

IN THE MATTER OF

WILLIAM A. WOODBURY SALES COMPANY, INC., WILLIAM A. WOODBURY, RICHARD PICARD, AND ARTHUR BAUM

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

Docket 3113. Complaint, Apr. 24, 1937—Decision, Dec. 8, 1938

Where a corporation and three individuals, officers thereof and directors and controllers of its sales policies and business operations, engaged in sale and distribution of facial, dental, and shaving creams, and of powders, rouge, and other cosmetics, dentifrices, toilet supplies, and accessories, in substantial competition with others engaged in sale and distribution, in commerce among the various States and in the District of Columbia, of similar and other products designed for similar usage, and including those who, in connection with sale and distribution of their respective products, do not represent themselves as being manufacturers unless they actually are, or otherwise engage in unfair and deceptive practices—

- (a) Represented, in designation "turtle oil cream" applied to emulsion of oils and fats sold by them, that principal ingredient thereof was turtle oil, notwithstanding fact it contained only a small portion of said substance and was not cream or similar product with turtle-oil base, or composition thereof, as principal ingredient, as preferred by substantial portion of purchasing public; and
- (b) Represented, through display of its corporate name on letterheads, billheads, and other printed matter used in marketing their products, followed by words "prepared by William A. Woodbury Corporation, New York, New York," or "by William A. Woodbury Co., New York, New York," that said various concerns were manufacturers of products sold and distributed by them, and thereby misled purchasing public, of which large portion prefers to buy direct from manufacturers because of economies and certain other advantages thereby brought about, into erroneous belief that they owned and operated factory and were in fact manufacturers of said several products which they sold and distributed as aforesaid, notwithstanding fact they did not manufacture any of them, nor own, operate, or control any factory wherein such products were made or prepared;

With tendency and capacity to mislead purchasing public into erroneous and mistaken beliefs that emulsion of oils and fats described and designated as "turtle oil cream," as aforesaid, actually contained said substance as principal ingredient, and that they were the manufacturers of the various preparations sold by them, and into purchase thereof on account of such representations, and with result that trade was diverted unfairly to them from competitors engaged in sale and distribution in commerce among the various States and in said District of similar preparations or others designed and intended for similar usage and who do not, in any way, misrepresent the character and nature of their preparations or business status:

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

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Before *Mr. William C. Reeves*, trial examiner.

Mr. Floyd O. Collins and *Mr. William L. Pencke* for the Commission.

Mr. Isaac Reiss, of New York City, for respondents.

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 the William A. Woodbury Sales Co., Inc., a corporation, and William A. Woodbury, Richard Picard, and Arthur Baum, individually and as officers of William A. Woodbury Sales Co., 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 said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, William A. Woodbury Sales Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business and home office located at 347 Fifth Avenue, New York City, N. Y.; and William A. Woodbury, Richard Picard, and Arthur Baum are officers of the William A. Woodbury Sales Co., Inc., and direct and control its sales policies and business operations. The address of each of the individual respondents is 347 Fifth Avenue, New York City, N. Y.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution of face creams, dental creams, shaving creams, powders, hair dyes, bleaches, rouge, and other cosmetics, dentrifices, toilet supplies, and accessories, which are sold and recommended as an aid in the care and treatment of the skin, teeth, and hair. Respondents cause said products, when sold, to be shipped and transported in interstate commerce from their place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State of New York. They now maintain, and at all times mentioned herein have maintained, a constant current of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business as aforesaid, are now and at all times herein referred to have been in

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active, substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution in commerce among and between the various States of the United States of other preparations and compounds which are prepared, compounded, manufactured, advertised, recommended, and sold for substantially the same purposes and use for which respondents' products are advertised and sold.

PAR. 4. A substantial portion of the purchasing public has a preference for facial creams with a turtle-oil base and respondents, in the course and conduct of their business as aforesaid, sell and distribute an emulsion of oils and fats, and, for the purpose of inducing the public to purchase said products, have placed a label on the containers in which the said product is sold and distributed, describing and designating the said product as "turtle oil cream." Respondents, by labeling said product as aforesaid, represent to the purchasing public that a major portion of said product is turtle oil. Said representation is false and misleading, for, in truth and in fact, the major portion of said preparation is not turtle oil but is other substances. If any part of said cream is turtle oil, it is a very small portion.

PAR. 5. Respondents, in the course and conduct of their business as aforesaid, and for the purpose of inducing the public to purchase their products, such as face creams, shaving creams, tooth pastes, and various other cosmetics and dentifrice, place said product on the market in cartons on which are printed prominently and conspicuously the following:

Prepared by William A. Woodbury Corporation,
New York, New York

Prepared by William A. Woodbury Company,
New York, New York

William A. Woodbury Corporation and William A. Woodbury Co. are not separate corporations but are merely names used by respondents in labeling said products.

There is printed on the billheads and invoices used by the respondents in conducting their business as aforesaid, the following:

William A. Woodbury Sales Company, Inc.,
General Offices and Factory
625 West 43rd Street, New York

Respondents, by the acts and practices and the language as above set out, represent to the purchasing public that the respondent, William A. Woodbury Sales Co., Inc., is a manufacturer, and that the toilet articles, dentifrice, cosmetics, and other products sold and offered for sale by respondents, are manufactured, compounded and

prepared by respondent, William A. Woodbury Sales Co., Inc. Said representations are false and misleading, for, in truth and in fact, respondent, William A. Woodbury Sales Co., Inc., is not a manufacturer and does not own and operate, or directly and absolutely control a factory or plant wherein the products sold by respondents are manufactured, compounded, or prepared.

PAR. 6. Respondents, in the course and conduct of their business as aforesaid, have advertised in various newspapers and magazines of general circulation throughout the United States, and by circulars and advertising literature which are distributed through the United States mails and otherwise. In all of said advertisements the name of the respondent corporation and the names of the products sold are prominently and conspicuously displayed, together with the following statements:

It was through the genius of William A. Woodbury that the dictionary definition of dermatology was broadened to read, "the science that pertains to the improvement of human appearance."

It is as an artist on the human skin that William A. Woodbury assumes the title "Dermatologist." His books contain the secrets of beautifying women and keeping her beautiful from her toes to the hair of her head.

On the tubes in which some of the products are sold there is imprinted the following:

This fine lather shaving cream is a distinct innovation in the science of the care of the face. The result of deep research by William A. Woodbury, famous as the author of textbooks on the care of the person from the head to the foot.

This product is a distinct innovation in the science of the care of the mouth and teeth. The result of deep research by William A. Woodbury, author of the following textbooks: "Care of the Face," "Care of the Hands," "Care of the Hair and Scalp."

On the introductory page of the books referred to there appears:

William A. Woodbury, Dermatologist

In all of said advertising, respondents represent, through the statements above set out and through reference and through other statements of like import and effect, that the products sold and distributed by respondents were and are manufactured, compounded, and prepared by, or under the direct supervision of, a dermatologist member of the medical profession. Said representation is false and misleading, for, in truth and in fact, the said William A. Woodbury is not a dermatologist; neither is he a licensed physician, pharmacist, or chemist. Said products are not prepared or compounded by, or under the direct supervision of, any licensed physician, pharmacist, chemist, or dermatologist.

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For many years a substantial portion of the purchasing public has expressed, and actually has, a preference for purchasing products sold and distributed by the manufacturer directly to the public. Such portion of the public is aware of the prevailing economies and other advantages that are obtained in purchasing direct from the manufacturer. It places confidence in the manufacturers of such products and, as a result thereof, purchases a substantial volume of merchandise direct from the manufacturers thereof.

PAR. 7. There are among respondents' competitors many who manufacture, compound, prepare, sell, and distribute in commerce among and between the various States of the United States, compounds and preparations which are compounded, prepared, sold, and distributed for substantially the same purposes and uses for which respondents' products are advertised, recommended, and sold, and who do not engage in unfair acts and practices and who do not make similar misrepresentations with reference to the products manufactured, compounded, prepared, sold, and distributed by them.

PAR. 8. Each and all of the false and misleading statements and representations and the unfair acts and practices engaged in by the respondents as above set out, in offering for sale and selling said products, were and are calculated to, and had and now have, the tendency and capacity to mislead and deceive, and did and do mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that all of said statements and representations are true. As a direct consequence of said mistaken and erroneous beliefs, induced by respondents' acts, practices, and representations as hereinbefore set out, members of the purchasing public have purchased respondents' product, and trade has thereby been unfairly diverted to the respondents from those competitors referred to in paragraph 7 hereof. As a result of the aforesaid false and misleading representations and acts and practices of the respondents, injury has been and is now being done by respondents to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondents have been and are all to the injury and prejudice of the public and respondents' competitors, and have been and are unfair methods in commerce within the meaning and the intention 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 the Federal Trade Commission Act, the Federal Trade Commission, on April 24, 1937, issued and subsequently served its complaint in this proceeding upon respondents William A. Woodbury Sales Co., Inc., a corporation, and William A. Woodbury, Richard Picard, and Arthur Baum, individuals, 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 and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Isaac Reiss, attorney for the respondents, before William C. Reeves, 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 said complaint, answers, testimony and other evidence, and briefs in support of the complaint and in opposition thereto; 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. William A. Woodbury Sales Co., Inc., is a New York corporation, and its home office is located at 347 Fifth Avenue, New York, N. Y. The individual respondents, William A. Woodbury, Richard Picard, and Arthur Baum, are officers of the respondent, William A. Woodbury Sales Co., Inc., and direct and control its sales policies and business operations. The address of each individual respondent is 347 Fifth Avenue, New York, N. Y.

PAR. 2. The respondents are now, and have been for several years last past, engaged in the sale and distribution of face creams, dental creams, shaving creams, powders, rouge, and other cosmetics, dentifrices, toilet supplies, and accessories. Respondents cause said products when sold to be shipped from their place of business in New York through and into States of the United States other than the State of New York to the respective purchasers. Respondents maintain, and have for several years last past 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.

PAR. 3. The respondents are now, and for several years last past have been, in active and substantial competition with other corporations and with firms and partnerships which are engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of similar products and other products designed for similar usage.

PAR. 4. In the course and conduct of their business, respondents sell and distribute in commerce among and between the various States of the United States and in the District of Columbia an emulsion of oils and fats which is described and designated as "turtle oil cream." Through use of such designation, respondents represented to the purchasing public that the principal ingredient of such cream was turtle oil. Said representation is misleading and untrue for in truth and in fact, said cream contained only a small portion of turtle oil and the principal ingredients forming the base for the cream were preparations other than turtle oil.

A substantial portion of the purchasing public has a preference for facial creams and similar products with a turtle-oil base or which contain turtle oil as the principal ingredient.

PAR. 5. In the course and conduct of their business, respondents have placed on their letterheads, billheads, and other printed matter which they use in marketing their products, the following statements:

William A. Woodbury Sales Company,
Inc., General Office and Factory,
625 West 43rd Street, New York, N. Y.

Prepared by William A. Woodbury
Corporation, New York, New York

Prepared by William A. Woodbury
Company, New York, New York

The aforesaid statements serve as representations to members of the purchasing public on the part of respondents that William A. Woodbury Corporation, William A. Woodbury Co. and William A. Woodbury Sales Co. are the manufacturers of the products sold and distributed by the respondents.

The use of the said statements and representations on their letterheads, billheads, and invoices and other printed matter has the capacity and tendency to and does mislead the purchasing public into the erroneous belief that said concerns own and operate a factory and are in fact the manufacturers of the several products sold and distributed by respondents. In truth and in fact the respondents do not manufacture any of the products sold and distributed by them,

neither do they, or any of them, own, operate, or control a factory wherein said products are manufactured or prepared.

PAR. 6. A large portion of the purchasing public prefers to purchase direct from manufacturers of commodities because of economies and certain other advantages brought about on account thereof.

There are among respondents' competitors in commerce among and between the various States of the United States those who, in connection with the sale and distribution of their respective products, do not represent themselves to be manufacturers unless they actually are and do not otherwise engage in unfair and deceptive practices.

PAR. 7. The use by the respondents of the false and misleading statements and representations herein described, in connection with the sale and distribution of their various products, has had, and has, the tendency and capacity to mislead the purchasing public into the mistaken and erroneous beliefs that the emulsion of oils and fats described and designated as "turtle oil cream" actually contains turtle oil as a principal ingredient and that the respondents are the manufacturers of the various preparations sold by them, and into the purchase of respondents' products on account of said representations. As a result, trade has been diverted unfairly to respondents from competitors engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of similar preparations or other preparations designed and intended for similar usage who do not in any manner misrepresent the character and nature of their preparations or their business status.

PAR. 8. The complaint alleges that the respondents falsely and misleadingly represent that the products sold by them are compounded and prepared by, or under the direct supervision of, a dermatologist or a member of the medical profession. The Commission finds that while respondent William A. Woodbury is not a licensed physician, pharmacist, or chemist, there is not sufficient competent testimony to support the allegations of the complaint that said William A. Woodbury is not a dermatologist.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein by Floyd O. Collins, counsel for the Commission, and by Isaac Reiss, counsel for respondents, 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, William A. Woodbury Sales Co., Inc., a corporation, its officers, representatives, agents, and employees, and respondents, William A. Woodbury, Richard Picard, and Arthur Baum, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of face creams, dental creams, shaving creams, powders, rouge, and other cosmetics, dentifrices, toilet supplies, and accessories and an emulsion of fats and oils now designated as "turtle oil cream," in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. Representing, directly or in any other manner, that respondents or any of them are the manufacturers of the various preparations sold and distributed by them, unless and until such respondents actually own and operate or directly and absolutely control a factory wherein such products are actually so manufactured by them:

2. Using the term "turtle oil cream" to designate or describe any emulsion of fats and oils, or any other preparation, which does not have turtle oil as a principal ingredient therein.

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 this order.

Syllabus

IN THE MATTER OF
FOOD DISH ASSOCIATES OF AMERICA ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Pocket 3397. Complaint, May 3, 1938—Decision, Dec. 9, 1938*

Where a voluntary unincorporated trade association, members of which (1) were engaged in manufacturing and in selling and distributing, among the various States and in the District of Columbia, paper, pulp, and wooden dishes or trays ordinarily used by grocery and delicatessen stores and butcher shops as containers of lard, butter, meats, and other food products sold by them, and which, (2) organized in 1933 and formed, with intent of serving as a clearing house for its said members in cooperation therewith, actually engaged in attempts, acts, and practices, in consequence thereof, to stabilize and supervise the production and distribution of the food dish industry, promote standardization and improvements thereof, collect from and disseminate among its members, trade statistics and information, including the prices at which said products were being sold, control production, limit output, and fix prices with respect to the sales of said products, and otherwise promote the common business interests of its respective members for their mutual profit and advantage; the secretary and treasurer of such association, as active up to about July 1936, and of such association as reorganized and thus active until about May 1, 1937, when activities thereof, as thus reorganized, terminated; 16 corporations and 1 individual, members thereof as aforesaid, and at one time or another participants in practices as below set forth; and corporate sales agent of one of said members, and participant therein—

(a) Entered into understandings, combinations, conspiracies, and agreements, at various times between 1933 and 1937, as aforesaid, for the purpose of fixing prices or uniform minimum sales price, discounts to be made from the sale of their said products, arranging territory of the United States into a system of zones, and basing prices thus fixed on the respective zones, exchanging price lists, and periodically submitting invoices and other information, for the purpose and with the result of maintaining prices or uniform fixed price in respective zones, at which said products were to be sold, and a uniform fixed discount to be allowed thereon; and in pursuance of said understandings, combinations, and agreements, and in furtherance and execution thereof—

(1) Exchanged, through the medium of said association and its successor, price lists, in order to establish the price at which their respective products were to be sold thereafter, and arranged for the exchange of various information necessary to be used in connection with price fixing and price and discounts at which their products were to be sold;

(2) Fixed uniform prices at which their products were to be sold and at times the discounts thereon, and established a system of zones throughout the United States to aid in the establishment of and the fixing and maintaining of prices;