

IN THE MATTER OF
THE RIESER COMPANY, INC.

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

Docket 2799. Complaint, May 8, 1936—Decision, June 30, 1937

Where a corporation engaged in manufacture and sale of tissues, in competition with those engaged in sale and distribution of handkerchiefs and of compounds, medicaments, or preparations of various kinds of treatment, relief, or cure of colds, hay fever, and sinus troubles, and including among said various competitors those who truthfully describe their said handkerchiefs or truthfully advertise, describe, and represent their said remedies, etc., on labels and in advertisements thereof—

Described its said products, on packages and cartons in which sold, as "MENTHIO-KERCHIEF The Mentholated Tissue Handkerchief," and stated thereon "RELIEVES HEAD COLDS SINUS AND HAY FEVER * * * CLEARS NASAL PASSAGES," and on reverse side of package or carton, and under statement "WHY DOCTORS RECOMMEND MENTHIO-KERCHIEF," "They are better than ordinary handkerchiefs, because they are disposable and sanitary . . . They are better than ordinary tissues, because they are mentholated," and "Nothing like Mentho-kerchief to relieve all types of Head Colds, Sinus Trouble, and Hay Fever, etc," facts being its said tissue products, thus designated, described, and represented, had not been and were not recommended by doctors as a cure or remedy for head colds and other ailments above set forth, and use thereof did not, and could not, have any beneficial effects as remedy or cure for hay fever or sinus trouble, or afford any appreciable relief to those suffering therefrom, and any benefits which a patient might derive through use of such tissues would be purely psychological and not physical, and said products were not, as signified to consuming public from unqualified words "handkerchief" or "kerchief," articles for use in connection with nose, face, or hands and made of silk, linen or cotton, and said products were not better than ordinary handkerchiefs, either because disposable or mentholated, or for any other cause;

With capacity and tendency to unfairly divert trade to it and thereby injure competitors above designated:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Fulton Brylawski, of Washington, D. C., 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 Rieser Company, Inc., hereinafter designated 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. The Rieser Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business at One Hundred Nineteen (119) West Fortieth (40th) Street, in the city and State of New York, engaged in the manufacture of tissues and in the sale and distribution of such products in commerce between the States of New York and Pennsylvania and the various other States of the United States. The factory in which it manufactures its said products is located at Shamokin, in the State of Pennsylvania. Respondent causes and has caused its products when sold to be transported either from its place of business in the State of New York or from its said factory in the State of Pennsylvania to purchasers in the various other States of the United States.

In the course and conduct of its business The Rieser Company, Inc., has been at all times hereinafter mentioned, and now is, in competition with individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce, of handkerchiefs, and of compounds, medicaments or preparations of various kinds offered for sale or sold for the treatment, relief, or cure of colds, hay fever, and sinus troubles.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent has caused its tissue products to be offered for sale or sold in packages or cartons on which there have appeared the following representations, to wit:

MENTHIO-KERCHIEF

The Mentholated Tissue Handkerchief

RELIEVES HEAD COLDS

SINUS AND HAY FEVER

* * *

CLEARs NASAL PASSAGES

The reverse side of the packages or cartons bears the following statements:

WHY DOCTORS RECOMMEND MENTHIO-KERCHIEF

They are better than ordinary handkerchiefs, because they are disposable and sanitary . . . They are better than ordinary tissues, because they are mentholated!

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Nothing like Mentho-kerchief to relieve all types of Head Colds, Sinus Trouble and Hay Fever, etc.

In truth and in fact, the word "handkerchief" signifies and means to the consuming public an article for use in connection with the nose, face or hands manufactured from silk, linen, or cotton, and the tissue products of respondent is manufactured neither from silk, nor linen, nor cotton, and is not a handkerchief as the term is understood by the consuming public. They are not better than ordinary handkerchiefs either because they are disposable and sanitary or mentholated, or for any other cause.

The tissue products of respondent designated, described and represented as aforesaid have not been and are not recommended by doctors as a cure for head colds, sinus trouble, hay fever, or similar ailments, and the use of respondent's product has not had, does not have and cannot have any beneficial effect as a remedy for hay fever or sinus trouble, nor does it have or afford any appreciable or noticeable relief to those suffering from sinus trouble or hay fever. Such relief as might be obtained by sufferers from head colds would be limited to a conceivable, or possibly momentary, clearing of the nasal passages, yielding a relief so slight, temporary, and transient as to be negligible.

PAR. 3. There have been and are individuals, partnerships, and corporations offering for sale and selling in interstate commerce handkerchiefs truthfully described.

There are also and have been for many years last past individuals, partnerships, and corporations engaged in the sale in interstate commerce of compounds, remedies, medicaments, or medical preparations of various kinds for the cure of or as a remedy for, or for the treatment or relief of colds, hay fever and sinus troubles, truthfully advertised, described, and represented, both on labels appearing on their cartons or other containers of their product, and in advertisements thereof.

PAR. 4. The sale by respondent of its said product by means of the false and misleading representations described in paragraph 2 hereof has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the said product has been recommended by doctors as a cure or remedy for, and that it may successfully serve for, the treatment and relief of sinus trouble, hay fever, and head colds and into the purchase of respondent's products in reliance on such erroneous belief.

The aforesaid practices of respondent have had and have the capacity and tendency to divert trade to respondent from, and

thereby to injure, competitors described or designated in paragraph 3 hereof, offering for sale and selling in interstate commerce handkerchiefs of various kinds, compounds, remedies, medicaments or medical preparations for the treatment, relief, or cure of sinus trouble, hay fever, or colds.

PAR. 5. The above and foregoing practices of respondent, described in paragraph 2 hereof, have been and are all to the prejudice of the public and of respondent's competitors, and have constituted and constitute unfair methods of competition within the meaning of Section 5 of the 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 May 8, 1936, issued and served its complaint in this proceeding upon respondent, namely, The Rieser Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by W. L. Taggart, attorney for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Fulton Brylawski, 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; 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 Rieser Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at

119 West Fortieth Street in the city and State of New York. It is engaged in the manufacture of tissues and in the sale and distribution of such products in commerce between the States of New York and Pennsylvania and the various other States of the United States. The factory in which it manufactures its said products is located at Shamokin, in the State of Pennsylvania. Respondent causes and has caused its products, when sold, to be transported from its place of business in the State of New York, or from its said factory in the State of Pennsylvania, to purchasers in the various other States of the United States.

PAR. 2. In the course and conduct of its business, the Rieser Company, Inc., has been at all times hereinafter mentioned, and now is, in competition with individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce, of handkerchiefs and of compounds, medicaments, or preparations of various kinds offered for sale or sold for the treatment, relief, or cure of colds, hay fever, and sinus troubles.

PAR. 3. Respondent causes its tissue products to be offered for sale or sold in packages or cartons on which there have appeared the following representations, to wit:

MENTHO-KERCHIEF

The Mentholated Tissue Handkerchief

RELIEVES HEAD COLDS

SINUS AND HAY FEVER

* * *

CLEARs NASAL PASSAGES

The reverse side of the packages or cartons bears the following statements:

WHY DOCTORS RECOMMEND MENTHO-KERCHIEF

They are better than ordinary handkerchiefs, because they are disposable and sanitary * * * They are better than ordinary tissues, because they are mentholated.

Nothing like Mentho-kerchief to relieve all types of Head Colds, Sinus Trouble and Hay Fever, etc.

PAR. 4. The tissue products of respondent, designated, described, and represented, as aforesaid, have not been and are not recommended by doctors as a cure or remedy for head colds, sinus trouble, hay fever, or similar ailments. The use of respondent's product has not had, does not have, and cannot have any beneficial effect as a remedy or cure for hay fever or sinus trouble. Said products do not afford any appreciable relief to those suffering from sinus trouble or hay fever.

PAR. 5. There are individuals, partnerships and corporations offering for sale and selling in interstate commerce handkerchiefs truthfully described in competition with respondent's tissue products:

There are also, and have been for many years last past, individuals, partnerships, and corporations engaged in competition with respondent who have been offering for sale and selling in interstate commerce compounds, remedies, medicaments, or medical preparations of various kinds designed for the cure of, or as a remedy for or for the treatment or relief of colds, hay fever, and sinus troubles which are truthfully advertised, described, and represented, both on labels appearing on their cartons or other containers of their products and in advertisements thereof.

PAR. 6. It is the consensus of medical opinion that menthol externally applied will not relieve head colds, sinus trouble, or hay fever, but that a patient suffering from a head cold may by the inhalation of menthol vapors of considerable strength get a soothing sensation through the respiratory tract. The consensus of medical opinion is that common colds are caused by an unfilterable virus; that one of the effects of the cold is congestion of the nasal passages, that menthol when mixed with oil is frequently inserted into the nostrils for the purpose of easing this congestion. The effect of the menthol is to create a cooling and soothing sensation within the nostrils, and unless the congestion is too severe the patient has less difficulty in breathing. This is not, however, a treatment for the common cold in the strict sense, but is simply a temporary palliative in that the effect of the menthol is slightly astringent. Menthol has no effect on sinus trouble except in so far as it may give a cooling sensation to the nostrils and has no curative value in the treatment of hay fever. The claim of the respondent that the mentholated tissue in question will relieve colds, hay fever, and sinus trouble is a gross exaggeration and the tissues of respondent would be absolutely worthless in the treatment of common colds, hay fever, and sinus trouble. Any benefits which a patient might derive through the use of said tissues would be purely psychological and not physical.

PAR. 7. The claim that said tissues relieve colds, hay fever and sinus trouble is erroneous. The amount of menthol vapor that can be inhaled from the tissues in question is barely perceptible to a person not suffering from any of the ailments mentioned, that is to say, common colds, hay fever, and sinus trouble and would be entirely imperceptible to one suffering from common cold or sinus trouble.

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PAR. 8. The use of the words handkerchief or kerchief unaccompanied by such qualifying and descriptive words as "paper" or "tissue paper" signifies and means to the consuming public an article for use in connection with the nose, face, or hands, manufactured from silk, linen, or cotton and does not include the type of product manufactured by respondent. The tissue products of respondent are not manufactured from silk, linen, or cotton and are not a handkerchief as the term is now understood by the consuming public. When the words "tissue paper" or "paper" accompanying the words handkerchief or kerchief the public is placed on notice as to the nature of the product described. Respondent's tissue product is not better than ordinary handkerchiefs either because they are disposable or mentholated or for any other cause.

PAR. 9. The aforesaid practices of respondent have had, and now have, the capacity and tendency to unfairly divert trade to respondent from, and thereby to injure, competitors designated in paragraph 2 hereof, selling in commerce among and between the various States of the United States handkerchiefs of various kinds, and compounds, remedies, medicaments, or medical preparations for the treatment, relief or cure of sinus trouble, hay fever or colds.

CONCLUSION

The aforesaid acts and practices of the respondent, The Rieser Company, 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 the complaint of the Commission, and the answer of the respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Taggart, counsel for the Commission, and by Fulton Brylawski, counsel for the 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, The Rieser Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its tissue products in interstate commerce or in the District of Columbia, do forthwith cease and desist:

(1) From representing that its tissue products are better than or superior to ordinary handkerchiefs because they are sanitary and disposable or because they are mentholated; that use of its tissue products will clear the nasal passages; that its tissue products have been recommended by doctors as a cure or remedy for sinus trouble, hay fever, and head colds or that said products are beneficial in the treatment of such ailments and conditions.

(2) From using the words "handkerchief" or "kerchief" as descriptive of its tissue products unless there also appears in close proximity thereto and in equal prominence therewith the words "tissue paper" or "paper" written or printed in letters of clear and easily readable type.

It is further ordered, That the 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.

IN THE MATTER OF
MISS MORRIS CANDIES, INC.

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

Docket 3132. Complaint, May 15, 1937—Decision, June 30, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve, or which were designed to or might involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which included such assortments as a number of packages of candy of varying size, together with a punchboard, for sale to the consuming public under a plan, and in accordance with said board's explanatory legend, by which those punching by chance certain numbers received specified package of candy, and person making last punch in each of sections into which board was divided received specified package, and others received nothing for their five cents other than privilege of making a punch—

Sold, to wholesalers and jobbers, such assortments for display and resale to purchasing public by retail dealers therein in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting a lottery in the sale of its said 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 offer or sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said product in preference to that offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as aforesaid, and thereby induced to purchase said candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its aforesaid competitors, exclude from candy trade all competitors who are unwilling to and do not use same or equivalent method because unlawful, lessen competition in such trade, tend to create a monopoly thereof in it and such other distributors as do use same or equivalent method, deprive purchasing public of benefit of free competition therein, 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.