

IN THE MATTER OF

ALLEN B. WRISLEY COMPANY, ALLEN B. WRISLEY DISTRIBUTING COMPANY, ALSO TRADING AS REGAL SOAP COMPANY, AND KARL MAYER, GEORGE A. WRISLEY AND WRISLEY B. OLESON, TRADING AS KARL MAYER & COMPANY

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

Docket 3021. Complaint, Dec. 24, 1936—Decision, Apr. 6, 1939

Where a corporation, its subsidiary, and three individuals, partners, and officers and employees of said corporations, engaged, as case might be, in manufacture, offer, and sale of many kinds of soaps, and in branding, stamping, or imprinting on certain of their said soaps certain brands, and in labeling, wrapping, and packaging product in question and distributing same, and in substantial competition with others engaged in manufacture and sale of genuine olive oil soaps in commerce among the various States, and also with those thus engaged in manufacture and sale of soap, oil content of which is not wholly olive oil—

Made use of words "Oliv-ilo," "Olive Oil," "Olive," and "Oliv," in names, brands, designations, and descriptions of certain of their said soaps, through such names and designations as "WRISLEY's Oliv-ilo pronounced Oliv-eye-lo," "ROYALE OLIVE OIL PURE Allen B. Wrisley Co., Chicago," "PURITO OLIVE OIL CASTILE," "PALM and OLIVE SOAP," etc., facts being six of the seven brands thus involved and designated contained from 5 to 15 percent of olive oil or olive oil fats only, and its "Del Gloria Castile, Spanish Process" contained, for a time, 36 percent of said product and thereafter approximately 51 percent, and none of said soaps were genuine olive oil soap, as understood and preferentially bought and used by substantial number of consuming public as soap containing as fatty ingredient, to exclusion of all other oils or fats, the more costly olive oil, and considered by manufacturers, dealers, and public generally, by reason of qualities of said oil, as high-quality soap free from substances harmful to skin or delicate fabrics and possessing desirable qualities not obtained in other soaps, and as such preferentially purchased and used for many purposes by substantial portion of purchasing and consuming public, and long considered by medical profession as having qualities requisite and desirable for use in the bathing of infants and sick and ailing, and in medicinal preparations, and prescribed and recommended by it for such purposes;

With result that they were enabled to and did sell their soaps at prices substantially less than those at which competitors who imported or manufactured and sold genuine olive oil soaps, with their more costly olive oil ingredient, could and did sell their products, and with effect of misleading and deceiving substantial portion of trade and purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of their said soaps by reason of such belief, and of thereby diverting unfairly trade to themselves from competitor manu-

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facturers and distributors of genuine olive oil soap and competitor manufacturers and distributors of soap, oil content of which is not wholly olive, and who truthfully advertise, sell, and distribute their said products among the various States; to the substantial injury of competition in commerce:

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

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Frank W. Sullivan of Mayer, Meyer, Austrian & Platt, of Chicago, Ill., 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 Allen B. Wisley Co., a corporation, Allen B. Wisley Distributing Co., a corporation, also trading under the name Regal Soap Co.; and Karl Mayer, George A. Wisley, and Wisley B. Oleson, copartners, trading as Karl Mayer & Co., hereinafter referred to as respondents, have been and are now using unfair methods of competition in Commerce, as "commerce" is defined in said Act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Allen B. Wisley Co., is a corporation, organized in 1895, and doing business under the laws of the State of Illinois, having its principal office and place of business at 6801 West Sixty-fifth Street, Chicago, Ill. Respondent, Allen B. Wisley Distributing Co., is a corporation, organized in 1933, and doing business under the laws of the State of Illinois, with its principal office and place of business at 6801 West Sixty-fifth Street, Chicago, Ill. It is an affiliate and sales agent of the Allen B. Wisley Co. Allen B. Wisley Distributing Co. also trades under the name Regal Soap Company. Respondent Wisley B. Oleson is president and respondent George A. Wisley is vice president and general manager of both companies.

Respondents, Karl Mayer, Wisley B. Oleson, and George A. Wisley, are copartners, trading as Karl Mayer & Co. The place of business of said partnership is located in the Merchandise Mart Building, Chicago, Ill. Respondent, Karl Mayer, originally owned and operated Karl Mayer & Co. In 1932, the respondents, Wisley B. Oleson and George A. Wisley became associated with the said Karl Mayer in

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his business. The policies and practices of the respondents are controlled and directed by the respondent Allen B. Wrisley Co.

Respondent, Allen B. Wrisley, Co., is engaged in the business of manufacturing soap and all of said respondents are now, and for several years last past have been, engaged in the sale and distribution of soap to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondents now cause, and for several years last past have caused, their soap, when sold by them, to be shipped from their respective places of business in Chicago, Ill., to the purchasers thereof, located in the various States of the United States other than the State of Illinois and in the District of Columbia. There is now, and has been for several years last past, a constant current of trade in commerce by the respondents, in soap, between and among the various States of the United States and in the District of Columbia.

Respondents are, and for several years last past have been, in substantial competition with corporations, partnerships, and individuals, engaged in the manufacture and sale of genuine olive oil soap in commerce between and among the various States of the United States, and in the District of Columbia; and respondents are, and for several years last past have been in substantial competition with corporations, partnerships, and individuals, engaged in the manufacture and sale of soap the oil content of which is not wholly olive oil, 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 thereof, respondents offer for sale and sell many kinds of soap some of which are branded, labeled, and otherwise advertised and represented as olive oil soap. Among the brands and labels so used by the respondents are:

WRISLEY'S	ROYALE
Oliv-ilo	OLIVE OIL
pronounced	PURE
Oliv-eye-lo	
PURITO OLIVE OIL CASTILE	Allen B. Wrisley Co., Chicago
Wrisley's	PALM and OLIVE
OLIV-SKIN	SOAP
pure	Regal Soap Co.
Toilet	
Soap	

Palm and Olive Oil Soap

In truth and in fact the oil or fat ingredient of said soap so labeled and branded is not wholly olive oil.

PAR. 3. Genuine olive oil soap is one the oil ingredient of which always has been and now is olive oil to the exclusion of all other oils and fats. Said soap has for many years been sold to and used by the purchasing public throughout the United States. Because of the qualities of olive oil as a soap material, said soap has long been and now is considered by manufacturers of and dealers in soap, and by the public generally, as a high-quality soap, free from substances harmful to the human skin or delicate fabrics; and possessing desirable qualities not contained in other soaps. For many purposes, a substantial portion of the purchasing and consuming public prefers to purchase and use soap, the oil content of which is wholly olive oil. Said olive oil soap has long been and is now considered by the medical profession to have the qualities requisite and desirable for bathing infants, sick and ailing persons, and is used in medicinal preparations. Said soap has long been and now is prescribed and recommended by the medical profession for said purposes.

PAR. 4.—Genuine olive oil soap is more costly to manufacture than respondents' said soaps for the reason that olive oil is uniformly substantially higher in price than the oils and fats used by respondents as substitutes therefor. By reason of that fact, respondents are enabled to and do sell their soaps at prices substantially less than respondents' competitors who import, or manufacture, and sell genuine olive oil soap, can and do sell the same. Respondents' aforesaid practices have the capacity and tendency to cause and do cause the trade and public to purchase respondents' said soaps as and for genuine olive oil soap in preference to the more costly genuine olive oil soap sold by said competitors referred to in paragraph 1 hereof.

PAR. 5. The use by respondents of the representations set forth herein has had and now has the capacity and tendency to mislead and deceive a substantial portion of the trade and purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondents' said soap on account of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of genuine olive oil soap and manufacturers and distributors of soaps, the oil content of which is not wholly olive oil, who truthfully advertise, sell, and distribute their soaps among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade is unfairly diverted to respondents from such competitors, thereby substantial injury is being, and has been done by respondents to competition in commerce as herein set out.

PAR. 6. The above alleged acts, practices, and methods of respondents are all to the injury and prejudice of the public and 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 December 24, 1936, issued and served its complaint in this proceeding upon the respondents, Allen B. Wrisley Co., a corporation, Allen B. Wrisley Distributing Co., a corporation, also trading under the name Regal Soap Co., Karl Mayer, George A. Wrisley, and Wrisley B. Oleson, copartners trading as Karl Mayer & Co., 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 said complaint were introduced by DeWitt T. Puckett, attorney for the Commission and in opposition to the allegations of the complaint by Frank W. Sullivan, attorney for the respondents before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Allen B. Wrisley Co. and Allen B. Wrisley Distributing Co. are corporations organized, existing, and doing business under the laws of the State of Illinois with their principal place of business at 6801 West Sixty-fifth Street, Chicago, Ill., and respondent Allen B. Wrisley Distributing Co. is a subsidiary of the respondent Allen B. Wrisley Co. Wrisley B. Oleson is president of both respondent corporations, and George A. Wrisley is vice president and general manager of both corporations. Karl Mayer is employed as a salesman by the Allen B. Wrisley Distributing Co.

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Respondents George A. Wrisley, Karl Mayer, and Wrisley B. Oleson are partners doing business under the firm name and style of Karl Mayer & Co., in the Merchandise Mart, Chicago, Ill.

Respondent Allen B. Wrisley Co. is engaged in the manufacture and sale of soap, certain brands being sold through the medium of its subsidiary, respondent Allen B. Wrisley Distributing Co. All branding, stamping, or imprinting on the soap is done by the Allen B. Wrisley Co., and all labeling, wrapping, and packaging of the soap is done by the respondent Allen B. Wrisley Distributing Co. The Allen B. Wrisley Distributing Co. sells to respondent Karl Mayer & Co. a soap labeled "Del Gloria Castile."

PAR. 2. Upon receipt of orders, respondents Allen B. Wrisley Co. and Allen B. Wrisley Distributing Co., Karl Mayer, George A. Wrisley, and Wrisley B. Oleson ship their stamped, branded, and labeled products from their place of business in Chicago, Ill., to customers located in the States of the United States, other than the State of Illinois.

PAR. 3. In the course and conduct of their said business in commerce, respondents are, and for several years last past have been, in substantial competition with corporations, partnerships, and individuals engaged in the manufacture and sale of genuine olive oil soap in commerce between and among the various States of the United States; and respondents are, and for several years last past have been, in substantial competition with corporations, partnerships, and individuals engaged in the manufacture and sale of soap, the oil content of which is not wholly olive oil, in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of their businesses as set forth above, respondents offer for sale and sell many kinds of soap, some of which is not wholly olive oil, in commerce between and among the States of the United States. Among the brands and labels so used by the respondents are:

WRISLEY'S
Oliv-ilo
pronounced
Oliv-eye-lo

ROYALE
OLIVE OIL
PURE
Allen B. Wrisley Co., Chicago

PURITO OLIVE OIL CASTILE

Wrisley's
OLIV-SKIN
pure
Toilet
Soap

PALM and OLIVE
SOAP
Regal Soap Co.

Palm and Olive Oil Soap

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"Oliv-Palm Complexion Soap", having branded on the back thereof, "Contains olive, palm and coconut oils, best for the skin, hair, and baby."

Del Gloria Castile, Spanish Process, made with pure olive oil, for nursery, toilet, bath, shampoo, Karl Mayer & Company, Chicago, U. S. A.

PAR. 5. The testimony shows and the Commission finds the oil or fat ingredient of said soaps so labeled and branded as set forth in paragraph 4 is not wholly olive oil but each has an olive oil content as follows:

(a) Wrisley's Oliv-ilo Toilet Soap contains 5 to 15 percent of olive oil or olive oil foots.

(b) Purito Olive Oil Castile, which is also labeled, "Purito Baby Castile Soap, pure and mild, for nursery and clinic. Allen B. Wrisley Company," contains 5 to 15 percent denatured olive oil.

(c) Oliv-Palm Complexion Soap, having branded on the back thereof, "Contains olive, palm, and coconut oils, best for the skin, hair, and baby," contains 5 to 15 percent olive oil foots.

(d) Palm and olive oil soap, having branded on the back thereof, "for the complexion, scalp, skin, and toilet," contains 5 to 15 percent olive oil foots.

(e) Royale Pure Olive Soap contains 5 to 15 percent olive oil foots.

(f) Wrisley's Oliv-Skin Pure Toilet Soap, having stamped on the back thereof, "Allen B. Wrisley Company, Chicago, U. S. A.," contains 5 to 15 percent olive oil foots.

(g) "Del Gloria Castile, Spanish Process, made with pure olive oil, for nursery, toilet, bath, shampoo, Karl Mayer & Company, Chicago, U. S. A.," contained 36 percent prior to the fall of 1936, and since that time it has contained approximately 51 percent olive oil. Its olive oil content was never less than 36 percent and never greater than 51 percent.

PAR. 6. Olive oil soap is a soap containing olive oil as its fatty ingredient, to the exclusion of all other oils or fats. Some of the brand names and labels used by respondents in advertising their soap have led a substantial number of the trade and purchasing public to believe that the soap so labeled, branded, and otherwise advertised is olive oil soap.

PAR. 7. Because of the qualities of olive oil as a soap material, said soap has long been, and is now, considered by manufacturers of and dealers in soap, and by the public generally, as a high-quality soap, free from substances harmful to the human skin or delicate fabrics; and, possessing desirable qualities not contained in other soaps. For many purposes, a substantial portion of the purchasing and consuming public prefer to purchase and use soap, the oil content of which is wholly olive oil. Said olive oil soap has long been and is now considered by

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the medical profession to have the qualities requisite and desirable for bathing infants, sick and ailing persons, and is used in medicinal preparations. Said soap has long been, and is now, prescribed and recommended by the medical profession for said purposes.

PAR. 8. Olive oil has been higher in price than other oils and fats commonly used in the manufacture of soap, and genuine olive oil soap is more costly to manufacture than respondents' said soaps, and respondents are enabled to, and do, sell their soaps at prices substantially less than respondents' competitors who import, or manufacture, and sell genuine olive oil soap, can and do sell the same.

PAR. 9. There are a substantial number of the consuming public who understand an olive oil soap to be a soap containing 100 percent olive oil as its oil or fat content, and prefer to buy and use said soaps.

PAR. 10. The use by the respondents of the representations as set forth above has had, and now has, the capacity and tendency to mislead and deceive and have misled and deceived a substantial portion of the trade and purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondents' said soaps on account of such erroneous belief. There are among the competitors of respondents manufacturers and distributors of genuine olive oil soap and manufacturers and distributors of soap, the oil content of which is not wholly olive oil, who truthfully advertise, sell, and distribute their soaps among the various States of the United States. By the use of the representations aforesaid, trade is unfairly diverted to respondents from such competitors, thereby, substantial injury is being and has been done by the respondents to competition in commerce as herein set forth.

CONCLUSION

The above acts, practices, and methods of respondents are all to the injury and prejudice of the public and 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs

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filed herein, and oral arguments by DeWitt T. Puckett, counsel for the Commission, and by Frank L. Sullivan, counsel for the 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 respondents, Allen B. Wrisley Co. and Allen B. Wrisley Distributing Co., also trading under the name Regal Soap Co., their officers, representatives, agents, and employees, directly or through any corporate or other device, and Karl Mayer, George A. Wrisley, and Wrisley B. Oleson, copartners trading as Karl Mayer & Co., or trading under any other name, their agents, representatives, 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:

Using the word "olive" or any other word or words or any combination of words or parts thereof or any device of similar import or meaning to describe, designate, or in any way refer to soap, the oil or fatty content of which is not wholly olive oil, except that in the case of soap containing olive oil and other oils as the fatty content, the word "olive" may be used as descriptive of the olive oil content if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent oil in the order of its predominance by volume, beginning with the largest single oil constituent, and provided that if any particular oil in said soap is not present in an amount sufficient substantially to affect its detergent or other qualities, the percentage in which such oil is present shall then be specifically disclosed.

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
SOAP LAKE PRODUCTS CORPORATION

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

Docket 2823. Complaint, May 27, 1936—Decision, Apr. 10, 1939

Where a corporation engaged in preparation, sale and distribution of certain packaged mineral salts which (1) were designated as "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit," and of which (2) salt ingredients were obtained from Soap Lake, Washington, and of which (3) its "Salts" constituted the unadulterated residue, after evaporation was complete, of the natural water of said lake, while its "Spirit" was the liquid concentrate bottled before evaporation was complete, and its "Seltzer" was 60 percent "Salts" and 40 percent citric and tartaric acid salts, added for effervescence and palatability, and (4) contents of which, as disclosed by analysis, included trifle more than 20 percent sodium sulphate or Glauber's salts, laxative effect of which was minimized by combination with other ingredients therein, about 54 percent sodium carbonate or caustic alkali known as washing soda, and about 25 percent sodium chloride and potassium chloride, or ordinary table salt, and, as thus engaged, in competition with others likewise engaged in preparing, selling and distributing mineral salt products or other products intended and sold for same purposes as its said products;

In advertising its said packaged mineral salts through booklets, folders, pamphlets and other advertising literature distributed to members of the purchasing public in the various States and furnished to customers for distribution to members of said public, and through newspapers and magazines of general circulation throughout the various States, and through radio broadcasts of extrastate audience—

Represented through said advertisements, in all of which it featured its corporate name in connection with aforesaid trade names of its said products as above set forth, and various statements therein made, directly or by implication, that said various products would prevent and cure and were beneficial in the treatment of many of the diseases, afflictions, ailments, and conditions which may be present or exist in the body, and thus included rheumatism, arthritis, neuritis, eczema, athlete's foot, ulcers of the stomach, poison oak and ivy, gangrene, body and scalp sores, Buerger's disease, hyperacidity, lumbago, trench mouth and pyorrhea;

Facts being its said packaged mineral salts alone, used either externally or internally, will not prevent or cure, and are not beneficial in the treatment of, rheumatism, arthritis, neuritis and the various other ailments and conditions above set forth, or any other disease, affliction, ailment or condition which may be present or exist in the body, as represented as above set forth, but therapeutic benefits, if any, generally obtained from use of any or all of said products, are limited to those resulting from the laxative, diuretic, and cleansing properties of the various ingredients thereof;