

Syllabus

IN THE MATTER OF

PUBLIX SALES CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 2561. Complaint, Sept. 27, 1935—Decision, Feb. 23, 1939

Where a corporation engaged as wholesale mail order house in sale and distribution of merchandise consisting of (1) worn, second-hand, used, and damaged clothing and shoes which it purchased at Government salvage sales and from clothing peddlers, from factories, and from large mail order houses which had had the particular merchandise returned to them for adjustment after use, and (2) unused merchandise consisting of factory rejects and stocks of bankrupt dealers bought by it, and in selling, as thus engaged, such merchandise to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others similarly engaged in sale and distribution of worn, second-hand, used, and damaged clothing and shoes, and including many who do not in any manner misrepresent quality, condition and state of repair of their merchandise and do not make any other false statements in connection with sale and distribution thereof; in advertising with respect to its said goods and business status and practices in newspapers and other publications circulating among the various States and in said District, and in bulletins and catalogs distributed from its place of business to prospective purchasers in various States and in District aforesaid—

- (a) Represented that the merchandise thus offered had been purchased by it at auction sales, and represented that it was the largest wholesale distributor of rummage sale merchandise, and that its reputation as the largest cash buyer gave it a choice of the world's best bargains, and that through its large, competent staff of trained buyers it could supply merchandise whose value could not be beaten or equalled, facts being it bought very little of its merchandise at auction sales, but bought largest portion thereof from auctioneer purchasers at such sales, and was neither largest distributor of rummage sale merchandise nor largest cash buyer thereof, and did not have large, competent staff of trained buyers;
- (b) Represented that its merchandise had been factory dry-cleaned and re-blocked, repaired and pressed and was of high grade materials, attractive styles and new patterns, and represented excellent and tremendous values, and that when received by the purchaser it would be of good quality, recent style and cut, serviceable, etc., and saleable for immediate wear, and represented certain merchandise as all wool, and held out certain amounts as representing those for which various items of merchandise originally sold, facts being merchandise variously referred to and represented as aforesaid was not dry-cleaned and reblocked by factory which made same, and was not, as case might be, cleaned, repaired or pressed, or of high grade materials, or excellent values, and new patterns, but, in case of many items, was dirty, ripped, torn, and worn out, of inferior quality and materials, and in such condition as not to be usable for wear, merchandise represented as of latest style was of a style from 10 to 15 years old,

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goods represented as all wool were made of cotton, and amounts held out, as aforesaid, as representing those for which certain items originally sold were in fact greatly in excess of the true amounts for which items did in fact actually sell; and

- (c) Represented that it allotted exclusive territory to purchasers or customers, through such statements as "Do not hesitate, reserve your territory immediately with your first order—Act now before some other wide-awake hustler gets exclusive rights in your district," and that purchasers or customers avoided competition in resale of such merchandise, and it worked with its customers and helped them in every way, and that persons purchasing such merchandise from it for resale would make big profits or tremendous profits, or 100 percent profit on such resale, facts being it did not sell merchandise to any dealer or dealers exclusively in any territory or locality, nor grant exclusive territory to any dealer or dealers, its purchasers did not avoid competition in resale of its merchandise by reason of purchase from it, nor did it work with its customers and help them personally in every way, but handled orders received by it in a routine manner, and those purchasing from it did not, as represented, make 100 percent profits in resale of its goods, in which, under normal conditions and circumstances, it was impossible to make such profits in ordinary course of business in such resale;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its merchandise and business status and practices were as represented, and with effect of causing substantial portion of purchasing public, because of such erroneous and mistaken belief, to buy substantial quantities thereof, and of thereby diverting unfairly trade to it from its competitors in commerce who truthfully advertise the quality, condition, and state of repair of their merchandise and their business status and practices:

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. Robert S. Hall*, trial examiner.

Mr. John N. Wheelock for the Commission.

Karlin & Cohen, 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 Public Sales Corporation, 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:

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PARAGRAPH 1. Respondent Publix Sales Corporation is a corporation, incorporated on or about June 14, 1930, under the laws of the State of Illinois, with an authorized capital of \$20,000, and having an usual place of business in Chicago, Ill., at all times since on or about the date of its incorporation.

PAR. 2. During all the times above mentioned, B. M. Belon (former name, Belonsky) is and has been the president of the respondent corporation and B. N. Vollen its secretary and treasurer.

PAR. 3. During all the times since on or about the date of its incorporation, the respondent is and has been engaged, as a wholesale dealer, substantially entirely as a mail order house in the business of the sale of merchandise consisting of worn, second-hand, used, and damaged clothing and shoes, that respondent purchased from peddlers and junk dealers, and new clothing such as stocks of bankrupt dealers, job lots, and factory rejects.

The respondent during the times above mentioned has sold and still sells such merchandise to retail dealers, purchasers thereof, located throughout the various States of the United States for resale by them to members of the public for use or wear. The respondent has caused the merchandise when sold by it to be transported from Illinois, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 4. Prior to and during all the times above mentioned, other individuals, firms, and corporations, hereinafter referred to as sellers, located in the various States of the United States, have been engaged in the sale of clothing and shoes at wholesale to retail dealers, purchasers thereof, located throughout the various States of the United States, other than the State of the seller, for resale by them to members of the public for use or wear. The sellers, respectively, have caused the said clothing and shoes, when so sold by them, to be transported from the State of the seller, or the state of origin of the shipment, to the purchasers located in States other than the State of origin of the shipment.

PAR. 5. During all the times above mentioned and referred to, the respondent is and has been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in paragraph four hereof, in the sale of the merchandise referred to in paragraph 3 hereof.

PAR. 6. The respondent during all the times above mentioned has caused advertisements of its said merchandise to be published in newspapers and magazines which are and have been circulated throughout the trade and public in the various States and in cata-

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logues, form letters, and descriptive circulars which the respondent has caused to be distributed among the retail dealers and prospective retail dealers throughout the various States of the United States.

In its advertisements the respondent has caused statements and representations to appear regarding the nature, character, and quality and prices of the articles of merchandise sold by it. Among many other such statements, the respondent has stated and represented in its advertisements to the effect that all of its merchandise was carefully selected and of good class, that it was slightly used merchandise; or, that it was slightly used, factory cleaned, repaired, and pressed and nearly new; that its several items of merchandise were made of high-grade materials, or the finest materials, and represented the last word in materials, workmanship, and value.

PAR. 7. Among many other similar statements and representations made by the respondent in advertisements, during the times above mentioned, were statements and representations made for the purpose of inducing individuals and firms to engage in the retail sale of its merchandise, including those mentioned and referred to above in paragraph 6, to the effect as follows:

Start bargain store business. Tremendous profits. New and used clothing. Bankrupt and auction sale merchandise. Experience unnecessary. Everything supplied by Publix, 568 Roosevelt Street, Chicago.

and statements and representations that the respondent was the largest wholesale distributor of rummage sale merchandise; that respondent's reputation as the largest cash buyers gives respondent the choice of the world's best bargains and through respondent's competent staff of trained buyers it could supply merchandise whose values could not be beaten or even equalled.

In its advertisements respondent stated:

Do not hesitate, reserve your territory immediately with your first order
* * * Act now before some other wide-awake hustler gets exclusive rights in your district.

By selling bankrupt stock, new and used goods, auction sale mdse. and close-outs you avoid competition and make big profits.

and,

A wonderful assortment of high saleable merchandise with which you take no chance.

All merchandise is carefully selected and of good class.

and

When a merchant needs cash and is obliged to sacrifice his stock or when manufacturer or wholesale house is going out of business, our buyers are on the spot with the cash and obtain wonderful values at practically our own price.

PAR. 8. The statements and representations mentioned and referred to above in paragraphs 6 and 7 hereof and many other statements of like tenor and effect made by the respondent in its advertisements were false in various particulars, among others, in that very little of the merchandise referred to, offered for sale, and sold by the respondent was new clothing or shoes or merchandise purchased at auction sales of bankrupt merchants; and in that respondent was not the largest nor even a large wholesale distributor of rummage sale merchandise and was not the largest nor even a large cash buyer of merchandise; in that the respondent's merchandise was not merchandise carefully selected and of good class; in that very little of respondent's merchandise was new clothing, but on the contrary its merchandise was mostly worn out, used, and sometimes filthy, when offered for sale and sold by respondent as set forth in paragraph 3 hereof.

And further, the merchandise referred to by the respondent as factory cleaned, repaired, and pressed implied to purchasers and prospective purchasers that the merchandise so described consisted of factory rejects that had been cleaned, repaired, and pressed in the factory that manufactured it when such was not the fact, and when on the contrary in many instances the clothing referred to was badly out of repair, was not cleaned and was in an unsalable and unusable condition. The representations by respondent to purchasers and prospective purchasers of its merchandise to reserve their territory and to get exclusive rights in their respective districts were false and misleading in that the respondent did not sell to any dealer or dealers exclusively in any territory or locality.

PAR. 9. The statements and representations mentioned and referred to in paragraphs 6, 7, and 8 hereof made by the respondent in its advertisements to dealers and to prospective dealers were false statements of material facts and known to the respondent to be false when made and they had the capacity and tendency to deceive and mislead and were intended by the respondent to deceive and mislead members of the public, dealers, and prospective dealers in such merchandise, most of whom were of limited means and resided in places far distant from respondent's place of business, and such dealers and prospective dealers were deceived and misled thereby into purchasing respondent's merchandise instead of merchandise sold by respondent's competitors. In consequence thereof when the dealers and prospective dealers bought the respondent's merchandise they paid exorbitant prices for it and were not able thereafter to resell it or offer it for sale because of its worn out and otherwise unsalable and often filthy condition. As a further result, trade in clothing

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and shoes was diverted from competitors to the respondent by means of its practices and misrepresentations mentioned and referred to above.

PAR. 10. The above acts and things done and caused to be done by the respondent were and are each and all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the meaning and intent 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 the 27th day of September 1935, issued and served its complaint in this proceeding upon respondent, Publix Sales 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 John N. Wheelock, attorney for the Commission, and in opposition to the allegations of the complaint by Joseph J. Karlin, attorney for the respondent, before Robert S. Hall, 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, and answer thereto, testimony, and other evidence, briefs in support of the complaint and opposition thereto, oral arguments not 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. Respondent, Publix Sales Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and having its office and principal place of business in the city of Chicago, State of Illinois. Respondent was incorporated in the year 1930.

PAR. 2. The respondent is now and has been from the date of its incorporation engaged in business as a wholesale mail order house

in the sale and distribution of merchandise consisting of worn, second-hand, used, and damaged clothing and shoes. Respondent purchases such merchandise at Government salvage sales and from clothing peddlers. Respondent also purchases such merchandise from factories and large mail order houses, which merchandise has been returned to such factories and mail order houses for adjustment after having been used. Respondent purchases unused merchandise such as factory rejects and stocks of bankrupt dealers. Respondent sells such merchandise to members of the purchasing public situated in various States of the United States and in the District of Columbia and causes the said merchandise, when sold by it, to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Illinois, and in the District of Columbia. Respondent maintains, and has at all times mentioned herein maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia, with other corporations and with partnerships, firms, and individuals selling and distributing worn, second-hand, used, and damaged clothing and shoes. Among such competitors in said commerce are many who do not, in any manner, misrepresent the quality, condition, and state of repair of their merchandise and who do not make any other false statements in connection with the sale and distribution of their merchandise.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its merchandise, the respondent has caused advertisements containing representations and claims with respect to said merchandise and the business status and practices of respondent to be disseminated in newspapers and other publications, having a circulation among and between the various States of the United States and in the District of Columbia, and in bulletins and catalogs distributed from respondent's aforesaid place of business to prospective purchasers of such merchandise, situated in various States of the United States and in the District of Columbia. The following statements and representations are typical of those made in the aforesaid advertisements:

These hats have been factory dry-cleaned and reblocked.

We are ready and willing to work with you, to help you personally in every way, to lead you step by step to success because upon your success depends ours.

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Start bargain store business—tremendous profits. New and used clothing. Bankrupt and auction sale merchandise. Experience unnecessary. Everything supplied by Publix—568 Roosevelt Road, Chicago.

Do not hesitate, reserve your territory immediately with your first order—Act now before some other wide-awake hustler gets exclusive rights in your district.

By selling bankrupt stock, new and used goods, auction sale merchandise and close-outs, you avoid competition and make big profits.

When a merchant needs cash and is obliged to sacrifice his stock, or when manufacturer or wholesale house is going out of business, our buyers are on the spot with the cash and obtain wonderful values at practically our own price.

The respondent causes other statements to be disseminated as aforesaid, containing representations that respondent is the largest wholesale distributor of rummage sale merchandise, that respondent's reputation as the largest cash buyer gives respondent a choice of the world's best bargains and that through respondent's large competent staff of trained buyers it can supply merchandise whose value can not be beaten or equalled.

PAR. 5. In truth and fact respondent buys very little of the merchandise which it advertises as new merchandise at auction sales but buys the largest portion of such merchandise from auctioneer purchasers at auction sales. Respondent is not the largest distributor of rummage sales merchandise and is not the largest cash buyer of merchandise. The merchandise referred to by respondent in the aforesaid advertisement as being factory dry-cleaned and reblocked is not dry cleaned and reblocked by the factory which manufactures such merchandise. Respondent does not sell merchandise to any dealer or dealers exclusively in any territory or locality and the respondent does not grant the privilege to any dealer or dealers to reserve an exclusive territory in the sale of such merchandise. Respondent does not have a large competent staff of trained buyers.

Purchasers of respondent's merchandise do not avoid competition in the resale of such merchandise by reason of the fact that they purchase such merchandise from the respondent. Respondent does not work with its customers and help them personally in every way but the respondent handles the orders received by it in a routine manner.

PAR. 6. In the aforesaid catalogs and bulletins purporting to describe the merchandise which respondent distributes to prospective purchasers of such merchandise situated in various States of the United States and in the District of Columbia, respondent represents, among other things, that such merchandise: Is cleaned, repaired, and

pressed; is of high grade materials, attractive styles, and new patterns; and constitutes excellent and tremendous values. Respondent makes other statements similar thereto in such advertisements, which statements serve as representations that such merchandise, when received by the purchaser thereof from the respondent, will be of good quality, of recent style and cut, serviceable, and that such merchandise will be cleaned, repaired and pressed so as to be saleable for immediate wear. In truth and in fact, various items of such merchandise, which the respondent sells and distributes to the purchasers thereof, situated in various States of the United States and the District of Columbia, are not cleaned, repaired, or pressed. Various items of such merchandise, so sold and delivered, are not of high-grade materials and are not excellent values and of new patterns. In fact, many of such items of such merchandise are dirty, ripped, torn, and worn out, are of inferior quality and material and are in such condition that they are not usable for wear. Merchandise which the respondent represents as being all wool is, in fact, made of cotton. Merchandise which the respondent represents as being of the latest style is, in fact, of a style from 10 to 15 years old.

PAR. 7. Respondent represents in the aforesaid advertisements that various items of such merchandise originally sold for the amounts which are stated in such advertisements. In truth and in fact, the amounts stated in such advertisements are greatly in excess of the amounts for which such merchandise was originally sold. Respondent represents in such advertisements that purchasers of its merchandise can make 100 percent profit in the resale of such merchandise. In truth and in fact, it is impossible for such purchasers to make such profits in the resale of such merchandise in the ordinary course of business under normal conditions and circumstances.

PAR. 8. The use by respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to such merchandise has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous mistake and belief that such false statements, representations, and advertisements are true and that respondent's merchandise and business status and practices is as represented and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's merchandise. As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertised the quality, condition and state of repair of their merchandise and their business status and practices.

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CONCLUSION

The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's 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, the answer of respondent, testimony, and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, oral arguments not 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Publix Sales Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly:

1. That merchandise which was not purchased by respondent at auction sales was purchased by respondent at auction sales.

2. That respondent is the largest distributor of rummage sale merchandise, that respondent is the largest cash buyer of merchandise, or that respondent has a large staff of trained buyers of merchandise, when such is not the fact.

3. That merchandise is factory dry cleaned and reblocked, unless such merchandise is dry cleaned and reblocked by the factory which manufactured such merchandise.

4. That respondent sells merchandise exclusively to any purchaser or purchasers in any territory or locality, when such is not the fact.

5. That purchasers of respondent's merchandise avoid competition in the resale of such merchandise.

6. That respondent works with its customers and helps them in every way, when such is not the fact.

7. That merchandise which is not cleaned, repaired, or pressed, of high-grade materials or of good quality, of newest pattern or of latest style, is cleaned, repaired and pressed, of high-grade

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materials and of good quality and of newest pattern and of latest style.

8. That merchandise which is not composed wholly of wool is all wool, or is wool.

9. That merchandise which was not originally sold for a certain amount or amounts was sold for such amount or amounts.

10. That persons purchasing such merchandise from the respondent for resale will make 100 percent profit or any other profit in the resale of such merchandise, unless such purchasers consistently make such profits in the resale of such merchandise in the ordinary course of business under normal conditions and circumstances.

This order shall not be construed as approving the use of the unqualified term "wool" to designate, describe, or refer to any wool which is not virgin wool.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

JOHN J. KANE, TRADING AS LA PEP HEALTH
BEVERAGE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2681. Complaint, Jan. 7, 1936—Decision, Feb. 23, 1939*

Where an individual engaged in manufacture of a preparation composed of the juices of a variety of fruits, together with sassafras root, nettle leaves, dog grass, and stick licorice, and in sale and distribution thereof to purchasers in other States, in competition with others engaged in sale and distribution of like and similar products in commerce among the various States and in the District of Columbia; in advertising his said product through circulars, folders, pamphlets and radio broadcasts circulated generally throughout the United States, and in labels—

- (a) Represented that said preparation was a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, gall bladder trouble, heart trouble, rheumatism, or other similar ailments, facts being it was not such a remedy;
- (b) Represented that said preparation was not a medicine or a drug, and that it cleansed the body of toxic germs and was a body disinfectant, facts being it was a medicine or drug and would not accomplish results above set forth, and was not such a disinfectant; and
- (c) Represented that said preparation would rejuvenate a person or guide him to health, or keep him young and healthy, or cause him to eat and sleep, and that it would cause wrinkles to disappear and cleanse and clarify the skin, facts being such various representations were false;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as a direct consequence of such mistaken and erroneous belief induced by aforesaid advertising and representations, that a number of the purchasing public bought substantial quantity of said product and trade was unfairly diverted from others likewise engaged in sale and shipment of preparations of medicinal character, and also of a beverage character, who truthfully advertise their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Mr. Samuel E. Kratzok, of Philadelphia, Pa., 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