

Complaint

IN THE MATTER OF

NEW ENGLAND COLLAPSIBLE TUBE COMPANY AND
ROBERT P. GUST COMPANY, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2457. Complaint, June 26, 1935—Order, Jan. 29, 1936*

Consent order requiring respondents, their agents, etc., in connection with the sale and offer of toothpaste or other merchandise in interstate commerce, to cease and desist from—

- (a) Selling or offering for sale, or causing others to sell or to offer toothpaste or other merchandise for sale in tubes, boxes, cartons, or other packages, whose dress or appearance, when sold to dealers for resale or to the public for use of consumption, is contrived or otherwise formed, with or without the use of attached labels, by means of brand names or printed words or statements in type of the same or approximately the same size, form and arrangement, in colors or in white or black, and with retail resale prices marked or printed thereon, so that the dress or appearance simulates the dress or appearance of tubes, boxes, cartons, or other packages in which similar toothpaste or other merchandise is sold or offered for sale by a competitor or competitors, with the effect that the dress or appearance of their tube, etc., has the capacity and tendency to confuse, deceive and mislead dealers and members of the public into the belief that their toothpaste or merchandise is that of a competitor;
- (b) Representing by printed resale prices on the tubes, boxes, cartons or packages thereof, or verbally or otherwise representing, or causing others to represent the retail resale price or prices of toothpaste or other merchandise sold or offered for sale by them, or by either of them, to be a sum or sums greater than the actual price or prices at which the said toothpaste or other merchandise is regularly and customarily sold and offered for sale at retail to the public who purchase the same for use or consumption; or
- (c) Representing that the manufacturer of the toothpaste or other merchandise sold or offered for sale by them is other than the actual manufacturer thereof by printing a fictitious name and address on the tubes, boxes, cartons or packages thereof.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Edward E. Reardon for the Commission.

Mr. Nathan Belcher, of New London, Conn., for respondents.

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 New England Collapsible Tube Company and Robert P. Gust Company, Inc.,

Complaint

22 F. T. C.

hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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 New England Collapsible Tube Company is a corporation, incorporated prior to the year 1930 under the laws of the State of Connecticut and having at all times since 1930 a factory for the manufacture, among other things, of dentifrices at New London, Conn., and a usual place of business also in the city of New York, N. Y.

PAR. 2. During all the times above mentioned, the respondent, New England Collapsible Tube Company, manufactured, among other things, four dentifrices, hereinafter mentioned and referred to in paragraphs 4, 6, and 7 hereof, which it sold and caused to be sold or distributed to dealers, purchasers and distributors thereof, located in the District of Columbia and in various States other than New York or Connecticut, for resale to the public, users thereof.

The respondent put up its four dentifrices in collapsible tubes which were sold enclosed in paper cartons and the tubes and cartons carried brand names and were subscribed with names and addresses purporting to be the name and address of the manufacturer of the dentifrice in each instance. The respondent caused the price 50¢ to be marked on the end of the cartons of three of its dentifrices. The brand names, the names and addresses of the manufacturer in each case and the price marked appearing on the four dentifrices were, respectively, as follows: "Quire's Milk of Magnesia Dental Cream—Quire Laboratories, New York—50¢"; Forsyth Dental Cream—Forsyth Labs., New York, New York"; "Payne's Tooth Paste—Payne Laboratories, New York—Price 50¢"; and, "Palmer's Tooth Paste—Palmer Laboratories, New York, N. Y.—50¢."

The said respondent during said times caused its four brands of dentifrices, when so sold or distributed by it to be transported from New York or Connecticut, or from the State of origin of the shipment to the purchasers located in States other than the State of origin of the shipments.

PAR. 3. Respondent Robert P. Gust Company, Inc., is a corporation, incorporated prior to the year 1930 under the laws of Illinois and having a usual place of business in Chicago, Ill., at all times since 1930.

PAR. 4. During all the times above mentioned, respondent Robert P. Gust Company has been engaged in the business of the sale or distribution of dentifrices and other merchandise, including both the merchandise and dentifrices owned by it or consigned to it as a man-

Complaint

manufacturers' sales agent for distribution to other dealers, and including the four dentifrices made by respondent New England Collapsible Tube Company mentioned and referred to in paragraphs 2, 6, and 7 hereof, and during said times the Robert P. Gust Company has caused the merchandise and the dentifrices, above mentioned or referred to, to be sold or distributed to dealers, purchasers thereof, located in various States of the United States other than Illinois.

The Robert P. Gust Company, during said times, has caused the said merchandise and dentifrices, when so sold or distributed by it, to be transported from Illinois, or the State of origin of the shipment, to the purchasers located in States other than the State of origin of the shipments.

PAR. 5. During all the times above mentioned and referred to, other individuals, firms, and corporations, located in various States of the United States, and hereinafter referred to as sellers, are and have been engaged, some of them in the business of the manufacture and sale, and others in the business of the sale of dentifrices which they have sold, respectively, under brand names in collapsible tubes, enclosed in paper cartons with the name of the manufacturer and in some instances with the regular or customary retail prices marked thereon, to dealers, purchasers thereof, located in the District of Columbia and in various States of the United States, other than the State of the seller, for resale under said brand names to the public, users thereof. The sellers, respectively, have caused the said dentifrices, when so sold by them, to be transported from the State of the seller, or the State of origin of the shipment, to the purchasers located in States other than the State of origin of the shipments.

PAR. 6. During all the times above mentioned and referred to the respondents are and have been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in paragraph 5 hereof, in the sale and distribution of dentifrices, including those mentioned in paragraphs 2, 4, and 7 hereof.

PAR. 7. During all the times above mentioned and referred to, the respondent New England Collapsible Tube Company has put up its four brands of dentifrices, mentioned and referred to in paragraphs 2, 4, and 6 hereof, in tubes and cartons approximately of the same size and shape, respectively, as the tubes and cartons in which four nationally known brands of dentifrices, namely, Squibb Dental Cream, Forhan's, Ipana Tooth Paste, and Pepsodent Tooth Paste, were put up and in which they were sold by their manufacturers and by dealers therein, among those referred to as sellers in paragraph 5 hereof.

Complaint

22 F. T. C.

The said respondents' brand names on the tubes and cartons of its dentifrices simulated, respectively, the brand names above mentioned on the tubes and cartons of its competitors. In addition to the said brand names, the said respondent New England Collapsible Tube Company caused designs in colors to be put on the tubes and cartons of its dentifrices which were similar to the designs and colors thereof on the tubes and cartons of the dentifrices of its competitors. The said respondent also caused printed descriptive matter to appear on the tubes and cartons of its dentifrices which was approximately the same as that printed on the tubes and cartons of the dentifrices of its competitors in language, type, and appearance.

For greater accuracy of description of the dress and appearance of the tubes and cartons of respondent's said dentifrices and of the similarity thereof to the dress and appearance of the tubes and cartons of the dentifrices above mentioned and referred to of respondent's competitors, reference is hereby made to the actual tubes and cartons of the said dentifrices of the respondent and of its competitors which will be offered in evidence herein.

PAR. 8. The representation of the name and address of the manufacturer of the dentifrices which the New England Collapsible Tube Company, during the times above mentioned, caused to appear on the tubes and cartons in which they were displayed for sale and sold to the public was fictitious and false.

The price of 50¢ which said respondent caused to be marked on its cartons was not the usual and regular price at which the dentifrices so marked were regularly sold to the public, users of dentifrices, but was, in each instance, a fictitious and false price that was several times larger than the regular and usual price at which they were offered and sold to the public. The respondent's said price markings were approximately the prices at which the dentifrices of respondent's competitors, above mentioned, were regularly offered for sale and sold to the public during said times.

PAR. 9. The respondent, New England Collapsible Tube Company, caused the fictitious and false names and addresses of the manufacturers and the fictitious and false representations of retail prices at which its dentifrices were offered for sale and sold to the public to be printed on the tubes and cartons of its dentifrices, and caused the size, shape, dress, and appearance of the tubes and cartons to simulate in size, shape, dress, and appearance, the tubes and cartons of the dentifrices of respondents' competitors with the knowledge and intent that the said respondent's dentifrices would be so displayed, offered for sale, and sold to the public, users of dentifrices, in com-

petition with others and particularly in competition with the brands of respondents' competitors above mentioned.

PAR. 10. The respondents, New England Collapsible Tube Company and Robert P. Gust Company, sold and distributed, as set forth in paragraphs 2 and 4 hereof, the dentifrices manufactured by the New England Collapsible Tube Company, above described, with the intent and purpose to confuse, deceive, and mislead dealers and members of the public, users of dentifrices, into the belief that the names of manufacturers appearing thereon were, respectively, the actual names of the manufacturers thereof; into the belief that the prices thereon were the actual, regular, and customary prices at which the same were actually, regularly, and customarily sold to members of the public; and, into the belief that, in purchasing said dentifrices they were purchasing the products of respondents' competitors, which are and have been offered for sale and sold under the brand names, mentioned in paragraph 7 hereof. And, dealers in dentifrices and members of the public, purchasers of dentifrices were confused, deceived, and misled thereby into the belief that the said names of manufacturers were the names of the actual makers of the said respondent's dentifrices; into the belief that the said retail prices marked on the cartons thereof were the actual, regular, and customary retail prices thereof, and in consequence of the said names of alleged manufacturers, and of the said fictitious and false prices, and of the dress and appearance of said respondent's tubes and cartons dealers and members of the public were confused, deceived, and misled into purchasing the said dentifrices of respondent New England Collapsible Tube Company instead of the dentifrices sold by respondents' competitors under the brand names mentioned in paragraph 7 hereof and instead of the dentifrices sold by other competitors of respondents, and trade in dentifrices was thus diverted from competitors to respondents.

PAR. 11. The above acts and things done and caused to be done by the respondents were and are each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent 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

This matter coming on to be heard by the Commission upon the complaint filed herein June 26, 1935, the answer to the complaint

Order

22 F. T. C.

filed herein December 26, 1935, by the respondent, New England Collapsible Tube Company and the answer to the complaint herein filed December 31, 1935, by the respondent, Robert P. Gust Company, Inc., in which answers the respondents separately state that they waive hearing on the charges set forth in the complaint herein; that they refrain from contesting the proceeding and that they consent 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 the said respondents, 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 thereby ordered, That the respondents, New England Collapsible Tube Company and Robert P. Gust Company, Inc., their several agents, representatives and employees, in the sale and offering for sale of toothpaste or other merchandise in interstate commerce do cease and desist from—

(1) Selling or offering for sale, or causing others to sell or to offer toothpaste or other merchandise for sale in tubes, boxes, cartons, or other packages, whose dress or appearance, when sold to dealers for resale or to the public for use or consumption, is contrived or otherwise formed, with or without the use of attached labels, by means of brand names or printed words or statements in the type of the same or approximately the same size, form, and arrangement, in colors or in white or black, and with retail resale prices marked or printed thereon, so that the dress or appearance simulates the dress or appearance of tubes, boxes, cartons, or other packages in which similar toothpaste or merchandise is sold or offered for sale by a competitor or competitors, with the effect that the dress or appearance of the tubes, boxes, cartons, or packages of the respondents has the capacity and tendency to confuse, deceive, and mislead dealers and members of the public into the belief that the toothpaste or merchandise of the respondents, or of either of them, is the toothpaste or merchandise of a competitor;

(2) Representing by printed resale retail prices on the tubes, boxes, cartons or packages thereof, or verbally or otherwise representing, or causing others to represent the retail resale price or prices of toothpaste, or other merchandise sold or offered for sale by respondents, or by either of them, to be a sum or sums greater than the actual price or prices at which the said toothpaste or other merchandise is regularly and customarily sold and offered for sale at retail to the public who purchase the same for use or consumption;

Order

(3) Representing that the manufacturer of the toothpaste or other merchandise sold or offered for sale by them is other than the actual manufacturer thereof by printing a fictitious name and address on the tubes, boxes, cartons, or packages thereof.

It is further ordered, That the respondents, New England Collapsible Tube Company, and Robert P. Gust Company, Inc., shall each within 30 days after the service of this order file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order to cease and desist.

IN THE MATTER OF
ETON KNITTING CORPORATION

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

Docket 2581. Complaint, Oct. 15, 1935—Order, Jan. 29, 1936

Consent order requiring respondent corporation, its officers, etc., in connection with the distribution, offer for sale, and sale of wearing apparel knitted or crocheted from yarn, in interstate commerce, to cease and desist from using the word "knitting" as a part of or in connection with its corporate name in carrying on the business of distributing and selling such wearing apparel, or advertising or in any other way representing itself to be the manufacturer or knitter thereof, until and unless it actually owns, operates and controls a factory or factories in which such apparel is actually knitted or crocheted.

Mr. Harry D. Michael for the Commission.

Mr. Carlton Z. Solomon, 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 Eton Knitting 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, Eton Knitting Corporation, 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 located in New York City in said State. It is now, and since its organization in 1932, has been engaged in the business of selling to wholesalers and retailers for resale wearing apparel knitted or crocheted from yarn, which said wearing apparel consists of hats, caps, berets, sweaters, and other articles. Now and since its organization it has caused such wearing apparel, when sold by it, to be transported from its place of business in New York City aforesaid to the purchasers thereof, some located in the State of New York and others located in various other States of the United