

Complaint

IN THE MATTER OF

RICHARD I. STEWART, TRADING AS AVOCADO SOAP
PRODUCTS COMPANY

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

Docket 3183. Complaint, July 22, 1937—Decision, Sept. 17, 1937

Where an individual engaged in manufacture, sale, and distribution of soap to purchasers thereof in the States of the United States and in the District of Columbia, in substantial competition with those similarly engaged—

- (a) Represented, through use of the word "Avocado," together with depictions of said fruit, and through such statements as "Contains the Oil of Sun Ripe Avocados," etc., and "AVOCADO TISSUE SOAP Nature's Aid to Beauty," in advertisements, price lists and labels and otherwise, that his said soap contained a substantial amount of oil of avocado; and
- (b) Made such statements as " * * * Highly recommended by beauty specialists. * * * Not just a soap but a distinct beauty aid";

Facts being amount of said oil contained in soap in question, thus described, was infinitesimal compared to total of other ingredients used in manufacture thereof, and was not sufficient to warrant claim that such soap was made from avocado oil, and soap in question was not a natural aid to beauty nor recommended by beauty specialists, and had no beneficial effect different from any other soap;

With tendency and capacity to lead distributors and purchasing public into belief that said statements and representations were true, and with effect of inducing members of the public to purchase his said product on account of such erroneous beliefs, and with result of thereby unfairly diverting trade to him from competitors who do not make similar misleading representations concerning the ingredients or value of their respective products; 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.

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 Richard I. Stewart, an individual doing business under the trade name of Avocado Soap Products Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect

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thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Richard I. Stewart, is an individual doing business under the trade name of Avocado Soap Products Company, and has his principal office and place of business in the city of Anaheim, State of California. He is now, and for more than one year last past has been, engaged in the manufacture, sale, and distribution of soap. He causes said soap, when sold, to be transported from his principal place of business in the State of California to purchasers thereof in 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 in said soap so prepared, distributed, and sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business respondent is now and has been in substantial competition with other individuals, partnerships, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling soap or other products designed, intended, and sold for the same purposes for which respondent's products are sold in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course of the conduct of said business, and for the purpose of inducing the purchase of said soap, respondent has printed and circulated through the United States mails, and otherwise, to customers and prospective customers in the several States of the United States, descriptions of his said product. The following statements are representative of those made by respondent in describing the said products:

1.

AVOCADO

(pletorial representation
of an Avocado)

TISSUE SOAP

REG. U. S. PAT. OFFICE

Contains the oil of
Sun Ripe Avocados
A California Fruit

2.

AVOCADO TISSUE SOAP

Nature's Aid to Beauty

Made in California. Contains the oil of sun-ripe
California Avocados (Alligator Pears). AVOCADO

TISSUE SOAP is made of the purest ingredients
obtainable. Highly recommended by beauty specialists.

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Contains no animal fats. Leaves skin soft, smooth and velvety. Not just a soap but a distinct beauty aid

A PRODUCT OF
AVOCADO SOAP PRODUCTS—ANAHEIM, CALIF.

Avocado Beauty Guild Hollywood, Calif.

The name "AVOCADO" which appears on Avocado Tissue Soap is protected by Trade Mark Registered in the U. S. Pat. Office. Infringers will be prosecuted

PAR. 4. 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 him. The articles and items of merchandise described in the said advertisements, price lists, and on labels appearing on the merchandise, and otherwise, above referred to are so described as to lead purchasers and prospective purchasers into the mistaken and erroneous belief that the said soap contains a large amount of oils of the Sun Ripe Avocados, and further that respondent's soap is a natural aid to beauty and highly recommended by beauty specialists.

PAR. 5. The use by the respondent of the phrase "Contains the Oil of Sun Ripe Avocados" serves to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the above referred to oil is a major ingredient used in the manufacture of the soap so made and sold by respondent.

PAR. 6. In truth and in fact, in each and every instance wherein the above set out words and phrases are used, the amount of Avocado oil appearing in respondent's said soap is infinitesimal when compared to the amount of other ingredients used in the manufacture of said soap, and is not sufficient to warrant the claim that said soap is made from Avocado oil.

Further, in truth and in fact, respondent's product is not a natural aid to beauty, nor is respondent's product recommended by beauty specialists.

PAR. 7. There are among the competitors of the respondent in commerce as described in paragraph 1 above, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products, and who refrain from advertising or representing, through their advertisements, price lists, or other advertising media, and brand marks on their products, that the merchandise offered for sale by them has a merit and value that it does not have, or that it contains ingredients in substantial portions other than actually contained in said merchandise.

PAR. 8. The effect of the foregoing false and misleading representations and acts of 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 by inducing them to believe:

1. That the soap manufactured, sold, and distributed by respondent contains a substantial amount of Avocado oil;
2. That the soap manufactured, sold, and distributed by respondent is "Nature's Aid to Beauty";
3. That respondent's product is highly recommended by beauty specialists.

PAR. 9. The foregoing false and misleading statements and representations on the part of respondent have induced and still induce a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by respondent on account of the aforesaid mistaken and erroneous beliefs.

As a result thereof trade has been diverted from those competitors of respondent engaged in similar businesses referred to in paragraph 7 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. 10. The aforementioned methods, acts, and practices of respondents 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 July 22, 1937, issued and served its complaint in this proceeding upon respondent, Richard I. Stewart, trading as Avocado Soap Products Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent filed his answer in which he admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint, and that without further evidence or intervening procedure the Commission may issue and serve upon him findings as to

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Findings

the facts and conclusion and an order to cease and desist from the violation of law charged in the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto; 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, Richard I. Stewart, trading as Avocado Soap Products Company, is an individual doing business under the laws of the State of California.

PAR. 2. The respondent has been for more than one year last past engaged in the manufacture, sale, and distribution of soap.

PAR. 3. In the sale of said product, respondent has transported or caused same to be transported from his principal place of business in the State of California to purchasers thereof located in States of the United States other than the State from which the shipment originated, 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 in said soap so prepared, distributed, and sold by the respondent between and among the various States of the United States and in the District of Columbia.

The respondent is engaged in substantial competition with individuals, partnerships, firms, and corporations engaged in the manufacture, sale, 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. 4. Respondent, in soliciting the sale, and in the selling, of his commodity, and for the purpose of creating a demand upon the part of the consuming public for said commodity, has printed and circulated through the United States mails and otherwise, to customers and prospective customers in the several States of the United States, descriptions of his said commodity. The following statements are representative of those made by respondent in describing the said commodity:

1.

AVOCADO
(pictorial representation
of an Avocado)
TISSUE SOAP
REG. U. S. PAT. OFFICE
Contains the Oil of
Sun Ripe Avocados
A California Fruit

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2.

AVOCADO TISSUE SOAP

Nature's Aid to Beauty

Made in California. Contains the oil of sun-ripe California Avocados (Alligator Pears). AVOCADO TISSUE SOAP is made of the purest ingredients obtainable. Highly recommended by beauty specialists. Contains no animal fats. Leaves skin soft, smooth and velvety. Not just a soap but a distinct beauty aid

A PRODUCT OF

AVOCADO SOAP PRODUCTS-ANAHEIM, CALIF.

Avocado Beauty Guild Hollywood, Calif.

PAR. 5. The respondent, by the aforesaid ways and means, has made and still makes to the general public false and misleading statements with reference to the commodity offered for sale by him. The articles of merchandise described in the said advertisements, price lists, and labels appearing on the merchandise, and otherwise, are so described as to lead purchasers and prospective purchasers into the belief that the said soap contains a large amount of oils of the Sun-Ripe Avocado, and further that respondent's soap is a natural aid to beauty and highly recommended by beauty specialists.

In fact, in each and every instance wherein the above set out words and phrases are used the amount of Avocado Oil appearing in respondent's soap is infinitesimal when compared to the total amount of other ingredients used in the manufacture of the said soap, and is not sufficient to warrant the claim that said soap is made from Avocado oil.

In fact, the respondent's product is not a natural aid to beauty, nor is respondent's product recommended by beauty specialists. Said soap does not have any beneficial effect different from any other soap.

PAR. 6. The use of each and all of the foregoing false and misleading statements and representations by the respondent as herein set out has had, and now has, a tendency and capacity to lead distributors and the purchasing public into the belief that said statements and representations are true, and has induced and now induces members of the public to purchase the product of said respondent on account of such erroneous beliefs.

Said representations have thereby unfairly diverted trade to said respondent from competitors who do not make similar misleading representations respecting the ingredients or value of their respective products, 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.

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Order

CONCLUSION

The aforesaid acts and practices of the respondent, Richard I. Stewart, trading as Avocado Soap Products Company, 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 respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint, and that without further evidence or other intervening procedure the Commission may issue and serve upon him its findings as to the facts and conclusion and an order to cease and desist from the violation of law charged in the complaint, 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, Richard I. Stewart, an individual, trading as Avocado Soap Products Company, or trading under any other name, his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of soap in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "Avocado," or any other word of similar import and meaning, as descriptive of said products, that his soap contains a substantial amount of oil of avocados;

Representing that Avocado Tissue Soap is nature's aid to beauty or has any beneficial effect different from any other soap;

Representing that his soap is highly recommended by beauty specialists; and

Representing that his soap is a distinct aid to beauty.

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

IN THE MATTER OF
PARCO PRODUCTS, INC., AND SOLOMON L. GOLDBERG

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

Docket 2558. Complaint, Sept. 23, 1935—Decision, Sept. 21, 1937

Where a corporation engaged in sale and distribution of a lithopone casein paint, under brand or trade names "Artwall" and "Partwall," principally to and through dealers for resale, but also to members of the public in various other States, in substantial competition with others engaged in the manufacture, sale, and distribution of casein and oil paints to dealers and to the public in other States, as above set forth, and including among aforesaid competitor manufacturers of casein paint, those whose product was sold and resold at substantially lower prices and was freely available to dealers and consumers in any quantity; and an individual, manager thereof and sales executive in charge and control of its agents and salesmen and of methods employed in sale and distribution of paints sold by it; in pursuance of a fraudulent plan, fraudulently conceived by said individual and fraudulently carried out by him and officers of said corporation, through it as instrumentality of such fraud and deception, and directed to the sale, in as large quantities as could be contrived, of said inferior and commercially unsalable paint to dealers, preferably and if possible, inexperienced in sale of paints, under scheme involving enlistment, in first instance, of their interest, and the disarming of their natural skepticism through holding out to them, by means of salesmen and representatives employed for such purpose, chance of being selected at corporation's home office as exclusive distributor in their territory of asserted new and valuable product, but in fact similar to that against sale of which, through methods employed, order of Commission had theretofore issued, as known to said individual and officers, and inducing prospects, as incident to so-called distributor's franchise, at home office, to commit themselves to as large an amount of said paint as aforesaid individual could bring about through misrepresentation of one sort or another, and to obligate themselves to payment therefor preceding opportunity to become fully apprized of the facts respecting the same—

- (a) Represented, in soliciting interest and securing commitments of prospects, as hereinabove indicated, that their aforesaid paint was a one coat paint which was a new discovery and was washable after use, left no disagreeable odor, and was not followed by hot spots on surfaces painted therewith, and could be used by amateurs or inexperienced persons as successfully as by experienced painters, and would give a finish to painted surfaces that could be obtained with other paints by experienced painters only, facts being it was not a one coat paint, left a very disagreeable odor, could not be successfully applied by inexperienced persons, and other representations above set forth were each and all false;
- (b) Represented, as aforesaid, that its vice-president had been associated in paint industry before his connection with aforesaid corporation, and that said corporation was backed by well-known financiers and was a sub-