

IN THE MATTER OF
JOHNSON & JOHNSON

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

Docket 3029. Complaint, Jan. 8, 1937—Decision, Dec. 29, 1937

Where a corporation engaged in manufacture of absorbent cotton, gauze, bandage, and other first-aid and surgical-dressing products, and in sale and distribution thereof to purchasers in other States, in substantial competition with those engaged in manufacture, sale, and distribution of similar products in commerce among the various States and in the District of Columbia, and including manufacturers, sellers, and distributors of like and similar products, who truthfully advertise and represent nature, merit, therapeutic, and remedial value thereof, and those who do not falsely advertise and otherwise represent that their products have merits and values not possessed by competitive goods or articles not so well-known or extensively advertised, and do not unwarrantedly disparage products of competitors; in advertising certain of its said products in newspapers, magazines, and other publications circulated among the various States and in aforesaid District—

Unfairly disparaged competitors' products through statements inferring that, because such competitors did not extensively advertise their respective goods and products and they were not widely known, such goods subjected users thereof to dangers of infection, and were not safe and in sanitary condition when opened for use, through such statements as " * * * this young mother is wrapping around her son's wrist a bandage that may invite infection. It is a 'first-aid' dressing of unknown make which can betray the trust imposed in it," and that while probably "sterilized at some period," as in the "original bleaching process," "in subsequent cutting and packing, it may have been handled by dirty hands * * * hands that couldn't help but rob this dressing of its cleanliness—and safety," and accompanying depiction of crutches, and under caption "Monuments to a Misplaced Trust," among others, "You just can't take chances with germs of infection," "The 'sterilized' dressings that you use must be sterilized in fact as well as in name," and "You can't afford to gamble with any 'first-aid' product that is merely marked 'sterilized'," and " * * * some 'first-aid' dressings of unknown make, which may be sterilized only in an early process of manufacture and subsequently be exposed to germ-laden dirt," etc., facts being there is no necessary relationship between antiseptic properties or safety of any of products in question and fact that manufacturer is known or unknown;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of first-aid and surgical-dressing goods or articles into purchase of its said products in erroneous belief that its aforesaid representations were true, and with result that a number of the consuming public, as a direct consequence of such mistaken and erroneous beliefs, purchased substantial volume thereof, and trade was unfairly diverted to it from those

likewise engaged in manufacture, sale and distribution of similar goods and articles; 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. Edward E. Reardon*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Kenneth Perry, of New Brunswick, N. J., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Johnson & Johnson, a corporation, has been and now 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Johnson & Johnson, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located in the city of New Brunswick, in the State of New Jersey. It is now, and has been for more than one year last past, engaged in the business of manufacturing, selling and distributing absorbent cotton, gauze, bandage, and other first-aid and surgical-dressing products. It ships said products, or causes them to be shipped, when sold, to purchasers located at various points in States of the United States other than New Jersey. It maintains, and has at all times maintained, a constant current of trade and commerce in the products distributed and sold by it among and between the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent has been, at all times referred to herein, in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the manufacture, sale, and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, and for the purpose of creating a demand for its products on the part of the purchasing public, the respondent has caused advertisements and advertising matter pertaining to certain of its products to be inserted in newspapers and magazines, and other publications having a circulation between and among the various

States of the United States and in the District of Columbia. In said ways and by said means, the respondent has caused and now causes its said products to be advertised and represented as follows: Following the picture of a young woman binding the wrist of a child are the statements:

In all innocence, this young mother is wrapping around her son's wrist a bandage that may invite infection.

It is a "first-aid" dressing of unknown make which can betray the trust imposed in it.

True, it probably was sterilized at some period of its manufacture * * * as in the original bleaching process.

But in subsequent cutting and packing, it may have been handled by dirty hands * * * hands that couldn't help but rob this dressing of its cleanliness—and safety.

Following the picture of a pair of crutches and as part of an advertisement entitled "Monuments to a Misplaced Trust" appear the following representations:

You just can't take chances with germs of infection.

No matter how small the cut, the greatest care must be exercised in dressing the wound—or something serious * * * tragic may happen.

The "sterilized" dressings that you use must be sterilized in fact as well as in name * * *.

You can't afford to gamble with any "first-aid" product that is merely marked "sterilized."

* * * some "first-aid" dressings of unknown make, which may be sterilized only in an early process of manufacture and subsequently be exposed to germ-laden dirt * * *.

PAR. 3. In truth and in fact, the statements and representations thus made by respondent as set out in paragraph 2 hereof, and others similar thereto, are misleading and deceptive in that they represent, directly or by innuendo, that users of first-aid and surgical-dressing products of unknown make, or which are manufactured by other than well-known and extensively advertised organizations, run grave risk of infecting wounds or cuts upon which such dressings are used. Further, respondent's said statements and representations constitute an unwarranted disparagement of the products of those competitors who, although they do not advertise their products extensively and may not be as well known, manufacture first-aid and surgical-dressing products that are equal in antiseptic properties and are as safe for use and in as sanitary condition when opened for use as are the products manufactured and sold by the respondent.

PAR. 4. There are, among the competitors of the respondent in commerce, as herein set out, manufacturers, sellers, and distributors of like and similar products who truthfully advertise and represent the nature, merit, therapeutic and remedial value of their respective

products. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that their products have merits and values not possessed by competing products that are not so well known or as extensively advertised, when such is not the case, and who do not unwarrantedly disparage the products of competitors.

PAR. 5. The above-alleged acts and practices of respondent have and have had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of first-aid and surgical-dressing products into the purchase of respondent's products in the erroneous beliefs that respondent's representations, as aforesaid, are true. Further, as a direct consequence of the mistaken and erroneous beliefs aforesaid, a number of the consuming public purchase and have purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to respondent from corporations, firms, and individuals likewise engaged in the business of manufacturing, selling and distributing similar products, and thereby substantial injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged, and 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 the 8th day of January 1937, issued and served its complaint in this proceeding upon respondent, Johnson & Johnson, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of said respondent's answer and amended answer thereto a stipulation as to the facts was entered into by and between the respondent and W. T. Kelley, Chief Counsel for the Commission, by which it was agreed that, subject to the approval of the Commission, the statement

of facts so agreed upon should 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 by which stipulation it was further agreed that the Commission might proceed upon said statement of facts to issue its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission and approved by it. Thereafter the proceeding came on for final hearing before the Commission on said complaint, the answer thereto and the statement of facts as agreed upon in lieu of testimony, briefs and argument having been waived and the Commission having duly considered the same and being 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. Respondent, Johnson & Johnson, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located in the city of New Brunswick, in the State of New Jersey. It is now, and has been for more than one year last past, engaged in the business of manufacturing, selling, and distributing absorbent cotton, gauze, bandage, and other first-aid and surgical-dressing products. It ships said products, or causes them to be shipped, when sold, to purchasers located at various points in States of the United States other than New Jersey. It maintains, and has at all times maintained, a constant current of trade and commerce in the products distributed and sold by it among and between the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent has been, at all times referred to herein, in substantial competition with other corporations, firms, partnerships and individuals likewise engaged in the manufacture, sale, and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, and for the purpose of creating a demand for its products on the part of the purchasing public, the respondent has caused advertisements and advertising matter pertaining to certain of its products to be inserted in newspapers and magazines, and

other publications having a circulation between and among the various States of the United States and in the District of Columbia. In said ways and by said means, the respondent has caused its said products to be advertised and represented as follows: Following the picture of a young woman binding the wrist of a child are the statements:

In all innocence, this young mother is wrapping around her son's wrist a bandage that may invite infection.

It is a "first-aid" dressing of unknown make which can betray the trust imposed in it.

True, it probably was sterilized at some period of its manufacture * * * as in the original bleaching process.

But in subsequent cutting and packing, it may have been handled by dirty hands * * * hands that couldn't help but rob this dressing of its cleanliness—and safety.

Following the picture of a pair of crutches and as part of an advertisement entitled "Monuments to a Misplaced Trust" appear the following representations:

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No matter how small the cut, the greatest care must be exercised in dressing the wound—or something serious * * * tragic may happen.

The "sterilized" dressings that you use must be sterilized in fact as well as in name * * *.

You can't afford to gamble with any "first-aid" product that is merely marked "sterilized."

* * * some "first-aid" dressings of unknown make, which may be sterilized only in an early process of manufacture and subsequently be exposed to germ-laden dirt * * *.

Respondent's advertisements as above set out were discontinued in or about the month of February, 1937.

PAR. 3. The statements and representations made by respondent as set out in paragraph 2 hereof, and others similar thereto have a capacity and tendency to deceive and mislead the public in that they represent indirectly, that users of first-aid and surgical products of unknown make, or those manufactured by other than well-known manufacturers, run grave risk of infecting wounds or cuts upon which such dressings are used. Further, respondent's said statements and representations have the capacity and tendency to disparage the products of those competitors, if any, who, although their products may not be well-known, manufacture first aid and surgical dressing products that are safe for use and sanitary when opened for use. There is no necessary relationship between the antiseptic properties or safety of any of the products in question and the fact that the manufacturer is known or unknown.

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PAR. 4. There are, among the competitors of the respondent in commerce, as herein set out, manufacturers, sellers, and distributors of like and similar products who truthfully advertise and represent the nature, merit, therapeutic and remedial value of their respective products. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that their products have merits and values not possessed by competing products that are not so well known or as extensively advertised, when such is not the case, and who do not unwarrantedly disparage the products of competitors.

PAR. 5. The above-alleged acts and practices of respondent have had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of first-aid and surgical-dressing products into the purchase of respondent's products in the erroneous beliefs that respondent's representations, as aforesaid, are true. Further, as a direct consequence of the mistaken and erroneous beliefs aforesaid, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to respondent from corporations, firms, and individuals likewise engaged in the business of manufacturing, selling, and distributing similar products, and thereby 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.

CONCLUSION

The aforesaid acts and practices of respondent, Johnson & Johnson, 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 complaint of the Commission, the answer and amended answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, Johnson & Johnson, a corporation, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence

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or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the 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, Johnson & Johnson, a corporation, its representatives, agents, and employees, in connection with the advertising, offering for sale, sale, distribution and manufacture of absorbent cotton, gauze, bandages and other first-aid and surgical dressing products in interstate commerce or in the District of Columbia, do forthwith cease and desist:

From unfairly disparaging competitors or their products through use of statements which, directly or indirectly, infer that because said competitors do not extensively advertise their respective products and are not widely known such competitive products subject the users thereof to the dangers of infection and are not safe and in a sanitary condition when opened for use, or through any other such means or device or in any similar manner.

And it is hereby further ordered, That the said respondent shall, within 60 days from the date of the service upon it of this order, file with this Commission a report, in writing, setting forth the manner and form in which it shall have complied with this order.

IN THE MATTER OF
BUILDING MATERIAL DEALERS ALLIANCE, 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 2191. Complaint, Oct. 18, 1935¹—Decision, Dec. 30, 1937

Where a trade association which included in its membership over 150 dealers in building materials and builders' supplies in the Cleveland-Pittsburgh Trade Area, and organized local or sectional associations of such dealers; and certain local or sectional organizations of such dealers, affiliated with said trade association as members or through common membership or common officers and representation on its council, and active cooperators with it in furthering their common basic object and purpose or program of controlling and confining retail distribution of building materials and builders' supplies exclusively through "recognized" dealers as established by them, and preventing direct sale of such materials to consumers, non-recognized dealers, vendors, contractors, and State Governments and other political sub-divisions, and of requiring all such purchasers to buy their materials and supplies through recognized dealer channels affording a commission or profit to recognized dealers, and with further objectives of (1) limiting distribution of such materials to carload quantities by railroad only, with participation in pool car shipments denied to other than recognized dealers, (2) preventing manufacturers of cement blocks from purchasing their raw materials direct from manufacturers and producers, (3) requiring sale and distribution of all cement requirements for all buildings and private construction, and for highway, bridge, and culvert maintenance, and for cities, counties, and other political sub-divisions, to be made through the medium of the members and recognized dealers, and at prices affording them a profit, (4) facilitating price fixing among such dealers in their respective communities, and (5) eliminating brokers in distribution of such materials and supplies; and the officers, counsellors and members of such associations and organizations: and—

Where a national federation which included 41 federated local and sectional associations of dealers in such materials and supplies in '32 States, and which was formed to succeed to, and apply on a national scale and under same leadership, principles, and programs of aforesaid trade associations; and certain local or sectional affiliated or member organizations of said national federation, acting in cooperation with one another and with it and the active officers thereof, as the case might be; and officers, etc., of said various organizations.

In concertedly pursuing their common objectives and purposes, as above indicated, and as the case might be, and representing, in the aggregate, predominant interests in the fields and sections concerned—

- (a) Prepared, published, and circulated among manufacturers and producers of building materials and builders' supplies, lists, or directories containing names of recognized dealers, with intent and effect of indicating that per-

¹ Amended and supplemental.