

Syllabus

IN THE MATTER OF
R. FRANK YANCEY, TRADING AS THE MONARCH
CHINA COMPANY

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

Docket 3410. Complaint, May 7, 1938—Decision, Aug. 15, 1940

Where an individual engaged in offer, sale, and distribution of earthenware products, including dinnerware or, as by him designated, "chinaware," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale in commerce as aforesaid of such products—

- (a) Represented, through advertising literature made use of by him in soliciting sale of, and in selling, said products to prospective purchasers, and through sales promotion literature, and agents and traveling salesmen, that offer and sale of assortments of dinnerware sets by him was in nature of a "clearance sale" of accumulated assortments not disposed of in regular course of manufacture and sale, offered at purported special bargain prices by virtue of being accumulated stock not used by manufacturer because of certain defects, but in other respects of high grade;

Facts being so-called "chinaware" was supplied to him by manufacturer in regular course of business and made to his order, and not taken or selected from high-grade stock, and was not offered and sold as "clearance sale," but at prices which did not constitute any special bargain or price advantage, but were those at which he regularly and customarily sold such products in the regular and continuing course of business;

- (b) Represented, as aforesaid, that he was the manufacturer of the products offered and sold by him, and that purchase thereof from him constituted direct purchase from manufacturer, eliminating competition and thereby saving purchaser against added cost of expense normally involved in making purchases through distributors and jobbers or any source other than manufacturer, through such statements, among others, as "* * * packed right at the factory and shipped direct to you," "BUY DIRECT, ELIMINATE COMPETITION," etc.;

Facts being he was not, as represented, manufacturer, for purchase of whose products direct, and for dealing with whom, there is preference on part of dealers and purchasing public as securing sellers, in their opinion, superior quality, better prices and other benefits not obtainable through distributor and jobber middlemen, but, on contrary, was distributor or jobber of such products, and purchases of such products from him did not constitute direct purchases from manufacturer and eliminate competition and save purchaser against any cost and expense normally involved in dealing with distributor or jobber; and

- (c) Represented, directly and through his representatives, that products offered and sold were of same grade and quality as sample pieces supplied by him to his agents for display in solicitation and sale of his merchandise;

Facts being samples aforesaid were of materially higher grade and quality than sets or so-called "chinaware" sold and delivered to customers after receipt

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of order from salesman, and products thus supplied were in no way comparable in grade and quality with samples exhibited and displayed to prospective purchasers, but were substantially inferior thereto;

With effect of misleading and deceiving retail dealers and members of purchasing public into mistaken and erroneous belief that such statements and representations were true and, by reason thereof, into purchase of his said products, and of thereby diverting unfairly trade to him from competitors engaged in sale of earthenware and china products in commerce as aforesaid, and who do not misrepresent their business status or character or quality of their said products; to the injury of competition in commerce: *Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of competitors and the public, and constituted unfair methods of competition.

Before *Mr. Edward E. Reardon* and *Mr. John J. Keenan*, trial examiners.

Mr. Jay L. Jackson and *Mr. DeWitt T. Puckett* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that *R. Frank Yancey*, trading as *The Monarch China Co.*, hereinafter referred to as respondent, has violated the provisions of the 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, *R. Frank Yancey*, is an individual trading under the name and style of *The Monarch China Co.*, with his office and principal place of business located at 703 Chestnut Street, city of Greensboro, N. C. For approximately 4 years last past said respondent has been, and now is, engaged in the business of offering for sale, selling, and distributing earthenware products, including dinnerware sets, designated by respondent as chinaware, in commerce among and between the various States of the United States and in the District of Columbia. It has been, and now is, the practice of respondent to cause said products, when sold or ordered, to be shipped and transported from the factories where the same are made to respondent in the State of North Carolina and also direct to purchasers of said products located in various States of the United States other than the State of origin of said shipment, and in and to the District of Columbia.

In the course and conduct of the business aforesaid respondent has been, and now is, in competition with other individuals, firms, partnerships, and corporations engaged in the business of offering for

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sale, selling, and distributing earthenware and chinaware, including dinnerware, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of the business aforesaid, it has been, and now is, the practice of respondent to offer his said products and to solicit and sell prospective purchasers and purchasers, through and by means of advertising and sales promotion literature and through and by means of agents and traveling salesmen.

Through and by means of the said literature and oral statements and representations made by respondent, and by his said selling agents, it has been, and now is, the practice of respondent to state and represent, among other things, to prospective purchasers and purchasers, that the assortments of dinnerware sets, or chinaware, offered and sold by respondent, are "Damaged Job Thirds" and "Odds and Ends," and further, that the offer and sale thereof is in the nature of a "Clearance Sale" of accumulated assortments of chinaware sets not used in the regular course of manufacture and sale. Demonstrative of the statements and representations contained in the aforesaid advertising literature, which is distributed by respondent and his agents to purchasers and prospective purchasers, are the following:

You Wonder How We Do It!

SIMPLY THIS: In the Manufacture of High grade Chinaware a large part of the production comes thru damaged to the extent that the factories are not justified in making the careful selection that is made in selling the better grades in open stock. As this ware is entirely of accidental production and is never purposely made, its cost is added to the better grades and the damaged ware is lumped and sold in Job Lots to keep the stock rooms clear.

JOB THIRDS

1000 Pieces to the Cask and each cask is packed right at the factory and shipped direct to you.

YOU GET STRICTLY FACTORY SELECTED MERCHANDISE

GIVE YOUR CUSTOMERS WHAT THEY WANT

Increase Your Sales

BUY YOUR CHINAWARE FOR SHIPMENT DIRECT FROM THE FACTORY and you will be in position to offer your trade bigger and better values that will bring many new customers into your store. We especially recommend this assortment for Special Sales purposes. It is not only a **BIG PROFIT** maker for you but a valuable advertisement for your store. This is the lowest price ever offered on good clean Job Lot Chinaware.

BUY DIRECT, ELIMINATE COMPETITION

The aforesaid statements by respondent further imply and represent, and are understood by prospective purchasers to mean, that the offer and sale made by respondent constitutes a special bargain price offer

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or advantage by virtue of the products being so-called "Odds and Ends" or accumulated stock not used by the manufacturer because of certain defects, but that the same are otherwise of high-grade stock. The said statements further imply and represent that the respondent, doing business under the name The Monarch China Co., is the manufacturer of the products which are offered for sale, and sold, and that the purchase through the said company constitutes a direct purchase, "eliminates competition," and thus saves the purchaser against the added cost or expense normally involved in making so-called indirect purchases through distributors and jobbers.

PAR. 3. It has been, and now is, the further practice of respondent to supply his said selling agents with certain sample pieces of earthenware or chinaware stock for display use in the process of soliciting the sale of, and in selling his products to purchasers and prospective purchasers. Said samples, however, are of materially higher grade and quality than the earthenware dinnerware sets or so-called chinaware which respondent in fact sells and delivers to his purchasers. Through use of such samples, respondent represents, both directly and through his representatives, that the products offered for sale, and sold by him, are of the same grade and quality as the samples exhibited. In fact, respondent's products are substantially inferior in grade and quality to the samples exhibited and displayed to prospective purchasers and are in no wise comparable to such samples.

PAR. 4. There is a preference on the part of the purchasing public for buying merchandise from, and dealing direct with, the manufacturer of the merchandise being purchased, said members of the purchasing public believing that in so doing they secure merchandise of superior quality and also secure more advantageous prices and other benefits not obtainable when purchasing the same products through middlemen such as distributors and jobbers.

PAR. 5. In truth and in fact the foregoing statements and representations are false and misleading in that the earthenware products or dinnerware sets, or so-called chinaware, offered and sold by respondent are not "Damaged Job Thirds," or "Odds and Ends," or sold in the process of a "Clearance Sale," and the offer and sale at the prices quoted by respondent do not constitute any special bargain or price advantage. The prices at which respondent offers said products for sale are in fact the regular, usual, and customary prices at which said products are regularly and customarily sold. The offer and sale thereof at the prices quoted constitute the respondent's regular and continuing course of business. The said products are supplied to respondent by a manufacturer in the regular course of business and are made to respondent's order, and the same are not taken or selected from high grade stock. Respondent, trading as The Monarch China

Co., is not a manufacturer of the products which he offers for sale and sells but on the contrary is a distributor or jobber thereof. Purchases of such products from respondent do not constitute a direct purchase from a manufacturer, eliminates no competition, and does not save the purchaser against any cost or expense normally involved in dealing with a distributor or jobber.

PAR. 6. The aforesaid statements and representations made by the respondent in connection with the offering for sale and sale of his earthenware or so-called chinaware products have had, and now have, the tendency and capacity to, and do, mislead and deceive retailer purchasers and prospective consumer purchasers of such products into the false and erroneous beliefs that said statements and representations, above set out, are true, and into the purchase of respondent's products in and on account of such beliefs induced by respondent's acts and practices, as herein set out. As a result thereof, trade has been diverted unfairly to the respondent from competitors likewise engaged in selling earthenware products or chinaware products in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent their business status or the character or quality of their respective products. In consequence thereof injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 7th day of May A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondent, R. Frank Yancey, individually and trading as The Monarch China Co., charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Jay L. Jackson, Esq., and DeWitt T. Puckett, Esq., attorneys for the Commission, and in opposition thereto by the respondent, who appeared in his own behalf, before Edward E. Reardon and John J. Keenan, trial examiners of the Commission theretofore duly designated by it. 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, the answer thereto, the testimony and other evidence, and brief in support of the complaint (the respondent not having filed any brief and oral argument 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, R. Frank Yancey, is an individual who is now, and has been for a number of years last past, doing business at 703 Chestnut Street, in Greensboro, N. C., under the trade name and style, "The Monarch China Company." Respondent is now, and has been for some years, engaged in the business of offering for sale, selling, and distributing, in commerce, earthenware products including dinnerware sets designated by respondent as "chinaware."

PAR. 2. For more than 4 years last past respondent has caused the said earthenware products, including dinnerware sets designated by respondent as "chinaware," when sold by him, to be transported from his place of business in the State of North Carolina and from the State of Ohio to purchasers thereof located in States of the United States other than the States of North Carolina and Ohio and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade by respondent in said so-called "chinaware" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and has been at all times mentioned herein, engaged in substantial competition with other persons, and with firms, partnerships, and corporations, also engaged in the sale and distribution of earthenware and chinaware, including dinnerware sets, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of his business, and for the purpose of inducing individuals, firms, and corporations to purchase his said earthenware products, including dinnerware sets designated by respondent as "chinaware," respondent has made it a practice to solicit the sale of and sell said products to prospective purchasers through and by means of advertising and sales promotion literature, and through and by means of agents and traveling salesmen. By means of said advertising literature and oral statements and representations made by respondent and his representatives, it has been and now is the practice of the respondent to state and represent to

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prospective purchasers, among other things, that the offer and sale of assortments of dinnerware sets is in the nature of a "clearance sale" of accumulated assortments of chinaware sets not disposed of in the regular course of manufacture and sale.

PAR. 5. Among and typical of the statements and representations disseminated as aforesaid by respondent, and which have been distributed by respondent and his agents to purchasers and prospective purchasers, are the following:

YOU WONDER HOW WE DO IT!

SIMPLY THIS: In the Manufacture of High Grade Chinaware a large part of the production comes thru damaged to the extent that the factories are not justified in making the careful selection that is made in selling the better grades in open stock. As this ware is entirely of accidental production and is never purposely made, its cost is added to the better grades and the damaged ware is lumped and sold in job lots to keep the stock room clear.

JOB THIRDS

1,000 pieces to the Cask and each cask is packed right at the factory and shipped direct to you.

YOU GET STRICTLY FACTORY SELECTED MERCHANDISE

GIVE YOUR CUSTOMERS WHAT THEY WANT!

Increase Your Sales

BUY YOUR CHINA FOR SHIPMENT DIRECT FROM THE FACTORY and you will be in position to offer your trade bigger and better values that will bring many new customers into your store. We especially recommend this assortment for Special Sales Purposes. It is not only a BIG PROFIT maker for you but a valuable advertisement for your store. This is the lowest price ever offered on good clean Job Lot Chinaware.

BUY DIRECT, ELIMINATE COMPETITION

THE MONARCH CHINA COMPANY

Headquarters for Low Prices

We Don't Meet Prices—We Make Them

Sales Office and Sample Rooms

Greensboro, North Carolina

M C. C.

Selling Agent Associated Potteries of Ohio.

THE MONARCH CHINA COMPANY

Headquarters for Low Prices

Greensboro, N. C.

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All of the aforesaid statements and representations by respondent, together with similar statements appearing in respondent's other advertising matter, purport to be descriptive of the merchandise offered for sale by respondent at purported special bargain prices by virtue of the product's being accumulated stock not used by the manufacturer because of certain defects, but otherwise being of high grade stock. The said statements further imply and represent that respondent, doing business under the name "The Monarch China Company," is the manufacturer of the products which are offered for sale and sold by him, and that the purchase of such products from respondent constitutes a direct purchase from the manufacturer, eliminates competition, and thus saves the purchaser against the added cost or expense normally involved in making purchases through distributors and jobbers or through any source other than the manufacturer.

PAR. 6. In truth and in fact, all of the aforesaid statements and representations are false and misleading, in that the earthenware products, or so-called "chinaware," offered and sold by respondent are not sold in the process of a "clearance sale," and the offer and sale thereof at the prices quoted by the respondent do not constitute any special bargain or price advantage. The prices at which respondent offers said products for sale are, in fact, the regular, usual, and customary prices at which said products are regularly and customarily sold, and constitute the respondent's regular and continuing course of business. Said products are supplied to respondent by the manufacturer in the regular course of business and are made to respondent's order, and the same are not taken or selected from high grade stock. Respondent is not the manufacturer of the products which he offers for sale and sells, but, on the contrary, is a distributor or jobber thereof. Purchases of such products from the respondent do not constitute and have not constituted direct purchases from the manufacturer, do not eliminate competition and do not save the purchaser against any cost or expense normally involved in dealing with a distributor or jobber.

PAR. 7. The respondent, in the course and conduct of his business, supplies his selling agents with sample pieces of earthenware or chinaware stock, for display use in the process of soliciting the sale of and selling respondent's merchandise. Such samples are, in truth and in fact, of materially higher grade and quality than the earthenware dinner sets, or so-called "chinaware" which respondent in fact sells and delivers to his customers after receipt of order from his salesmen. Through the use of such samples, respondent represents, both directly and through his representatives, that the products offered for sale and sold by him are of the same grade and quality as the sam-

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ples so exhibited. In truth and in fact, respondent's products are substantially inferior in grade and quality to the samples exhibited and displayed to prospective purchasers by his salesmen and representatives, and are in no way comparable with such samples.

PAR. 8. There is a preference on the part of dealers and the purchasing public for buying merchandise from, and for dealing directly with, the manufacturer of the merchandise being purchased, said dealers and members of the purchasing public believing that in so doing they secure merchandise of superior quality, and also secure more advantageous prices and other benefits not obtainable when purchasing such products through middlemen, such as distributors and jobbers.

PAR. 9. The aforesaid statements and representations made by respondent in connection with the offering for sale and the sale of his earthenware, or so-called "chinaware" products, has had and now has the tendency and capacity to, and did and does, mislead and deceive retail dealers and members of the purchasing public into the mistaken and erroneous belief that said statements and representations are true, and into the purchase of respondent's products because of such belief. As a result thereof, trade has been diverted unfairly to the respondent from his competitors engaged in selling earthenware products and chinaware products in commerce among and between the various States of the United States and in the District of Columbia, who do not misrepresent their business status or the character or quality of their respective products. In consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of respondent's competitors and of the public, 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 Edward E. Reardon and John J. Keenan, trial examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of counsel for the Commission,

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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, R. Frank Yancey, individually and trading as The Monarch China Co., or trading under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of earthenware or chinaware, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent is a manufacturer, or that any of the products sold by respondent are manufactured by him.

2. Representing that the prices at which respondent's products are offered for sale constitute special or reduced or "clearance sale" prices, when such prices are in fact the usual and customary prices at which such products are offered for sale and sold by respondent in the normal and regular course of business.

3. Representing, by the use of purported samples or otherwise, that respondent's products are of a quality or value different from the actual quality or value of such products.

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

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IN THE MATTER OF

MARY ELOISE GAUSS, TRADING AS SPRAGUE-KITCHEN
& COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3821. Order, Aug. 16, 1940

Order of August 23, 1939, 29 F. T. C. 671, requiring respondent, her agents, etc., to cease and desist disseminating, as in said order set forth in detail, advertisements representing that her said "Graolene", or other similar cosmetic preparation, is not a dye or will restore original color to gray hair, or supply deficient materials thereto, etc., as modified August 16, 1940, as below set forth, so as to eliminate from said order prohibition respecting failure to disclose possible injurious effects when applied to skin where continuity of the integument is broken.

Mr. Robert Mathis, Jr., for the Commission.

MODIFIED ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mary Eloise Gauss, individually and trading as Sprague-Kitchen & Co., or trading under any other name or names, her agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

¹ Original order of Aug. 23, 1939, was modified to read as above set forth, by following order of Aug. 16, 1940:

ORDER STRIKING PORTION OF ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the request of respondent that the order to cease and desist entered herein on Aug. 23, 1939, be modified by striking a certain portion thereof, and it appearing that the modification of said order in the respects requested is in the public interest, and the Commission having duly considered said request and the record herein, and being now fully advised in the premises;

It is ordered that the order to cease and desist entered herein on Aug. 23, 1939, be modified by striking therefrom the following language appearing in the last four lines thereof:

"or which advertisements fail to reveal that the use of said preparation may produce a harmful or injurious effect particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument."

It is further ordered that except as herein modified said order to cease and desist remain in full force and effect.