

IN THE MATTER OF
DENNISON BROTHERS, INC.

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

Docket 2676. Complaint, Feb. 14, 1936¹—Decision, June 30, 1936

Where a corporation engaged in the sale of groceries, drugs, sundries and toilet articles direct to the consumer, through personal solicitation and contact by its agents and representatives, and which donated more than ten per cent of its profits to an orphans' home under a contract calling for such a percentage, but procured by it solely to enable it to represent to potential customers and the public at large that a substantial percentage of the profits realized by it in the sale of its products were for the use and benefit of a charitable institution, and to secure and influence customers to purchase its merchandise, not superior to that vended by competitors at like prices, and to increase its volume of sales and secure patronage otherwise unobtainable—

- (a) Represented to members of the public, through its agents and solicitors, that it manufactured the merchandise offered by it, and circulated price lists and general advertising matter depicting a purported photographic simile of a large factory building, across facade of which appeared its name and words "Where Quality Originates", and represented in said advertising material that it sold its "products direct from factory to the consumer, thereby saving you the middleman's profit", facts being the building depicted was not owned, nor entirely occupied, by it, but only a portion of one of the several floors thereof, and commodities sold by it were actually made by others and purchased by it from those who made and vended same, in the common marts of trade, and notwithstanding preference of a substantial number of the purchasing public for dealing directly with manufacturer as effecting a pecuniary saving through eliminating from article's retail cost so-called middleman's profit, and as securing purchase of merchandise of a grade or quality superior to that of articles bought at a comparable price from retailer;
- (b) Designated as "Butt R Milk Soap" a commodity advertised and offered and distributed by it, facts being said product contained an infinitesimal amount of buttermilk, if any, and not enough to entitle it properly thus to designate or describe or represent the same, and notwithstanding preference of a substantial number of members of the purchasing public for purchase of soap of which buttermilk is a principal or substantial ingredient, as thus indicated; and
- (c) Sold and offered as "Russian Mineral Oil" a commodity thus labeled and identified, with intent and effect of causing a substantial number of members of the purchasing public to believe that said oil was "heavy oil", as commonly known to trade, and an oil of high viscosity, and represented on labels affixed to containers thereof that its contents complied "with U. S. P. Specifications No. 10 for liquid petroleum", facts being it was neither a heavy oil, nor of high viscosity, and did not comply or conform

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with such specifications of the United States Pharmacopoeia Board, and notwithstanding preference of a substantial number of members of the purchasing public for heavy oil and oil of a high viscosity and a definite specific gravity;

With effect of misleading and deceiving a substantial number of members of such public into false belief that through buying said products from it they were assisting it in furtherance of a beneficent cause, dictated by its generosity, solely, and that said products, respectively, contained buttermilk as principal ingredient, or had qualities or properties hereinbefore indicated, and of diverting trade from competitors, among whom there are a substantial number who do not, to secure patronage, represent to potential customers that a large percentage of their prospective profits are to be used for and donated to charitable institutions, and those who, as manufacturers or non-manufacturers, as case may be, do not falsely represent themselves as manufacturers of articles dealt in by them, and who do not, through labeling a product with name of a minor ingredient, falsely represent such ingredient as actually constituting a principal property thereof, or through labeling or otherwise falsely represent their mineral oils as heavy, or of high viscosity and which comply and conform with aforesaid specification:

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.

Mr. Alden S. Bradley for the Commission.

Mr. Simon S. Gittleman, of Verona, N. J., for respondent.

AMENDED 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 Dennison Bros., Inc., 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, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dennison Bros., Inc., is a corporation organized under and by virtue of the laws of the State of New York in the year 1932, with its principal office and place of business at 437 11th Ave., New York, N. Y. Respondent is now, and has been for some years, engaged in the business of selling groceries, drugs, sundries, and toilet articles directly to the consumers thereof through the medium of personal solicitation and contact on the part of agents of said respondent, which agents are located in the various States of the United States. In the course and conduct of its business as aforesaid the respondent has shipped and caused to be shipped from

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its principal office in New York, or other distributing points, the merchandise sold by it to purchasers thereof located in various States of the United States other than the State of New York or other than the place of origin of such shipment. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in the hereinabove described merchandise, distributed and sold by the respondent, among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations, firms, and individuals likewise engaged in the business of distributing and selling or in the business of manufacturing, distributing, and selling groceries, drugs, sundries, and toilet articles directly to consumers, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent represents, and causes to be represented, to the general public, customers and potential customers, that a large percentage of the profits to be realized by it in the sale of its products as aforesaid are for the use and benefit of a charitable institution, to wit: Bethlehem Orphan and Half-Orphan Home, said representation being designed and calculated to play upon the sympathies of potential customers and thus influence them to purchase the merchandise offered for sale.

The quality of the merchandise offered for sale by the respondent is of an inferior nature as compared with the quality and nature of goods of like kind offered by competitors of the respondent at the same prices, and the respondent utilizes the representation aforesaid that a large percentage of its profits is for a charitable purpose in order to increase the volume of its sales and to secure patronage which otherwise would not come to it.

In truth and in fact, no substantial part of the profits of the respondent nor any substantial sum whatever is contributed by the respondent out of its income to the Bethlehem Orphan and Half-Orphan Home or any other charitable institution as represented.

PAR. 4. The respondent, through its agents and solicitors, directly and indirectly, represents or causes to be represented, that it is the manufacturer of the merchandise offered for sale by it, and circulates, in commerce as aforesaid among the general public, price lists and other advertising literature wherein appears the picturization of a large factory building with the name of the respondent prominently displayed across the facade thereof, together with the words,

Dennison—Where Quality Originates

The respondent further distributes in commerce, as herein set out, coupons containing the following words:

Dennison Bros., Inc. sell their products direct from factory to the consumer, thereby saving you the middleman's profit

In truth and in fact, the building pictured as aforesaid is not owned, nor is the same entirely occupied by said respondent. The respondent uses only a portion of one of the several floors of said building and does not manufacture any of the products sold by it. The products so distributed and sold by the respondents are purchased from the manufacturers or millers who manufacture such products and the purchases thereof are made in the common marts of trade.

There are among the members of the purchasing public a substantial number thereof who prefer to purchase merchandise directly from the manufacturer thereof, believing that they thereby eliminate from the retail cost of the articles so purchased the so-called middleman's profit and that they secure superior quality in purchasing direct from the manufacturer.

PAR. 5. In the course and conduct of its business, the respondent advertises, and offers for sale, a product which it labels and identifies as "Butt R Milk Soap." The use of the descriptive name above indicated serves as a representation that a substantial ingredient of said soap is buttermilk.

In truth and in fact, the soap labeled and sold under the name "Butt R Milk Soap" contains only an insignificant amount of buttermilk, if any at all, and much less than the amount necessary as an ingredient thereof to entitle the respondent to properly designate, describe, or represent the same to be buttermilk soap. There are among the members of the purchasing public a substantial portion thereof who have a preference for, and who desire to, purchase soap having buttermilk as a substantial or principal ingredient thereof.

PAR. 6. The respondent, in the course and conduct of its business as aforesaid, has offered for sale and sold, a certain commodity labeled and identified as "Russian Mineral Oil." The identification and labeling above set out causes, and is intended to cause, members of the purchasing public to form the belief or impression that such oil is what is commonly known to the trade as a "heavy" oil and an oil of high viscosity. Respondent further represents, on the label affixed to the container of such oil that the contents of such container comply "with U. S. P. Specifications No. 10 for liquid petroleum."

In truth and in fact, the oil so labeled and sold by the respondent is not what is commonly known to the trade as a "heavy" oil, is not

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of a high viscosity and does not comply with Specification No. 10 of the United States Pharmacopoeia Board.

A substantial portion of the purchasing public who buy Russian mineral oil have expressed a preference for a "heavy" oil of a high viscosity and a definite specific gravity.

PAR. 7. There are among the competitors of the respondent many individuals, partnerships, and corporations who, in the course and conduct of their respective businesses, do not play upon the sympathies of potential customers by representations that a large percentage of the profits to be made in the sale of merchandise offered for sale are to be used for and donated to charitable institutions, said representations being made for the purpose of effecting sales of their merchandise, when said representations are not true in fact. There are among the competitors of the respondent many who do not represent to the purchasing public that they are the manufacturers of the articles distributed and sold by them when they are not in fact manufacturers of said articles. There are also among the competitors of respondent many who do not, by labeling a commodity with the name of a minor ingredient thereof, represent that such ingredient actually constitutes a principal ingredient of said commodity and who do not represent by descriptive labeling, or in any way whatever, that the mineral oils sold by them are "heavy" oils, of high viscosity or comply with Specification No. 10 of the United States Pharmacopoeia Board for liquid petroleum; when in truth and in fact, said oils are not "heavy" oils, are not of high viscosity and do not comply with Specification No. 10 of the United States Pharmacopoeia Board.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent in designating or describing the nature and extent of its business, the disposition of a portion of its profits or the products distributed and sold by it, as hereinabove set out, in its advertising literature and through its representatives and agents, in offering for sale and selling its merchandise was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations and statements are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts, advertisements, and misrepresentations of respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of the merchandise sold by the respondent with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling similar merchandise or in the business of manufacturing, distributing, and selling similar merchandise and who truthfully represent the na-

ture and extent of their business and the quality and character of their products. As a result thereof, substantial injury has been, and is now being, done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition 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.

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 the 14th day of February 1936, issued and served its complaint in this proceeding upon respondent Dennison Brothers, Inc., 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 was entered into by and between W. T. Kelley, chief counsel for the Commission and S. S. Gittleman, attorney for the respondent, and said stipulation was duly recorded and filed in the offices of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto and the stipulation as to the facts; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Dennison Brothers, Inc., is a corporation existing under and by virtue of the laws of the State of New York, and has its principal office and place of business at 437 11th Ave., New York, N. Y. It now is, and has been for some years engaged in the business of selling groceries, drugs, sundries, and toilet articles directly to the consumers of the same through the medium of personal solicitation and contact on the part of agents and representatives of the respondent, which agents and representatives are located in the various States of the United States.

In the conduct of its business, respondent sells and causes to be sold, and ships and transports the commodities vended by it, into and

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through the various States of the United States other than the State of New York, and thus maintains a constant current of trade in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. Respondent, in the conduct of its business, is now, and has been, in substantial competition with other persons, firms, and corporations likewise engaged in the sale and distribution in interstate commerce of commodities of a like nature, kind, and design, to those vended by the respondent.

PAR. 3. Respondent, in the conduct of its business aforesaid, represents, and causes to be represented, to potential customers, and to the public at large, that a substantial percentage of the profits to be realized by it in the sale of its products, as aforesaid, are for the use and benefit of a charitable institution, to wit, Bethlehem Orphan and Half-Orphan Home, which said representation is used by the respondent for the purpose and with the intention of securing customers, and influencing customers to purchase the merchandise vended by the respondent.

The merchandise vended by the respondent is not of a superior quality to the merchandise vended by competitors of the respondent at like prices, and the representation by the respondent that a large percentage of its profits inures to a charitable use is used by the respondent solely for the purpose of increasing the volume of sales, and securing patronage which otherwise would not be obtainable.

The respondent has actually, during the term of the contract with Bethlehem Orphan and Half-Orphan Home, donated more than 10 percent of its profits, although the contract calls for but 10 percent. Such contract was procured by the respondent solely for the purpose of enabling it to make the representations referred to above.

PAR. 4. Respondent, through its agents and solicitors, directly and indirectly represents, and causes to be represented to members of the purchasing public, that it manufactures the merchandise offered for sale by it, and circulates in interstate commerce as aforesaid, price lists and general advertising matter wherein appears a purported photographic simile of a large factory building, across the facade of which appear the words,

Dennison—Where Quality Originates

The respondent further represents in its advertising material as above set forth the following:

Dennison Bros., Inc., sell their products direct from factory to the consumer, thereby saving you the middleman's profit

The building depicted as aforesaid is not owned, nor entirely occupied by the respondent. In fact, the respondent uses only a portion

of one of the several floors of such building, and the commodities vended by the respondent are actually manufactured by others, and are purchased by the respondent from those who manufacture them, and vend the same in the common marts of trade.

A substantial number of the members of the purchasing public prefer to purchase merchandise directly from the manufacturer of the same, believing that they thereby effect a pecuniary saving by eliminating from the retail cost of the articles so purchased, the so-called middleman's profit, and also that they secure merchandise of a superior grade or quality when purchasing the same from the manufacturer thereof, to those articles to be purchased at a comparable price from retail dealers.

PAR. 5. In the conduct of the business of the respondent, it has advertised, and now advertises, offers for sale, and transports in interstate commerce as above defined, a particular commodity known as "Butt R Milk Soap." The use of such name in connection with the vending of such commodity is calculated by the respondent to be indicative of the fact that a substantial ingredient of the same is buttermilk. In truth and in fact, such commodity contains an infinitesimal amount of buttermilk, if any at all, and does not contain a quantity sufficient to entitle the respondent properly to designate, describe, or represent the same to be "Butt R Milk Soap."

A substantial number of the members of the purchasing public have an actual preference and desire for the purchase of soap having buttermilk as a substantial or principal ingredient thereof.

PAR. 6. In the conduct of its business aforesaid, respondent has sold and offered for sale, a certain commodity labeled and identified as "Russian Mineral Oil." Such identification and labeling causes, and is intended to cause a substantial number of members of the purchasing public to believe that such oil is what is commonly known to the trade as "heavy oil" and an oil of high viscosity. The respondent further represents on the label affixed to the container of the oil above described, that the contents thereof comply "with U. S. P. Specifications No. 10 for liquid petroleum." In truth and in fact, the oil so labeled and sold by the respondent is not what is commonly known to the trade as a "heavy" oil, is not of a high viscosity, and does not comply nor conform with specification No. 10 of the United States Pharmacopoeia Board.

A substantial number of the members of the purchasing public have an actual preference for "heavy" oil, and oil of a high viscosity and a definite specific gravity.

PAR. 7. A substantial number of competitors of the respondent who are individuals, partnerships, and corporations do not in the course and conduct of their respective businesses, solely for the purpose of

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producing patronage, represent to potential customers that a large percentage of the profits to be made in the sale of merchandise vended by them is to be used for and donated to charitable institutions. Likewise, there are among the competitors of the respondent, those who do not represent to members of the purchasing public that they are the manufacturers of the articles distributed and sold by them, when in fact they are not. Likewise, among the competitors of the respondent are many who truthfully represent to the purchasing public that they, in fact, manufacture the articles and commodities distributed and sold by them.

A substantial number of the competitors of the respondent do not, by labeling a commodity with the name of a minor ingredient of the same, falsely represent that such ingredient actually constitutes a principal property of such commodity, and who do not by labeling and otherwise, falsely represent that certain mineral oils vended by them are "heavy" oils, or oils of high viscosity, and oils which comply and conform with Specification No. 10 of the United States Pharmacopoeia Board.

PAR. 8. The acts and practices of respondent, as above related, had a tendency and capacity to, and in fact did, mislead and deceive a substantial number of the members of the purchasing public into the false belief that—

1. By effecting purchases of the articles and commodities vended by the respondent, the purchasers of the same were assisting the respondent in the furtherance of a beneficent cause, the furtherance of which was dictated solely by the generosity of the respondent;

2. That the commodity vended by the respondent under a label, designation, and trade name of "Butt R Milk Soap" contained as its principal ingredient buttermilk;

3. That the commodity vended by the respondent and labeled and identified by it as "Russian Mineral Oil" was an oil of high viscosity and of a definite specific gravity, was what is known to the trade as "heavy" oil, and conformed with Specification No. 10 of the United States Pharmacopoeia Board.

Such acts and practices had a capacity and tendency to, and did, not only mislead a substantial number of the members of the purchasing public, but diverted trade from a substantial number of competitors of the respondent, who did not, in vending articles of like character, nature, and design, make, or cause to be made the false representations last above referred to.

CONCLUSION

The aforesaid acts of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice

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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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and signed stipulation as to the facts; 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."

It is ordered, That the respondent Dennison Brothers, Inc., a corporation, its officers, agents, representatives, and employees in the sale and offering for sale of groceries, drugs, sundries, and toilet articles in interstate commerce, do forthwith cease and desist from:

1. Representing or causing to be represented to the public by advertising, by photographs, by price lists, or in any other manner that respondent manufactures the commodities vended by it;

2. Labeling or designating a particular soap as "Butt R Milk Soap" when buttermilk is a minor and insignificant ingredient thereof;

3. Representing or causing to be represented to the purchasing public, through the use of labels or other identification upon containers of oils, that a product is "Russian Mineral Oil" or is some other type of oil commonly known and accepted by the purchasing public as "heavy oil," or that such oil complies with the U. S. Pharmacopoeia Specification No. 10 for liquid petroleum, when such are not the facts.

It is further ordered, That the respondent, Dennison Brothers, Inc., a corporation, shall within 60 days after the date of the service of this order upon it, file with the Federal Trade 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.

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IN THE MATTER OF
OLD GOLD DISTILLERS, INC.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933

Docket 2375. Complaint, Apr. 23, 1935—Order, July 2, 1936

Consent order requiring respondent, its agents, etc., in connection with offer and sale of whiskies, brandies, etc., in interstate commerce, to cease and desist from—

Use of word "Distillers" in its corporate name, etc., or representing that it is a distiller of brandies, etc., or that its said whiskies, etc., were made by it through process of distillation or that it owns, operates, etc., a place where such beverages are made by such process, unless and until it shall own, operate, etc., such a place, where they are made, through process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels till manufacture thereof is completed; and from

Using words "Importer", "Importers", or "Imported" on its letterheads, etc., in soliciting sale of its said products or otherwise representing that it is an importer of whiskies, etc., unless and until it shall actually become engaged in the business of importing such products into the United States from other countries; and

Ordered further that complaint be dismissed as to count two, charging violation of National Industrial Recovery Act.

Mr. PGad B. Morehouse for the Commission.

Weinrob & Feldman, of Chicago, Ill., 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 Old Gold Distillers, 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 in violation of the Act of Congress approved June 16, 1933, known as the National Industrial Recovery Act, and it appearing to the 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:

Count One

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its