pursuant to such sales, shipment is made from its place of business in the State of New York into and through various States of the United States other than the State of point of origin of such shipment, and in the District of Columbia.

There are in the United States other corporations, persons and firms engaged in the manufacture and the sale and distribution of similar competing products who, pursuant to such manufacture and sale, ship their products into and through the various States of the United States other than the States of point of origin of such shipments, and with such other corporations, persons and firms respondent is and at all times hereinafter mentioned has been in active and substantial competition.

PAR. 2. In the course and conduct of its business respondent, in soliciting the sale of and selling its products in interstate commerce, used and uses the following methods and practices: caused and causes certain of its absorbent cotton to be packaged in cardboard containers on the labels of which respondent attaches and causes to appear the words "sterilized" and "Manufactured under the strictest sanitary conditions and from the finest quality obtainable."

The word "sterilized" appearing on the said containers of absorbent cotton means to the trade and to the purchasing public that the cotton contained therein is, at the time of purchase, bacteria-free.

PAR. 3. The aforesaid labeling and branding of respondent's absorbent cotton as "sterilized" is false and misleading, because said cotton was not and is not in fact free of bacteria at the time of purchase by the public so as to be properly and correctly represented, designated, and described or referred to as "sterilized". The aforesaid labeling of said cotton as "manufactured under the strictest sanitary conditions and from the finest quality obtainable" is false and misleading because in truth and in fact said product was not and is not manufactured under the strictest sanitary conditions nor was or is the said product manufactured from the finest quality

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cotton obtainable. Said descriptions of respondent's absorbent cotton reach the consuming public through the retail drug stores and are used by said drug stores in advertising and selling such cotton to the public.

PAR. 4. The use of the aforesaid descriptions, markings, representations and labeling by respondent has the capacity and tendency to deceive the purchasing public into the belief that its said absorbent cotton represented as sterilized, is free from bacteria, and into the belief that the said product was and is manufactured under strictest sanitary conditions and from the finest quality cotton obtainable, and the public purchases said absorbent cotton in those beliefs when, as a matter of fact, said absorbent cotton is not free of bacteria and is not manufactured under strictest sanitary conditions and is not made from the finest quality cotton obtainable.

PAR. 5. There are among the competitors of respondent, referred to in paragraph 1 herein, many who deal in and sell absorbent cotton that is in fact sterilized at the time of the sale to the purchasing public and who rightfully and truthfully represent such to be the case. There are among competitors of respondent, referred to in paragraph 1 herein, many who deal in and sell absorbent cotton manufactured under strictest sanitary conditions and who rightfully and truthfully represent said absorbent cotton to be such. There are others of said competitors of said respondent who sell absorbent cotton that is not bacteria-free, and who do not in any manner represent such cotton to be sterilized or bacteria-free. Respondent's acts and practices, as in this complaint set out, tend to and do unfairly divert business from and otherwise injure and prejudice said competitors and do substantially injure such competitors so engaged in the sale and distribution of like products in interstate commerce.

PAR. 6. The above alleged unfair practices of respondent are all to the prejudice of the public and of respondent's 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.

ORDER TO CEASE AND DESIST

Respondent herein having filed its answer to the complaint and waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said answer that it does not contest the said proceeding, and having consented in its said answer that the Commission, without trial, without evidence, and without findings

as to the facts or other intervening procedure, may make, enter, issue and serve upon 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 ordered, That the respondent, Gotham Aseptic Laboratory Co., Inc., its officers, directors, representatives, agents, servants and employees, in the course of or in connection with the sale or offer for sale or distribution of absorbent cotton in interstate commerce, do cease and desist from—

(1) Directly or indirectly advertising, branding, labeling, designating, describing or otherwise representing cotton as sterilized, unless said cotton is sterile and free of bacteria after it has been packaged and while contained in such original unbroken package;

(2) Using any other word or words to the effect that such cotton is sterilized, when in fact such cotton is not and has not been sterilized and rendered free from bacteria after it has been packaged and while contained in such original unbroken packages;

(3) Directly or indirectly advertising, branding, labeling, designating, describing, or otherwise representing cotton as manufactured under the strictest sanitary conditions, when in fact such cotton has not been manufactured or packed under strictest sanitary conditions, or when such cotton has been manufactured or packed under conditions in which full and strictest sanitary precautions have not been provided for or followed for the removal and exclusion from such cotton of all bacteria;

(4) Directly or indirectly advertising, branding, labeling, designating, describing or otherwise representing absorbent cotton as being manufactured from the finest quality cotton obtainable, unless such cotton had been manufactured from the finest, selected quality of cotton.

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

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IN THE MATTER OF

ARTE PRODUCTS COMPANY, INC.

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

Docket 2288. Complaint, June 11, 1935¹—Order, Dec. 9, 1935

Consent order requiring respondent, its officers, etc., in connection with the sale in interstate commerce of olive oil, compound vegetable oil, and related products, to cease and desist from—

- (a) Using words "Lucca" and "San Remo", alone or with any other word or words, and name of any other city, district or province of Italy, as a brand or label for olive oil, or in any other way so as to import or imply or to have capacity or tendency to confuse or mislead purchasers into believing that said product was produced in and imported from either Lucca, San Remo, or any other city or district or province of Italy, unless and until said statements are true;
- (b) Using word or words "Italy", "Italian Product", "Italian Oil", or "Imported from Italy", alone or with any other word or words, and using any pictorial representation of Italian flag or the coat-of-arms, or of any ruler or member of ruling house of Italy, alone or with words "Imported Product", or "Prodotto Importato", or other words describing said product, and using said words or pictorial representations as a brand or label for olive oil so as to import or imply or to have tendency or capacity to confuse or mislead purchasers into believing that said product is composed wholly of oils produced in and imported from Italy, unless and until such representations are true;
- (c) Using word "olio" to designate an oil product composed in part of olive oil and in part of other oils unless and until there appears in immediate conjunction therewith, and in clear and legible type in size equal to that of word "olio", other words which accurately describe the true content of the product; or
- (d) Using, in connection with oil composed in part of olive oil and in part of other oils, pictorial representations of olive branches, or words "Rima", "Latosca", or other words suggesting Italian origin, unless and until there appears, in conjunction therewith and in clearly legible and conspicuous type, words accurately describing the true content of the product.

Mr. Marshall Morgan for the Commission.

Mr. Morris Shapiro, of New York City, for respondent.

COMPLAINT¹

Whereas the Federal Trade Commission did heretofore, to wit, on January 29, 1935, issue its complaint herein, charging and alleging that respondent herein is and has been guilty of unfair methods of competition in interstate commerce within the intent and meaning of

¹ Supplemental and amended.