

Complaint

22 F. T. C.

IN THE MATTER OF
ACME COTTON 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 2605. Complaint, Oct. 31, 1935—Order, Jan. 20, 1936

Consent order requiring respondent corporation, its officers, etc., in connection with the distribution, offer and sale of surgical supplies and absorbent cotton products in commerce between and among the several States and in the District of Columbia, to forthwith cease and desist from—

- (a) Using the words "Very Highest Grade Procurable", or words of similar import, in describing or designating the grade or grades of cotton used in the manufacture or processing of the various surgical supplies and absorbent cotton products sold by it until and unless the cotton so used in such manufacture or processing of said products is in truth and in fact the very highest grade of cotton procurable on the open market; or
- (b) Using the words "Sterilized", "Aseptic" or "Purified", or words of similar import in describing or designating such supplies and absorbent cotton products sold by it, or representing through use of such words or any other words of similar import or in any manner that such supplies and cotton products made and sold by it are bacteria-free when sold and placed in the channels of trade by it, until and unless said supplies and products are in fact bacteria-free when sold by it for public use and consumption and placed in the aforesaid channels.

Mr. J. T. Welch 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 Acme Cotton Products Co., Inc., a corporation, 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, Acme Cotton Products Co., Inc., is now, and has been for a period of more than two years, a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 245 Fifth Avenue in the city of New York in said State, and is now, and has been at all times mentioned herein, engaged in the

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business of manufacturing and selling surgical supplies, including packaged absorbent cotton.

PAR. 2. Said respondent, being engaged in the business of manufacturing, distributing and selling said surgical supplies, including packaged absorbent cotton, causes said products, when sold to wholesale jobbers, retail drug stores and members of the medical profession located in various cities in the several States of the United States, to be transported from its principal place of business in the State of New York, or its manufacturing plant in the State of Connecticut, to the purchasers thereof located in States of the United States other than the State of origin of the shipment 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 packaged absorbent cotton manufactured and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other individuals, partnerships and corporations engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, distribution and sale of surgical supplies, including packaged absorbent cotton.

PAR. 4. Respondent, in the course and conduct of its business, as detailed in paragraphs 1, 2, and 3 hereof, has offered for sale, and sold, in commerce, as hereinabove set out, certain of its products, to wit, packaged absorbent cotton, in paper or cardboard containers, by way of advertisement and inducement to purchase, there being printed on all four sides of said containers the following:

Acme
Sterilized Surgical Aseptic
Absorbent Cotton
Very Highest Grade Procurable
Manufactured by Acme Cotton Products
Co., Inc.
New York

The respondent is now, and has been prominently displaying certain printed matter containing the words "sterilized", "purified" and "aseptic" on the outside of various other paper or cardboard containers used by it in packaging, displaying for sale and selling certain of its packaged absorbent cotton products to dealers for resale.

Further, on the container first hereinabove described, as well as on the other containers herein mentioned, the respondent causes to

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be printed on the ends of said containers, together with other words, the word "sterilized".

PAR. 5. The words "sterilized", "aseptic" and "purified", as used by the respondent in designating or describing its absorbent cotton products, mean to the purchasers thereof, including both the trade and the purchasing public, that the absorbent cotton contained in said containers so labeled is, at the time of final packaging by the manufacturer and sale to the purchaser thereof, bacteria-free. The use, by the respondent, of the words "Very highest grade procurable" serves as a representation to dealers and ultimate purchasers that the said absorbent cotton products contained in said containers are manufactured from the very highest grade of cotton procurable.

In truth and in fact, the aforesaid labeling or branding of respondent's packaged absorbent cotton products as "sterilized", "aseptic" or "purified" is false and misleading, as said absorbent cotton is not, and was not, free of bacteria at the time of the final packaging by the manufacturer and the sale to the purchaser thereof so as to be properly and correctly labeled, designated and described as "sterilized". The aforesaid labeling of said packaged absorbent cotton products as "Very highest grade procurable" is false and misleading because, in truth and in fact, said products are not, and were not, manufactured from the very highest grade of cotton procurable.

PAR. 6. Over a period of many years surgical supplies, including packaged absorbent cotton, that are manufactured or produced and packaged in such a way as to be bacteria-free at the time of the final packaging by the manufacturer and the sale to the purchaser thereof have been labeled with the words "sterilized" or "aseptic" and have enjoyed a wide-spread popularity and demand among the consuming public, many of whom have been led to believe, and do believe and consider, that said packaged absorbent cotton products, manufactured or produced and packaged so as to be in a bacteria-free condition at the time of final packaging by the manufacturer and the sale to the purchaser thereof, are superior in quality and other desirable characteristics to similar packaged absorbent cotton products manufactured and packaged by other processes, and to purchase substantial quantities of said packaged absorbent cotton products so manufactured and packaged in preference to packaged absorbent cotton products manufactured, produced and packaged in any other manner.

PAR. 7. The false and misleading advertising and representations hereinbefore set out, on the part of the respondent, place in the hands of aforesaid wholesale and retail jobbers and druggists an

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instrument and a means whereby said dealers and jobbers 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 packaged absorbent cotton products produced by respondent as being manufactured and packaged in such a way as to be in fact bacteria-free at the time of the final packaging by the manufacturer and the sale to the purchaser thereof.

PAR. 8. There are among the competitors of the respondent many who manufacture and sell packaged absorbent cotton products that are in fact bacteria-free, or "sterilized" or "aseptic" at the time of the final packaging by the manufacturer and the sale to the purchaser thereof, and who rightfully and truthfully represent such to be the case. There are among the competitors of the respondent many who manufacture and sell absorbent cotton products that are manufactured from the very highest grade of cotton procurable and who rightfully and truthfully represent their products as being manufactured from such grade of cotton. There are many others among the competitors of the respondent who manufacture and sell absorbent cotton products that are not bacteria-free and that are not made from the very highest grade of cotton procurable, and who do not in any manner represent such cotton products to be "sterilized", "aseptic" or bacteria-free or to be manufactured from the very highest grade of cotton procurable.

PAR. 9. The effect of the foregoing false and misleading advertisements and representations on the part of the respondent is to mislead a substantial number of wholesale and retail jobbers and druggists, as well as a substantial portion of the consuming public, in the several States, by inducing them to believe that: (1) the absorbent cotton products manufactured, packaged and sold by the respondent are bacteria-free at the time of the final packaging by the manufacturer and the sale to the purchaser thereof, and (2) the absorbent cotton products sold by the respondent are produced from the very highest grade of cotton procurable; and to induce them to purchase substantial quantities of the respondent's said products in said beliefs.

The acts and practices of the respondent, as herein set out have a tendency and a capacity to, and do, divert a substantial volume of trade from competitors of the respondent engaged in similar businesses with the result that substantial quantities of the products manufactured, distributed and sold by the respondent are sold to said dealers and purchasers and to the consuming public on account of said beliefs induced by said false and misleading representations. As a consequence thereof, a substantial injury has been done by the

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respondent 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 foregoing acts, practices and representations 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

This matter coming on to be heard by the Commission upon the complaint filed herein on October 31, 1935, and the answer to said complaint filed on January 15, 1936, by Acme Cotton Products Company, Inc., a corporation, respondent herein, in which answer the respondent states that it waives hearing on the charges set forth in the complaint herein; that it refrains from contesting the proceeding and that it consents that the Commission, without a 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 now fully advised in the premises:

It is hereby ordered, That the respondent, Acme Cotton Products Company, Inc., its officers, agents, representatives, and employees, in connection with the distribution, offering for sale, and sale of surgical supplies and absorbent cotton products, in commerce between and among the several States of the United States, and in the District of Columbia, do forthwith cease and desist from:

(1) Using the words "Very Highest Grade Procurable", or words of similar import, in describing or designating the grade or grades of cotton used in the manufacture or processing of the various surgical supplies and absorbent cotton products sold by the respondent until and unless the cotton so used in the manufacture or processing of said surgical supplies and absorbent cotton products is in truth and in fact the very highest grade of cotton procurable on the open market.

(2) Using the words "Sterilized", "Aseptic", or "Purified", or words of similar import, in describing or designating the surgical supplies and absorbent cotton products sold by it until and unless said surgical supplies and absorbent cotton products are in fact bacteria-free at the time said products are sold by the respondent for use and consumption by the public.

(3) Representing, by the use of the words "Sterilized", "Aseptic", and "Purified", or by any other word or words of similar import, or in any manner whatever, that the surgical supplies and absorbent cotton products manufactured and sold by it are bacteria-free at the time said products are sold and placed in the channels of trade by the respondent until and unless said surgical supplies and absorbent cotton products are in fact bacteria-free at said time.

It is further ordered, That the respondent shall within 90 days after the service 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 this order to cease and desist.

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IN THE MATTER OF

LEGAY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2377. Complaint, Apr. 25, 1935—Order, Jan. 22, 1936*

Where a corporation, engaged in the sale and distribution in commerce of a depilatory—

Represented upon the labels thereof and in folders accompanying the same and in periodical advertisements thereof, that its said product was a "harmless" and "effective hair remover" and banished facial hair shadows and removed unsightly hair without roughening skin texture, and that consistent use thereof would permanently eradicate hair;

Facts being its action was only temporary, and composition thereof was such that unless used with care it might burn the skin of the user and it would not remove hair, even temporarily, without roughening the skin texture, and noticeably so in the case of a user with a sensitive skin;

With capacity and tendency to mislead and deceive the purchasing public and induce their purchase of said product in reliance upon the truth of such false and misleading statements and representations and to divert trade unfairly to it from competitors who truthfully advertise their products, to the substantial injury of substantial competition in interstate commerce:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John W. Hildrop 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 LeGay, 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, LeGay, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at Chicago in the State of Illinois. It is now and for more