

IN THE MATTER OF

J. W. MCPHEETERS, TRADING AS MID-WEST SOAP COMPANY, AND AS SAVON PRODUCTS

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

Docket 2995. Complaint, Nov. 27, 1936—Decision, Feb. 11, 1938

Where an individual engaged in manufacture of a cheap, inferior cold process soap of a grade and quality generally not used as a toilet soap, and in the sale and distribution thereof to wholesalers and dealers at various points in other States for resale to house-to-house canvassers or peddlers, at cost thereto of approximately $4\frac{1}{2}\text{¢}$ per three-cake carton, in competition with many who sell, in commerce as aforesaid, soap similar in grade and quality to that sold by him, and many who sell soap of a far superior grade and quality and which has a retail value of, and sells for, price marked by him on his said containers, and who do not in any way misrepresent the price, quality, or character of their products—

Placed on three-bar containers of brands of his aforesaid cheap and inferior soap, words "3 bars—75¢," together with words "Toilet," "Bath," "Shampoo," and trade name and address, notwithstanding fact price thus marked and indicated was many times in excess of selling price of said soaps to aforesaid canvassers, and many times in excess of true value thereof, and much greater than actual price at which such containers were sold to ultimate purchaser, and price indicated was not intended to be true retail price of products in question, but was wholly false and fictitious and in no way represented true value or selling price of products so marked; and thereby put in hands of its purchasers and of said house-to-house canvassers or peddlers instrument or means whereby they could and did commit a fraud upon substantial portion of purchasing and consuming public, through enabling them to represent to purchasers and prospective purchasers, and to cause such purchasers to believe, that said products were in fact high grade and of a retail value substantially as marked and indicated, and represented through statements on containers in question;

With result that such canvassers or peddlers could and did sell said soap at price greatly in excess of fair and reasonable value thereof and of prices at which soap of similar grade and quality was usually and customarily sold, and of aiding and abetting them in misleading and deceiving purchasing and consuming public through such fictitious markings, and of furthering deception thus occasioned through placing on said containers statements falsely indicating soap in question was of grade and quality of soap which had retail value of, ordinarily sold for, price marked thereon, and with tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such soap had the value of and ordinarily retailed for the price thus marked and indicated, and that said representations and statements as to grade and quality thereof were true, and with result that substantial number of consuming public, as true consequence of mistaken and erroneous beliefs induced by his said acts and practices, purchased substantial volume of his said products and trade was unfairly diverted to him from

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competitors who truthfully advertise and represent their respective soaps; to the substantial injury of competitors in commerce as aforesaid, and to the injury of the public:

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. Wm. T. Chantland and *Mr. George Foulkes* for the Commission.

Mr. Harry A. Weaver, Jr., of Korbly & McNutt, of Indianapolis, Ind., 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 J. W. McPheeters, trading as Mid-West Soap Company, and as Savon Products, hereinafter referred to 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 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, J. W. McPheeters, trading as Mid-West Soap Company, and as Savon Products, personally and through said Mid-West Soap Company and said Savon Products, with office and principal place of business at 901 High Street, Indianapolis, Ind., is now and for some time has been engaged in the business of distributing, and selling in commerce, as herein set out, certain alleged toilet soaps.

PAR. 2. Said respondent being engaged in business as aforesaid, causes said soaps, when sold, to be transported from his office and place of business in the State of Indiana to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondent now maintains a constant current of trade in commerce in said soaps, distributed and sold by him 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 said business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations engaged in the business of distributing and selling toilet soaps, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of said business and for the purpose of inducing the purchase of his said soaps, respondent has been, and is now, engaged in misbranding, fictitious price marking, misrepresentation, and false and misleading advertising.

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Among the acts done and representations made by respondent are the following:

1. Under the trade name "Mid-West Soap Co., Indianapolis," respondent sells a three-bar or cake soap combination called and labelled "Burberry," in a box marked "3 bars—75¢," and each cake stamped—"25¢," and advertised on the box as "A toilet and bath soap"; "Use as a shampoo," and "Excellent for shaving."

2. Under the trade name "Savon Products, Indianapolis," respondent sells:

(a) A three-bar or cake soap combination called and labelled "Vello," in a box marked "3 bars—Price 75¢," and advertised on the box as for "Toilet—Bath—Shampoo."

(b) A three-bar or cake soap combination called and labelled "Creem—O," in a box marked "3 bars—Price 75¢," and advertised on the box as for "Toilet—Bath—Shampoo."

PAR. 5. The representations made by respondent with respect to the prices, nature, and effective qualities of said soaps are grossly exaggerated, false, misleading, and untrue. The truth and facts are that said soaps are never sold or offered for sale at the excessive prices marked on the boxes; neither are such soaps the fine toilet soaps which such fictitious high prices and the labels are intended to, and do, claim, and imply, but are in fact cheap grades of soaps without valuable qualities as indicated by their names.

The truth and facts are that said soaps are sold by respondent to its peddlers at 4 cents per box of 3 cakes, and that the cheap, printed, cardboard containers cost about as much or more to make as the three small cakes of inferior soap contained therein.

The said products above mentioned are sold by the respondent principally to house to house canvassers for resale to ultimate consumers. The prices marked on the boxes in which the products above mentioned are 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 products are sold by said canvassers to said ultimate purchasing and using public. The prices so indicated were not intended by respondent to be the true retail price or the true retail value of said products, and are false and fictitious and in no sense represents either the true value or the true selling price of the products so price marked. The prices marked as above indicated were intended by respondent and the canvasser purchasing for resale to be far in excess of the price actually charged the ultimate consumer.

PAR. 6. There are among respondent's competitors many who distribute and sell toilet soaps which have ingredients and qualities which may justify prices somewhat in line with respondent's fictitious prices and often at much less than such fictitious prices, who do not in any way misrepresent the prices, quality or character of their respective products.

PAR. 7. Each and all of the false and misleading statements, representations and implications made by the respondent in pricing, designating and describing his products, and the quality of said products, as hereinabove set out, in the labels and advertising, in the course of distributing said products, were and are calculated to, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true.

Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, labeling and representations of respondent, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling toilet soaps which have the qualities and values claimed by respondent for his products, who truthfully advertise their respective products and sell them at such higher prices as their quality warrant. As a result thereof, substantial injury has been and is now being done by respondent to competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above, and foregoing acts, practices, and representations, actual and implied, of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 November 27, 1936, issued and, on November 30, 1936, served its complaint in this proceeding upon respondent J. W. McPheeters, trading as Mid-West Soap Company,

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and as Savon Products, 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 William T. Chantland and George Foulkes, attorneys for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Harry A. Weaver, Jr., attorney for the respondent; and said testimony and other evidence was 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, no brief having been filed by the respondent, 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. Respondent, J. W. McPheeters, trading and doing business as Mid-West Soap Company and Savon Products, at Indianapolis, Indiana, is now and since the 9th day of November 1934, has been engaged in the business of manufacturing, distributing and selling certain soaps. The respondent has caused and still causes said soaps when sold to be transported from his place of business in the State of Indiana to purchasers thereof located at various points in States of the United States other than the State of origin of the shipment. Respondent has maintained and still does maintain a constant current of trade in commerce in said soaps distributed and sold by him between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondent manufactures all of the soap sold and distributed by him at his plant in Indianapolis, Ind. The respondent sells to wholesalers and dealers who resell said soap through house-to-house canvassers, commonly known as peddlers. The respondent's said soaps cost the peddlers approximately $4\frac{1}{2}$ cents per carton of three cakes. The respondent formerly manufactured, sold and distributed three brands of soap, named, packaged, marked, and priced as hereinafter set out:

"Burberry" brand soap was sold three bars in a container, marked "3 bars—75¢", whereon appeared the following statements: "Toilet and Bath Soap" "Used as a Shampoo" "Excellent for Shaving";

"Mid-West Soap Co., Indianapolis." Each bar of said soap had stamped thereon the following: "25¢—Burberry." The manufacture, sale, and distribution of "Burberry Brand" of soap was discontinued approximately one year ago. Sales of this brand were confined to the State of Indiana.

"Vello" brand soap was and is sold three bars in a container, marked "3 bars—75¢" "Toilet—Bath—Shampoo"; "Savon Products, Indianapolis." This brand was and is sold and distributed to purchasers located in States other than Indiana.

"Cream-O" brand soap was and is sold three bars in a container, marked "3 bars—price 75¢" "Toilet—Bath—Shampoo"; "Savon Products, Indianapolis." This brand was and is sold and distributed to purchasers located in States other than Indiana.

The soap offered for sale and sold in said containers, marked and priced as above set forth, weighs approximately three ounces or less per bar and was and is a cheap, inferior cold process soap of a grade and quality not generally used as a toilet soap.

PAR. 3. The price of 75 cents marked and indicated on said containers as above set out is many times in excess of the selling price of said soaps to said house-to-house canvassers, and many times in excess of the true value of the soaps therein contained. The price so marked is much greater than the actual price at which said container of soap is sold to the ultimate purchaser. The price so indicated was not intended by the respondent to be the true retail price of said products but was and is wholly false and fictitious and in no way represents the true value or the true selling price of the products so marked.

PAR. 4. The fictitious and exaggerated price markings placed by the respondent on said containers, containing said cheap, inferior soap, places in the hands of purchasers from the respondent and the house-to-house canvassers or peddlers an instrument or means whereby said house-to-house canvassers or peddlers can and do commit a fraud upon a substantial portion of the purchasing and consuming public in that it enables said canvassers or peddlers falsely to represent to their purchasers and prospective purchasers, and to cause said purchasers and prospective purchasers to believe that said products are in fact high-grade soaps and of a retail value substantially as marked and indicated on said containers and as represented in the statements on said containers. As a result said house-to-house canvassers or peddlers can and do sell said soap at prices greatly in excess of the fair and reasonable value thereof and greatly in excess of the prices at which soap of a similar grade and quality is usually and customarily sold. By placing such fictitious markings on said containers, the

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respondent has aided and abetted and now aids and abets house-to-house canvassers or peddlers in misleading and deceiving the purchasing and consuming public. The respondent furthers the deception occasioned by the use of said fictitious price markings by placing on said containers the statements above set out indicating that the soap therein contained is of the grade and quality of soap which has a retail value of, and ordinarily sells for, the price marked on said containers, when in truth and fact the soap in said containers is grossly inferior to soaps which ordinarily retail at the prices indicated on the containers.

PAR. 5. There are among respondent's competitors in said commerce many who sell soap similar in grade and quality to that sold by the respondent and many who sell soap of a grade and quality which has a retail value of, and sells for, the price marked by the respondent on said containers who do not in any way misrepresent the price, quality, or character of their products.

PAR. 6. The acts and practices of the respondent, as herein above set out, have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said soap is of the value of, and ordinarily retails for, the price marked and indicated by the respondent, and to believe that said representations and statements as to the grade and quality of said soap are true.

PAR. 7. As a true consequence of the mistaken and erroneous beliefs induced by the acts and practices of the respondent as herein above set out, a substantial number of the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from his competitors in said commerce who truthfully advertise and represent their respective products. As a result thereof, substantial injury has been and is now being done by respondent to competitors in said commerce between and among the various States of the United States and in the District of Columbia, to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, J. W. McPheeters, are to the prejudice of the public and to 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 designated by it, in support of the allegations of said complaint and in opposition thereto, and brief for the Commission filed herein (no brief having been filed by the respondent), 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. McPheeters, individually, or trading as Mid-West Soap Company, and as Savon Products, or trading under any other name, his representatives, agents, and 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, directly or indirectly, either personally or through any corporate or other device:

1. Representing through the use of fictitious price marks, or in any other manner, that said soap has a retail value or price in excess of the actual customary retail value or price thereof;

2. Representing that said soap is generally offered for sale and sold at retail at a price in excess of the usual and customary price at which such soap is actually and customarily offered for sale and sold to the ultimate purchaser;

3. Representing, by price markings, or in any other manner, that the soap now sold and distributed by the respondent, or any other soap of similar grade and quality, has a retail value of, and ordinarily sells for, 75 cents per box of three bars.

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.

IN THE MATTER OF
EMILE CARPENTIER, TRADING AS DR. EMILE
CARPENTIER

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

Docket 3073. Complaint, Mar. 10, 1937—Decision, Feb. 11, 1938

Where an individual engaged in manufacture of his "T. B. Compound" proprietary preparation for tuberculosis in various forms and for chronic bronchitis and other ailments, and in sale and distribution thereof to individual purchaser users and to members of the medical profession; in advertising the same in newspapers of general circulation and posters and circulars mailed to purchasers and prospective purchasers throughout the country and through legend captioned "Pass This On!" contained on label of each package thereof, and through advertising leaflets—

- (a) Represented that said product was a cure and remedy for tuberculosis of the lungs, larynx, intestines, and other parts of the body and that such malady had been cured thereby and that victims thereof could verify the astonishing results achieved with the herbs, roots, and other ingredients which were used therein;
- (b) Made use of the abbreviation "Dr." and represented himself as a "naturopathic doctor," and that physicians had prescribed his said product for patients suffering from tubercular conditions and had sent to him patients suffering from such ailments and that it was not necessary for him to diagnose or see patients for their treatment which they took at home, and which consisted of two teaspoons of his said compound daily for "proper results"; and
- (c) Represented that his said product also constituted cure for chronic bronchitis, colitis, chronic gastritis, and ulcerated duodenum and ailments of the stomach or intestines;

Facts being said compound had no curative, remedial, or therapeutic value in the treatment of the various types of tuberculosis or causes thereof or various other ailments or conditions above specified and was of no beneficial value whatever in the treatment thereof, no one had been cured of tuberculosis by its use, nor had physicians successfully prescribed it in treatment of patients with tuberculosis or other diseases for which he claimed his product to be a cure, said product was not an original or secret discovery and use thereof by persons afflicted with tuberculosis might delay the securing of essential medical care and hospitalization so long that there was no possibility of arresting the disease, through attempted self-medication without proper and necessary advice or otherwise, and said individual had had no medical training and was not a physician and maintained no office nor place where condition of purchasers or prospective purchasers might be determined;

With effect of misleading and deceiving substantial part of purchasing public into false and erroneous belief that said representations were true and that his said preparation was a cure for all types of tuberculosis and causes thereof and other ailments and conditions above specified, and that public acting in the mistaken and erroneous beliefs induced by such false