

Syllabus

IN THE MATTER OF
VICTOR SOAP COMPANY

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

Docket 2368. Complaint, Apr. 17, 1935—Decision, Apr. 13, 1936

Where a corporation engaged under different trade names in sale and distribution of soap through jobbers, retailers, agents, and house-to-house canvassers to purchasing and consuming public; in periodical advertising, and in circulars and pamphlets distributed by it and sent in response to inquiries from prospective salesmen—

- (a) Falsely represented that it guaranteed that persons who undertook to sell its products would meet with a marked degree of success through such statements as "House wives buy on sight", "Here's the kind of fast-selling profit maker you've been looking for. Liberal profits—up to 200%—very attractive—sells on sight", etc.;
 - (b) Falsely represented that its agents were "Cleaning up" opening up soap shops, through quoted testimonials setting forth "'\$100.00 CLEAR PROFIT THE FIRST WEEK.' 'I was working for \$1.00 a day before I took on the Victor Line. The very first week I made \$100.00 clear profit. Today I own my own soap store. I have averaged more than \$80.00 a week profit'", etc., facts being person quoted as having soap store, etc. conceded that favorable results thus portrayed did not continue as conditions became less favorable;
 - (c) Falsely represented that its agents were earning from \$50 a week to \$5,000 a year through such statements as "A CHANCE TO EARN UP TO \$15 A DAY", "AGENTS! DISTRIBUTORS! YOU CAN EARN UP TO \$5,000 A YEAR!", etc., facts being it is rarely, if ever, possible to earn up to \$5,000 a year or make \$15 a day profit, and said soap does not sell without effort or on sight, as represented;
 - (d) Falsely represented that the regular price for such soap or its said soap, as sold by it, was \$1, through such statements as "Seven cakes of finest toilet soaps in handsome packages sells for only 25¢. The kind of soap used in every home every day. Selling price marked on box, \$1.00. You sell for only 25¢", etc., facts being same assortment in retail stores does not cost \$1 nor does its soap sell for such price but in fact for only 25 cents; and
 - (e) Designated as "Germicidal Soap" one of the cakes included among its assortments, facts being the soap thus referred to does not kill germs within the standard claimed applicable to term "germicidal soap";
- With capacity and tendency to confuse, mislead, and deceive a substantial number of the purchasing public into the belief that said statements were true and to mislead and deceive many persons into becoming its agents and offering and selling its products to such public, and with effect of causing same to buy substantial quantities of its said soap in aforesaid erroneous belief, and of diverting thereby substantial trade to it from competitors who do not misrepresent the actual or probable earnings of their agents or prospective agents or the selling price or therapeutic value

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of their product, and with tendency so to divert; to the substantial injury and prejudice of such competitors:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Moulinier, Bettman & Hunt, of Cincinnati, Ohio, and *Estabrook, Finn & McKee*, of Dayton, Ohio, 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 Victor Soap Co., a corporation, hereinafter referred to as respondent, has been and now is 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, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Victor Soap Co., is now, and has been since February 1933, a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Concord and Scoville Avenues, Dayton, Ohio. Respondent is and since February 1933, has been engaged in selling an assortment of soap, through jobbers, retailers, agents, and house-to-house canvassers, to the purchasing public. It has caused such product, when sold, to be transported to purchasers thereof from its place of business in the city of Dayton, State of Ohio, into and through the various other States of the United States. In the course and conduct of said business respondent has been and is in substantial competition with other corporations and also with individuals and partnerships engaged in the sale and transportation of soap in commerce between and among the various States of the United States.

PAR. 2. It has been and is the practice of respondent, in connection with the sale and offering for sale of its product, to advertise its soap through the media of magazines, pamphlets, circular letters, and other forms of advertising matter, which it has caused, and now causes, to be distributed among purchasers and prospective purchasers in the various States of the United States. In the course and conduct of such business it has been and is the practice of respondent to adver-

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tise for dealers or purchasers of its products under the pretense and guise of seeking agents. It represents that:

- (a) It furnishes everything needed and guarantees success;
- (b) "Victor agents everywhere are cleaning up, opening soap shops."
- (c) "Agents are making \$50.00 to \$60.00 a week easily"; "Up to \$10.00 a day"; "Up to \$150.00 a week"; "\$15.00 a day"; "\$5,000.00 a year"; "Liberal profits up to 200%."
- (d) Its soap sells on sight.
- (e) "The same assortment in retail stores would cost at least \$1.00."
- (f) One cake of the seven cakes in the box is a germicidal soap that kills germs.
- (g) The selling price of the box of soap is \$1.

Respondent makes many other statements and representations concerning its products, of like tenor and effect as the statements and representations set out hereinabove.

PAR. 3. In truth and in fact:

- (a) Respondent does not furnish everything nor guarantee success.
- (b) Victor agents everywhere are not cleaning up, opening soap shops.
- (c) Agents are not making the amounts represented by the respondent, nor any substantial portion thereof.
- (d) Respondent's soap does not sell on sight.
- (e) The same assortment in retail stores does not cost \$1 but considerably less than \$1.
- (f) Respondent's so-called germicidal soap does not kill germs.
- (g) The selling price of respondent's soap is not \$1 per box, but it sells, in fact, for 25 cents.

PAR. 4. The representations made by the respondent, as mentioned in paragraph 2 hereof, have the capacity and tendency to, and do, cause many persons to become agents for respondent and as such to sell respondent's soap by means of repeating some of the statements set out in paragraph 2 hereof, to the public, and many of the public are constrained to purchase such soap from said agents in the belief that such statements and representations are true. The aforesaid representations have tended to divert, and have diverted, trade to respondent from its competitors engaged in the sale of soap between and among the various States of the United States who truthfully represent their soap and its salability. Thereby, substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and 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.

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, on April 17, 1935, issued and served its complaint in this proceeding upon respondent, Victor Soap Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts in said cause was obtained; and said stipulation of facts was duly approved, recorded, and filed in the office of the Commission. Thereafter, the proceeding came on regularly for final hearing before the Commission on the said complaint, answer thereto, and stipulation of facts; and the Commission having duly considered the same and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Victor Soap Co., is a corporation organized under the laws of the State of Ohio in February 1933, having its principal office and place of business at Concord and Scoville Avenues, in the city of Dayton, in the State of Ohio.

PAR. 2. The respondent is, and has been at all times since the said date of its incorporation, engaged in the sale and distribution of soap through jobbers, retailers, agents, and house-to-house canvassers to the purchasing and consuming public located in the District of Columbia and in the several States of the United States, and has caused, and still causes, its said soap when so sold by it to be transported, in commerce, from its place of business in the city of Dayton, in the State of Ohio, into and through certain other States and in the District of Columbia to the said purchasers thereof. Respondent has and now does employ the trade names "Royal Soap Company" and "Heick Soap Company" in its aforesaid business.

PAR. 3. At all times since February 1933 the respondent has been in direct and substantial competition in interstate commerce with other persons, copartnerships, and corporations engaged in the sale and distribution of soap as aforesaid, and more particularly, the respondent is, and has been at all times herein mentioned, in substantial competition in interstate commerce with Crown Soap Co., of Dayton, Ohio, and Evanson Soap Co., of Camden, N. J., which said competitors sell their products respectively to purchasers lo-

cated in States other than the States of Ohio and New Jersey. In addition to the sale of the soap as hereinbefore set forth the said respondent corporation is also engaged in the sale of extracts for cooking and baking purposes and a line of toilet goods and cosmetics.

PAR. 4. Respondent, in the aid of the sale of said products, and more particularly in the sale and distribution of its soap, represents, in magazine advertisements and in circulars and pamphlets distributed by it in interstate commerce, that the respondent corporation guarantees that persons who undertake to sell its soap product will meet with a marked degree of success and that numerous persons are earning from \$50 a week to \$5,000 a year disposing of this soap which it is alleged sells on sight for 25 cents a box when the same assortment is sold in retail stores for \$1 a box and, in short, by its advertisements, seeks to convey to the public, assurance of easily earning an above-the-average income if they undertake to dispose of this soap product.

Typical of such advertisements is the following, which appeared in the Pathfinder, a magazine of general circulation in the United States:

SELL 7 BIG BARS

OF FINEST TOILET SOAPS FOR ONLY 25¢

A CHANCE TO EARN UP TO \$15.00 A DAY

Seven cakes of finest toilet soaps in handsome packages sells for only 25¢. The kind of soap used in every home every day. Selling price marked on box, \$1.00. You sell for only 25¢. Housewives buy on sight. Up to 150 percent profit for you. Write for money-making details and facts about other sensational Victor Soap deals. For quick action send 25¢ for actual full size sample.

VICTOR SOAP CO., DEPT. P-10, DAYTON, OHIO

The respondent admits that the soap does not generally sell for \$1 a box but that it does generally sell for 25¢ a box.

Respondent has advertised extensively in the publication Independent Salesman, a magazine of general circulation in the United States, of which the following are typical examples of its representations:

AGENTS! DISTRIBUTORS!

YOU CAN EARN UP TO \$5,000 A YEAR!

Here's the kind of fast-selling profit maker you've been looking for. Liberal profits—up to 200%—very attractive—sells on sight. This sensational seller has everything you require to make real money. Our special distributor, crew

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manager, and agents plan will surprise and delight you. Mail the coupon for Free complete catalog and details and sample offer.

**\$100.00 CLEAR PROFIT
THE FIRST WEEK**

"I was working for \$1.00 a day before I took on the Victor Line. The very first week I made \$100.00 clear profit. Today I own my own soap store. I have averaged more than \$80.00 a week profit, and I have an established money-making business. I want everyone to know that the day I took on the Victor Line was the Happiest day of my life."

Kathryn Moser, Missouri.

PAYS YOU UP TO 100% PROFIT!

Everyone needs and uses this complete box of seven full-sized bars of finest toilet soaps—and everyone buys on sight when they see the gorgeously colored package, and hear the unbelievable low price—only 25¢. Just the kind of soaps used in every home every day—Baby Castile, Vegetable Wonder Soap, Cup Shaving Cream, Germicidal Soap, Jabon Glycerine, Olive Toilet Soap, all combined in one complete household package. No wonder this sensational new soap deal is proving a selling sensation. The selling price marked on box is \$1.00. Yet you can sell for only 25¢—with big, liberal, cash profits for you on every sale—up to 100%. If cash profits up to \$15.00 a day sound good to you, then mail the coupon immediately for Free details of my profit-sharing plans. For quick action send along 25¢ for actual full-sized sample box containing 7 big bars of soap.

It is rarely, if ever, possible to earn up to \$5,000 a year or make \$15 a day profit and the soap does not sell without effort on the part of the salesman—on sight—as represented. Kathryn Moser states that while the statements made in the ad were true that she, however, did not continue to make \$100 a week and says, "When this soap was something new it sold good but within a short time the sales started to fall off and of course, my profits accordingly", and "my earnings was gross profits", also "In a good territory it is easy to sell from 50 to 80 boxes but it can't be done in St. Louis any more on account of competition."

In response to inquiries received by respondent, Victor Soap Co., from prospective salesmen, a glowing circular in many colors is mailed in interstate commerce which contains among similar representations, the following:

EARN UP TO \$100 A WEEK!

It is not uncommon for Victor agents to earn \$50, \$60—yes, even as much as \$100 a week. If you can sell about \$30 worth of Victor products a day—it is not hard—your income will be More than \$100 a week.

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AGENTS—

BOOST YOUR EARNINGS

\$50 TO \$60

A WEEK—EASILY!

No matter what you're selling at the present time, you can't afford to pass up this sensational money-making opportunity—a chance to boost your earnings \$50 to \$60 a week. These unusual soap deals are sweeping the country like wildfire, and bringing distributors, crew managers, and agents more money than they ever dreamed possible. You, too, can earn real money, no matter how many sub-agents you employ. Just imagine! 3 full-sized cakes of pure Baby Castile—or 3 cakes of Palm and Olive soap—or 3 cakes of refreshing Health Soap—wrapped in glistening cellophane—that you can sell profitably for only 25¢! Our prices to you are so low that you can even sell 2 packages for the price of 1. Some agents here built up tremendous volumes on an introductory offer of 2 for the price of 1. Sounds impossible, but it's true. This same quality soap cannot be duplicated in retail stores at twice the low wholesale price of Victor soaps. No wonder you can make real money—folks buy on sight!

Respondent, Victor Soap Co., further did not deny that none of the soap in the 7 cake box is a germicidal soap that kills germs and says that they do not insist that it is a germicidal soap and that it will kill germs.

The facts are that respondent does not guarantee the financial success of its agents; Victor agents everywhere are not cleaning up opening soap shops; the majority of its agents are not making the amounts represented by respondent in its advertising matter; the same assortment in retail stores does not cost \$1 nor does respondent's soap sell for \$1 per box, but it sold in fact for only 25 cents; and the respondent's so-called germicidal soap does not kill germs within the standard claimed applicable to the term "germicidal soap".

PAR. 5. The representations of respondent, as aforesaid, have had and do have the capacity and tendency to confuse, mislead, and deceive a substantial number of the purchasing public into the belief that said statements are true and have caused, and do cause, said purchasing public to purchase substantial quantities of respondent's soap in such erroneous belief. Said false and misleading statements have the capacity and tendency to mislead and deceive many persons who, because of such deception and relying on the truth of said statements as to actual or probable earnings, become agents for respondent. Such agents whose services are procured by respondent through and by means of said false and misleading statements offer for sale and sell respondent's products to the purchasing public, thereby diverting

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a substantial trade to respondent from those competitors who do not misrepresent the actual or probable earnings of their agents and prospective agents.

PAR. 6. There are among competitors of respondent corporations, firms and individuals who likewise sell and distribute soap among the various States of the United States and in the District of Columbia who do not in any way misrepresent the selling price or therapeutic value of their product, and who do not, in the solicitation of agents to sell their product, misrepresent the actual or possible earnings of their agents or prospective agents. Respondent's acts and practices, as hereinabove set forth, tend to and do divert trade to respondent from such competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts of the respondent, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors and are unfair methods of competition in commerce and constitute a violation 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 April 17, 1935, the answer to said complaint filed May 20, 1935, by Victor Soap Co., respondent herein, and a stipulation of facts in lieu of testimony, and the Commission now being fully advised in the premises:

It is ordered, That the respondent, Victor Soap Co., a corporation, doing business under the trade names of Royal Soap Co. and Heick Soap Co., or under any other trade name, its agents, representatives, servants, and employees, in connection with the advertising, offering for sale, or sale in interstate commerce of soap, do cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, or guarantees, or in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, letters, or otherwise:

- (1) That respondent guarantees the financial success of its agents;
- (2) That Victor agents are "cleaning up" opening soap shops;
- (3) That agents of respondent engaged in selling its products are easily making daily, weekly, or annual sums or incomes which are in fact in excess of the average daily, weekly, or annual sums or incomes

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made by the average agent employed by respondent during said period or periods;

(4) That respondent's assortments or boxes of soap are sold or offered for sale in retail stores for \$1 per box, or for any other price which is higher than the usual or customary price at which said assortments or boxes of soap are customarily and usually sold or offered for sale in said retail stores;

(5) That assortments or boxes of soap similar to respondent's are sold or offered for sale in retail stores for \$1 per box, or for any other price which is higher than the usual or customary price at which said assortments or boxes of soap are customarily and usually sold or offered for sale in said stores;

(6) That one of the seven cakes of soap in boxes or assortments sold or offered for sale by respondent is a germicidal soap or that it will kill germs;

(7) And from making any other representations of like or similar import or tenor.

It is further ordered, That the respondent above named, within 60 days after the service upon it of this order, shall file with the Commission a report, in writing, setting forth in detail the manner in which this order has been complied with.

IN THE MATTER OF
ECONOMY RUBBER PRODUCTS COMPANY

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

Docket 2718. Complaint, Feb. 10, 1936.—Decision, Apr. 17, 1936

Where a corporation engaged in the sale of a brand of tire patches known to the trade as "Tiger-Grip"; in matter in advertisements and in circulars and labels directed to soliciting prospective salesmen or distributors to engage in the sale and distribution of its said product and creating demand therefor on the part of the consuming public—

- (a) Set forth that there was "Big money in Tire Patches" and that its salesmen or distributors make up to \$15 a day or earn from \$12 to \$20 daily or \$75 weekly and are guaranteed to make 100 percent profit on all sales of its said products, facts being said representations were grossly exaggerated and misleading, there is no big money to be earned as aforesaid, average wage or commission is no such amount as represented nor does average salesman and distributor earn any such amount, and few if any ever earned any such amount over a period of several days or in any 1 week, and their sales were not in fact 100 percent profit guaranteed;
- (b) Represented that its said patches renew old blown out tires instantly, insure permanent tire repairs and permanently repair blowouts, rim cuts, etc. by self vulcanizing and save motorists 50 percent in mileage and cost compared with results obtained from competing product, and were guaranteed to repair nail holes and save tire, facts being said statements were false in aforesaid various respects and there was no bona fide insurance that any guaranteed mileage would be obtained by persons whose tires were repaired by its said product;

With tendency and capacity to mislead and deceive prospective salesmen or distributors and purchasing public into erroneous belief that said statements were true and to induce members of the public to enlist in its service and purchase its said products in such erroneous belief, and with effect of so inducing, to the consequent damage and injury to prospective salesmen or distributors and that of the general public and with effect of unfairly diverting trade to it from competitors, among whom there are those who do not misrepresent their products and falsely claim for them such merits and results, to the substantial injury and substantial competition:

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

Mr. Joseph C. Fehr for the Commission.

Mr. Daniel L. Dwyer, of Dayton, Ohio, for respondent.