

Syllabus

IN THE MATTER OF
WILSON CHEMICAL COMPANY, INC.

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

Docket 2874. Complaint, July 11, 1936—Decision, Aug. 24, 1936

Where a corporation engaged in sale and distribution of salves and miscellaneous merchandise premiums to purchasers through "return or remit" plan, under which it advertises for agents in newspapers and periodicals and furnishes same with boxes of its said salve, with allowance of thirty days for sale thereof and remittance of portion of proceeds agreed on, or return of unsold merchandise, and under which no deposit is required and products remain its property until paid for, and "agent" may either remit stated sum of amount collected after deducting his commission, or entire amount and receive a premium for his services, or entire proceeds with additional stated sums in payment for premium offered by it in its catalog sent to its said agents—

- (a) Represented in its advertising that, through sale of a specified number of boxes, certain depicted or described premiums, such as express wagons, radios, air rifles, and other merchandise, might be obtained, through such statements as "STREAMLINE 1935 Model WAGON * * * Electric Headlights, Lifelong Lubrication, Instrument Board, * * * America's Greatest Coaster Wagon. IT'S REALLY A WHIZ! Simply give away FREE 12 beautiful pictures with 12 boxes of our famous WHITE CLOVERINE SALVE * * * which you sell to friends at 25¢ a box (with picture FREE) and remit us as per big premium plan book * * *", and other similar statements informing the prospective agent that by selling a certain specified number of boxes he might obtain a guitar or movie machine or rifle or other articles;

Facts being that representations as to number of boxes required to be sold and amount of money required to be remitted for premiums were false, misleading and untrue, in that various sums of cash were required in addition to cash remittance realized by sale of salve as advertised, and in some instances sale of additional boxes was demanded, with remission of the additional money acquired by selling same; and

- (b) Called for additional sums, in almost every case in which a premium was selected, to cover cost of postage or freight thereon, of which facts or conditions it did not advise prospective agents in its advertising matter, but deferred giving notice thereof to the sending of its catalog to those agents making inquiry in response to such advertising;

With tendency to confuse, mislead, and deceive members of the public into belief that, upon making sales of specified amounts of its said salve, the various premiums advertised as a reward therefor would be received unconditionally, when such was not the case, and to induce members of the public to answer its advertisements and sell its said products, as above set

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forth, and with effect of thereby unfairly diverting trade to it from competitors engaged in the sale of merchandise under return or remit plans which do not misrepresent the same or the conditions upon which sales are made, and of causing substantial injury to 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.

Mr. George Foulkes for the Commission.

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 Wilson Chemical Company, Inc., a corporation hereinafter referred to as respondent, has been and is now 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, Wilson Chemical Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located in the city of Tyrone, in the State of Pennsylvania. Respondent is now and for more than one year last past, has been engaged in the business of distributing and selling salves and miscellaneous merchandise designated by respondent as "premiums" which respondent distributes to purchasers, many of whom reside in States other than the State of Pennsylvania, and when orders are received therefor, they are filled by respondent by shipping said salve and miscellaneous merchandise to purchasers from said city of Tyrone, Pa., into and through other States of the United States and the District of Columbia, and there is now and has been during the time hereinabove mentioned, a constant current of trade and commerce in said salve and miscellaneous merchandise so sold and distributed by the respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, said respondent has been and is in substantial competition with other corporations, individuals, firms, and partnerships, likewise engaged in the sale and distribution of salves and miscellaneous merchandise between and among the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of its business, respondent uses what is commonly known as the "return or remit" plan, that is to say, respondent advertises in newspapers, magazines, and periodicals for selling agents to sell its merchandise, furnishes them with boxes of salve to sell, and allows them thirty (30) days to sell the same and either remit the portion of the proceeds of sale agreed upon, or return the unsold merchandise. No deposit is required and the salve and merchandise remain the property of respondent until paid for. The agent may remit the stated sum of the amount collected, keeping the rest as his commission; may remit the entire sum collected, receiving a premium for his services; or may remit the entire proceeds of sale with additional stated sums of money in payment for premiums offered by respondent in its catalogue which is sent its said agents.

PAR. 3. In the course of the operation of said business and for the purpose of inducing the purchase of said salve and miscellaneous merchandise, respondent has caused representations to be made in newspapers, magazines, periodicals, circulars, and various other advertising media, which respondent circulates throughout the United States. Said advertising is variously devised to show pictorial representations of express wagons, radios, air rifles, and other merchandise and contains statements and representations such as the following:

STREAMLINE

1935

Model WAGON

Or Choice of Cash Commission

Send No Money—Mail Coupon!

Has Roll Top—Big Hub Caps

15 x 33 x 5 Body

Electric Headlights G

Lifelong Lubrication I

Instrument Board V

SEND E

NOW N

* * * * *

America's

Greatest

Coaster Wagon

IT'S REALLY A WHIZ!

—Simply give away FREE 12

beautiful pictures with 12

boxes of our famous WHITE

CLOVERINE SALVE, used for chaps,

burns, sores, etc., which you sell to

friends at 25¢ a box (with picture FREE)

and remit us as per big premium plan book.

Salve easy to sell. Big profit to regular

agent. We have better things ahead for you.

Be first.

MAIL COUPON NOW!

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All of said representations together with many similar representations appearing in respondent's advertising, inform prospective selling agents that by selling a certain specified number of boxes (usually 12) of respondent's salve, that such salesmen may obtain as a premium either (1) a guitar, or (2) a movie machine, or (3) a rifle, or (4) a coaster wagon, or (5) a telescope, or (6) a wrist watch.

PAR. 4. The representations made by respondent in its said advertisements with respect to the number of boxes of salve agents must sell and the amount of money such selling agents must remit to respondent for premiums, are false, misleading, and untrue. In truth and in fact, all of the premiums set forth in paragraph 3 hereof advertised by respondent to be obtainable by their selling agents on completing sales of a specified number of packages of salve are only obtainable by such selling agents upon the payment of various sums in cash, in addition to the cash remittances realized upon the sale of such salve, or upon the sale of additional packages of salve and the remittance of the additional money acquired by the selling agents by selling the same, and in many cases, additional cash sums are required by respondent of its selling agents, to cover the cost of postage or freight of said premiums. In truth and in fact, said guitar, movie machine, rifle, coaster wagon, telescope, and wrist watch cannot be obtained by selling agents from respondent by selling the number of packages of respondent's salve which it has specified in its advertisements.

PAR. 5. The representations of respondent as aforesaid have had and do have a tendency to confuse, mislead, and deceive members of the public into the belief that upon making sales of specified amounts of respondent's salve, the various premiums advertised as a reward therefor, will be received unconditionally when in truth and in fact such is not the case. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to answer respondent's advertisements and sell respondent's salve as above set forth thereby unfairly diverting trade to respondent from competitors engaged in the sale of merchandise upon "return or remit" plans, which plans do not misrepresent the plans or conditions upon which such sales are made. As a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and of respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress approved September

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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 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 July 11, 1936 served its complaint in this proceeding upon the respondent, Wilson Chemical Company, 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, the respondent answered, admitting all the material allegations of the complaint to be true, and waiving all further and intervening procedure.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. The respondent, Wilson Chemical Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the city of Tyrone in the State of Pennsylvania. For more than one year last past respondent has been engaged in the business of selling and distributing salves and miscellaneous merchandise to purchasers, many of whom reside in States other than the State of Pennsylvania. Said miscellaneous merchandise is designated by respondent as "premiums". When orders are received for said salves and miscellaneous merchandise they are filled by respondent by shipping said products to purchasers from said city of Tyrone, Pa., into and through other States of the United States and in the District of Columbia.

There is now and has been for more than one year last past a constant current of trade and commerce in said salve and miscellaneous merchandise so sold and distributed by the respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business said respondent has been and is in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of salves and miscellaneous merchandise between and

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among the various States of the United States and in the District of Columbia.

PAR. 2. In the sale of its salves and miscellaneous merchandise, respondent uses what is commonly known as the "return or remit" plan. Under this plan respondent advertises in newspapers, magazines, and periodicals for selling agents to sell its merchandise, furnishes them with boxes of salve to sell, and allows them thirty (30) days to sell the same and either remit the portion of the proceeds agreed upon or return the unsold merchandise. No deposit is required and the salve and merchandise remain the property of respondent until paid for. The person designated by respondent as an "agent" may remit the stated sum of the amount collected keeping the rest as his commission; may remit the entire amount collected, receiving a premium for his services; or may remit the entire proceeds of sales with additional stated sums of money in payment for premiums offered by respondent in its catalog which is sent its said agents.

PAR. 3. In the course of the operation of said business and for the purpose of inducing the purchase of said salves and miscellaneous merchandise respondent has inserted ads in newspapers, magazines, circulars, and various other advertising media which respondent circulates throughout the United States.

This advertising is variously devised to show pictorial representations of express wagons, radios, air rifles, and other merchandise, and contains statements and representations such as the following:

STREAMLINE

1935	Electric Headlights	G
Model WAGON	Lifelong Lubrication	I
Or Choice of Cash Commission	Instrument Board	V
Send No Money—Mail Coupon!	SEND	E
Has Roll Top—Big Hub Caps	NOW	N
15x33x5 Body		

* * * * *

America's
Greatest

Coaster Wagon

IT'S REALLY A WHIZ!

—Simply give away FREE 12
beautiful pictures with 12
boxes of our famous WHITE

CLOVERINE SALVE, used for chaps,
burns, sores, etc., which you sell to friends
at 25¢ a box (with picture FREE) and remit us
as per big premium plan book. Salve easy to
sell. Big profit to regular agent. We have
better things ahead for you. Be first.

MAIL COUPON NOW!

Many other similar representations are made by respondent in its advertising, among which are statements that inform prospective selling agents that by selling a certain specified number of boxes (usually 12) of respondent's salve that such salesman may obtain as a premium either (1) a guitar, or (2) a movie machine, or (3) a rifle, or (4) a coaster wagon, or (5) a telescope, or (6) a wrist watch.

PAR. 4. The representations made by respondent in its said advertisements as set forth in paragraph 3 hereof with respect to the number of boxes of salve agents must sell and the amount of money such selling agents must remit to respondent for premiums are false, misleading, and untrue.

In fact, in order to obtain either the guitar, movie machine, rifle, coaster wagon, telescope, or wrist watch, which are advertised by respondent to be obtainable by their selling agents on completing sales of twelve (12) packages of salve, are only obtainable by such selling agents upon the payment of various sums of cash in addition to the cash remittance realized upon the sale of such salve.

In some instances respondent requires its said selling agents, in order to obtain some of the premiums above enumerated, to sell additional packages of salve and to remit the additional money acquired by selling the same.

In almost every case where a selling agent selects a premium respondent requires said selling agent to remit additional cash sums in order to cover the cost of postage or freight of said premiums. Respondent does not set forth in its advertising matter the fact that respondent requires additional sums to cover postage and freight, but sends a catalog to its selling agents after said agents answer respondent's advertisement informing said agents that this additional amount of money will be required of them.

PAR. 5. Each and all of the misleading statements and representations made by respondent in advertising for agents to sell its salve and miscellaneous merchandise, as hereinabove set forth, had and do have a tendency to confuse, mislead, and deceive members of the public into the belief that upon making sales of specified amounts of respondent's salve, the various premiums advertised as a reward therefor will be received unconditionally, when in truth and in fact such is not the case.

Said representations of respondent have had and do have a tendency and capacity to induce members of the public to answer respondent's advertisements and sell respondent's salve as above set forth, thereby unfairly diverting trade to respondent from competitors engaged in the sale of merchandise upon the "return or remit" plans, which plans do not misrepresent the plans or conditions upon

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which such sales are made. As a direct result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices 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 proceeding having been heard by the Commission upon the complaint filed herein on July 11, 1936, and the answer of the respondent Wilson Chemical Company, Inc., received by the Commission on August 7, 1936, which said answer the respondent requests be substituted in lieu of answer filed herein on July 16, 1936, in which answer said respondent admits all the material allegations in the complaint to be true, and waives all further proceedings herein, 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 request of respondent that it be permitted to withdraw its said answer to the complaint herein, filed July 16, 1936, and to substitute in lieu thereof respondent's said answer received by the Commission on August 7, 1936, be and the same is hereby granted.

It is further ordered, That respondent, Wilson Chemical Company, Inc., a corporation, its agents, servants, representatives, and employees, in connection with the sale, or offering for sale, in interstate commerce of salves and miscellaneous merchandise designated by it as "premiums", forthwith cease and desist from:

Representing, directly or by inference, through testimonials, contracts, advertisements, or through any other means whatever,

1. That a premium is obtainable for a less amount in either services or money than is actually the case;

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2. That any premium will be sent upon the remittance of a stated amount without mention of an additional sum to cover postage or packing in cases where this extra remittance is required.

It is further ordered, That the respondent, Wilson Chemical Company, Inc., a corporation, shall within 30 days from the date of service upon it of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which it is complying and has complied with the order herein set forth.

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IN THE MATTER OF
RICHARD R. SOBERANES, TRADING AS TARZANA
MINERAL WATER COMPANY

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

Docket 2804. Complaint, May 15, 1936—Decision, Aug. 25, 1936

Where an individual engaged in sale and distribution of a purported mineral water—

- (a) Represented in radio broadcasts and in circulars, leaflets, and booklets that said water would prevent and cure or was beneficial in treatment of many diseases and afflictions and conditions which might be present in the body, including rheumatism, neuritis, arthritis, high blood pressure, and many others; and
- (b) Represented and implied, through radio broadcasts and by circulars, etc., as aforesaid, that diet of average American citizen was "sadly" deficient in important mineral elements, including sodium, calcium, and magnesium, and that such deficiency could be supplied through drinking said water;

Facts being said water would neither prevent nor cure said ailments and conditions, and was not beneficial in treatment of any, diet referred to was not thus deficient, and such a deficiency would not be supplied through using said water, which acted on body in no different manner than any pure, potable water, and contained no elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any such water;

With effect of misleading and deceiving a substantial portion of prospective purchasers desirous of buying or obtaining a remedy or treatment to prevent and cure, or be beneficial in treatment of such ailments and conditions, and who believed their diet deficient as aforesaid, and wished to supply from other than usual sources of diet elements thus thought deficient, and of causing many prospective purchasers to believe such false representations and implications to be true, and a substantial portion of such purchasers, by reason thereof, to buy said water, and of diverting thereby trade to him from competitors dealing in mineral water and other products used and useful for same purposes for which his said water was advertised and recommended by him; to the substantial injury of such competitors in commerce, and to the injury of the public:

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.

Mr. Edw. W. Thomerson for the Commission.

Mr. Clinton F. Seccombe, of Hollywood, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-