

Syllabus

IN THE MATTER OF

ARABIAN TOILET GOODS 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 2981. Complaint, Nov. 13, 1936—Decision, Jan. 20, 1938

Where a corporation engaged in manufacture, sale, and distribution of face powders, skin tonics, and skin creams—

- (a) Represented, through expression "CERTIFIED COSMETICS" displayed on labels of practically all of its products, that its said cosmetics had been certified by some governmental or official authority;
- (b) Represented, through such expressions on labels of its "Wrinkle Eradicator" or "Wrinkle Creme" as "Combined with 100% Pure Turtle Oil" or "Combined with pure turtle oil," and "Rejuvenates the skin and removes lines and wrinkles * * *," and "Will soften and nourish the skin. * * *," that its said skin cream, as thus variously designated, had such qualities or properties and would accomplish said results, and contained turtle oil; and
- (c) Represented, through sales girls or demonstrators employed by it for such purposes at appropriate places in department stores handling its said products, that its said "Wrinkle Creme" was guaranteed by the United States Government to contain pure turtle oil, and that such oil had been successfully used by the Government in removing scar tissue and wrinkles from wounded soldiers, and that use thereof was indorsed by the Government as a skin food and rejuvenator;

Facts being products in question had not been certified in any respect by any government or official authority, said cream would not rejuvenate the skin or nourish the same, or remove or eradicate wrinkles and lines, and did not contain turtle oil, and had not been guaranteed by the Government as so doing, and such oil had not been successfully used thereby as above represented, and Government had not indorsed use thereof as aforesaid, and use of creams or oils, notwithstanding certain temporary effects, cannot eliminate or eradicate lines and wrinkles or accomplish other results as aforesaid represented;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that its said cosmetics had been certified as above set forth, and that its said "Wrinkle Creme" was composed as above claimed, and would accomplish results as above specified, and had been guaranteed by the Government to contain pure turtle oil, successfully used and indorsed by said Government as aforesaid, and with result, further, that public, acting under mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of its said products and trade was unfairly diverted to it from competitors likewise engaged in manufacture, sale and distribution, or in sale and distribution, of cosmetics, and who truthfully represent the character and nature of their products and the efficacy and beneficial value thereof:

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

Complaint

26 F. T. C.

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

Mr. DeWitt T. Puckett for the Commission.

Moody, Eberle, Dierssen & Crane, of Chicago, Ill., 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 Arabian Toilet Goods Company, a corporation, 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, Arabian Toilet Goods Company, is a corporation, organized in 1923, and doing business under the laws of the State of Illinois, having its principal office and place of business at 225-227 West Huron Street, Chicago, Ill.

Respondent is now, and for several years last past has been, engaged in the manufacture and sale of cosmetics 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 products, when sold by it, to be shipped from its place of business in Chicago, Ill., 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 cosmetics, 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 cosmetics 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 cosmetics, some of which are labeled as follows:

WRINKLE CREME

Combined with pure turtle oil. Will soften and nourish the skin. Leave on over night. If skin is abnormally dry and wrinkled, use "Wrinkle Creme and Muscle Oil mixed."

"ARABIAN WRINKLE ERADICATOR

Combined With

100% Pure Turtle Oil

Rejuvenates the skin and removes lines and wrinkles around the eyes, throat, and mouth. First cleanse with Arabian Cleansing Cream, then apply Arabian Wrinkle Eradicator, leaving it on over night. Arabian Muscle Oil may be applied to give added strength and nourishment to the tissues."

In truth and in fact, the products so described and represented do not possess such properties as to nourish or rejuvenate the human skin, and neither will they eradicate wrinkles or give strength and nourishment to the tissues.

PAR. 3. Said respondent, acting through its duly authorized demonstrators and saleswomen whom it employs to display, demonstrate and sell its products in department stores, stated and represented to customers and prospective customers that its "Arabian Wrinkle Creme" is guaranteed by the United States Government to contain pure turtle oil; that such oil has been successfully used by the Government in removing scar tissue and wrinkles from wounded soldiers; and that the use of this ingredient is endorsed by the United States Government as a skin food and rejuvenator.

In truth and in fact, the United States Government has not used turtle oil in the manner described, and has not given any such guaranty or indorsement. The amount of turtle oil forming the fatty content of said product was not substantial nor sufficient to warrant the marking, branding, or representation of said product as containing "100% Turtle Oil."

PAR. 4. Said respondent further caused the words "Certified Cosmetics" to appear prominently on the labels affixed to the containers in which certain of its products were packed, sold, and distributed, as well as on the front page of price lists and other advertising literature distributed to purchasers and prospective purchasers wherein its products were sold.

In truth and in fact, said products were not certified, either as to their purity or in any other respect by any Government or other official authority.

PAR. 5. 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 cosmetics 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 cosmetics who do not misrepresent the therapeutic qualities of their products, or otherwise publish claims for their products which are untrue, who likewise advertise, sell, and distribute their cosmetics 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. 6. 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 13, 1936, issued, and on November 17, 1936, served, its complaint in this proceeding upon respondent, Arabian Toilet Goods Company, Inc., 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 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 George J. Crane, attorney 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, 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, Arabian Toilet Goods Company, Inc., is an Illinois corporation organized on August 3, 1923. Its principal office and place of business are at 225-227 West Huron Street, Chicago, Ill. It is engaged in the manufacture, sale, and distribution of cosmetics such as face powder, skin tonics and skin creams.

Respondent's cosmetics are manufactured at its place of business in Chicago, Ill., and distributed through department and drug stores throughout the United States. When orders are received for respondent's cosmetics, it causes them to be shipped from its place of business at Chicago, Ill., to the purchasers thereof located at various points in the States of the United States other than the State of Illinois. Since the date of incorporation, the respondent has maintained a course of trade in said products, in commerce among and between the various States of the United States and in the District of Columbia.

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 cosmetics in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. Respondent has advertised, and is now advertising, its cosmetics by means of labels attached to containers in which its products are packed, by sales talks, and by advertisements in daily newspapers having an interstate circulation. Until the early part of 1936, the front label of one of respondent's skin creams read as follows:

ARABIAN
WRINKLE ERADICATOR

The back label of said cream read as follows:

ARABIAN WRINKLE ERADICATOR
Combined with
100% Pure Turtle Oil
Rejuvenates the skin and
removes lines and wrinkles
around the eyes, throat and
mouth. * * *

The front label in current use on said cream reads:

ARABIAN
CERTIFIED COSMETICS

The back label in current use on the cream reads as follows:

WRINKLE CREME

Combined with pure turtle oil. Will
soften and nourish the skin. * * *

The expression "Certified Cosmetics" appears on the labels used on practically all of respondent's products.

The above statements serve as representations to purchasers and prospective purchasers and to the public generally that respondent's cosmetics have been certified by some governmental or official authority; that its skin cream, now designated Wrinkle Creme, will rejuvenate the skin and remove or eradicate wrinkles and lines; that said creme contains turtle oil and will nourish the skin.

One of respondent's methods of selling its products is through sales girls or demonstrators employed by respondent on a salary or commission basis. These sales girls or demonstrators occupy booths at appropriate places in the department stores which handle respondent's products. At these booths, the sales girls demonstrate and promote the sales of respondent's cosmetics. In promoting the sale of respondent's cosmetics, said demonstrators and sales girls have represented to purchasers and prospective purchasers (1) that respondents Wrinkle Creme was guaranteed by the United States Government to contain pure turtle oil; (2) that such oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers; and (3) that the use of said turtle oil is endorsed by the United States Government as a skin food and rejuvenator.

PAR. 3. Respondent's skin creme, now labeled Wrinkle Creme, contains white wax, spermacetti, anhydrous lanolin, cocoa butter, water, liquid petrolatum, perfume oil, and coloring. At one time said creme contained turtle oil, 1 to 2 percent; aquaphill, 2½ to 5 percent; cocoa butter, 2 to 2½ percent; beeswax, 45 to 46 percent; spermacetti, 45 to 46 percent; and mineral oil.

Based upon the testimony and other evidence in this record, it is found that respondent's products have not been certified in any respect by any government or official authority; respondent's Wrinkle Creme will not rejuvenate the skin and remove or eradicate lines and wrinkles; it will not nourish the skin; and it does not now contain turtle oil. The United States Government has not guaranteed that respondent's Wrinkle Creme contains pure turtle oil. Turtle oil has not been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers and the use of turtle oil is not endorsed by the United States Government as a skin food or as a rejuvenator. The skin obtains its food or is nourished by the blood stream as are the other parts of the body and, although the

use of creams or oils may tend to temporarily soften the skin and make lines and wrinkles less noticeable in some instances, nevertheless, they cannot be eliminated or eradicated thereby. Scars, especially superficial ones, can be made less noticeable through use of creams, oils, heat, and massage but they cannot be entirely eliminated by these treatments. The accepted specific treatment for removal of scars is surgery.

PAR. 4. The use by respondent of the representations set forth above in its advertising literature and by its sales persons has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous beliefs that respondent's cosmetics have been certified by some governmental or other official authority; that its facial cream designated Wrinkle Creme will eradicate or remove wrinkles and lines from the skin; that said Wrinkle Creme contains turtle oil and will nourish the skin; that said Wrinkle Creme has been guaranteed by the United States Government to contain pure turtle oil; that such oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers; and that the use of said turtle oil is endorsed by the United States Government as a skin food and rejuvenator. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the public has purchased a substantial volume of respondent's said products 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 cosmetics who truthfully represent the character and nature of their cosmetics and the efficacy and beneficial value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Arabian Toilet Goods 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

26 F. T. C.

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. Hornor, 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, Arabian Toilet Goods Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cosmetics in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That its cosmetics have been certified by any governmental or official authority;

2. That its skin cream now designated as Wrinkle Creme, or any other cream containing substantially the same ingredients or possessing the same properties, sold under that name or any other name

(a) Will nourish or rejuvenate the skin;

(b) Will remove wrinkles and lines from the skin;

(c) Contains turtle oil or is guaranteed by the United States Government to contain pure turtle oil;

3. That turtle oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers;

4. That the use of turtle oil has been endorsed or approved by the United States Government as a skin food and rejuvenator.

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.

Syllabus

IN THE MATTER OF

NATIONAL CANDY COMPANY, INC., IN ITS OWN NAME
AND RIGHT, AND TRADING AS PAN CONFECTION
FACTORYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1802. Complaint, Apr. 22, 1937¹—Decision, Jan. 22, 1938*

Where a corporation engaged in manufacture and sale of candies, including assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of (1) number of 2-for-a-penny pieces of chocolate covered candies of uniform size and shape, together with certain other articles of merchandise to be given as prizes to purchasers procuring, by chance, one of a relatively few of said uniform pieces, colored center of which differed from that of majority, and to purchaser of last of such uniform pieces in assortment, and together with, also, explanatory display card for retailers' use, and of (2) number of chocolate-covered candy malted milk balls, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, and in accordance with number pushed by chance, one or more of said malted milk balls, up to 20, and pursuant to which, further, purchaser of last push in first 3 of board's 4 sections received 5 of such balls and purchaser of last push received 15—

Sold to wholesalers, jobbers, and retailers, for display and resale to purchasing public in accordance with aforesaid sales plans, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, in accordance with aforesaid sales plan, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom; With result that many dealers in and ultimate purchasers of candy were attracted by its said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein and

¹ Amended and supplemental complaint. Original findings and order in this matter on April 3, 1934 (18 F. T. C. 282), were vacated and set aside by order of April 21, 1937. See 24 F. T. C. 1395.