

## Syllabus

## IN THE MATTER OF

## GEORGE FOSTER, INC., AND GEORGE FOSTER, INDIVIDUALLY AND AS OFFICER OF GEORGE FOSTER, INC.

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

*Docket 3322. Complaint, Feb. 3, 1938—Decision, Apr. 6, 1938*

Where a corporation and an individual, its president and principal stockholder, engaged in the manufacture of food flavors, food products, cosmetics and toilet supplies, and in the sale and distribution of said products and of other articles of merchandise; in circulars and other advertising literature, distributed through the mails to retailers and prospective retailers and to the consuming public, announcing the various "deals" of said corporation and individual—

- (a) Represented as customary or regular retail prices for their said products prices which were fictitious and greatly in excess of the regular or customary figures at which such products were sold or offered or expected to be offered for sale at retail, through various offers or "deals" at such pretended prices, including its "Regular \$1.25 Value Bottle of Pure-Strong-Famous Vanilla Flavor," and its "50 cent" "Blue Spruce Medicated Balm";
- (b) Described flavorings made from chemical compounds as substitutes for the juice of fruit, nuts, beans or berries, as pure flavorings through referring, as above set forth, to its said "Pure-Strong-Famous Vanilla Flavor," facts being said product was a cheap imitation vanilla flavoring compound;
- (c) Represented that products offered by them had established sales records, through such statement as "With every deal that you buy we give you an additional big selling 50¢ retail item FREE," facts being its said "Blue Spruce Medicated Balm," thus referred to, was not such an item and did not have an established retail sales value;
- (d) Represented that said articles of merchandise offered and sold by them would be given free of cost, through such statements as "A gorgeous and costly Windsor fruit and salad bowl and \$1.00 silverware coupon FREE," and "Included with this shipment, large deluxe \$2.00 sample case with 6 Rogers teaspoons for carrying and displaying the complete deal ABSOLUTELY FREE," facts being no merchandise was given away free by them, but cost thereof was included in specified prices to be paid by purchaser of the said deal or deals of which such merchandise was a part; and
- (e) Represented that their coupons offered in connection with their said deals or merchandising plans possessed designated values or were valuable, through such statements as "\$1.00 Coupon for 6 Genuine Rogers Spoons and a Regular \$1.25 Value Bottle," etc., and "Windsor fruit and salad bowl and \$1.00 silverware coupon," facts being said coupons did not have a \$1.00 value and were not redeemable in said silverware unless accompanied by 20 three-cent stamps;

With result that members of the purchasing public, in accordance with general public understanding of custom of marking or stamping actual retail price or value on various commodities as indication of quality of product thus marked, were led, erroneously and mistakenly, to believe that actual value

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and selling price of said products were prices stamped or marked thereon, and of thereby placing in hands of others means of deceiving and defrauding purchasing public and of misleading substantial portion of such public into erroneous belief that aforesaid statements and representations were true, and into purchase of substantial quantities of their said products by reason of such erroneous belief, and with effect of unfairly diverting trade to them from competitor manufacturers and distributors who do not misrepresent the price at which their goods are sold or otherwise publish untrue claims for their products; to the substantial injury of competition in commerce among the various States and in the District of Columbia: *Held*, That such methods, acts, and practices were to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. D. C. Daniel* 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 George Foster, Inc., a corporation, and George Foster, individually and as an officer of George Foster, Inc., hereinafter referred to as respondents, have been and are now 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 George Foster, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at 225 East Fourth Street, St. Paul, Minn. Respondent George Foster is an individual and is the president of, and the principal stockholder in, the respondent George Foster, Inc., and formulates, controls, and directs its policies and practices. Respondent George Foster has his offices at the same address as that of the respondent George Foster, Inc. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and have been for more than 1 year last past, engaged in the manufacture of food flavors, food products, cosmetics, and toilet supplies, and in the sale and distribution of said products and of other articles of merchandise. Respondents cause their said products when sold to be transported from the principal place of business of the respondent George Foster, Inc., in the State of Minnesota, to retail dealers and the purchasing public at their respective points of location in the various States of the United States and in the Dis-

trict of Columbia. There is now and has been for more than 1 year last past a course of trade and commerce by said respondents in such products between and among the various States of the United States and in the District of Columbia. Respondents are now, and for more than 1 year last past have been, engaged in substantial competition with other corporations and individuals and with partnerships engaged in the sale and distribution of like and 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 their business as referred to in paragraph 1 hereof, respondents advertise and have advertised in magazines of interstate circulation, and distribute and have distributed circulars and other advertising literature through the United States mails to retail dealers and prospective retail dealers and to the consuming public announcing their various "deals." The retail dealers to whom respondents sell their said products in turn offer for sale and sell the same to the general purchasing public. Respondents' said advertising matter contains and has contained false and misleading statements and representations of which the following are examples but are not all inclusive:

**\$1.00 Coupon for 6 Genuine Rogers Spoons And a Regular \$1.25 Value Bottle of Pure-Strong-Famous Vanilla Flavor.**

— — With every deal that you buy we give you an additional big selling 50¢ retail item **FREE.**

**A gorgeous and costly Windsor fruit and salad bowl and \$1.00 silverware coupon FREE.**

**Also included with this shipment, large deluxe \$2.00 sample case with 6 Rogers teaspoons for carrying and displaying the complete deal ABSOLUTELY FREE.**

The labels attached to said bottle of vanilla and to the jar of said "additional big selling 50¢ retail item," which, in fact, is respondents' "Blue Spruce Medicated Balm," are price marked \$1.25 and 50¢ respectively.

PAR. 3. In truth and in fact, the said vanilla flavoring did not, and does not, contain ingredients of a "pure" vanilla flavoring, but was and is a cheap imitation vanilla flavoring compound which did not and does not have a "regular \$1.25 value"; said coupons did not and do not have a \$1.00 value, nor were they redeemable in said silverware unless accompanied by 20 three-cent stamps; "Blue Spruce Medicated Balm" was not and is not an additional big selling 50¢ retail item," but on the contrary, did not and does not have an established retail sales value; the retail prices set forth hereinabove for said vanilla and "Blue Spruce Medicated Balm" are fictitious and greatly in excess of the normal retail values of said products and

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the prices at which said products are ordinarily sold or ever intended to be sold to the ultimate consumers thereof; no merchandise is given away "free" by said respondents, but the cost thereof is included in the specified price to be paid by the purchaser of the said "deal" or "deals" of which said merchandise is a part.

PAR. 4. For many years a substantial portion of the consuming public has had and has expressed a marked preference for flavoring extracts, food products, cosmetics, and similar commodities which are composed of superior ingredients produced by manufacturers who sell at prices in excess of the general and usual range of prices for similar products or for products made with inferior ingredients. The said manufacturers, following the custom herein detailed, have marked and stamped the suggested retail prices on said products to indicate the superior quality and character of the product and its higher value.

The public generally understands the custom of marking or stamping the actual retail price or value on various commodities and has been led to, and does, place its confidence in the price markings so stamped on commodities and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. As a result of the respondent's representations, members of the purchasing public are led to erroneously and mistakenly believe that the actual value and selling price of respondents' products are the prices stamped or marked thereon, when, in fact, many of the prices so stamped or marked are fictitious and in no sense represent the actual selling price or value of the products referred to. Thus respondents, by distributing said advertising literature containing the said false and misleading statements and representations to said retail dealers, have placed and are placing in the hands of others the means of deceiving and defrauding the purchasing public.

PAR. 5. The use by respondents of the false and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not misrepresent the price at which their products are sold, or otherwise publish claims for their products which are untrue. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors and as a result thereof, substantial injury is being,

and has been done by respondents 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 respondents are all to the injury and prejudice of the public and of respondents' 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 3, 1938, issued, and thereafter served its complaint in this proceeding upon the respondents, George Foster, Inc., a corporation, and George Foster, individually and as an officer of George Foster, Inc., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, respondents filed in the office of the Commission an answer admitting all the material allegations of the complaint to be true and waiving the taking of further testimony and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, 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. Respondent George Foster, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at 225 East Fourth Street, St. Paul, Minn. Respondent George Foster is an individual and is the president of, and the principal stockholder in, the respondent George Foster, Inc., and formulates, controls, and directs its policies and practices. Respondent George Foster has his offices at the same address as that of the respondent George Foster Inc.. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter found. Respondents are now, and have been for more than 1 year last past, engaged in the manufacture of food flavors, food products, cosmetics, and toilet supplies, and in the sale and distribution of said

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products and of other articles of merchandise. Respondents cause their said products when sold to be transported from the principal place of business of the respondent George Foster, Inc., in the State of Minnesota, to retail dealers and the purchasing public at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondents in such products between and among the various States of the United States and in the District of Columbia. Respondents are now, and for more than 1 year last past have been, engaged in substantial competition with other corporations and individuals and with partnerships engaged in the sale and distribution of like and 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 their business, as described in paragraph 1 hereof, respondents advertise and have advertised in magazines of interstate circulation, and distribute and have distributed circulars and other advertising literature through the United States mails to retail dealers and prospective retail dealers and to the consuming public announcing their various "deals." The retail dealers to whom respondents sell their said products in turn offer for sale and sell the same to the general purchasing public. Respondents' said advertising matter contains and has contained false and misleading statements and representations, of which the following are examples but are not all inclusive:

\$1.00 Coupon for 6 Genuine Rogers Spoons and a Regular \$1.25 Value Bottle of Pure-Strong-Famous Vanilla Flavor.

— With every deal that you buy we give you an additional big selling 50¢ retail item FREE.

A gorgeous and costly Windsor fruit and salad bowl and \$1.00 silverware coupon FREE.

Also included with this shipment, large deluxe \$2.00 sample case with 6 Rogers teaspoons for carrying and displaying the complete deal ABSOLUTELY FREE.

The labels attached to said bottle of vanilla and to the jar of said "additional big selling 50¢ retail item," which, in fact, is respondents' "Blue Spruce Medicated Balm," are price-marked \$1.25 and 50 cents, respectively.

PAR. 3. In truth and in fact, the said vanilla flavoring did not, and does not, contain ingredients of a "pure" vanilla flavoring, but was and is a cheap imitation vanilla flavoring compound which did not and does not have a "regular \$1.25 value"; said coupons did not and do not have a \$1 value, nor were or are they redeemable in said

silverware unless accompanied by twenty 3-cent stamps; "Blue Spruce Medicated Balm" was not and is not an "additional big selling 50¢ retail item," but on the contrary, did not and does not have an established retail sales value; the retail prices set forth hereinabove for said vanilla and "Blue Spruce Medicated Balm" are fictitious and greatly in excess of the normal retail values of said products and the prices at which said products are ordinarily sold or ever intended to be sold to the ultimate consumers thereof; no merchandise is given away "free" by said respondents, but the cost thereof is included in the specified price to be paid by the purchaser of the said "deal" or "deals" of which said merchandise is a part.

PAR. 4. For many years a substantial portion of the consuming public has had and has expressed a marked preference for flavoring extracts, food products, cosmetics, and similar commodities which are composed of superior ingredients produced by manufacturers who sell at prices in excess of the general and usual range of prices for similar products or for products made with inferior ingredients. The said manufacturers, following the custom herein detailed, have marked and stamped the suggested retail prices on said products to indicate the superior quality and character of the product and its higher value.

The public generally understands the custom of marking or stamping the actual retail price or value on various commodities and has been led to, and does, place its confidence in the price markings so stamped on commodities and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. As a result of the respondents' representations, members of the purchasing public are led to erroneously and mistakenly believe that the actual value and selling price of respondents' products are the prices stamped or marked thereon, when, in fact, many of the prices so stamped or marked are fictitious and in no sense represent the actual selling price or value of the products referred to. Thus respondents, by distributing said advertising literature containing the said false and misleading statements and representations to said retail dealers, have placed and are placing in the hands of others the means of deceiving and defrauding the purchasing public.

PAR. 5. The use by respondents of such false and misleading statements and representations, as hereinabove found, has had, and now has, the capacity and tendency to mislead and deceive, and has misled, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true

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and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are, among the competitors of respondents, as described in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not misrepresent the price at which their products are sold, or otherwise publish claims for their products which are untrue. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors and as a result thereof, substantial injury is being, and has been, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

## CONCLUSION

The aforesaid methods, acts, and practices of respondents George Foster, Inc., a corporation, and George Foster, individually and as an officer of George Foster, Inc., are to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act,

*It is ordered,* That the respondent George Foster, Inc., a corporation, and its officers, and respondent George Foster, individually, and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of food flavors, food products, cosmetics, toilet supplies, and any other articles of merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, in any manner:

1. As the customary or regular retail prices for such products, prices which are fictitious and greatly in excess of the regular or customary prices at which said products are sold or offered for sale at retail;

2. That flavorings made from chemical compounds as substitutes for the juice of fruits, nuts, beans or berries, are pure flavorings;

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3. That any of their products have established sales records, when such is not the fact;

4. That any of the articles of merchandise offered for sale and sold by them will be given free of cost when the cost thereof is included in and is a part of the sale price of articles of merchandise which are sold in a group;

5. That their coupons possess designated values or are valuable, when such is not the fact.

*It is further ordered*, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

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## IN THE MATTER OF

## ROBERT MORRIS, TRADING AS D. P. PEN COMPANY

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

*Docket 3131. Complaint, May 15, 1937—Decision, Apr. 9, 1938*

Where an individual engaged in sale and distribution of fountain pens and pencils, in commerce between and among the various States and in the District of Columbia—

Described such pens in newspaper advertisements as possessing retail values and prices many times in excess of the actual price at which said individual sold his merchandise to ultimate purchasers, and sold many of articles dealt in with retail prices stamped and printed on labels attached or on containers thereof, which were many times in excess of the actual selling price to consuming public and many times in excess of their true and actual value, through such advertising as offering, for 59 cents, for two-day period only and for "special discount coupon", as pretended, alleged "\$5.00 Value Vacuum 'Morris' Fountain Pens," etc., and, for 29 cents, "\$2.00 Pencils to Match Above Pens";

Facts being such indicated retail prices, which appeared on items of merchandise or on containers thereof, were not intended to be true retail price or true retail value of merchandise thus price-marked, but to be far in excess of price to be charged and actually charged in sale of said articles to consumers purchasing in usual course of trade, and far in excess of true value of such articles, true retail value of which was 59 cents and 29 cents, respectively, and not \$5 and \$2, respectively, as advertised;

With effect of misleading a substantial part of consuming public by inducing them to believe that said items were superior products made by manufacturer to sell at retail at a price closely approximating that stamped thereon, and that said pens had retail values closely approximating their purported retail value and price of \$5, and had a value substantially in excess of their aforesaid actual value of about 59 cents; and with result that such false and misleading statements and representations constituted inducements for a substantial number of purchasers to buy products thus offered, sold, and distributed, and unfairly diverted to said individual substantial volume of trade from competitors, among whom there are many who manufacture ordinary fountain pens and others who make pens of superior quality and truthfully represent selling price or value to consuming public, and with tendency and capacity so to divert:

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

Before *Mr. John W. Norwood*, trial examiner.

*Mr. S. Brogdyne Teu, II* 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-