

Syllabus

IN THE MATTER OF
TRADE LABORATORIES, INC., ETC., 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 3064. Complaint, Feb. 19, 1937—Decision, Aug. 28, 1937*

Where five corporations and three individuals, officers thereof and directors and in control of their sales policies and general business activities, engaged in distribution and sale of shoe polish, shaving, dental, and sun tan creams, and similar commercial preparations, and toilet articles made by two of aforesaid corporations—

- (a) Packed their aforesaid products in containers upon which were printed, together with description of product, certain price marks, facts being retail prices thus indicated, and appearing on items of merchandise or containers thereof, were not intended by them or by those buying for resale, to be true retail prices or values of merchandise thus price marked, but were intended to be far in excess of prices contemplated and actually charged for sale of merchandise to ultimate consumer buying in usual course of trade, and were not fairly indicative of quality, character, and amount of said products or their ingredients; in accordance with general public's understanding of manufacturers' long-standing practice of indicating retail price on containers of their product as indicative of quality, character, and amount of ingredients used, and in accordance with confidence placed by public in such price marks and representations thereby made and substantial volume of merchandise purchased in such lines;
- (b) Placed the tubes or containers of the products variously made and sold by them in cartons of a capacity and size greatly in excess of that required to house said various tubes, and capable of containing much larger and longer tubes of product than those actually contained, to the deception of the purchasing public, recipient, usually and in accordance with its expectation in purchasing product of type made and packed as aforesaid, of a tube or amount commensurate with size of pasteboard carton or container enclosing same; and
- (c) Caused certain of their said products to be conspicuously labeled and advertised as made and sold by "Dr. Dally's Laboratories, New York, N. Y.," notwithstanding fact products in question, made by two of their number as above set forth, were not made by Dr. Dally's Laboratories, nor under formula or supervision of any doctor so named, nor in laboratory having doctor in its employ; and

Where the non-manufacturing three of aforesaid five corporations—

- (d) Included word "laboratories" in their corporate names, and represented thereby that they owned, controlled, or operated chemical workroom or place devoted to experimental study in some branch of natural science or to the application of scientific principles in the testing, analysis, and preparation of their said products, facts being they were not directly engaged, as separate corporate entities, in manufacture of any product, but merely owned and controlled their own respective corporate names, used by said manufacturing corporations, in distribution of products sold

Complaint

25 F. T. C.

by them, as designations or representations that aforesaid respective corporations were the actual manufacturers of the various products labelled with their said respective corporate names, and they neither owned, controlled, nor operated any type of laboratory or chemical workroom or places devoted to experimental study in any branch of natural science, as above set forth, and did not manufacture said products;

With effect of misleading and deceiving members of the purchasing public into the mistaken and erroneous belief that said representations were true, and into purchase of their said products by reason thereof, and of unfairly diverting trade to them from their competitors who do not use similar false and misleading practices in the sale of their respective products, but truthfully represent true quality thereof and their true business status; to the substantial injury of competition, and with further result of placing in the hands of purchasers buying for resale means enabling them to commit a fraud upon a substantial portion of consuming public:

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.

Strange, Myers, Hinds & Wight, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914 (38 Stat. 717-15 U.S.C.A. Sec. 41), 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 Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., Dr. Daily's Laboratories, Inc., corporations, and J. C. Brush, C. R. Dickinson, and C. V. Brush, individuals, all hereinafter referred to as respondents have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., are all corporations organized and existing under the laws of the State of New Jersey, with their principal place of business at 412 Halsey Street, Newark, N. J. All of the above named corporations are officered and directed by the individual respondents namely:

J. C. Brush, president,
C. R. Dickinson, vice president,
C. V. Brush, secretary and treasurer,
who direct and control the sales policies and general business activities of said corporations.

PAR. 2. All of the said corporate respondents and individuals herein named are now, and for several years last past have been, distributors and sellers of shaving cream, dental cream, shoe polish, sun tan cream, and similar commercial preparations and toilet articles. The products which they distribute are manufactured by respondents Modern Brands, and Trade Laboratories, Inc.

Said respondents, being engaged in business as aforesaid, cause said products, when sold, to be transported from their principal place of business in the State of New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above described products sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondents are now, and have been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of selling shaving cream, dental cream, sun tan cream, and similar toilet articles in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Over a period of many years many manufacturers have formed the custom of marking or stamping on articles or items of manufacture, or on the containers thereof, the retail price at which said manufacturers suggest the retailer should sell said items or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer, middleman, and retailer and, consequently, to represent the approximate retail sale value of the article. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality, character and amount of the ingredients used. 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 and amount of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 5. Respondents pack their products in containers on the outside of which is printed a price mark and a description of the product. Among the items advertised and sold aforesaid in con-

Complaint

25 F. T. C.

nection with which retail prices have been affixed either to the article itself or to the container thereof and which are placed in a carton or container to house said product are the following:

1. Windsor Shaving Cream-----	50¢
2. Trlm Shaving Cream-----	Giant Size 60¢
3. Hudson Bay Shaving Cream-----	Large 35¢ Size
4. Royal Palm Shaving Cream-----	Giant 60¢ Size
5. Imperial Shaving Cream-----	Giant 50¢ Size
6. Barritt's Shaving Cream-----	Giant 50¢ Size
7. Society Brand Dental Cream-----	Large 35¢ Size

PAR. 6. In truth and in fact the retail prices, as indicated above, appearing on the items of merchandise or on the containers thereof, were not intended by either the respondents or the purchasers, purchasing for resale, to be the true retail price or the true retail value of the merchandise so price marked. The retail prices, as indicated, appearing on the items of merchandise, or on the containers thereof, were intended by the respondents, and by the purchasers purchasing for resale, to be far in excess of the price intended to be charged and actually charged on a sale of the merchandise to the ultimate consumer purchasing in the usual course of trade and far in excess of the true value of the various items of merchandise so price marked.

PAR. 7. When the purchasing public make a purchase of a product of the type manufactured and packed by the respondent (not being able to see the inside of the carton or container or able to examine it before purchase) they expect and do usually receive a tube or an amount of the product commensurate with the size of the paste board carton or container in which the product is packed for sale.

In truth and in fact the cartons in which the tubes or containers of the above products and others manufactured and sold by respondents are placed and shipped in commerce as herein described are of a capacity and size greatly in excess of that required to house said tubes of the product. Said cartons are of a size and capacity capable of containing much larger and longer tubes of the product than those which said cartons actually contain, and the public has been and is being deceived when purchasing any of the products packed and sold as aforesaid.

PAR. 8. In the manufacture, sale and distribution of their products in commerce respondents cause certain of their products to be labelled and advertised as being manufactured and sold by Dr. Daily's Laboratories, Inc., New York, N. Y. The labelling of this product contains in large type on the carton after a description of the product the words "Dr. Daily's Laboratories, New York, N. Y." This statement serves as a representation on the part of the respondents that

the products so labelled and advertised were actually manufactured under a formula of, or under the supervision of, a Dr. Daily in the plant of the Dr. Daily's Laboratories.

In truth and in fact the product labelled as above mentioned is manufactured by the respondents Modern Brands, Inc. and Trade Laboratories, Inc., and is not manufactured by Dr. Daily's Laboratories. The product is not manufactured and made under the formula of, or the supervision of, any doctor by the name of Daily. No doctor is employed in the laboratory in which the product is manufactured.

The respondents, Perlox Laboratories, Inc., Pearl-White Laboratories, Inc. and Dr. Daily's Laboratories, Inc. are not directly engaged in the production of any products as separate corporate entities but they merely own and control their own respective corporate names, which are used by Modern Brands, Inc. and Trade Laboratories, Inc. in the distribution of the products which they sell as designations or representations that said respective corporations are the actual manufacturers of the various products labelled with their respective corporate names. The said respondents Perlox Laboratories, Inc., Pearl-White Laboratories, Inc. and Dr. Daily's Laboratories, Inc. do not own, control, or operate any type of laboratory for the manufacture of any commercial preparations or toilet products, and do not manufacture said products.

PAR. 9. The aforesaid false and misleading representations have had, and now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true and into the purchase of respondents' products on account thereof. As a result thereof trade is unfairly diverted to respondents from their competitors who do not use similar false and misleading practices in the sale of their respective products but who truthfully represent the true quality of their products and their true business status. In consequence thereof substantial injury has been done to competition in commerce among and between the various States of the United States.

Likewise, the false and misleading acts and representations, hereinabove set out on the part of respondents, places in the hands of the purchasers buying for resale, an instrument and a means whereby said purchasers may commit a fraud upon a substantial portion of the consuming public.

PAR. 10. The above and foregoing acts, practices, and representations of respondents have been, and are, all to the prejudice of the public and of respondents' competitors, and have been, and are, unfair

methods of competition within the meaning and intent 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."

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 power and duties, and for other purposes," the Federal Trade Commission on February 19, 1937, issued, and on February 23, served, its complaint in this proceeding upon respondents Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., corporations, and upon the individual respondents, J. C. Brush, C. R. Dickinson, and C. V. Brush, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute 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 substitute 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. Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., are all corporations organized and existing under the laws of the State of New Jersey, with their principal place of business at 412 Halsey Street, Newark, N. J. All of the above named corporations are officered and directed by the individual respondents, namely:

J. C. Brush, president,

C. R. Dickinson, vice president,

C. V. Brush, secretary and treasurer,

who direct and control the sales policies and general business activities of said corporations.

PAR. 2. All of the said corporate respondents and individuals herein named are now, and for several years last past have been, distributors and sellers of shaving cream, dental cream, shoe polish, sun tan cream, and similar commercial preparations and toilet articles. The products which they distribute are manufactured by respondents Modern Brands, and Trade Laboratories, Inc.

Said respondents, being engaged in business as aforesaid, cause said products, when sold, to be transported from their principal place of business in the State of New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above described products sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondents are now, and have been in substantial competition with other individuals, firms, and corporations likewise engaged in the business of selling shaving cream, dental cream, sun tan cream, and similar toilet articles in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Over a period of many years many manufacturers have formed the custom of marking or stamping on articles or items of manufacture, or on the containers thereof, the retail price at which said manufacturers suggest the retailer should sell said items or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to, and does represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer, middleman, and retailer and, consequently, represents the approximate retail sale value of the article. The range of the suggested retail price is intended by the manufacturer to be, and is, indicative of the quality, character, and amount of the ingredients used. 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 and amount of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 5. Respondents pack their products in containers on the outside of which is printed a price mark and a description of the product. Among the items advertised and sold aforesaid in connection with

Findings

25 F. T. C.

which retail prices have been affixed either to the article itself or to the container thereof and which are placed in a carton or container to house said product are the following:

1. Windsor Shaving Cream-----	50¢
2. Trim Shaving Cream-----	Giant Size 60¢
3. Hudson Bay Shaving Cream-----	Large 35¢ Size
4. Imperial Shaving Cream-----	Giant 50¢ Size
5. Royal Palm Shaving Cream-----	Giant 60¢ Size
6. Barritt's Shaving Cream-----	Giant 50¢ Size
7. Society Brand Dental Cream-----	Large 35¢ Size

PAR. 6. In truth and in fact the retail prices, as indicated above, appearing on the items of merchandise or on the containers thereof, were not intended by either the respondents or the purchasers, purchasing for resale, to be the true retail price or the true retail value of the merchandise so price marked. The retail prices as indicated, appearing on the items of merchandise or on the containers thereof, were intended by the respondents, and by the purchasers purchasing for resale, to be far in excess of the prices intended to be charged and actually charged on a sale of the merchandise to the ultimate consumer purchasing in the usual course of trade and are not fairly indicative of the quality, character, and amount of the said products or their ingredients.

PAR. 7. When the purchasing public makes a purchase of a product of the type manufactured and packed by the respondent (not being able to see the inside of the carton or container or able to examine it before purchase), it expects and usually does receive a tube or an amount of the product commensurate with the size of the pasteboard carton or container in which the product is packed for sale.

But the cartons in which the tubes or containers of the above products and others manufactured and sold by respondents are placed and shipped in commerce as herein described are of a capacity and size greatly in excess of that required to house said tubes of the product. Said cartons are of a size and capacity capable of containing much larger and longer tubes of the product than those which said cartons actually contain, and the public has been and is being deceived when purchasing any of the products packed and sold as aforesaid.

PAR. 8. In the manufacture, sale and distribution of their products in commerce, respondents cause certain of their products to be labelled and advertised as being manufactured and sold by Dr. Daily's Laboratories, Inc., New York, N. Y. The labelling of this product contains in large type on the carton after a description of the product the words "Dr. Daily's Laboratories, New York, N. Y." This state-

ment serves as a representation on the part of the respondents that the products so labelled and advertised were actually manufactured under a formula of, or under the supervision of, a Dr. Daily in the plant of the Dr. Daily's Laboratories.

In truth and in fact the product labelled as above mentioned is manufactured by the respondents Modern Brands, Inc., and Trade Laboratories, Inc., and is not manufactured by Dr. Daily's Laboratories. The product is not manufactured and made under the formula of, or the supervision of, any doctor by the name of Daily. No doctor is employed in the laboratory in which the product is manufactured.

In the sale and distribution of these products in commerce, respondents Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., represent through the use of the word "laboratories" in their corporate names that they own, control or operate a chemical workroom or a place devoted to experimental study in some branch of natural science or to the application of scientific principles in the testing, analysis, and preparation of their said products.

The respondents, Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., are not directly engaged in the production of any products as separate corporate entities but they merely own and control their own respective corporate names, which are used by Modern Brands, Inc., and Trade Laboratories, Inc., in the distribution of the products which they sell as designations or representations that said respective corporations are the actual manufacturers of the various products labelled with their respective corporate names. The said respondents Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., do not own, control or operate any type of laboratory or chemical workroom, or a place devoted to experimental study in any branch of natural science, where the application of scientific principles in testing, analysis and preparation of said products takes place, and do not manufacture said products.

PAR. 9. The aforesaid false and misleading representations have had, and now have the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true and into the purchase of respondents' products on account thereof. As a result thereof trade is unfairly diverted to respondents from their competitors who do not use similar false and misleading practices in the sale of their respective products but who truthfully represent the true quality of their products and their true business status. In conse-

Order

25 F. T. C.

quence thereof substantial injury has been done to competition in commerce among and between the various States of the United States.

Likewise, the false and misleading acts and representations hereinabove set out on the part of respondents, places in the hands of the purchasers buying for resale, an instrument and a means whereby said purchasers may commit a fraud upon a substantial portion of the consuming public.

CONCLUSION

The aforesaid acts and practices of the respondents, Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., corporations, and of the individual respondents, J. C. Brush, C. R. Dickinson, and C. V. Brush are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on July 9, 1937, by respondents, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., their officers, representatives, agents and employees, and the individual respondents, J. C. Brush, C. R. Dickinson and C. V. Brush, the representatives, agents and employees of each of said individuals, in connection with the offering for sale, sale and distribution of shaving cream, dental cream, shoe polish, sun tan cream, similar commercial preparations and toilet articles, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, by marking or affixing an exaggerated or fictitious price upon the cartons or containers in which said articles are packed for sale or in any other manner that the prices so marked or affixed are the regular or customary retail prices at which such products are usually sold or offered for sale.

2. Representing, by the placing of any of said products in greatly over-sized cartons or containers, or in any other manner that a substantially larger quantity or amount of such product is therein contained than is actually the case.

3. Representing that any of said products are manufactured according to the formula or under the supervision of a "Dr. Daily" or any other physician when such is not the fact.

4. Representing, through use of the word "Laboratories" in the corporate name of respondents, Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., or Dr. Daily's Laboratories, Inc., that the respondents so named own, control or operate a chemical workroom or a place devoted to experimental study in any branch of natural science or to the application of scientific principles in the testing and analysis and preparation of said products unless and until the said respondents shall own, operate, or control such a place or places.

5. Representing, through the use of any labelling or other advertising, that the respondents Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., are engaged in the manufacture and production of said products, when such is not the fact.

It is further ordered, That each of the above named respondents 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
ILLINOIS BAKING CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3023. Complaint, Dec. 24, 1936—Decision, Sept. 3, 1937

Where a corporation engaged in manufacture, sale, and distribution of ice cream cones, including cones packed and assembled with small printed slips bearing various legends, so as to involve use of a lottery scheme when sold and distributed by retail dealers to consumers thereof, and including legend "You're lucky YOU WIN A FREE ice cream cone," chance recipient of which printed slip, so placed in cones that ultimate consumer could not ascertain whether or not he was entitled to free ice cream cone until after his purchase had been made and cone partially consumed, became entitled thereby, and in accordance with explanatory display circulars furnished by it, free of charge, to another ice cream cone—

Sold, thus packed, said cones, to wholesalers, jobbers, and ice cream manufacturers, for use, sale, and distribution by their retail dealer purchasers in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product in accordance with such sales 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 ice cream cones with printed slips as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance, refrain therefrom, and in competition with many unwilling to adopt and use said or any method involving game of chance to win by chance or any other method contrary to public policy;

With capacity and tendency to induce purchasers to buy its said product in preference to cones offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of ice cream cones were attracted by its said method and manner of inserting in a number thereof printed slips entitling purchasers to free ice cream cones, and by element of chance involved in sale thereof as above described, and were thereby induced to buy its said products, containing such printed slips and sold by it, in preference to those offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to it trade and custom from its said competitors who do not use such or equivalent method, exclude from said trade all competitors who are unwilling to and do not use such method because unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors of ice cream cones as do use same or equivalent method, deprive purchasing public of benefit of free competition in trade involved, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use said or equivalent method:

Held, That such method, 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.