

IN THE MATTER OF
THE JOHN J. McCANN COMPANY

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

Docket 2926. Complaint, Sept. 22, 1936—Decision, Nov. 2, 1936

Where a corporation engaged in manufacture of artificial limb appliances, including stump socks, as to which there is a marked preference for articles composed of wool, safe from attack by moths, and capable of great durability—

- (a) Represented and advertised that its "Comfort Stump Socks, used properly, should literally never wear out," facts being that while said products, used interchangeably with a reasonable number of others, might remain serviceable for a period of a year or longer, they were susceptible to ordinary wear and tear, and would not last indefinitely, and would wear out;
- (b) Represented and advertised, among other things, that "If any moth is unfortunate enough to come into contact with a Comfort Stump Sock, he dies before he can do any harm," and that said sock had been mothproofed, and that thereafter all such socks would be insured against moth damage for two years from date of purchase by a named insurance company, and that any socks thus damaged within said period would be replaced by said company free, and that such was its method of denying the charge that its said socks were not mothproofed; facts being they were not impervious to such damage, and neither retailers nor members of purchasing and consuming public were protected by insurance, as aforesaid, for two years, or any other period;

With capacity and tendency to deceive and mislead ultimate purchasers into buying such socks from it as and for articles which will last indefinitely and which have been so treated as to render same entirely impervious to moth damage, and which are further insured against such damage, as above set forth, and to mislead and deceive retailers and consuming public so as to induce purchase of aforesaid product in preference to that of other manufacturers, or to pay a higher price therefor than would have been paid but for reliance upon aforesaid representations; and with effect of unfairly diverting trade from competitors engaged in sale of such socks, and who truthfully represent the wearing qualities of their products, their ability to withstand moth-damage, and extent to which purchasers are insured, if at all, against such damage; to the substantial injury of competition in commerce:

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

Mr. James M. Hammond 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 The John

J. McCann Company, a corporation, hereinafter referred to as the respondent, has been and 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. The respondent, The John J. McCann Company, is a corporation organized and existing pursuant to the laws of the State of New Jersey, having its office and principal place of business at 454 Lawrence Street, Burlington, N. J. It is now, and has been, for more than one year last past, engaged in the business of manufacturing, among other artificial limb appliances, an article known as "Stump Socks", and of shipping said product, when sold, to the purchasers thereof, some located in the State of New Jersey, and others located in various 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 by respondent in the aforesaid stump socks. In the course and conduct of its business the respondent is now, and has been, in substantial competition with other corporations, and with partnerships and individuals likewise engaged in the sale of stump socks in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. A stump sock is an article used by persons who have suffered the amputation of a limb, to cover the stump in order to ease the pressure or friction caused by attaching an artificial appliance. These stump socks are generally made from a durable but soft material, and freedom from seams is a highly desirable feature. Since wool is usually the principal article used in their manufacture, ability to withstand damage or destruction by moths is also a highly important feature to both retail dealers who carry the same in stock and to the purchasing public. This marked preference on the part of consumers for a soft, durable, seamless and moth-proof stump covering has been, and is, advertised and exploited by the respondent herein. Respondent markets its stump socks under the name "Comfort Stump Socks" which name is printed on the containers in which the said stump socks are sold, on tags affixed to the same, and on its letterheads, literature and other advertising matter.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, and for more than one year last past, the respondent herein, in soliciting the sale of and in selling its stump socks in commerce as herein set out, states in its correspondence, advertisements, or trade literature, or on its labels and tags, among other things, that:

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One of the most important features of the Comfort Stump Sock is the "finish", which refers particularly to the shaping of the bottom. Until this new finish was developed and patented for exclusive use in Comfort Stump Socks, it was difficult to provide a bottom that was both strong and smooth. The new finish, being seamless is just as smooth as the previous finish of Comfort Stump Socks and by actual tests it doubles the strength just where the greatest strain comes.

Comfort Stump Socks, used properly, should literally never wear out.

Said statements serve as representations on the part of respondent to a substantial portion of the purchasing public, that the respondent's stump socks are, in fact, seamless, and will withstand ordinary wear and tear indefinitely.

In truth and in fact, respondent's stump socks are not seamless and do have seams in the enclosed end or bottom thereof. Said stump socks will not wear indefinitely, but have an average life, under ordinary circumstances, of approximately one year.

PAR. 4. In the course and conduct of its business, as described in paragraph 1 hereof, and for more than one year last past, the respondent herein, in soliciting the sale of and in selling its stump socks in commerce, as herein set out, states in its correspondence, advertisements or trade literature, or on its labels and tags, among other things that:

Now, if any moth is unfortunate enough to come into contact with a Comfort Stump Sock, he dies before he can do any harm.

This Comfort Stump Sock has been moth proofed.

Hereafter, All Wool Comfort Stump Socks will be insured against damage by moths for a period of two years from the date of purchase, by the American Eagle Insurance Co.

Any All Wool Comfort Stump Socks damaged by moth within two years from the date of sale will be replaced by the American Eagle Insurance Co., free of charge.

This is our method of denying the charge that All Wool Comfort Stump Socks are not moth-proof.

Said statements serve as representations on the part of respondent to a substantial portion of the purchasing public, that the respondent's stump socks are, in fact, moth-proof, and that moths do die when they come in contact therewith before they can do any harm, and that the said stump socks are insured for a period of two years after purchase by a reliable insurance company.

In truth and in fact, respondent's stump socks are not moth-proof and are, in fact, susceptible of consumption or damage, in whole or in part, by moths, and retail dealers and other purchasers of respondent's said stump socks are not protected from damage from moths by insurance issued by the American Eagle Insurance Company, the American Eagle Fire Insurance Company, or any other insurance company, or companies, and such moth insurance, if any, only covers

said stump socks while they remain in the possession of the respondent company.

PAR. 5. There are among the competitors of respondent, as set forth in paragraph 1 hereof, other corporations, firms, partnerships, and individuals who do sell stump socks in interstate commerce, who do not misrepresent their product to be "seamless", or to "literally never wear out", or that the same have been "moth-proofed" or that the purchasers thereof are insured against damage by moths for two years, or any other time, and who do not in any manner misrepresent the character or quality of their product.

PAR. 6. The acts and practices of respondent in falsely representing, advertising, marking, and branding its products or falsely marking, branding or representing in its circulars or advertising that the enclosed ends or feet of its stump socks are "seamless"; that they "should literally never wear out"; that they have been "moth-proofed"; or that a moth "will die after coming in contact therewith before he can do any harm"; or that the purchasing public or the retail trade is insured against damage by moths for a period of two years, or any other period, are all, or any of such or similar representations, calculated to mislead and deceive, and have, and have had, the capacity, tendency and effect of misleading and deceiving, and have misled and deceived, a substantial portion of the purchasing and consuming public into the erroneous belief that all of said representations are true and into the purchase of respondent's stump socks in reliance on said representations. Respondent has also placed in the hands of wholesalers, jobbers, and retailers, the means of making false and misleading representations as above described to the purchasing public, by which means, or any of them, it has increased its own sales of said stump socks, so dishonestly advertised or represented, thereby lessening the market for similar goods sold by other manufacturers, merchants, or dealers, the true nature of which is honestly stated.

As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale in interstate commerce of similar stump socks who truthfully represent their respective products. Further, as a result thereof, substantial injury has been and is being done by respondent to the purchasing public and to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been and are all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create

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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, 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 22, 1936 issued, and on September 23, 1936 served, its complaint in this proceeding upon the respondent, The John J. McCann Company, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of the complaint to be true, with the exception of the allegation contained in said complaint to the effect that respondent's stump socks are not seamless, and waiving the taking of further evidence, and all other intervening procedure, in reference to the allegations so admitted to be true, which substituted answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substituted answer, briefs and oral arguments of counsel having been waived, 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 respondent, The John J. McCann Company, is a corporation organized and existing pursuant to the laws of the State of New Jersey, having its office and principal place of business at 454 Lawrence St., Burlington, N. J. It is now, and has been, for more than one year last past, engaged in the business of manufacturing, among other artificial limb appliances, an article known as "stump socks", and of shipping said product, when sold, to the purchasers thereof, some located in the State of New Jersey, and others located in various 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 by respondent in the aforesaid stump socks. In the course and conduct of its business the respondent is now, and has been, in substantial competition with other corporations, and with partnerships and

individuals likewise engaged in the sale of stump socks in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. A stump sock is an article used by persons who have suffered the amputation of a limb to cover the stump, in order to ease the pressure or friction caused by attaching an artificial appliance. These stump socks are made from soft material and are generally composed of wool. Because of this fact, the ability of the article to withstand damage or destruction by moths is a highly important feature to both retail dealers, who carry the same in stock, and to the purchasing public. This marked preference on the part of consumers for a stump sock composed of a woollen fabric safe from attack by moths and capable of great durability has been, and is, advertised and exploited by the respondent herein. The respondent markets its stump socks under the name "Comfort Stump Socks", which name is printed on the containers in which the said stump socks are sold, on tags affixed to the same, and on its letterheads, literature, and other advertising matter.

PAR. 3. In soliciting the sale of and in selling its stump socks in commerce as herein set out, respondent states in its correspondence, advertisements, or trade literature, or on its labels and tags, among other things, that said stump socks are seamless. Respondent's stump socks are, in fact, seamless.

PAR. 4. In soliciting the sale of and in selling its said stump socks in commerce, the respondent has also advertised and represented, among other things, that:

Comfort Stump Socks, used properly, should literally never wear out.

Respondent's stump socks are susceptible to ordinary wear and tear, will not last indefinitely, and will wear out; but when used interchangeably with a reasonable number of other stump socks may remain serviceable for a period of one year or longer.

PAR. 5. In soliciting the sale of and in selling its said stump socks in commerce, respondent has also advertised and represented, among other things, that:

Now, if any moth is unfortunate enough to come into contact with a Comfort Stump Sock, he dies before he can do any harm.

This Comfort Stump Sock has been mothproofed.

Hereafter, All Wool Comfort Stump Socks will be insured against damage by moths for a period of two years from the date of purchase, by the American Eagle Insurance Company.

Any All Wool Comfort Stump Socks damaged by moth within two years from the date of sale will be replaced by the American Eagle Insurance Co., free of charge.

This is not our method of denying the charge that All Wood Comfort Stump Socks are not mothproofed.

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The use by the respondent of these representations has a tendency and capacity to, and does create the impression and belief among the purchasing public that moths will not attack respondent's stump socks and that they are impervious to damage in that manner and that, should any stump sock purchased by a retailer or by a member of the public become in any way damaged by moths within two years after purchase, that the same will be replaced free of charge by the American Eagle Insurance Company or some other insurance company.

Respondent's said stump socks are not impervious to damage by moths and neither retail merchants nor members of the purchasing and consuming public are protected by insurance issued by the American Eagle Insurance Company, or any other insurance company, against damage by moths for two years after purchase, or for any other period of time.

PAR. 6. The use by respondent of the aforesaid representations, as herein related, are false and misleading and have the capacity and tendency to deceive and may deceive and mislead ultimate purchasers into buying stump socks from respondent in the belief that they are purchasing an article which will not wear out and which will last indefinitely, and which has been treated in such a manner as to render the same entirely impervious to damage by moths, and that the said stump socks so purchased are insured against damage by moths by the American Eagle Insurance Company, or other insurance company, free of charge, for a period of two years following purchase of the same. These representations mislead and deceive or may mislead and deceive retail merchants and the consuming public so as to induce them to purchase respondent's product in preference to the products of other manufacturers of stump socks or to pay a higher or greater price therefor than would have been paid had not the purchase been made in reliance upon these representations.

PAR. 7. The use by respondent of the aforesaid practices has the tendency and capacity to, and does, unfairly divert trade from competitors engaged in selling stump socks in commerce between and among the various States of the United States who truthfully represent the wearing qualities of their products, their ability to withstand damage from moths, and the extent to which purchasers are insured, if at all, against damage by moths, and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, The John J. McCann Company, except as to the matter set out in paragraph 3 above, are to the prejudice of the public and of respondent's com-

petitors, 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 answer filed herein on October 26, 1936, by respondent, admitting all the material allegations of the complaint to be true with the exception of the allegation contained in said complaint to the effect that respondent's stump socks are not seamless, and waiving the taking of further evidence and all other intervening procedure as to said admitted allegations, 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, The John J. McCann Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its stump socks in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. Through the use of the phrase "literally never wear out", or any other word or words of similar import or effect that the life of said stump socks is indefinite and that they are impervious to ordinary wear and tear;

2. That said stump socks are mothproof or that a moth, coming in contact with the same will die before it can do any harm; or that the said stump socks are impervious to damage by moths;

3. That purchasers of the said stump socks are insured against damage by moths for a period of two years or for any other period of time from the date of purchase, by the American Eagle Insurance Company, or any other insurance company, unless and until retail dealers and purchasers or consumers of said stump socks are so insured.

It is further ordered, That the complaint in this proceeding be, and the same is hereby dismissed insofar as the same relates to an allegation contained therein to the effect that respondent's stump socks are not seamless.

It is further ordered, That the respondent shall, within 60 days from the date of the service upon it of this order, file with this Commission, its report in writing, stating the manner and form in which it shall have complied with this order.

IN THE MATTER OF
SAVAGE CANDY COMPANY

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

Docket 2606. Complaint, Oct. 31, 1935—Decision, Nov. 3, 1936

Where a corporation engaged in manufacture and sale of candy, including both "straight goods," and "break and take" and "draw" or "deal" assortments, in which, as case might be, (1) chance selection of one of a number of penny pieces of uniform size and shape, enclosed, colored center of which differed from that of majority of said penny pieces, entitled purchaser to receive, without charge, one of larger pieces included therewith, and in which purchaser of last one of said penny pieces received as prize, box of candy; (2) chance selection depended upon concealed color of individually wrapped pieces of candy making up assortment; (3) identical assortments were sold with push cards and receipt of one of larger pieces included depended upon chance selection of certain numbers from 200-hole push card supplied therewith, and in which purchaser pushing last disk from card received box of candy prize; and, (4) assortment composed of candy bars and pound box of candy, in which so-called "Baseball" assortment, purchaser of a punch received, for five cents charged, from one to five candy bars, depending upon legend punched by chance from push card included, and box of candy was secured by last punch, as set forth by said cards' explanatory legends—

Sold said various assortments, with cards, to retailers, wholesalers, and jobbers knowingly assembled and packed for resale, without alteration, addition, or rearrangement, to consuming, purchasing public, by lot or chance, by retailers, which, as sellers of its said candy, included grocery, candy, and drug stores, stores in vicinity of schools, and, in some cases, cigar stores, and stores of which, in case of small establishments, are frequently near schools and attract trade of school children, substantial proportion of whom constitute the consumers of the lottery or prize package candy, and who, given choice, purchase same in preference to "straight" goods because of lottery or gambling feature connected therewith, and chance of becoming a winner, and sale of which "straight" goods candy showed a marked decrease whenever and wherever lottery or prize candy appeared in its markets by reason of said gambling feature connected therewith;

With result that many competitors dealing in "straight goods" candy only, and who regard sale and distribution of other as morally bad and as encouraging gambling, and especially among children, its largest class, by far, of consumer-purchasers, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and refuse to sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage, retailers bought from it and others employing similar methods of sale as enabling them to sell more candy, and trade was diverted to it and such others from aforesaid competitors dealing in straight goods, and able to compete on even terms only