

Syllabus

IN THE MATTER OF

WOLF CREEK SOAP COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3116. Complaint, Apr. 26, 1937—Decision, June 29, 1937*

Where a corporation engaged in manufacture, sale, and distribution of soap to retailers and peddlers and direct to consuming public, in substantial competition with those engaged in manufacture and distribution of like and similar products and sale thereof in commerce among the various States and in the District of Columbia—

- (a) Described many articles and items listed in its price lists as possessing retail values or prices many times in excess of their actual selling price to retailer or other purchaser, and many times in excess of actual retail price thereof, and thus included items and articles such as soaps and cold creams and combinations with retail prices stamped or printed thereon, or on labels attached thereto, or on containers in which offered and sold to public, which similarly exceeded actual selling price of particular item or article sold by peddler or retailer to consuming public, and were many times in excess of true and actual value, and constituted false and fictitious retail prices representing in no sense either true value or selling price of articles thus marked, and thus placed in hands of aforesaid peddler and retailer purchasers instrument and means enabling them to commit a fraud upon substantial portion of consuming public through representing and offering said articles as genuinely superior products produced by manufacturers for sale in usual course of trade to general consuming public at and for retail price stamped thereon or on containers thereof; and
 - (b) Falsely represented, through use of abbreviation "Dr.", and name of individual, and word "Medicated" in name of one of its aforesaid products or offerings, that medical doctor was connected with derivation of formula from which said soap combination was made, and that it had ingredients of such a character as to give it substantial therapeutic value as a true medicated soap, facts being no physician was in any way connected with such formula or manufacture of said product, which contained no ingredients of the therapeutic nature in such quantities, if present at all, as to give such soap any such value;
- With effect of misleading substantial portion of consuming public in the several States and in said District by inducing them mistakenly and erroneously to believe that items of merchandise described as aforesaid were of superior value and sold and distributed by it with intent that they should be resold at retail prices closely approximating those stamped thereon, and that such products, because of prices thus affixed or stamped, were composed of superior ingredients and ordinarily retailed, in usual course of trade, for prices closely approximating those marked thereon as aforesaid, and that a doctor of medicine derived formula from which aforesaid soap combination was made, or was connected with manufacture thereof, and with tendency and capacity to mislead and deceive distributors and

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purchasing public into erroneous and mistaken belief that such statements and representations were true, and with effect of inducing members of public to buy its said products by reason of such erroneous beliefs, and of thereby unfairly diverting trade to it from competitors who do not make use of same or similar acts or practices; 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. S. Brogdyne Teu II for the Commission.

Holland & Holland, of Dayton, Ohio, 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 the Wolf Creek Soap Company, an Ohio corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wolf Creek Soap Company, is a corporation organized and doing business under the laws of the State of Ohio, having its principal place of business in the city of Dayton, State of Ohio. It is now, and has been for more than one year last past, engaged in the manufacture and in the sale and distribution of soap 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 its said business, respondent is now and has been in substantial competition with other corporations, and with individuals, firms, and partnerships likewise engaged in the business of manufacturing and selling soaps and other household novelties in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. When said products are sold, respondent transports, or causes same to be transported, from its place of business in the State of Ohio to purchasers thereof located in States of the United States other than the State of Ohio, 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 sold by respondent between and among the various States of the United States and in the District of Columbia.

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PAR. 4. Respondent in soliciting the sale and in the selling of its commodities, and for the purpose of creating a demand on the part of the consuming public for certain commodities, has advertised its commodities through the media of price lists and other printed matter published, issued and circulated through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 5. In the aforesaid ways and by the aforesaid means, respondent makes and has made to the general public false and misleading statements with reference to the commodities offered for sale by it. Many articles and items of merchandise are priced and described as possessing retail prices and values greatly in excess of the respondent's actual selling price to the retailers or other purchasers, and greatly in excess of the actual value thereof. A number of the said items and articles of merchandise described as aforesaid have fictitious retail prices stamped on the product itself or printed on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public.

PAR. 6. Representative of such statements and representations made by respondent on the containers regarding the selling price and value of the commodities thus offered by it for sale, are the following: "Majestic Assortment of Toilet Soaps—Estimated total value \$1.00;" "Majestic Baby Castile Soap—Price \$.50;" "Lady Estel Cold Cream Soap Combination—Price 75¢;" and "Dr. Bernard's Medicated Health Soap Combination—Price 75¢."

On other labels and cartons used by the respondent many other fictitious retail prices are imprinted. As a result of the use of such fictitious price marks as described, the respondent has led the members of the purchasing public to mistakenly believe that said soaps have retail values approximating said fictitious prices and are made from superior ingredients and are of superior quality.

As a result of the use of the words "Dr. Bernard's" the purchasing public is led into the mistaken and erroneous belief that a medical doctor was, or is, connected with the formation of the formula from which the so-called "Dr. Bernard's Medicated Health Soap Combination" is made, and that said soap has ingredients of such character as to give it substantial therapeutic value as a true medicated soap.

PAR. 7. In truth and in fact, the Majestic Assortment of Toilet Soaps is sold to retail dealers for 8¢ per unit; Majestic Baby Castile Soap is sold to retail dealers for 8¢ per unit; Lady Estel Cold Cream Soap Combination is sold to retail dealers for 8¢ per unit; and Dr. Bernard's Medicated Health Soap is sold to retail dealers for 8¢ per unit.

All of said soaps are in fact made from cheap and inferior ingredients and said soaps themselves are of cheap and inferior quality and are not of such quality as to justify a retail price in any way closely approximating the retail price or value represented.

Further, in truth and in fact, no doctor or physician was in any way connected with the discovery of the formula for, or is now in any way connected with the manufacture of, the so-called "Dr. Bernard's Medicated Health Soap." Said soap does not contain any ingredients that are of therapeutic character in such quantity, if at all, as to give said soap any therapeutic value.

PAR. 8. The respective items above referred to are usually and regularly sold to retail dealers and peddlers for the price indicated in paragraph 7.. The said retail prices at which the products are actually sold to retail customers do not appear on the containers.

PAR. 9. Over a period of many years, manufacturers in many trades have adopted and followed the custom of marking or stamping on an article or item of manufacture, or on the carton thereof, the retail price at which the said manufacturer suggests that the retailer should sell the item or article to the ultimate consumer or purchaser. This suggested retail price so stamped or marked is intended to represent the cost to the manufacturer 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 public generally understands this custom, and has been lead to and does place its confidence in the price marking so stamped and the representations so made as to the quality of the product, to the extent that it purchases a substantial volume of merchandise in reliance upon this aforesaid custom.

PAR. 10. For many years a substantial part of the consuming public has had and has expressed a preference for soaps and for similar household articles which are composed of superior ingredients, and which are produced by the manufacturers 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 or for products made of inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail price on said products as indicating the superior quality and character of the products and their higher value.

Whenever a genuinely superior product so stamped or marked with the retail price thereon is offered for sale at a substantially reduced price, the general purchasing public is lead 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 price thereof over ordinary products sold for their regular price, which is lower than the normal retail value of the superior products in the customary course of trade.

PAR. 11. The retail prices so stamped or printed as aforesaid upon respondent's products are greatly in excess of the selling price of the said items or articles or merchandise by the retailer to the consuming public and are 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 selling price of the articles so price-marked.

PAR. 12. The aforesaid false and misleading advertising and representations, together with the aforesaid false and fictitious price-markings on the part of the respondent, place in the hands of the aforesaid peddlers and retailers buying for resale, an instrument and 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 respondent's soaps as being 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 approximately the retail price stamped on said products or on their containers.

PAR. 13. There are among the competitors of the respondent in commerce, as described in paragraph 2 above, 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 the respondent manufacturers and distributors of like and similar products who refrain from representing, by fictitious price markings, that the merchandise offered for sale by them has merit or value that it does not have.

PAR. 14. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale such items of merchandise as hereinbefore referred to, is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States by inducing them to erroneously and mistakenly believe:

1. That the various soaps sold and distributed by respondent were and are of superior value and were and are made and compounded by respondent with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

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2. That the said products, because of the price marks stamped or fixed thereon, are composed of superior ingredients and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices stamped on the merchandise.

3. That a medical doctor is connected with the compounding and manufacturing of Dr. Bernard's Medicated Health Soap; that said product is made under the formula of a medical doctor; and that said product has substantial therapeutic value.

PAR. 15. The foregoing false and misleading statements and representations on the part of respondent have induced, and still induce, a substantial number of retail merchants, as well as the consumer purchasers of said commodities, to buy the products offered for sale, sold, and distributed by respondent, on account of the aforesaid erroneous and mistaken beliefs. As a result thereof, trade has been diverted from those competitors of respondent engaged in similar businesses, referred to in paragraph 13 above. As a consequence thereof, substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 16. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors, as hereinabove alleged. Said methods, acts, and practices 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 April 26, 1937, issued and served its complaint in this proceeding upon respondent, Wolf Creek Soap 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 thereto, a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel of the Commission, and George F. Holland, counsel for respondent, which said stipulation was thereafter approved by the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the stipulation as to the facts (respondent having waived the filing of a brief); and the Commission

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having duly considered 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, Wolf Creek Soap Company, is an Ohio corporation organized and doing business by virtue of and under the laws of the State of Ohio.

PAR. 2. Respondent has been for more than one year last past engaged in the business of manufacturing, selling, and distributing soap to retailers and peddlers, and direct to the consuming public.

PAR. 3. In the sale of said product respondent has transported or caused the same to be transported from its principal place of business in the State of Ohio 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 soap so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals, partnerships, 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. 5. In the course and conduct of its business as aforesaid the respondent, in soliciting the sale of and in selling its product, and for the purpose of creating a demand on the part of the consuming public for said product, has for more than one year last past caused its product to be advertised through the media of price lists and other printed matter published, issued, and circulated through the United States mails to its 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, respondent has made to the general public many unfair, false, and misleading statements with reference to the commodities offered by it for sale.

PAR. 6. Many articles and items of merchandise listed in said price lists have been described as possessing retail values or prices many times in excess of the actual selling price by the respondent to the retailer or other purchaser, and many times in excess of the actual retail price thereof.

A number of the said items and articles of merchandise described in said price lists 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.

PAR. 7. Among the misleading and fictitious price markings, false branding, and mislabeling appearing on cartons and containers and described by respondent in its price lists and other advertising matter are the following:

1. "Majestic Assortment of Toilet Soaps—estimated total value \$1," whereas this item is sold by respondent at retail for 8¢ per unit.
2. "Majestic Baby Castile Soap—price 50¢," whereas this item is sold by respondent at retail at 8¢ per unit.
3. "Lady Estel Cold Cream Soap Combination—price 75¢," whereas this item is sold by respondent at retail for 8¢ per unit, and
4. "Dr. Bernard's Medicated Health Soap Combination—price 75¢," whereas this item is sold by respondent at retail for 8¢ per unit.

PAR. 8. 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 respondent place in the hands of the aforesaid peddlers and retailers buying for resale an instrument and means whereby said peddlers and retailers may, and do, commit a fraud upon a substantial part of the consuming public by enabling such dealers to represent and offer for sale and sell the said soaps as genuinely superior products produced by the manufacturers 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 the retail price stamped on the products or on their containers.

PAR. 9. 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 manufacturer suggests the retailer should sell the item or article 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 sales 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.

PAR. 10. For many years a substantial portion of the consuming public has expressed, and has had, a marked preference for soaps and toilet articles that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and the design of selling said products for the prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary 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 in 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.

PAR. 11. Through the use of the words "Dr. Bernard's" the purchasing public is led into the mistaken and erroneous belief that a medical doctor was or is connected with the derivation of the formula from which the so-called "Dr. Bernard's Medicated Health Soap Combination" was and is made and that said soap has ingredients of such character as to give it substantial therapeutic value as a true medicated soap.

No doctor or physician was or is in any way connected with the derivation of the formula for, or in any way connected with the manufacture of, the so-called "Dr. Bernard's Medicated Health Soap Combination." The said soap does not contain any ingredients that are of therapeutic nature in such quantity, if present at all, as to give the said soap any therapeutic value.

PAR. 12. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the items of merchandise herein described is to mislead a substan-

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tial portion of the consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly and erroneously believe:

1. That the various items of merchandise described in respondent's price lists and other advertising media are of superior value and are sold and distributed by respondent with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

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

3. That a medical doctor or doctor of medicine derived the formula from which the so-called "Dr. Bernard's Medicated Health Soap Combination" is made or is connected with the manufacture of said soap.

PAR. 13. The use of each and all the foregoing false and misleading statements and representations as herein set out has had, and now has, the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and has induced, and now induces, members of the public to purchase the products of the said respondent on account of such erroneous beliefs. Said representations have thereby unfairly diverted trade to said respondent from competitors who do not make use of the same or similar acts and practices and substantial injury has been 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 aforementioned acts and practices of the respondent, Wolf Creek Soap Company, a corporation, 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 the complaint of the Commission, the answer of respondent and the agreed stipulation of facts entered into between

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the respondent herein, Wolf Creek Soap Company, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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, Wolf Creek Soap Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of soap in commerce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, through use of the word "Doctor" or the abbreviation "Dr.," alone or in conjunction with any other word or words or through the use of any other word or words of similar import, meaning, and effect, or through any other means or device, or in any other manner, that any of its soap products is made pursuant to the formula of, or under the supervision and direction of, any doctor;

2. Representing, directly or indirectly, through the use of the word "Medicated," alone or in conjunction with any other word or words, or through the use of any other word or words of similar import, meaning and effect, or through any other means or device, or in any other manner that any of its soaps and soap products have any medicinal and therapeutic properties or value unless said products actually contain ingredients of a medicinal and therapeutic nature in such quantity as to give said products a substantial medicinal and therapeutic value;

3. Representing, directly or indirectly, through use of fictitious or exaggerated price markings and labels, or through any other means or device, or in any manner, that its soaps and soap products have retail values or prices in excess of their actual retail values or prices or in excess of the prices at which they are ordinarily sold or offered for sale at retail.

It is further ordered, That respondent shall, within 60 days from the date of 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 the order herein set forth.

IN THE MATTER OF
WOLVERINE GUM, INC.

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

Docket 3145. Complaint, June 4, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture, sale, and distribution of chewing gum including assortments which were so packed and assembled as to involve, or which might involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which consisted of a number of individually wrapped penny sticks of gum, of which a relatively few of the individual wrappers differed from that of the majority, together with a number of other articles of merchandise, to be given as prizes to chance purchasers of individual sticks, wrappers of which, upon opening, were thus found to differ as aforesaid—

Sold, to wholesalers and jobbers for display and resale by retailer-customers to purchasing public, in accordance with said sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with such plan, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to sell gum or other confections so packed and assembled, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

With result that many dealers in and ultimate purchasers of chewing gum or other confections were attracted by said method and manner of packing said gum and by element of chance involved in sale thereof as aforesaid, and were thereby induced to purchase such gum, thus packed and sold by it, in preference to gum or other confections offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors who do not use same or equivalent practice or method, exclude from trade involved all competitors who are unwilling to and do not use same or equivalent method as unlawful, lessen competition in said trade, and tend to create a monopoly thereof in it and in such other distributors of such products as do use same or equivalent practice or method, deprive purchasing public of benefit of free competition in said chewing gum trade, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or an equivalent method:

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

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