

IN THE MATTER OF
MORRIS GOTTSEGEN AND DAVID JACOBY, DOING BUSINESS AS MILLS SALES COMPANY

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

Docket 2864. Complaint, June 30, 1936—Decision, Sept. 25, 1936

Where a firm engaged as importers of and wholesale dealers in a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, shaving creams, offered in pretended "giant" sizes, razor blade hones, and other toilet articles—

- (a) Described many articles and items of merchandise listed in their catalogs and price lists as possessing retail values many times in excess of the actual selling price to the retailer or other purchaser and many times in excess of the actual value thereof, and stamped or printed on various items and articles offered, or on labels attached thereto, or on containers thereof, retail prices many times in excess of actual price thereof as sold by peddler or retailers to consuming public, and many times in excess of their true and actual value, through such practice as designating as "Honor" brand "Dental Creams, Large Sizes Marked 35¢", creams with said price printed on cartons thereof, but offered at 60¢ per dozen or \$6.50 per gross, "Brushless" brand "Shaving Cream—Giant 50¢, 60¢, and 75¢ Sizes", creams with 60¢ printed as price on cartons, but offered at 72¢ a dozen or \$8.25 per gross, and razor blade hones "Marked to sell at \$1.00", while offered at 45¢ per dozen or \$5.00 per gross, and in their catalogs set forth many other instances showing the "spread" between the dozen or gross rate at which the commodities were offered and sold, and the fictitious retail prices marked thereon, which various prices were not those at which different items were expected to be sold, but were greatly in excess of those at which same were intended to be sold and were sold in usual course of trade;
- (b) Caused word "Manufacturers" to appear on letterheads and advertising matter used by them in soliciting sale of and selling their aforesaid products, notwithstanding fact they were not manufacturers and did not own, operate, or control any factory in which products sold and distributed by them in interstate commerce were made;
- (c) Used abbreviation "Dr." in connection with various commodities offered by them, through such statements as "Dr. Jay's High Quality Tooth Brushes," with depiction of brush and name "Dr. Jay" on handle thereof, and thus associated said name with their "Rubbing Alcohol," and with certain dental creams, in connection with which name "Dr. Sach's" was also set forth, notwithstanding facts products thus marked, stamped, branded, advertised, and sold were not made in accordance with design or under supervision of a doctor and did not contain special or scientific features as a result of medical advice or services;

With result of placing in hands of peddlers and retailers buying for resale an instrument and means enabling them to commit a fraud upon a substantial portion of the consuming public, through representing and offering said tooth

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brushes and other articles as genuinely superior products produced by manufacturers, with intent of selling same in usual course of trade to general consuming public at and for retail price stamped thereon or on containers thereof, in accordance with long standing and well understood custom by which quality is associated with suggested retail price stamped on product involved, and with intent and effect of misleading a substantial portion of the consuming public into belief that said various items were superior products sold and distributed by said individuals with intent that they should be sold at retail at a price closely proximating that stamped thereon, and that they were composed of superior ingredients and ordinarily sold in usual course of trade at such approximate prices, and that said individuals were manufacturers and large scale operators and distributors and conducted their business on such a scale as to assure purchasers of superior quality and closer prices through trading with them, and that products were made in accordance with design and under supervision of a doctor and contained special or scientific features as result of medical advice or services, and that products at prices at which actually offered represented bargains not ordinarily obtainable; and

With tendency and capacity to mislead and deceive distributors and purchasing public into erroneous belief that said statements and representations were true and with effect of inducing members of public to buy said products on account of such erroneous beliefs, and with result, by reason of such false and misleading statements and representations and added inducements therein for substantial number of retail merchants, as well as consumer purchasers, to buy such products, of diverting a substantial volume of trade from competitors, including those who, as manufacturers and distributors, truthfully advertise and represent the nature, merit, and value of their respective products, and those who do not advertise or represent their merchandise as stamped or marked with price marks greatly exceeding their actual intended retail sale value or retail sale price, or represent same as made in accordance with design or under supervision of a doctor, etc., as above set forth; to the consequent damage and injury of manufacturers and distributors and injury of general public, and to the substantial injury of competition in interstate commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Joseph C. Fehr 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 Morris Gottsegen and David Jacoby, copartners trading as Mills Sales Company, 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

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it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Morris Gottsegen and David Jacoby, are copartners trading as Mills Sales Company, having their principal office and place of business located at 901 Broadway, in the city of New York, State of New York, with a branch office also located in the city of New York and another branch office located in the city of Chicago, State of Illinois. Respondents have been for more than one year last past engaged in business as importers of and wholesale dealers in a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, razor blade hones, and other toilet articles. In the course and conduct of their business, respondents offer said products for sale and sell the same in commerce between the State of New York and the several States of the United States and in the District of Columbia.

When said products are sold, respondents transport or cause the same to be transported from their principal place of business in the State of New York or one of their aforesaid branch offices, to purchasers thereof located in States of the United States other than the State from which shipment originated, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so manufactured and sold by respondents, between and among the various States of the United States and in the District of Columbia. Respondents are now and for more than one year last past have been engaged in substantial competition with other partnerships, and with individuals, firms, and corporations engaged in the manufacture of like and similar products and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, the respondents, in soliciting the sale of and in selling their commodities and for the purpose of creating a demand upon the part of the consuming public for said commodities, now cause and for more than one year last past have caused their commodities to be advertised through the medium of catalogs, price lists and other printed matter published, issued, and circulated through the United States mails, to their customers and prospective customers in the various States of the United States and in the District of Columbia. In said ways and by said means, respondents make and have made to the general public many unfair, false, and misleading statements with reference to the commodities offered by them for sale. Many articles and items of merchandise listed in said catalogs and price lists are

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described as possessing retail values many times in excess of the actual selling price by the respondents to the retailer, or other purchaser, and many times in excess of the actual value thereof. A number of the said items and articles of merchandise, described in said catalog, have retail prices stamped or printed thereon, on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public. The retail prices, so stamped or printed as aforesaid, are many times in excess of the actual selling price of the said items or articles of merchandise by the peddler or retailer to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed as aforesaid, are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

A portion of such statements and representations made by the respondents regarding the selling prices and value of the commodities thus offered by them for sale are as follows:

"Honor" brand "Dental Creams, Large Sizes Marked 35¢," offered at 60¢ per dozen, or \$6.50 per gross; the price of 35¢ was printed on the cartons in which packed;

"Seven Star" brand "Dental Creams—Giant 50¢ and 60¢ Sizes," offered at 72¢ per dozen or \$8.50 per gross; the prices of 50¢ and 60¢ were printed on the carton in which packed;

"Brushless" brand "Shaving Cream—Giant 50¢, 60¢, and 75¢ Sizes," offered at 72¢ per dozen or \$8.25 per gross, and the price of 60¢ was printed on the cartons;

A razor blade hone, "Marked to sell at \$1.00," offered at 45¢ per dozen or \$5.00 per gross.

The said catalogs contain many other instances showing the "spread" between the dozen or gross rate at which said commodities were offered for sale and sold and the fictitious retail prices marked thereon.

The prices placed upon said labels and appearing in said catalog as the value of said products were not and are not the prices at which the same were or are expected or intended to be sold, but were and are greatly in excess of the prices at which the same were sold or intended to be sold in the usual course of trade.

The statement and representation in such catalogs that their "Brushless" brand of shaving cream was put up in "Giant Sizes" was and is inaccurate and misleading; in fact said shaving cream is not put up in packages of sizes known to the trade and the purchasing public as "Giant" sizes.

Said respondents further cause and have caused the word "Manufacturers" to appear on their letterheads and advertising matter used in soliciting the sale of and selling their products in interstate com-

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merce; when in truth and in fact, said copartners were not and are not manufacturers, and do not and did not own, operate, or control any factory wherein the products sold and distributed by them in interstate commerce, or any of them, were made or fabricated.

Among other statements and representations made by the respondents regarding the prices and value of the commodities offered by them for sale are the following:

"Dr. Jay's High Quality Tooth Brushes", accompanied by a pictorial representation of a brush, showing the name "Dr. Jay", on the handle;

"Rubbing Alcohol", accompanied by a pictorial representation of a bottle of said product, showing the words "Dr. Jay's" on the label;

"Dental Creams" * * * Dr. Sach's; and

"Dental Creams"—Dr. Jay's; accompanied by a pictorial representation of the latter product, showing the words "Dr. Jay's Milk of Magnesia Dental Cream" on the carton and on the tube in which said product was packed.

The products so marked, stamped, branded, advertised, and sold in interstate commerce were not and are not made in accordance with the design and/or under the supervision of a doctor, as represented, and did not nor do they contain special or scientific features which were or are the result of medical advice or services.

PAR. 3. The retail prices, as indicated above, appearing on the items of merchandise or on the containers thereof, are not and were not intended by either the respondents or the purchaser purchasing for resale, to be the true retail price or the true retail value of the merchandise so price marked. The retail prices, as indicated, appearing on the items of merchandise or on the containers thereof, were intended by the respondents and by the purchaser purchasing for resale, to be far in excess of the price intended to be charged and actually charged on a sale of merchandise to the ultimate consumer purchasing in the usual course of trade, and far in excess of the true value of the various items of merchandise so price marked.

PAR. 4. Over a period of many years manufacturers have, in many trades, formed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer and retailer and, consequently, to represent the approximate retail sale value of the item. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item is manufactured. The public generally understands the custom herein

detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has expressed, and has had, a marked preference for dental creams, shaving creams, toilet articles, and similar household novelties that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary ingredients or with inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of the product and its resulting higher value. Whenever a genuinely superior product, so stamped or marked with the retail price thereof, is offered for sale at a substantially reduced price, the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof, over ordinary products sold for the regular price which is lower than the normal retail price of the superior product in the customary course of trade.

Also, a substantial portion of the purchasing public has a marked preference for dealing with and purchasing items of merchandise from manufacturers or distributors who operate on a large scale and do a large volume of business, believing that superior quality and closer prices can be secured by dealing with such distributor.

PAR. 5. The false and misleading advertising and representations hereinabove set out, together with the false and fictitious price markings herein set out, on the part of the respondents, places in the hands of the aforesaid peddlers and retailers, buying for resale, an instrument and a means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent and offer for sale, and sell, the said tooth brushes, shaving cream, dental cream, and other toilet articles, more fully described in paragraph 2, as genuinely superior products produced by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for a retail price stamped on the products or on their containers.

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There are among the competitors of the respondents in interstate commerce, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products. There are also among the competitors of respondents, manufacturers and distributors of like and similar products who do not advertise or represent through their catalogs and other advertising media that the merchandise offered for sale by them is stamped or marked with price marks greatly exceeding the actual intended retail sale value or retail sale price of the merchandise offered for sale, and who do not advertise or represent through their catalogs that their merchandise was made in accordance with the design and/or under the supervision of a doctor and that they contain special or scientific features which are the result of medical advice or services.

PAR. 6. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale items of merchandise as described in paragraph 2, is to mislead a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

(1) That the various items of merchandise described in respondents' catalogs, as set forth in paragraph 2 hereof, were and are superior products sold and distributed by respondents with the intent and purpose that said products would be sold at retail at a price closely approximating the price stamped thereon;

(2) That said products, because of the price marks affixed or stamped thereon, are products composed of superior ingredients and are products that ordinarily retail, in the usual course of trade, for prices closely approximating the prices stamped on said merchandise;

(3) That the respondents are manufacturers of said products and large scale operators and distributors and conduct their business on such a scale as to assure purchasers of superior quality and closer prices by trading with such operators;

(4) That such products are made, sold, and distributed in accordance with the design and/or under the supervision of a doctor and that they contain special or scientific features which are the result of medical advice or services.

The foregoing false and misleading statements and representations on the part of respondents are added inducements for a substantial number of retail merchants, as well as consumer purchasers, to buy the products distributed and offered for sale by respondents, and have a tendency and capacity to, and do divert a substantial volume of trade from competitors of respondents engaged in similar busi-

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nesses, with the result that substantial quantities of said products as described in paragraph 2 hereof are sold to said retailers and to the consuming public on account of said beliefs induced by said false and misleading representations, and as a consequence thereof, substantial injury has been and is being done by respondents to competition in interstate commerce.

PAR. 7. Said acts and practices of respondents are all to the prejudice of the public and respondents' 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 the 30th day of June 1936, issued and served its complaint in this proceeding upon Morris Gottsegen and David Jacoby, copartners, trading as Mills Sales Company, 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, the respondents herein filed separate answers thereto, in which answers the respondents stated that they waived hearing on the charges set forth in the complaint, that they admitted all of the material allegations of the complaint to be true and that they consented that the Commission may, without trial, without further evidence and without any intervening procedure, make, enter, issue, and serve upon them its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter this proceeding regularly came on for final hearing, and the Commission having duly considered the same, and being now 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 respondents, Morris Gottsegen and David Jacoby, have been for more than one year last past, copartners trading as Mills Sales Company with their principal place of business located at 901 Broadway in the city of New York, State of New York. They

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also operated a branch office in New York City and another branch office located in the city of Chicago, State of Illinois. On or about February 19, 1936, the said respondents terminated and dissolved their partnership since which time the management and operation of said Mills Sales Company has been carried on under the direction of the respondent, David Jacoby, at the same place of business located at 901 Broadway, in the city of New York, State of New York.

Respondents have been for more than one year last past engaged in business as importers of and wholesale dealers in a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, razor blade hones, and other toilet articles. In the course and conduct of their business, respondents have offered said products for sale in commerce between the State of New York and the various other States of the United States, and in the District of Columbia.

In the sale of said products respondents have transported or caused the same to be transported from their principal place of business in the State of New York or one of their aforesaid branch offices, to the purchasers thereof located in States of the United States other than the State from which the shipment originated, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so distributed and sold by respondents, between and among the various States of the United States, and in the District of Columbia. For more than one year last past respondents have been engaged in substantial competition with other partnerships and with individuals, firms, and corporations engaged in the manufacture and distribution of like and similar products and in the sale thereof in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, the respondents, in soliciting the sale of and in selling their commodities and for the purpose of creating a demand upon the part of the consuming public for said commodities, have for more than one year last past caused their commodities to be advertised through the medium of catalogs, price lists, and other printed matter published, issued, and circulated through the United States mails, to their customers and prospective customers in the various States of the United States, and in the District of Columbia. In said ways and by said means, respondents have made to the general public many unfair, false, and misleading statements with reference to the commodities offered by them for sale. Many articles and items of merchandise listed in said catalogs and price lists have been described as possessing retail values many times in excess of the actual selling price by

the respondents to the retailer, or other purchaser, and many times in excess of the actual value thereof. A number of the said items and articles of merchandise, described in said catalogs, have retail prices stamped or printed thereon, on the labels attached thereto, or on the containers in which they have been offered for sale and sold to the public. The retail prices, so stamped or printed as aforesaid, are many times in excess of the actual selling price of the said items or articles of merchandise sold by the peddler or retailer to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

A portion of such statements and representations made by the respondents regarding the selling prices and value of the commodities thus offered by them for sale and which the respondent, David Jacoby, has continued to make since the dissolution of the partnership, as aforesaid, and which he now makes, are as follows:

"Honor" brand "Dental Creams, Large Sizes Marked 35¢", offered at 60¢ per dozen, or \$6.50 per gross; the price of 35¢ was printed on the cartons in which packed;

"Seven Star" brand "Dental Creams—Giant 50¢ and 60¢ Sizes", offered at 72¢ per dozen or \$8.50 per gross, the prices of 50¢ and 60¢ were printed on the carton in which packed;

"Brushless" brand "Shaving Cream—Giant 50¢, 60¢ and 75¢ Sizes", offered at 72¢ per dozen or \$8.25 per gross, and the price of 60¢ was printed on the carton;

A razor blade hone, "Marked to sell at \$1.00", offered at 45¢ per dozen or \$5.00 per gross.

The said catalogs contain many other instances showing the "spread" between the dozen or gross rate at which said commodities were offered for sale and sold and the fictitious retail prices marked thereon.

The prices placed upon said labels and appearing in said catalogs as the value of said products were not and are not the prices at which the same were or are expected or intended to be sold, but were and are greatly in excess of the prices at which the same were sold or intended to be sold in the usual course of trade.

The statement and representation in such catalogs that their "Brushless" brand of shaving cream was put up in "Giant Sizes" was and is inaccurate and misleading; in fact, said shaving cream is not put up in packages of sizes known to the trade and the purchasing public as "Giant" sizes.

Said respondents further have caused the word "Manufacturers" to appear on the letterheads and advertising matter used in soliciting

the sale of and selling the aforesaid products in interstate commerce; when in truth and in fact, said respondents, Morris Gottsegen and David Jacoby, were not and are not manufacturers, and do not and did not own, operate, or control any factory wherein the products sold and distributed by them in interstate commerce, or any of them, were made or fabricated.

Among other statements and representations made by the respondents regarding the prices and value of the commodities offered by them for sale are the following:

"Dr. Jay's High Quality Tooth Brushes", accompanied by a pictorial representation of a brush, showing the name "Dr. Jay" on the handle;

"Rubbing Alcohol", accompanied by a pictorial representation of a bottle of said product, showing the words "Dr. Jay's" on the label;

"Dental Creams" * * * Dr. Sach's; and

"Dental Creams"—Dr. Jay's; accompanied by a pictorial representation of the latter product, showing the words "Dr. Jay's Milk of Magnesia Dental Cream" on the carton and on the tube in which said product was packed.

The products so marked, stamped, branded, advertised, and sold in interstate commerce were not and are not made in accordance with the design and/or under the supervision of a doctor, as represented, and did not nor do they contain special or scientific features which were or are the result of medical advice or services.

PAR. 3. The retail prices which, as indicated above, appear on the items of merchandise or on the containers thereof, are not and were not intended by either the respondents or the purchaser purchasing for resale to be the true retail price or the true retail value of the merchandise so price marked. The retail prices thus appearing on the items of merchandise or on the containers thereof, were intended by the respondents and by the purchaser purchasing for resale, to be far in excess of the price intended to be charged and actually charged on a sale of merchandise to the ultimate consumer purchasing in the usual course of trade, and far in excess of the true value of the various items of merchandise so price marked.

PAR. 4. Over a period of many years manufacturers have, in many trades, formed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer and retailer and, consequently, to represent the approximate retail sale value of the item. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item

is manufactured. The public generally understands the custom herein detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has expressed, and has had, a marked preference for dental creams, shaving creams, toilet articles, and similar household novelties that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary ingredients or with inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of the product and its resulting higher value. Whenever a genuinely superior product, so stamped or marked with the retail price thereof, is offered for sale at a substantially reduced price, the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof, over ordinary products sold for the regular price which is lower than the normal retail price of the superior product in the customary course of trade.

A substantial portion of the purchasing public has shown a marked preference for dealing with and purchasing items of merchandise from manufacturers or distributors who operate on a large scale and do a large volume of business, believing that superior quality and closer prices can be secured by dealing with such distributor.

PAR. 5. The false and misleading advertising and representations hereinabove set out, together with the false and fictitious price markings herein set out, on the part of the respondents, places in the hands of the aforesaid peddlers and retailers, buying for resale, an instrument and a means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent and offer for sale, and sell, the said tooth brushes, shaving cream, dental cream, and other toilet articles, more fully described in paragraph 2, as genuinely superior products produced by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for a retail price stamped on the products or on their containers.

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There are among the competitors of the respondents in interstate commerce, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products. There are also among the competitors of respondents, manufacturers and distributors of like and similar products who do not advertise or represent through their catalogs and other advertising media that the merchandise offered for sale by them is stamped or marked with price marks greatly exceeding the actual intended retail sale value or retail sale price of the merchandise offered for sale, and who do not advertise or represent through their catalogs that their merchandise was made in accordance with the design and/or under the supervision of a doctor and that they contain special or scientific features which are the result of medical advice or services.

PAR. 6. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale items of merchandise as described in paragraph 2, is to mislead a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

(1) That the various items of merchandise described in respondents' catalogs, as set forth in paragraph 2 hereof, were and are superior products sold and distributed by respondents with the intent and purpose that said products would be sold at retail at a price closely approximating the price stamped thereon;

(2) That said products, because of the price marks affixed or stamped thereon, are products composed of superior ingredients and are products that ordinarily retail, in the usual course of trade, for prices closely approximating the prices stamped on said merchandise;

(3) That the respondents are manufacturers of said products and large scale operators and distributors and conduct their business on such a scale as to assure purchasers of superior quality and closer prices by trading with such operators;

(4) That such products are made, sold, and distributed in accordance with the design and/or under the supervision of a doctor and that they contain special or scientific features which are the result of medical advice or services.

The foregoing false and misleading statements and representations on the part of respondents are added inducements for a substantial number of retail merchants, as well as consumer purchasers, to buy the products distributed and offered for sale by respondents, and have a tendency and capacity to, and do divert a substantial volume of trade from competitors of respondents engaged in similar businesses, with the result that substantial quantities of said products

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as described in paragraph 2 hereof are sold to said retailers and to the consuming public on account of said beliefs induced by said false and misleading representations, and as a consequence thereof, substantial injury has been and is being done by respondents to competition in interstate commerce.

PAR. 7. The use of each and all of the foregoing false and misleading statements and representations by the respondent, as set out in paragraphs 2, 3, and 4 hereof, have had and do have the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that said statements and representations are true, and have induced and do induce members of the public to purchase the products of the said respondents on account of such erroneous belief, to the consequent damage and injury of manufacturers and distributors and to the injury of the general public, and said representations have unfairly diverted trade to said respondents from competitors and thereby substantial injury has been done by respondents to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondents, Morris Gottsegen and David Jacoby, formerly copartners trading as Mills Sales Company, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning 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 and the separate answers of the respondents dated September 8, 1936, in which answers respondents admit all of the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of the law charged in the complaint; and the Commission having made its findings as to the facts and 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."

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It is ordered, That the time within which answers may be filed by said respondents be, and the same hereby is, extended from August 22, 1936, to this date, and that the separate answers of the respondents, Morris Gottsegen and David Jacoby, formerly trading as Mills Sales Company, be, and the same hereby are, received and filed.

It is further ordered, That the respondents, Morris Gottsegen and David Jacoby, formerly copartners trading as Mills Sales Company, individually, jointly or separately, or through or by means of any copartnership, firm, or corporation, and their associates, agents, servants, representatives, and employees, in connection with the offering for sale, sale, and distribution of general merchandise and peddlers' supplies, including tooth brushes, shaving cream, rubbing alcohol, razor blade hones, and other toilet articles and household novelties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from—

Representing, directly or indirectly, through circulars, catalogs, labels, or any other form of printed matter, or by radio broadcasting, or in any other manner—

(1) That the price marks affixed to or stamped on the products sold by them are the regular or customary resale prices for such products when said price marks are fictitious and greatly in excess of the regular and customary prices at which said products are sold or offered for sale at retail;

(2) That the products sold by them are designed by or are compounded under the supervision of a doctor or one possessing special knowledge of dental hygiene and pharmacology;

(3) That respondents or either of them are manufacturers of said products and are large-scale operators in and distributors of said products, or that they conduct their business on such a large scale as to assure purchasers of said products that they will receive products of superior quality and at lower prices by trading with respondents; and

(4) That the fictitious and excessive prices at which such or similar products are offered for sale or sold or intended to be sold by respondents are the regular retail prices customarily received for said products.

And it is further ordered, That the said respondents shall, within 60 days from the date of the service upon them of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF
ATLANTIC COAST OIL COMPANY OF NEW YORK, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914.*Docket 2865. Complaint, June 30, 1936—Decision, Sept. 25, 1936*

Where an association, in continuous operation for years and composed of practically all the refiners of motor oil produced from the Pennsylvania strata of oil fields, and of a large number of jobbers and distributors of such motor oil, organized to promote sale thereof, had caused large sums of money to be spent for such purpose and adopted emblem distinctive in arrangement, shape, color, and wording, and featuring words "Guaranteed 100 Per Cent Pure Pennsylvania Oil", for use by members on their labels and advertising to signify that distributor was an association member and that oil sold under emblem was pure, unadulterated oil, produced from said strata, so that, as result of such adoption and association activities, said emblem and name "Pennsylvania", together with derivations thereof, had acquired a very definite and valuable secondary meaning to purchasing public in connection with sale of motor oil as indicating and suggesting a pure, unadulterated oil produced from said Pennsylvania strata, such as decidedly preferred by substantial portion of consuming public; and thereafter a corporation engaged in business of blending and wholesaling motor oils and greases in competition with others similarly engaged—

- (a) Caused its products to be offered for sale and sold in cans or containers bearing aforesaid emblem, together with phrase "Guaranteed 100 Per Cent Pure Pennsylvania Oil Specially Processed", and either word "Pennsylvania" or some derivation thereof and phrase "Permit No. —", so as to indicate that said oil was pure, unadulterated Pennsylvania oil and that it was a member of said association, notwithstanding fact that oil in question was not such a product, but was composed of a blend of oils produced from other territories, and it was not a member of association in question, nor entitled to use emblem thereof or word "License" or "Permit" therewith, or word "Pennsylvania" or any derivation thereof in connection with offer and sale of its products; and

Where the Society of Automotive Engineers had developed a system of numbers to indicate viscosities of motor oils and said system of letters and numbers, through long usage, had come to have a very valuable and secondary meaning when used in connection with sale of such products, for which, as thus correctly described, there was a very definite preference on the part of a substantial portion of consuming public; and thereafter aforesaid corporation—

- (b) Caused to appear on cans and containers in which its products were packaged and sold, lettering and numbers used by said society in system thus developed by it to indicate relative viscosities, notwithstanding fact oil thus offered and sold by it under said letters and numbers did not have viscosity thus indicated;