

IN THE MATTER OF
VERNON WHITE & COMPANY ET AL.

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

Docket 2552. Complaint, Sept. 14, 1935—Decision, Aug. 7, 1936

Where three corporations, and an individual who directly or indirectly controlled and managed the same, engaged in sale and distribution of food products, including imitation jelly concentrate designated "YUM-YUM"—Represented in circulars distributed to customers and prospective customers that "Each package will make 5 glasses of pure fruit jelly", and that "YUM-YUM is the pure fruit jelly itself and saves the housewife long, tiresome hours over a hot stove making jelly that is oftentimes not a success", and, by printed statements on the cardboard containers thereof, that it "Contains genuine true fruit flavor, fruit acid derived from grapes, pectin, corn sugar and harmless vegetable color";

Facts being said preparation did not make food product known and identified as jelly, i. e., that semisolid, gelatinous product made by concentrating to a suitable consistence the strained juice or water extract from fresh fruit, cold pack fruit, canned fruit, or a mixture of two or all of them, with sugar or with sugar and dextrose, but made imitation jelly product containing fruit juice concentrate or extract, fruit acid derived from grapes, pectin, corn sugar, and vegetable color, and product was not made from the pure fruit itself;

With effect of misleading and deceiving purchasers into the false and erroneous belief that said representations were true and of thereby inducing them, in reliance upon such beliefs, to purchase said product, and with capacity and tendency so to do, and thereby tend to divert, and with effect of diverting, trade to them from competitors who do not in any manner misrepresent the kind, nature, ingredients, or quality of their products, to the substantial injury of such competitors, and competition in commerce:

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. Jay L. Jackson for the Commission.

COMPLAINT

Pursuant to the provisions 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, the Federal Trade Commission, having reason to believe that Vernon White & Company, a corporation, Thayer Sales Corporation, a corporation, Federal Pure Food Company, a corporation, and T. E. Hanshaw, hereinafter referred to as respondents, have been and are 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, Vernon White & Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2944 West Lake Street in the city of Chicago, in the State of Illinois. All or approximately all of the controlling and voting capital shares of stock of said respondent company are owned, held, or controlled by one T. E. Hanshaw, respondent named herein, or by Federal Pure Food Company, respondent named herein, or by Thayer Sales Corporation, respondent named herein, or jointly by said respondents, and said respondent, Vernon White & Company, and the assets, business, and affairs of said respondent company for more than one year last past have been and now are held by and under the control, direction, and management of one or more of the other named respondents herein. Upon information and belief it is further alleged that said Vernon White & Company was on November 15, 1934, cited to the attorney general for the State of Illinois for dissolution for failure to file an annual report and pay franchise taxes for the year 1934, but that to date hereof no official decree dissolving said respondent company has been rendered.

Respondent, Thayer Sales Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2944 West Lake Street in the city of Chicago, in the State of Illinois.

Respondent, Federal Pure Food Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2944 West Lake Street, in the city of Chicago, in the State of Illinois. Said respondent company is a subsidiary or branch of Thayer Sales Corporation, respondent named herein, and as such, since the date of its incorporation on July 5, 1935, has claimed and now claims to be the successor to said Vernon White & Company and to have, own and control the business and assets of said Vernon White & Company, together with the business and assets formerly owned by Federal Pure Food Company, bankrupt, and sold by receiver under date of March 6, 1934, to T. E. Hanshaw, upon order of referee in bankruptcy, dated March 5, 1934, Cases Nos. 51,342 and 54,934, in the District Court of the United States for the Northern District of Illinois, Eastern Division.

The aforesaid respondents are individually and jointly engaged in the manufacture and production of food products, particularly a

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product designated as "Yum-Yum", and in the sale and distribution thereof in commerce between and among various States of the United States, causing said products, when sold, to be shipped from their place or places of business in Chicago, Ill., to purchasers thereof located in a State or States of the United States other than the State of Illinois, in the course and conduct of which said respondents have been, since the dates of their respective incorporations, and are now, in competition with other corporations, individuals, firms, and partnerships engaged in like commerce.

Respondent, T. E. Hanshaw, is an individual and an officer of Thayer Sales Corporation and of Federal Pure Food Company, respondents named herein, with his principal place of business located at 2944 West Lake Street in the city of Chicago, in the State of Illinois. At all times material to this complaint said respondent has been and is now engaged in and with the aforesaid business of respondents herein, and with the advertising, promotion, and management thereof, and upon information and belief it is alleged that said respondent, T. E. Hanshaw, is the sole owner of, and in exclusive control of, the corporation-respondents herein, and that at all times material to this complaint, said respondent has been the sole owner, and in exclusive control, either directly or indirectly, of the corporation-respondents named herein.

PAR. 2. Respondents have sold and now sell said products of said Vernon White & Company, Thayer Sales Corporation, and Federal Pure Food Company, in interstate commerce, as set forth in paragraph 1 hereof, by use of the mails, interstate carriers and other channels of interstate commerce, and by means of circulars, letters, labels, and other forms of advertising literature which have and have had a circulation in and through the various States of the United States and which have been and are circulated and distributed by respondents to customers and prospective customers in and throughout various States of the United States, in the course and conduct of which respondents, individually and jointly have made and now make false and misleading statements and representations, all to the injury of the public and to the injury of competitors of said respondents.

PAR. 3. In the course and conduct of the business of said respondents, as aforesaid, respondents caused a circular or printed letter to be circulated and distributed in interstate commerce, in which said respondents referred to and represented its "Yum-Yum" product and with reference thereto made the following statements and representations, among others, to wit:

We do not know whether you have ever tried our YUM-YUM and for this reason are sending you a sample package, under separate cover. Won't you

take it home and have some one make up a batch of jelly for you. Each package makes five glasses of pure fruit jelly in 5 minutes, *nothing to add but sugar and water*.

Just follow the directions on the package. You will be surprised at the delicious flavor of this jelly, and we know you will agree that it is equal in every way to the finest home-made jelly. YUM-YUM is the pure fruit itself and saves the housewife long, tiresome hours over a hot stove making jelly that is oftentimes not a success. Finished jelly made from YUM-YUM only costs the housewife from 5¢ to 6¢ per glass, depending upon what she pays for sugar.

Said respondents have caused and now causes the package, or container, containing the said "Yum-Yum" product to be circulated and distributed in interstate commerce and to purchasers of said product, upon which package or container has been and now is printed the following statement, among others, to wit:

Contains genuine true fruit flavor, fruit acid, derived from grapes, pectin, corn sugar and harmless vegetable color.

PAR. 4. In the course and conduct of the business of said respondents, as aforesaid, and in the advertising, promotion, selling and distribution of said "Yum-Yum" product, as aforesaid, respondents have falsely and misleadingly stated and represented, and falsely and misleadingly state and represent that the said "Yum-Yum" product would make "five glasses of pure fruit jelly", and that said product contains "genuine true fruit flavor", when in truth and in fact said product was not and is not made of pure fruit, would not and will not make pure fruit jelly, and was not and is not flavored with true fruit flavors or the juices of pure fruits, but was and is manufactured from and flavored with an ingredient or ingredients other than pure fruit or the juices thereof.

PAR. 5. The aforesaid false and misleading statements and representations so made by respondents in the sale and distribution of the said "Yum-Yum" product have had and have the tendency and capacity to mislead and deceive and do mislead and deceive purchasers and prospective purchasers of like products of competitors of said respondents and the purchasing public into the false and erroneous belief that said statements and representations are true, thereby causing said customers and prospective customers of competitors of said respondents to purchase the said product "Yum-Yum" in lieu and instead of the products of respondents' competitors, in consequence of which trade has been and is diverted to respondents from their competitors who do not misrepresent their products, thereby substantially injuring competition and competitors of respondents in interstate commerce.

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PAR. 6. The above and foregoing acts, practices and representations of respondents have been and are all to the prejudice of the public and respondents' 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 719), entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on September 14, 1935, issued, and on September 16, 1935, served, its complaint in this proceeding upon the respondents Vernon White & Company, a corporation, Thayer Sales Corporation, Federal Pure Food Company, a corporation, and T. E. Hanshaw, charging them 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 respondents' answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Jay L. Jackson, attorney for the Commission, before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by respondents represented by respondent T. E. Hanshaw; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief of counsel for the Commission, and respondents having waived oral argument and brief in their behalf, 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 Vernon White & Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, but as such has ceased business and is now moribund. Since the 6th day of March 1934, the assets and business of said corporation have been owned, held, and controlled by respondents T. E. Hanshaw and Federal Pure Food Company, and respondents Federal Pure Food Company and Thayer Sales Corporation have assumed,

and do assume, responsibility for any and all business affairs conducted under or in the name of respondent Vernon White & Company since the date of March 6, 1934.

Respondent Federal Pure Food Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2944 West Lake Street, in the city of Chicago, in the State of Illinois. It is a subsidiary branch of respondent Thayer Sales Corporation, and since the 6th day of March 1934, has been, and is now, a successor in interest to the assets and business of respondent Vernon White & Company.

Respondent Thayer Sales Corporation is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2944 West Lake Street, in the city of Chicago, in the State of Illinois.

Respondent T. E. Hanshaw is an individual and an officer of respondents Thayer Sales Corporation and Federal Pure Food Company, with his principal place of business located at 2944 West Lake Street, in the city of Chicago, in the State of Illinois. During all times material to the complaint, said respondent has been in direction and control of the business policies, advertising, and sales promotion of the business of corporate respondents named in this proceeding.

PAR. 2. On the 17th day of September 1934, immediately prior thereto, and since said date, the aforesaid corporate respondents were and have been individually and jointly engaged in the sale and distribution of food products, more particularly that product designated as "YUM-YUM" and sold by, through, and under the name of corporate respondents Federal Pure Food Company and Vernon White & Company, in commerce among and between various States of the United States, causing said product, when sold, to be shipped from their place of business in the city of Chicago, State of Illinois, to purchasers thereof located in States of the United States other than the State of Illinois.

PAR. 3. In the course and conduct of the aforesaid business, the said corporate respondents at all times material to the complaint have been, and now are, in competition with other corporations, individuals, firms, and partnerships engaged in like commerce.

PAR. 4. Under date of September 17, 1934, in the course of the aforesaid business and in connection with the offering for sale, selling, and distributing of said "YUM-YUM" product, respondents caused to be printed, circulated, and distributed, to customers and prospective customers, a piece of sales literature, in which said product was

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referred to and in which it was represented, among other things, that "Each package will make 5 glasses of pure fruit jelly" and that "YUM-YUM is the pure fruit itself and saves the housewife long, tiresome hours over a hot stove making jelly that is oftentimes not a success." By printed statement upon the face of cardboard containers in which said product is packaged or enclosed, respondents also caused and cause to be represented that said "YUM-YUM" product "Contains genuine true fruit flavor, fruit acid derived from grapes, pectin, corn sugar and harmless vegetable color."

PAR. 5. The food product known as "jelly" and identified by the word "jelly" is that semisolid, gelatinous product made by concentrating to a suitable consistence the strained juice or strained water extract from fresh fruit, from cold-pack fruit, from canned fruit, or from a mixture of two or of all of these, with sugar or with sugar and dextrose. In truth and in fact, the said "YUM-YUM" does not make such a product, but the same is made with, and makes an imitation jelly product containing, fruit juice concentrate or extract, fruit acid derived from grapes, pectin, corn sugar, and vegetable color. Contrary to the aforesaid representations caused to be made by respondents, to the effect that "YUM-YUM" makes jelly and is, or is made from, the pure fruit itself, said product does not make jelly and the same is not, and is not made from, the pure fruit itself.

PAR. 6. The aforesaid representations made in the sales literature hereinabove referred to as circulated and distributed under date of September 17, 1934, to the effect that the said "YUM-YUM" product makes jelly, and that it is, or is made from, the pure fruit itself, are, and each of them is, false and misleading, and the same have, and each of them has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the false and erroneous belief that said representations are true, thereby inducing them, in reliance upon such beliefs, to purchase the said "YUM-YUM" product and thereby tending to divert and diverting trade to the said corporate respondents from their competitors who do not in any manner misrepresent the kind, nature, ingredients, or quality of their products, all thereby to the substantial injury of said competitors and competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondents' 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 respondents, and upon testimony and evidence taken before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and upon brief filed by counsel for the Commission, respondents having filed no brief and having waived oral argument upon final hearing, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents Vernon White & Company, Thayer Sales Corporation, and Federal Pure Food Company, and respondent T. E. Hanshaw, and their and his officers, agents, representatives, and employees, in connection with the advertising, offering for sale, sale or distribution, in interstate commerce, of the food product sold under the name of, and known as, "YUM-YUM", do cease and desist from:

(1) Representing in any way, directly or indirectly, that "YUM-YUM" makes jelly;

(2) Representing in any way, directly or indirectly, that "YUM-YUM" as now made, offered for sale, and sold, is, or is made from, the pure fruit.

It is further ordered, That respondents Vernon White & Company, Thayer Sales Corporation, and Federal Pure Food Company, and respondent T. E. Hanshaw, within 60 days from and after the date of service upon them of this order shall file with the Commission a report in writing, setting forth in detail the manner and form in which said order to cease and desist hereinabove set forth is being complied with.

IN THE MATTER OF
STERLING COMPANY ET AL.

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

Docket 2629. Complaint, Nov. 15, 1935—Decision, Aug. 12, 1936

Where a corporation engaged in the sale of cosmetics and its "Bonnie Day" toiletries through so-called prize club, and an individual engaged as president thereof, and two others who organized and controlled the same and were responsible for the selling scheme carried out through the medium of said so-called club—

Sold its products through an ostensible plan of introducing the same, under which it falsely advertised in newspapers and periodicals, leaflets, by radio broadcasts, and otherwise, that those sending in solution to some simple problem depicted, such as naming well-known motion picture actresses or stars, faces or likenesses of which were more or less concealed in the general depiction, or whose first or last names began with any letter in sentence, "Win Twenty Five Thousand Dollars" (with two of such names actually supplied), would receive an automobile or large sum in cash, or both, and that others had won substantial prizes and that large number of prizes would be awarded "to advertise and extend our business", through such statements (with heads and faces), as "I won \$485", "I won \$1980", etc., "Would you too like to win a brand-new, latest model Buick sedan * * * and \$1,000 extra for promptness?", "Now comes your chance to go after big prizes", "Can you find five movie stars' faces in picture", "A sensational advertising campaign. Do you want \$2500? We want people acquainted with our company quick. We will award 100 grand prizes to advertise and extend our business", "Don't send a cent, just do this now", etc.;

Facts being replying prospect supplying solution and sending \$2, pursuant to demand made in glowing follow-up, "come-on" trade literature—which re-emphasized prizes to be won for promptness and otherwise, congratulated prospect for his alertness, and informed him that he had been given high credit rating and 4500 "booster points" (of no particular significance under the actual terms of the contest)—finally learned that he did not win a prize through such solution, but merely opportunity to compete for prizes in contests based on sale of said products, purchase of which had been thus induced by him, and that no prize or prizes had ever thus been awarded, or to those whose heads and faces were thus depicted, by said corporation;

With result that it was enabled, through predominance of said prize feature, to establish contact with prospective purchasers and to present an insidious but delusive appearance, and with capacity and tendency to mislead and deceive public into belief that said representations were true, or that one or more of them had been and was true, and into purchase of its said products in reliance on such erroneous beliefs, and to divert trade to it from competitors selling toilet articles and cosmetics, truthfully advertised and described: