

IN THE MATTER OF

J. W. GIBSON, TRADING AS J. W GIBSON COMPANY

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

Docket 2932. Complaint, Sept. 29, 1936—Decision, Sept. 21, 1937

Where an individual engaged in sale and distribution of food flavoring, spices, toilet articles, and kindred merchandise, to distributors and house-to-house canvassers, in substantial competition with those engaged in sale of such products in commerce among and between the various States; in advertising, in periodicals or publications of interstate circulation, to facilitate the sales of such products and to obtain distributors for purchase of his said merchandise for resale, usually, through house-to-house canvassing, to members of the purchasing public—

- (a) Represented, to prospective distributors and purchasers, that, on becoming distributors, they would receive free sales kits, and that they could earn up to \$24.00 a day, and would earn \$35.00 a week, and that they would be given new automobiles as a bonus in addition to their regular earnings, through such statements as "Free Sales Kit * * * filled with 5 full size Samples * * * at Absolutely NO COST to workers * * *," "Up to \$24 a day," etc., "MEN AND WOMEN needing up to \$35 a WEEK Operate one of my New Kind of Cut-Rate Store-on-Wheels * * *," "I average between \$40.00 and \$50.00 EACH WEEK," "BRAND NEW TUDOR FORD SEDAN FURNISHED WORKERS * * *," "I give it to you IN ADDITION TO YOUR REGULAR EARNINGS," "* * * representatives have earned as many as three, even four brand new Ford cars within a space of two or three years. Not having use for more than one car, they sold the others and pocketed the easy cash for themselves," facts being no such kits are furnished, deposit is required on each, subject to refund in event of aggregate purchase amounting to some \$12.00, distributors did not earn any such amounts under normal conditions in due course of business, but average weekly earnings of all distributors under such conditions were much less than said \$35.00 per week, sale of \$4,500 of merchandise, exclusive of free deals and combinations, was required before any automobile was furnished, and in fact no automobile had ever been supplied by said individual to distributor;
- (b) Represented that merchandise was given away as a gratuity in consideration of purchase of other products, through such statements as "We frequently offer to customers valuable kitchen utensils and many other useful articles when they purchase a big high-quality bottle of food flavoring at regular retail price. This is just one of the hundreds of special combinations and free gift offers that are bound to make you the most popular person in your community," facts being no merchandise was given away as gratuity in consideration of purchase of other products, but cost of such merchandise was included as part of purchase price charged for another article or combination of articles;
- (c) Represented, on letterheads and in pamphlets of instructions sent to his distributors and otherwise, that he was a manufacturer of the products

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sold by him, and that his goods were sold "direct from the factory to the customer," facts being he did not own, operate or control plant or factory in which were made, manufactured or compounded all the products sold by him, but purchased in bulk and repackaged many of the items so sold; and

- (d) Designated food flavorings sold by him, in advertisements, literature, and instructions published and furnished to his purchasers, as "extracts," and represented said flavorings as triple strength, through such statements as "famous triple strength guaranteed food flavorings," facts being compounds thus referred to were not extracts or juices from fruits, beans, berries, or other similar products, dissolved and carried in alcoholic solution, but were made and composed largely of imitation and synthetic flavoring materials dissolved and carried in emulsions and oils, and were not three times as strong as ordinary food flavorings, but were ordinary imitation flavoring compounds;

With capacity and tendency to mislead and deceive potential distributors and customers into a mistaken and erroneous belief that earnings to be achieved in sale of said merchandise were far in excess of those that could actually be obtained, and that respondent was manufacturer of the merchandise sold by him, furnishing his distributors with bonuses, free automobiles, sales kits and merchandise, and offering genuine extracts and triple strength food flavors, and with result, by reason of such erroneous beliefs thus engendered, that prospective distributors and members of the public were induced to buy his said merchandise and become distributors therefor, and trade was unfairly diverted to him from his said competitors similarly engaged, and who do not misrepresent their said merchandise or business status or make false and misleading statements to prospective distributors and representatives concerning earning opportunities, conditions of employment or otherwise, and said competitors' abilities successfully to compete with him were thereby lessened; 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.

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

Mr. Astor Hogg 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 J. W. Gibson, an individual, trading and doing business under the firm name and style of J. W. Gibson Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

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PARAGRAPH 1. Said respondent, J. W. Gibson, is an individual, trading and doing business under the firm name and style of J. W. Gibson Company, with his office and principal place of business at 1828 Central Avenue, in the city of Indianapolis and State of Indiana. Respondent is now, and for more than one year last past has been, engaged in the business of selling food flavorings, spices, toilet articles, and kindred merchandise to agents and house-to-house canvassers. In the course and conduct of his business, respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia, causing said products, when sold, to be shipped from his place of business in the State of Indiana to purchasers thereof located in a State or States of the United States other than the State of Indiana.

PAR. 2. In the course and conduct of his business aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other individuals, and with other corporations, firms, and partnerships engaged in the business of manufacturing, selling and distributing food flavorings, extracts, spices, toilet articles, and kindred merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent has made and is making false and misleading representations in advertisements inserted in various publications circulated throughout the United States, and in letters, circulars, pamphlets, and otherwise. Among such advertisements, published and circulated as aforesaid, are the following:

Free Sales Kit

Gibson offers this Sales Kit filled
with 5 full size Samples Finest Food Flavors
at Absolutely NO COST to workers. Mail coupon
at once

Up to \$24 a day
Double your Money

Free Samples
5 Big Bottles Sale \$1.00 Price
Your Profit 51¢

MEN AND WOMEN needing up to \$35 a WEEK
Operate one of my New Kind of Cut-Rate Store-on-
Wheels in Your Community

Ride in this
NEW FORD
Distribute Food
Necessities to
Customers

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BRAND NEW TUDOR FORD SEDAN FURNISHED WORKERS as a bonus in addition to your regular earnings. Write J. W. Gibson, Employment Mgr., Dept. 1-2, Indianapolis, Ind.

and,

I Average between
\$40.00 and \$50.00
EACH WEEK

which concludes with the identical offer of a Ford automobile contained in the preceding advertisement.

After prospective agents or purchasers have communicated with respondent because of said advertisements, they receive letters and circulars, in which, among other things, it is stated that:

I want every one of my successful representatives to have one of these beautiful latest model Fords **ABSOLUTELY FREE * * ***

Understand you pay nothing now or ever for this free Ford * * * I give it to you **IN ADDITION TO YOUR REGULAR EARNINGS**.

Why, I know of cases where representatives have earned as many as three, even four brand new Ford cars within a space of two or three years. Not having use for more than one car, they sold the others and pocketed the easy cash for themselves.

On his letterheads, in his pamphlets of instructions, and otherwise, the respondent describes and holds himself out to be a manufacturer of the merchandise he sells, stating that the "J. W. Gibson Company has been manufacturing quality food products," that his said business is "unlike other manufacturers," and that his goods are sold "direct from the factory to the customer."

In the advertisements, literature, and instructions which respondent publishes and furnishes to his purchasers, the imitation flavoring compounds referred to are described in many instances as "extracts" and "Gibson's Famous Triple Strength Guaranteed Food Flavors."

In the catalogue sent by the respondent to prospective agents and purchasers, respondent makes the following statement:

We frequently offer to customers valuable kitchen utensils and many other useful articles when they purchase a big high-quality bottle of food flavoring at regular retail price. This is just one of the hundreds of special combinations and free gift offers that are bound to make you the most popular person in your community.

PAR. 4 Respondent, by such false and misleading advertising in interstate commerce, has falsely represented to prospective agents that they can obtain free sales kits, that they can earn from \$24 to \$50 per week, and that they are given new automobiles by respondent as a bonus in addition to their regular earnings.

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By the use of false and misleading representations appearing in respondent's circulars and other advertising matter pertaining to the quality of flavoring extracts and the giving of gifts and premiums, which representations are passed on to the purchasing public by agents and representatives of respondent, the public is deceived concerning the character and quality of said merchandise and the value thereof.

PAR. 5. In truth and in fact, respondent does not furnish free sales kits to prospective agents or purchasers, but on the contrary requires a deposit of one dollar for each of such sales kits, which said amount is not refunded until such purchaser has bought certain merchandise, the aggregate price of which is \$11.76; the agents or workers do not earn up to \$24 a day. The statement "men and women needing up to \$35 a week" implies that, by operating one of respondent's "Cut Rate Stores on Wheels," an agent is enabled to earn said amount of money in one week, when in truth and in fact said agents do not earn such amount; and in truth and in fact agents of respondent do not average between \$40 and \$50 per week, but on the contrary earn only amounts which do not even approximate such sum; respondent does not furnish any automobiles as a bonus to his agents in addition to their regular earnings, but on the contrary requires that such agents sell merchandise amounting to \$4,500, exclusive of free deals and combinations, before they are entitled to any automobile; in fact, no agent has ever received an automobile from respondent, free or otherwise; the representation, made in one of respondent's letters, to the effect that he knows of agents who have earned three or four brand new Ford cars, is false; respondent is not a manufacturer of the merchandise he sells, but on the contrary purchases all of his products from manufacturers and wholesalers; the extracts referred to by respondent as Guaranteed Triple Strength Food Flavors are in truth and in fact imitation flavoring compounds; respondent does not furnish to ultimate consumers gifts, premiums or money saving deals, but on the contrary the price of all such goods is included in the price of the merchandise sold to the public.

PAR. 6. Respondent, in his catalogue, pamphlets, and letters, distributed as aforesaid, has used the terms "extracts" and "Gibson's Famous Triple Strength Guaranteed Food Flavors" to describe imitation flavoring compounds which lack the necessary alcohol content required as a vehicle for carrying genuine flavoring extracts. Over a period of many years the trade and the public generally have been led to, and they now do, believe and consider a "flavoring extract" to be a flavoring compound wherein the flavoring is secured by extrac-

tion of juices from beans, berries, nuts, or fruits. These juices are then suspended in alcohol which is recognized as the most valuable and desirable vehicle that can be used for dissolving and preserving extractions of juice from beans, berries, nuts, or fruits.

PAR. 7. A substantial portion of the purchasing public has expressed and has had a marked preference for genuine "flavoring extracts," as that term is known and used by the trade and public generally, over any imitation flavoring compounds composed of synthetic substitutes and chemicals suspended in inferior oils or emulsions. The cost of producing genuine flavoring extracts is greatly in excess of the cost of producing imitation flavoring compounds.

Also, a substantial portion of the purchasing public has a marked preference for dealing with and purchasing items of merchandise from manufacturers or distributors who operate on a large scale and do a large volume of business, believing that superior quality and lower prices can be secured by dealing with such distributor.

PAR. 8. In the course and conduct of his business as hereinabove described, respondent is and has been in competition with individuals, and with firms, partnerships and corporations engaged in the manufacture, sale, and distribution in interstate commerce of food flavoring extracts, spices, toilet articles and kindred merchandise, which said competitors are likewise selling to representatives and agents, and who do not misrepresent and have not misrepresented their said merchandise, and who do not make and have not made false and misleading statements to prospective agents and representatives concerning their opportunity to earn large sums of money and otherwise.

PAR. 9. The aforesaid acts and practices of the respondent, as detailed herein, in the offering for sale and sale of his products, were calculated to, and had, and now have, the capacity and tendency to and do, mislead and deceive potential representatives, salesmen or employees into the false and erroneous belief that the earnings to be achieved in selling the wares and merchandise of the respondent are far in excess of the earnings that can actually be obtained and to mislead and deceive said representatives, salesmen or employees, as well as the purchasing public, into the mistaken and erroneous beliefs that the respondent is the manufacturer of the merchandise which he sells and that the representations with reference to bonuses, free deals and combinations are true, and into the purchase of respondent's merchandise on account of such erroneous beliefs. As a result thereof, trade has been unfairly diverted to the respondent from his said competitors whose ability to successfully compete with him has been and is lessened by reason of said methods. As a consequence thereof, substantial injury has been done by the respondent

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to competition in commerce among and between the various States of the United States.

PAR. 10. The acts and things above alleged to have been done, and the false representations alleged to have been made by respondent, are to the prejudice of the public and the competitors of respondent and 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 September 29, 1936, issued and on October 1, 1936, served its complaint in this proceeding upon respondent J. W. Gibson, trading as J. W. Gibson Company, charging him 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 Astor Hogg, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it. No testimony or evidence was offered by respondent in opposition to the allegations of the complaint. The testimony and other evidence offered 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 and brief in support of the complaint (respondent having filed no brief), 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. J. W. Gibson is an individual trading under the name and style of J. W. Gibson Company with his principal place of business located in the city of Indianapolis, in the State of Indiana. He is now, and for several years last past has been, engaged in the sale and distribution of food flavorings, spices, toilet articles, and kindred merchandise to distributors and house to house can-

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vassers. In the course and conduct of his business respondent sells and distributes said products in commerce between and among the various States of the United States. He causes said products, when sold, to be shipped from his place of business in the State of Indiana to purchasers thereof located in the various States of the United States other than the State of Indiana. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by the respondent in said products between and among the various States of the United States. Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals and with corporations, firms, and persons engaged in the sale and distribution of food flavorings, spices, toilet preparations, and allied products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof respondent sold and sells his merchandise to distributors designated by him as agents, who in turn sold and sell such products usually by house to house canvassing to members of the purchasing public. To facilitate the sales of such products and as a means of obtaining such distributors respondent caused and causes advertising matter to be inserted in magazines or publications having an interstate circulation. Typical advertisements published and circulated as aforesaid are the following:

Free Sales Kit

Gibson offers this Sales Kit filled with
5 full size Samples Finest Food Flavors at
Absolutely NO COST to workers. Mail
coupon at once.

Up to \$24 a day
Double your Money

Free Samples
5 Big Bottles Sale \$1.00 Price
Your Profit 51¢

* * * * *

MEN AND WOMEN needing up to \$35 a WEEK
Operate one of my New Kind of Cut-Rate Store-on-
Wheels in Your Community
Ride in this
NEW FORD
Distribute Food
Necessities to
Customers

BRAND NEW TUDOR FORD SEDAN FURNISHED WORKERS as a bonus
in addition to your regular earnings. Write J. W. Gibson, Employment Mgr.,
Dept. 1-2, Indianapolis, Ind.

* * * * *

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I Average between
\$40.00 and \$50.00
EACH WEEK

* * * * *
Gibson Leads Again. Aver 100% profit.
Free merchandise. Free Details.
* * * * *

After prospective distributors or purchasers have communicated with respondent because of said advertisements they receive letters and circulars from respondent in which, among other things, it is stated:

I want every one of my successful representatives to have one of these beautiful latest model Fords ABSOLUTELY FREE * * *.

Understand you pay nothing now or ever for this free Ford * * * I give it to you IN ADDITION TO YOUR REGULAR EARNINGS.

Why, I know of cases where representatives have earned as many as three, even four brand new Ford cars within a space of two or three years. Not having use for more than one car, they sold the others and pocketed the easy cash for themselves.

On his letterheads, in his pamphlets of instructions sent to his distributors and otherwise, respondent represents that he is a manufacturer of the products he sells and that his goods are sold "direct from the factory to the customer."

In the advertisements, literature and instructions which respondent publishes and furnishes to his purchasers the flavoring compounds referred to are described in many instances as "extracts" and "Gibson's famous triple strength guaranteed food flavorings."

In the catalogue sent by the respondent to prospective distributors and purchasers respondent makes the following statement:

We frequently offer to customers valuable kitchen utensils and many other useful articles when they purchase a big high-quality bottle of food flavoring at regular retail price. This is just one of the hundreds of special combinations and free gift offers that are bound to make you the most popular person in your community.

PAR. 3. In the manner and by the means aforesaid respondent has represented to prospective distributors and purchasers that they will receive free sales kits when they become distributors, that they can earn up to \$24.00 per day and that they will earn \$35.00 per week; that they will be given new automobiles by respondent as a bonus in addition to their regular earnings; that the food flavorings advertised and offered for sale are "extracts"; that gifts and premiums are granted purchasers without cost and that respondent offers hundreds of special combinations and free gifts of merchandise; and that respondent manufactures all the merchandise sold by him.

PAR. 4. In truth and in fact respondent does not furnish free sales kits to prospective purchasers or distributors but on the contrary requires a deposit of \$1.00 for each of such sales kits which amount is subject to be refunded in the event such purchaser buys certain merchandise, the aggregate price of which is \$11.76. The distributors of respondent's products do not earn up to \$24.00 a day under normal conditions in due course of business. The statement made by respondent "men and women needing up to \$35.00 a week" implies that the distributors of respondent's products make \$35.00 a week profit from selling respondent's goods. In truth and in fact the majority of said distributors do not earn any such amount. The average earnings of all distributors achieved under normal conditions, are much less than \$35.00 per week. Respondent's distributors do not average between \$40.00 and \$50.00 a week and neither do their earnings approximate any such sum. Respondent does not furnish any automobiles as a bonus to his distributors in addition to their regular earnings, or otherwise, but on the contrary requires that such distributors sell merchandise amounting to \$4500 exclusive of free deals and combinations before they are entitled to any automobile. In fact no distributor has ever received an automobile from the respondent. Respondent does not own, operate, or control the plant or factory in which are made, manufactured, or compounded all the products sold by him. Many of the items which he sells are purchased in bulk and repackaged by him. The flavoring compounds referred to as being of triple strength are not three times as strong as ordinary food flavorings, and on the contrary are ordinary imitation flavoring compounds. Respondent does not furnish to ultimate consumers or distributors gifts, premiums or free merchandise but on the contrary the price of all such goods is included as a part of the purchase price charged for another article or combination of articles.

PAR. 5. In his catalogues, pamphlets, and letters distributed to prospective purchasers respondent uses and used the term "extracts" to describe imitation flavoring compounds, which said representations are passed on to the consuming public by respondent's distributors. Such flavoring compounds so represented were not and are not extracts or juice from fruits, beans, berries, or other similar products dissolved and carried in alcoholic solution, but were and are, on the contrary, made and composed of flavoring materials, largely imitation and synthetic, dissolved and carried in emulsions and oils.

A substantial portion of the purchasing public has a preference for flavoring extracts as that term is generally known and understood

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over imitation flavoring compounds composed of synthetic substitutes and chemicals suspended in oils and emulsions.

Also a substantial portion of the purchasing public has a preference for dealing with and purchasing merchandise from the manufacturers thereof, believing that in so doing they can and do save middlemen's profits and secure other advantages.

PAR. 6. There are among the competitors of respondent corporations, individuals, partnerships, and firms engaged in the sale of food flavorings, spices, toilet articles, and kindred merchandise in commerce between and among the various States of the United States, which said competitors likewise sell to representatives and distributors and who do not misrepresent and have not misrepresented their said merchandise or business status and who do not make and have not made false or misleading statements to prospective distributors and representatives concerning the opportunity to earn sums of money, conditions of employment or otherwise.

PAR. 7. The use by respondent of the foregoing false and misleading representations has had and now has the capacity and tendency to mislead and deceive potential distributors and customers into the mistaken and erroneous belief that the earnings to be achieved in selling the wares and merchandise of respondent are far in excess of the earnings that can actually be obtained and to mislead and deceive such persons as well as the purchasing public into the mistaken and erroneous belief that the respondent is a manufacturer of the merchandise which he sells and into the erroneous belief that respondent furnishes his distributors with bonuses, free automobiles, free sales kits, and free merchandise; and into the erroneous beliefs that the food flavorings offered for sale are genuine extracts and that food flavorings offered for sale as such are three times stronger than ordinary food flavors. And as a result of such erroneous beliefs engendered as above set forth prospective distributors and members of the public are induced to purchase respondent's merchandise and to become distributors for such merchandise. As a result thereof trade has been unfairly diverted to the respondent from his said competitors whose abilities to successfully compete with respondent have been and is lessened by the reason of use of said methods. As a consequence thereof substantial injury has been, and is being, done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, J. W. Gibson, trading as J. W. Gibson Company, are to the prejudice of the public

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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, 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, brief filed herein (the respondent having offered no testimony in opposition to the complaint, having filed no brief, and not having requested oral argument), 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, J. W. Gibson, trading as J. W. Gibson Company, or trading under any other name or names, his agents, servants, and employees, in soliciting the sale of and selling food flavorings, spices, toilet articles, grocery products and similar merchandise, and in advertising for distributors to sell such merchandise, do cease and desist from:

1. Representing, or holding out, as possible or maximum earnings for any fixed period through the use of such statements or expressions "up to" or "as much as" or any other statements or expressions of similar import and effect, or through any other means or device or in any manner, any amount in excess of amounts actually earned during said fixed period by distributors of respondent's merchandise under normal conditions in due course of business.

2. Representing, or holding out, as usual or customary earnings or profits to be derived from the sale of respondent's products any sum or amount in excess of the average, usual and customary sums or amounts actually so earned under normal conditions in due course of business.

3. Representing that prospective distributors are given sales kits free or that any article of merchandise will be given free unless such article is given without the payment of any money.

4. Representing in any manner that merchandise is given as a gratuity in consideration of the purchase of other products when

the cost of such merchandise is included as a part of the purchase price charged for another article or combination of articles.

5. Representing in any manner that Fords or automobiles of any kind are furnished or supplied to, or earned by, workers or distributors.

6. Representing in any manner that respondent is the manufacturer of all the products sold by him or that he owns, operates, or controls a factory where all the products sold by him are manufactured or made or that customers in purchasing from respondent are dealing directly with the manufacturer of all products sold by him, unless and until respondent actually owns, operates or directly and absolutely controls a factory where all of said products are in fact made and manufactured by him.

7. Designating any food flavors as extracts until and unless the product is composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in alcohol.

8. Representing in any manner that ordinary food flavorings are of triple strength.

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.

Syllabus

IN THE MATTER OF
BABIGLO 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 3033. Complaint, Apr. 3, 1937¹—Decision, Sept. 30, 1937*

Where a corporation engaged in sale and distribution, as jobber, to wholesale and retail dealers in various other States, of soaps made for it by various manufacturers to its order, in direct and substantial competition with those similarly engaged in sale and offer of soaps in interstate commerce, and including among its competitors those who manufacture, sell, and distribute soaps which are actually made of olive oil and who advertise and represent their said soaps fairly and accurately—

Labeled, stamped, branded, stenciled, offered, sold, and distributed large and substantial quantities of its said soap with such words and phrases, on labels and containers thereof, as "Olive Oil," "Imported Olive Oil," "Imported Spanish Olive Oil," "Genuine Imported Spanish Olive Oil," "Made with Imported Olive Oil," and in connection therewith the words and phrases, "Old Seville," "Old Madrid," "Florentine," "Infanta," and "Rosario," notwithstanding fact aforesaid brands, thus advertised, designated, represented and sold by it, were not soaps made wholly of olive oil, long considered, by manufacturers of and dealers in said product and by public generally, as excellent soap, free from harmful substances, and possessing desirable qualities not possessed by others, and, by medical profession and drug trade, as having qualities requisite for the care of the sick or ailing, for medical use and for babies, and were not products of Spain, noted producer of olive oil, nor of Italy, but consisted of products saponified and mixed with other oils and fats containing for their fatty bases large percentages of cocoanut oil, palm kernel oil and tallow, with only small percentage of olive oil, in some instances;

With effect of confusing, prejudicing, and injuring its competitors through use of such false and misleading statements, designations, and descriptions, and diverting trade to it from them, operating as a detriment to free and legitimate competition in business of marketing soap, and placing in hands of wholesale and retail dealers an instrument permitting them more easily to substitute its goods for those of another, and of causing trading public in United States to buy its said soap as and for olive oil soaps made with one hundred percent olive oil base:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Marshall Morgan for the Commission.

Greenfeld, Cotton & Breitbart, of New York City, for respondent.

¹ Amended.