

Complaint

IN THE MATTER OF

W. A. GIBBS & SON, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914.*Docket 2534. Complaint, Aug. 30, 1935—Decision, Sept. 30, 1936.*

Where a corporation engaged in the manufacture and sale of animal traps, including its so-called "Two-Trigger" trap, developed by its president for purpose of attempting to eliminate or reduce to a minimum escapes, misses, losses, and "wring-offs" in trapping kind of animals for which adapted, and most generally used for trapping muskrats, and which had been highly successful in meeting the great difficulty encountered with use of single-jaw products in trapping such animals, from the considerable proportion of such escapes, etc., and certain tests of which indicated 100% perfect efficiency so far as wring-offs were concerned—

Represented, in catalogs, circulars, newspaper advertisements, and in other ways, that use of its said "Two-Trigger" trap assured a 100% catch, held every muskrat and prevented it from twisting and turning, and was escape-proof and eliminated wring-offs, through such statements as "Every Catch Stays Caught," "No Wring-Offs—No Losses," "Inner Trap Grips foot. Outer trap grips body," etc., "Finally the trap with 100% catch was perfected. It held every muskrat. It stopped the wring-offs," etc., "The Only 100% Muskrat Trap";

Facts being that trap, while highly successful, had not been 100% successful in preventing escapes, misses, losses, and wring-offs, and certain percentage of latter had occurred in practical use by trappers, as well as failures in other particulars, due to various factors and differences in conditions of use as contrasted with conditions prevailing under tests or series thereof;

With tendency and capacity to confuse, mislead, and deceive members of public in said particular and induce them to buy said traps because of such erroneous belief, and to divert trade to it from competitors, among whom there are those who do not make the same or similar misleading representations in regard to their said products, and with effect of so diverting business to it from such competitors, to their substantial injury and prejudice:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. Kennard N. Ware, of Philadelphia, Pa., for respondent.

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

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to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that W. A. Gibbs & Son, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, W. A. Gibbs & Son, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located in the city of Chester in said State. It is now and for more than one year last past has been engaged in the manufacture of animal traps and in the sale thereof between and among the various States of the United States and the District of Columbia, and now causes and for more than one year last past has caused such animal traps when sold by it to be shipped from its place of business in Chester aforesaid to the purchasers thereof, some located in the State of Pennsylvania and others located in various other States of the United States and in the District of Columbia, and there is now and has been for more than one year last past a constant current of trade and commerce by the respondent in animal traps between and among the various States of the United States and the District of Columbia.

Respondent is now and for more than one year last past has been in substantial competition with other corporations, and with persons, firms, and partnerships engaged in the sale of animal traps between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, in selling and in soliciting the sale of animal traps manufactured by it, respondent now represents and for more than one year last past has represented in and by its catalogs, by circulars, newspaper advertisements, and in other ways that the use of a type of animal trap manufactured and sold by it and known as "Gibbs' Two-Trigger" assures a 100% catch, that it holds every muskrat, that it absolutely prevents a muskrat from twisting and turning, that it is escape proof, and that it eliminates wring-offs, and that it holds all of the animals trapped by it.

In truth and in fact the use of the said trap designated "Gibbs' Two-Trigger" does not assure a 100% catch; such trap does not hold every muskrat; the use of such trap does not prevent a muskrat from twisting and turning; it is not escape proof and does not pre-

vent or eliminate wring-offs; and it does not hold all of the animals trapped therein.

PAR. 3. The use by the respondent of the representations set out in paragraph 2 hereof has and has had the capacity and tendency to mislead and deceive and does and has mislead and deceived the purchasing public into the beliefs that such representations are true, and to purchase such traps from respondent in such erroneous beliefs. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers of animal traps who do not misrepresent the efficiency of the animal traps sold by them between and among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is diverted by respondent from such competitors; thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

PAR. 4. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on August 30, 1935, issued and served its complaint in this proceeding upon respondent, W. A. Gibbs & Son, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Kennard N. Ware, attorney for the respondent; and said testimony and other 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 other evidence, and brief in support of complaint, counsel for respondent having elected not to file a brief or to be heard in oral argument; and

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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. Respondent, W. A. Gibbs & Son, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located in the city of Chester in said State. During the course of said hearings, and for more than five years prior thereto, respondent was engaged in the manufacture of animal traps and in the sale thereof between and among the various States of the United States. In the conduct of said business, respondent caused its said animal traps to be shipped from its said place of business in Pennsylvania to purchasers thereof located in various other States of the United States. Respondent, in the sale of its said animal traps, as aforesaid, has been in substantial competition with other individuals, partnerships, and firms engaged in the sale of animal traps between and among the various States of the United States.

PAR. 2. One of the animal traps made and sold by respondent as aforesaid was one designated and described by it as the Gibbs "Two-Trigger" trap. Respondent, in its catalogues, circulars, newspaper advertisements, and in other ways, made representations during the time aforesaid in regard to said "Two-Trigger" trap to the effect that the use thereof assures a 100% catch, that it holds every muskrat, that it absolutely prevents a muskrat from twisting and turning, that it is escape proof, that it eliminates "wring-offs", and that it holds all of the animals trapped thereby. Examples of such representations are the following:

Every Catch Stays Caught.

No Wring-Offs—No Losses.

Inner Trap grips foot. Outer trap grips body. No movement from foot to the shoulder.

Escape-Proof.

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**DOUBLE JAW
Super-Grip
GNAW-PROOF.**

Finally the trap with 100% catch was perfected. It held every muskrat. It stopped the wring-offs. Every rat, whether caught in water or on dry land, stayed caught and with no injury to the fur. Mr. Gibbs called this new trap Two Trigger for it was in reality two traps in one, a small inner trap to grip the leg of the animal and a larger trap to close over the body—a combination of grips which absolutely prevented a rat from twisting and turning. * * *

Two Trigger—The Perfect Muskrat Trap.

It's the Patent

LEG AND BODY GRIP

That Makes This Trap Escape-Proof

No Wring-Offs No Pull-Outs No Get-Aways

The pan never wobbles and if the animal trips the trigger **THE CATCH IS SURE.**

Every Catch Stays Caught in the Escape-Proof Two-Trigger.

No Wring-Offs

No Pull-Outs

No Get-Aways.

No Losses.

Two-Trigger Traps Always Hold the Catch.

Rate Gibbs Two-Trigger as the cheapest trap you can possibly buy, for the reason you do not have any losses by wring-offs, pull-outs, or get-aways.

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The Only 100% Muskrat Trap.

PAR. 3. The Gibbs "Two-Trigger" trap is one that was developed by W. A. Gibbs, president of the respondent company, for the purpose of attempting to eliminate, or to reduce to a minimum, escapes, misses, losses, and "wring-offs" in trapping the kind of animals for which it is adapted. It is most generally used in the trapping of muskrats. The great difficulty with the use of single jaw traps in trapping such animals is, and has been, the considerable proportion of escapes, misses, losses, and "wring-offs." The Gibbs "Two-Trigger" trap, in addition to having the primary jaws corresponding to those in the single jaw trap, has a pair of outer jaws which operate in conjunction with the primary jaws and which are intended to hold the body of the animal so as to prevent movement and escape. The trap has been highly successful in this particular, but it has not been 100% successful in preventing escapes, misses, losses, and "wring-offs." Respondent has conducted certain tests which indicated 100% efficiency, so far as "wring-offs" were concerned, but in practical use by trappers a certain percentage of "wring-offs" has occurred as well as failures in the other particulars enumerated above. So many factors are involved in the use and operation of a trap such as that made and sold by respondent, and conditions of use are so varied, that no two instances of trapping an animal therewith are, or can be, alike. The same may be said of any series of tests therewith. These varied factors and differences in conditions of use contribute to failure, in some instances at least, even though under ideal conditions performance may be 100% successful. It is doubtful whether any trap could be so contrived as to be 100% successful under all conditions and circumstances.

PAR. 4. Respondent's "Two-Trigger" trap does not assure a 100% catch, it does not hold every muskrat, it does not entirely prevent a muskrat from twisting and turning, it is not absolutely escape proof, and it does not entirely prevent or eliminate "wring-offs". Neither does it hold all of the animals trapped therein, or which spring the trap. The mere fact that said trap tends to eliminate such failures, or that it is 100% efficient in some cases, or in certain tests, does not give justification to representations of 100% efficiency.

PAR. 5. The representations of respondent as aforesaid have had the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars as aforesaid and to induce them to purchase respondent's said traps because of such erroneous beliefs en-

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gendered as above set forth and to divert trade to respondent from competitors engaged in the sale in interstate commerce of animal traps designed and intended for the same general use as those made and sold by respondent.

PAR. 6. There are among the said competitors of respondent in the sale of its said traps those who do not make the same or similar misleading representations as those made by respondent, as herein set out, in regard to the traps sold by them and respondent's said acts and practices have tended to and have in fact diverted business to respondent from its said competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, W. A. Gibbs & Son, Inc., are to the prejudice of the public and of respondent's 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 complaint of the Commission, the answer of respondent, testimony and other evidence taken before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of complaint, brief on behalf of respondent and oral argument having been waived by counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, W. A. Gibbs & Son, Inc., its officers, representatives, agents, and employees, and its successors in interest, in connection with the offering for sale, sale and distribution of its animal traps known as Gibbs "Two-Trigger" traps in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

(1) That said traps are 100% efficient in operation or that they effect a 100% catch.

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(2) That they will entirely eliminate misses, escapes, "wring-offs" or losses.

(3) That every animal that springs the trap will "stay caught."

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

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IN THE MATTER OF

AMERICAN MINT CORPORATION 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 2762. Complaint, Apr. 10, 1936—Decision, Oct. 2, 1936.

Where two individuals and a corporation engaged in manufacture and sale of candy, including a packaged assortment of penny pieces of uniform size, shape, and quality, a small number of which contained a sum of money so concealed that purchasers procured same wholly by lot or chance—

Sold such assortments to wholesalers, brokers, and retail chain stores, along with retailers' display cards explaining aforesaid sales plan and money prizes; contrary to public policy as long recognized in the common law and criminal statutes, and to that of the United States Government, and in competition with many who were unwilling to offer and sell candy so packed, assembled, or otherwise arranged for sale to the purchasing public as to involve a game of chance, and refrained therefrom;

With result of placing in hands of others means of conducting a lottery in sale of their products, to induce purchase thereof in preference to competitors', and with result that many dealers and ultimate purchasers were induced to buy the candy thus packed and sold, attracted by said method and manner of packing same and element of chance involved in sale thereof, in preference to that offered and sold by said competitors who do not use such methods, and with tendency and capacity thereby to divert to them trade and custom from said competitors who do not use such a method, to exclude from said candy trade all competitors who are unwilling to, and do not, use same or equivalent method because unlawful, and to tend to lessen competition in said trade and create a monopoly thereof in them and such other distributors as use same or equivalent method, deprive the purchasing public of the benefit of free competition therein, and eliminate from trade in question all actual competitors and exclude all potential competitors who do not adopt and use such or an equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

Burnstine, Geist & Netter, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Ameri-