

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.

AMENDED 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 Babiglo Company, Inc., hereinafter described and named as respondent, has been, and now is, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Babiglo Company, Inc., is a corporation organized under the laws of the State of New York, with its principal place of business located at No. 37 West 20th St., New York City. It is, and for two years last past has been engaged, as hereinafter described, in the business of selling and distributing, as jobbers, to wholesale and retail dealers located in various States of the United States, other than the State of New York, soaps manufactured for it by various manufacturers located in the States of New York, New Jersey, Ohio, and elsewhere. In consummating such sales and in distributing such merchandise, respondent causes the soaps so sold by it to be transported and delivered from the city of New York, through and into various other States of the United States to the respective purchasers thereof at their several points of location. In the course and conduct of its business, Babiglo Company, Inc., the respondent herein, has been, and now is, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in selling soap and in offering such product for sale, in interstate commerce.

PAR. 2. Spain has always been noted as a producer of olive oil. Because of the recognized qualities of olive oil as an agent for health and cleanliness, and for other reasons, soap made of olive oil has long been, and now is, considered by manufacturers of, and dealers in soap, and by the public generally, as an excellent soap, free from substances harmful to the human skin or to delicate fabrics, a product of undoubted excellence and possessing desirable qualities not contained in some other soaps. Soap made of olive oil has long been known as one of the world's best known toilet soaps. Soap made of olive oil has long been, and now is, considered and held by the medical profession and the drug trade, to have the qualities requisite and desirable for the cleansing and bathing of sick or ailing persons, and for use in medical preparations. Such soap has long been, and

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now is, prescribed and recommended by said profession and said trade as a Baby Soap.

PAR. 3. In connection with its business of selling and distributing soap in interstate commerce, respondent contracts with various manufacturers of soap who manufacture such product for it. Said manufacturers make soap to the order of respondent and the said soap, after being so manufactured, is weighed according to size and is then shipped to respondent by said manufacturers. Respondent thereupon assort the same, and stencils, brands, or labels and wraps it in accordance with respondent's own methods of marketing. Said soap is then sold to respondent's customers, wholesalers and retailers. Said stenciling, branding, labeling, wrapping, and representations appearing upon or in connection with respondent's soap products, represent and reflect the advertising ideas and policies of respondent.

PAR. 4. In further connection with the sale and distribution of its said soap to wholesalers and retailers as hereinabove described, respondent has caused and still causes large and substantial quantities of its said soap to be labeled, stamped, branded, stenciled, offered for sale, sold, and distributed under designations as hereinafter described, said representations indicating, and intended to indicate, that said soaps are, and were, made wholly of imported Spanish olive oil or were Spanish products made of olive oil, or were and are, products of Spanish or Italian origin, when such are not the facts.

The respondent has caused toilet soaps made and sold as herein described to be offered for sale, and sold, respectively, in wrappers and containers having on the wrappers, labels, and containers of the said soaps, among others, the words and phrases, "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," Rosario," and "Spanish Floating Soap."

PAR. 5. When in truth and in fact the aforementioned brands of soap advertised, represented and sold by respondent are not, and have not been made as alleged, and claimed, from olive oil, but are instead highly adulterated soaps of cheaper grade, type or composition, 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 a small percentage of olive oil in any instance, and containing no olive oil in some instances; the brands of soap containing Spanish names indicating Spanish origin, such as "Old Seville," "Old Madrid," "Infanta," and "Spanish Floating Soap" are not, and never were, of Spanish origin; the brand known as

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"Florentine" is not, and never has been, a product of Italian origin, and the brand designated as "Rosario" is not, and never has been, a product either of Spanish or Italian origin.

PAR. 6. Respondent's use of the words, terms, and expressions, "Olive Oil," "Imported Olive Oil," "Imported Spanish Olive Oil," "Genuine Imported Spanish Olive Oil," "Made With Imported Olive Oil" in designating, describing, representing, and offering for sale and in selling its said soaps as hereinbefore described is, and was, false, misleading, and deceptive and has, and has had, the capacity to mislead and deceive substantial members of the wholesale and retail trade and the consuming public into purchasing respondent's said soaps in the erroneous belief that the same are, and were, "Olive Oil" soaps made with a hundred percent olive oil base, when such is not, and was not, the fact. The further use by respondent of such Spanish words and expressions as "Old Seville," "Old Madrid," "Spanish Floating Soap," and "Infanta"; of the Italian word "Rosario" in connection with the expressions, "Olive Oil," "Imported Olive Oil," "Imported Spanish Olive Oil," "Genuine Imported Spanish Olive Oil," "Made with Imported Olive Oil," in designating, describing and offering for sale and in selling its soaps as aforesaid are, and were, false, misleading, and deceptive, and have, and have had, the capacity to mislead and deceive substantial numbers of the wholesale and retail trade and the consuming public into purchasing respondent's said brands of soap in the erroneous belief that the same are, and were, respectively, of Spanish or Italian origin, when such is not the fact.

PAR. 7. There are among the competitors of respondent those engaged in the manufacture or importation of soap which is made exclusively from an olive oil base, and who accurately and fairly describe, represent, advertise and sell their products as "Olive Oil" soap, a soap made of olive oil; and there are other competitors of respondent who manufacture, describe, represent, advertise and sell soaps containing no olive oil, or a combination of olive oil and other fatty ingredients such as cocoanut oil, palm kernel oil, or other oils, who do not represent such products to be "Olive Oil" soap, but who advertise and represent and sell such soaps fairly and accurately.

PAR. 8. The use by respondent of the false, misleading, and deceptive statements, designations, and descriptions as hereinbefore set forth constitutes practices or methods of competition which tend to, and do, confuse, prejudice and injure respondent's competitors, divert trade to respondent from its competitors, operate as a detriment to free and legitimate competition in the business of marketing soap, place in the hands of wholesale and retail dealers an instrument

which permits them more easily to substitute the goods of respondent for the more expensive products of another, have the capacity and tendency to cause, and do cause, the trading public in the United States to purchase respondent's said soaps, as and for olive oil soaps, which they are not, in preference to the more costly soaps of competitors which are made with a hundred percent olive oil base.

PAR. 9. Said false, deceptive, and misleading acts, practices, and methods of respondent 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."

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 January 15, 1937, issued and served its original complaint in this proceeding on respondent, Babiglo Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, and on April 5, 1937, issued and served its amended complaint on the said respondent charging it with the use of unfair methods of commerce other than, and in addition to, those in relation to which the Commission issued its original complaint as aforesaid. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondent through its counsel, Messrs. Greenfeld, Cotton & Breitbart, and W. T. Kelley, Chief Counsel of the Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences it might draw from said facts), and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaints, answers, and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Babiglo 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 located at No. 37 West 20th St., New York City. Respondent is now and for more than two years last past has been engaged in the business of selling and distributing as jobber, to wholesale and retail dealers located in various States of the United States, other than the State of New York, soaps manufactured for it by various manufacturers located in the States of New York, New Jersey, Ohio, and elsewhere. In consummating such sales and in distributing such merchandise, respondent causes the said soaps so sold by it to be transported and delivered from its place of business in New York City, State of New York, through and into various other States of the United States to the respective purchasers thereof at their several points of location.

PAR. 2. In the course and conduct of its business, Babiglo Company, Inc., the respondent herein, has been, and now is, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in selling soap and in offering such products for sale, in interstate commerce.

PAR. 3. Spain has always been noted as a producer of olive oil. Because of the recognized qualities of olive oil as an agent for health and cleanliness, and for other reasons, soap made of olive oil has long been, and now is, considered by manufacturers of, and dealers in soap, and by the public generally, as an excellent soap, free from substances harmful to the human skin or to delicate fabrics, a product of undoubted excellence and possessing desirable qualities not contained in some other soaps. Soap made of olive oil has long been recognized as one of the world's best known toilet soaps. Soap made of olive oil has long been, and now is, considered and held by the medical profession and the drug trade, to have the qualities requisite and desirable for the cleansing and bathing of sick or ailing persons, and for use in medical preparations. Such soap has long been, and now is, prescribed and recommended by said profession and said trade as a Baby Soap.

PAR. 4. In connection with its business of selling and distributing soap in interstate commerce, respondent contracts with various manufacturers of soap who manufacture such product for it. Said

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manufacturers make soap to the order of respondent and the said soap, after being so manufactured, is weighed according to size and is then shipped to respondent by said manufacturers. Respondent thereupon assort the same, and stencils, brands, or labels and wraps it in accordance with respondent's own methods of marketing. Said soap is then sold to respondent's customers, wholesalers and retailers. Said stenciling, branding, labeling, wrapping, and representations appearing upon or in connection with respondent's soap products, represent and reflect the advertising ideas and policies of respondent.

PAR. 5. In further connection with the sale and distribution of its said soap to wholesalers and retailers as hereinabove described, respondent has caused and still causes large and substantial quantities of its said soap to be labeled, stamped, branded, stenciled, offered for sale, sold, and distributed under designations as hereinafter described.

On wrappers and containers in which respondent's said soap has been offered for sale and sold respectively appear, among others, the following words and phrases: "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."

PAR. 6. In truth and in fact the aforementioned brands of soap as advertised and designated, represented and sold by respondent, are not and have not been made wholly of olive oil but are instead soaps saponified and mixed with other oils and fats, containing for their fatty bases, large percentages of coconut oil, palm kernel oil, and tallow, with only a small percentage of olive oil in some instances. The brands of soap having Spanish names, such as "Old Seville," "Old Madrid," and "Infanta" are not and never were of Spanish origin, the brand known as "Florentine" is not and never has been a product of Italian origin, and the brand designated as "Rosario" is not and never has been a product either of Spanish or Italian origin.

PAR. 7. There are among the competitors of respondent referred to in paragraph 1 hereof those who manufacture, sell, and distribute in competition with respondent, soaps which are actually made of olive oil and who advertise and represent their said soaps fairly and accurately.

PAR. 8. Respondent's use of the statements, designations, and descriptions as hereinbefore set forth is false and misleading and constitutes practices or methods of competition which tend to, and do, confuse, prejudice, and injure respondent's competitors, divert trade to respondent from its competitors, operate as a detriment to free

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and legitimate competition in the business of marketing soap, place in the hands of wholesale and retail dealers an instrument which permits them more easily to substitute the goods of respondent for the products of another, and have the capacity and tendency to cause, and do cause, the trading public in the United States to purchase respondent's said soaps, as and for olive oil soaps, made with a hundred percent olive oil base, which they are not.

CONCLUSION

The aforesaid acts and practices of the respondent, Babiglo Company, Inc., a corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the original and amended complaints of the Commission, the answers of respondent thereto, and the agreed stipulation as to the facts entered into between the respondent herein, Babiglo Company, Inc., and W. T. Kelley, Chief Counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts (including inferences which it may draw from the said stipulated facts) and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Babiglo Company, Inc., its officers, representatives, agents, individual or corporate, and its 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:

1. The use of the words "olive" or "olive oil," alone or in conjunction with any other word or words, to designate or describe a soap product composed in part of olive oil and in part of other oils and fats unless there appears in immediate connection and conjunction

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with the words "olive" or "olive oil" and in clear and legible type or lettering in size equal to that of the word "olive" or the words "olive oil," other words which accurately and truthfully describe and designate the true content of the product;

2. The use of the words "Old Seville," "Old Madrid," or "Infanta," or any other words of similar import and effect, alone or in conjunction with each other or with any other word or words describing said product, or the use of any pictorial representation, as a brand or label for soap so as to import or imply that said soap was produced in and imported from Spain, unless or until such statements and representations are true in fact and said soap was actually produced in and imported from Spain; or any similar use of the word "Florentine" or the word "Rosario," or any other words of similar import and effect, unless and until such statements and representations are true in fact and said soap was produced in and imported respectively from Italy, or from Italy or Spain.

3. Representing, through the use of the word "imported," alone or in conjunction with any other word or words as descriptive of soap, or in any manner, or through any means or device, that soap manufactured in the United States was made in and subsequently imported from Spain or from any other foreign country.

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
CHRISTMAS CLUB

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SECS. 3 AND 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3050. Complaint, Feb. 5, 1937—Decision, Sept. 30, 1937

Where a corporation engaged, for more than three years last past, in the sale, in commerce among the various States and in the District of Columbia, of pass books, account books, advertising literature, and other paraphernalia for use by banks and trust companies in their conduct of Christmas Clubs and other savings systems, in substantial competition with others engaged in sale in commerce of systems for use by banks and trust companies and their depositors in the conduct of such clubs and other savings systems, and, as thus engaged, in furnishing such systems for such purposes to more banks and trust companies for their use than any of its competitors, with annual revenues from such activity during aforesaid period likewise exceeding that of any other of said competitors—

- (a) Represented that it had the right to the sole and exclusive use of name or phrase "Christmas Club" for its said systems, and that said name had been trade-marked by it for use thereon, facts being that, while it was owner of registered trade-mark "Christmas Club" for use as magazine title, said name or phrase had not been registered by it as trade-mark for its said system, nor had it established in any court of competent jurisdiction its sole and exclusive right to use of name or phrase in question thereon;
- (b) Represented that it was the manufacturer and printer of its said systems, through inclusion in certain of its contract forms of statement that its said systems would be shipped f. o. b. its factories, facts being that approximately ninety-five percent of its said systems, furnished by it to banks and trust companies, were made for its order by manufacturing printing concerns in which it had no financial or other interest, while approximately five percent thereof were printed by affiliated corporations, stock of which, along with a part of its own stock, was held by another concern;
- (c) Represented that it had spent, over a period of time, more than \$3,500,000 in promoting the Christmas Club name and idea among the banks and people of the United States, facts being said figure represented an arbitrary fraction of the total selling expenses, other than cost of goods sold and executive selling expenses over a period of years, of itself and certain other companies, assets of which had been acquired by it;

With capacity and tendency to mislead certain banks and trust companies purchasing such systems from it into believing that such representations as aforesaid, as to such right to use of said name or phrase and as to manufacture of said systems, were true, and to induce them to buy such systems from it in such erroneous belief, and as manufactured and printed by it, and with effect of inducing banks and trust companies to purchase said products from it without knowing sense in which word "promotion"