

IN THE MATTER OF

INDIANAPOLIS SOAP COMPANY, ALSO TRADING AS
SANISOAP COMPANY, AND W. W. SOAP MANUFACTUR-
ING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2966. Complaint, Nov. 4, 1936—Decision, Jan. 13, 1938*

Where a corporation engaged in manufacture of soap and soap products, and in sale and distribution thereof, through mail order concerns and house-to-house canvassers, throughout the United States, in substantial competition with others similarly engaged in such sale and distribution, or manufacture, sale, and distribution, including competitors who, as manufacturers and distributors of such products, in no way mark the same with retail prices, and also those who place thereon only price marks at which their products are actually offered and sold in usual course of business—

Made use of expression "Combination Price, 75¢" on the three-bar cartons in which it put up such soap, and which it sold, thus packaged and conspicuously labeled, at 5¢ per carton, or thereabouts, to aforesaid canvassers for resale and distribution in conjunction with other products or separately, as desired, and in accordance with their practice and within their discretion, at approximately 25¢ per carton;

With effect of deceiving and misleading substantial portion of purchasing public into erroneous belief that said cartons of soap had retail value or price in excess of actual one, and were actually normally offered and sold at said marked price per carton in usual course of business, and with result that public, acting under mistaken and erroneous beliefs induced by such false and misleading representation, purchased substantial volume of its soap and trade was unfairly diverted to it thereby from competitors similarly engaged in manufacture, sale and distribution, or sale and distribution, of such products, and who truthfully represent the quality and value thereof, and the price at which same are offered and sold to public:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett 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 Indianapolis Soap Company, a corporation, trading as Sanisoap Company, and as W. W. Soap Manufacturing Company, hereinafter referred

to as respondent, has been, and is now, 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, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Indianapolis Soap Company, trading as Sanisoap Company, and as W. W. Soap Manufacturing Company, is a corporation, organized in 1922, and doing business under the laws of the State of Indiana, having its principal office and place of business at 1249 Roosevelt Avenue, Indianapolis, Ind.

Respondent is now, and for several years last past has been, engaged in the sale of soap to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and for several years last past has caused, its soap, when sold by it, to be shipped from its place of business in Indianapolis, Ind., to the purchasers thereof, located in the various States of the United States, and in the District of Columbia. There is now, and has been for several years last past, a constant current of trade and commerce, by the respondent, in soap, between and among the various States of the United States, and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other corporations, individuals, firms, and partnerships, engaged in the sale of soap 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, respondent offers for sale and sells its soap packed in cardboard boxes. For the purpose of inducing the purchase of its said soap respondent has been, and is now, engaged in, fictitious price marking. On the lid of each box of said soap appears one of the following representations: "3 Bars—Combination Price 75¢," "Price 75¢," or "Combination Price 75¢."

The said soap above mentioned is sold by the respondent principally to house-to-house canvassers for resale to ultimate consumers. The prices marked on the boxes in which the soap above mentioned is sold are many times in excess of the actual selling price to said house-to-house canvassers and many times in excess of the actual value thereof and are much greater than the actual price at which said soap is sold by said canvassers to said ultimate purchasing and using public. The prices so indicated were not intended by the respondent to be the true retail price or the true retail value of said soap, and are false and fictitious, and in no sense represent either the true

value or the true selling price of the soap so price marked. The prices marked as above indicated, were intended by the respondent and the canvasser purchasing for resale, to be far in excess of the price actually charged the ultimate consumer.

PAR. 3. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and does mislead a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said soap from respondent on account of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of soap who do not misrepresent in any way the prices at which their products are sold in the usual course of trade, who likewise advertise, sell, and distribute their soap among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors, thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 4. The above alleged acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors 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 November 4, 1936, issued, and on November 6, 1936, served, its complaint in this proceeding upon respondent, Indianapolis Soap Company, a corporation, also trading as Sanisoap Company and W. W. Soap Manufacturing Company, 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 respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Jesse M. Daily, counsel for the respondent, before John L. Hornor, an examiner of the Commission theretofore duly designated by it; and

said testimony and other evidence 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 briefs in support of the complaint and in opposition thereto (no oral argument having been requested); and the Commission having duly considered the matter, 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, Indianapolis Soap Company, is an Indiana corporation, organized in 1922. Its office and manufacturing plant are located at 1249 Roosevelt Avenue, Indianapolis, Ind. It is engaged in the manufacture, sale and distribution of soap and soap products. Respondent also offers its said products for sale under the trade names Sanisoap Company and W. W. Soap Manufacturing Company.

Respondent's said soap and soap products are manufactured and prepared for the market at its said place of business in Indianapolis, Ind., and distributed to the public through mail order houses and house-to-house canvassers throughout the United States. About one-third of its output is marketed through house-to-house canvassers. When orders are received for respondent's said soap and soap products, it causes such products to be shipped from its place of business in Indianapolis, Ind. to the purchasers thereof located at various points in the States of the United States other than the State of Indiana. At all times mentioned herein, the respondent has maintained a course of trade in said soap and soap products in commerce among and between the various States of the United States.

At all times since respondent entered into said business, it has been in substantial competition with other corporations, and with partnerships and individuals, engaged in the sale and distribution, or in the manufacture, sale, and distribution, of soap and soap products, in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. Respondent's bar soap is put up in pasteboard cartons, three bars to the carton. On each of the cartons conspicuously appears the expression "Combination Price, 75¢." Thus packaged and labeled, respondent's bar soap is sold by respondent for approximately 5¢ per carton to house-to-house canvassers, located at various points in States of the United States other than the State of Indiana,

who in turn sell and distribute same to the purchasing public for approximately 25¢ per carton.

The house-to-house canvassers usually carry, in addition to the cartons of soap, other products such as soap flakes, cleansers and soap powders. The canvassers determine what item or items shall be included in their stock in trade and respondent's sales to the canvassers do not always include the auxiliary products. It is within the discretion, also, of the canvassers to determine what item or items they shall offer for sale and sell and the price or prices at which the said item or items are offered for sale and sold. Respondent's cartons of soap labeled "Combination Price, 75¢" are not intended by respondent to be sold at retail, nor are they actually sold for 75¢ per carton retail. As a rule, they are actually sold at retail for approximately 25¢ per carton, the canvasser paying only 5¢ per carton therefor. The cartons may or may not be sold in conjunction with other products depending on whether the particular canvasser chooses to offer the cartons of soap singly, in groups, or in conjunction with other products.

PAR. 3. There are, among the competitors of respondent referred to in paragraph 1 hereof, manufacturers and distributors of soap and soap products who in no way mark their soap and soap products with retail prices. There are also among said competitors those who place upon their soap and soap products only the price marks at which their products are actually offered for sale and sold in the usual course of business.

PAR. 4. The use by respondent of the expression "Combination Price, 75¢" on its cartons of soap, which cartons do not in fact sell for 75¢ each, but actually sell for a price much less than 75¢ each, has had, and now has, the capacity and tendency to, and does, deceive and mislead a substantial portion of the purchasing public into the erroneous belief that said cartons of soap have a retail value or price in excess of the actual value or price thereof and are actually normally offered for sale and sold at 75¢ per carton in the usual course of business. Acting under the mistaken and erroneous beliefs induced by the false and misleading representation above referred to, the public has purchased a substantial volume of respondent's soap with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the manufacture, sale and distribution, or in the sale and distribution, of soap and soap products, who truthfully represent the quality and value of their respective products and the price at which their said products are offered for sale and sold to the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Indianapolis Soap Company, a corporation, also trading as Sanisoap Company, and W. W. Soap Manufacturing 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, the answer of respondent, testimony and other evidence taken before John L. Horner, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested), 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, Indianapolis Soap Company, a corporation, doing business under its own name and also trading as Sanisoap Company and W. W. Soap Manufacturing Company, or trading under any other name, its agents, representatives and employees in connection with the offering for sale, sale and distribution of soap and soap products, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of fictitious price marks, or through the use of any other means or device, or in any manner, that its soap has a retail value or price which is in excess of the price at which said soap is actually and customarily offered for sale and sold to the ultimate consumer thereof.

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

GABRIEL S. DUSCH, SR., AND GABRIEL S. DUSCH, JR.,
TRADING AS GABRIEL'S LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3016. Complaint, Dec. 19, 1936—Decision, Jan. 13, 1938*

Where a firm engaged in preparation of its "Gabriel's Mange Formula," and in distribution and sale thereof to purchasers at various points in other States and in the District of Columbia, in substantial competition with others engaged in manufacture, distribution, and sale of mange cures or other products designed, intended, and sold for same purposes for which its aforesaid preparation was sold in commerce as above set forth, and including many who manufacture, compound, distribute, and sell various products designed, intended and sold to cure, relieve, or treat said ailment and allied diseases, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness in use; in advertising the same in different magazines circulating throughout the various States and aforesaid District—

Represented that its said product was an effective cure for all types of mange and would effect cures thereof overnight, through such statements as "Kills mange overnight or money back," "Kill mange mites and eggs overnight * * *," " * * * The mites which cause sarcoptic mange are killed almost instantly * * *," etc., facts being said formula or product had no effect or curative value whatever upon follicular mange, needed to be applied for weeks upon sarcoptic mange, provided in no instance overnight cure of either type of said disease, and claims and representations made by it as above indicated, with respect to nature and effect of its said preparation when used for purpose for which same was sold, were grossly exaggerated, misleading, and untrue;

With tendency and capacity to mislead substantial portion of purchasing public into erroneous belief that use of aforesaid product would accomplish results claimed, and with result that number of purchasing public, by virtue of such belief, bought substantial quantity of its said preparation, and trade was unfairly diverted to it from competitors engaged in manufacture and sale in interstate commerce of medicinal products designed for treatment of said disease and who do not falsely represent curative value thereof; to the 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. Alden S. Bradley and Mr. J. T. Welch 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 Commis-