

IN THE MATTER OF
**ALBERT T. CHERRY, DOING BUSINESS AS A. T. CHERRY
COMPANY AND AS ATCO SOAP COMPANY**

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

Docket 3416. Complaint, May 11, 1938—Decision, Nov. 2, 1940

Where an individual engaged in sale and distribution of soap and soap powder to purchasers in various States and in the District of Columbia, in active and substantial competition with others engaged in sale and distribution of such products in commerce as aforesaid;

In selling his said products to house-to-house canvassers for resale in so-called "Combination Deals" in case lots of 48 cartons of soap to the case and at prices ranging from \$2.30 to \$3.00 a case, together with boxes of soap powder with trade name, usually, but without price mark, on each, for sale in combination with such soap, in case lots of 100 boxes to the case, at \$1.75 per case—

Offered and sold said soap in 3-cake cardboard cartons on which were printed brand name of soap and statement "Combination Deal 75¢," or some equivalent words, for sale, as aforesaid, in combination deals as made up by individual canvassers and as sometimes suggested by him, and including, as typical, two cartons of soap, four boxes of powder, costing wholesale about 18 cents, and consisting, in other instances, of three boxes of powder and three cartons of soap, and in still others of one box and one carton of each, respectively;

Notwithstanding fact price of 75 cents indicated on said cartons or such other amount as might be indicated thereon, did not represent the price at which such carton was generally and customarily offered and sold at retail, and such prices were wholly fictitious and in no sense represented actual retail selling price of soap concerned, but were greatly in excess thereof; and

Supplied thereby to and placed in the hands of house-to-house canvassers, means whereby purchasing and consuming public might be misled and deceived as to regular retail price and value of his said soap products, in accordance with general public understanding of custom of marking or stamping actual retail prices on various commodities, and into purchase by it of substantial volume of merchandise in reliance upon such custom to extent of accepting prices thus marked as indicating quality and fair market price of such commodities thus price-marked;

With result that such acts and practices, in marking such cartons of soap containing three cakes with legend "Combination Deal 75¢," or some other equivalent statement indicating price for three bars of said product, led many members of purchasing public erroneously and mistakenly to belief that regular and customary retail price of soap concerned was 75 cents per box of three cakes, or amount indicated thereon, and of causing them to purchase substantial quantity of his said soap because of such belief, and with effect that trade in commerce was diverted to him from his competitors who do not use deceptive and misleading representations in connection with sale and distribution of their products:

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

Before *Mr. Edward E. Reardon, Mr. Randolph Preston, Mr. Arthur F. Thomas*, and *Mr. Lewis C. Russell*, trial examiners.

Mr. Alden S. Bradley, Mr. S. Brogdyne Teu, II, and *Mr. Dewitt T. Puckett*, for the Commission.

Holland & Holland, of Dayton, Ohio, for respondent.

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 Albert T. Cherry, an individual doing business as A. T. Cherry Co., and as Atco Soap 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 as follows:

PARAGRAPH 1. The respondent, Albert T. Cherry, is an individual doing business as A. T. Cherry Co., and as Atco Soap Co., at 289 Linden Avenue, Dayton, Ohio. He is engaged in the sale and distribution of soap and soap products.

Respondent now causes, and for several years last past has caused, his soap and soap products, when sold by him, to be shipped from his said place of business in Dayton, Ohio, to the purchasers thereof, located in the various States of the United States other than Ohio, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said soap so sold and distributed in commerce by the respondent between and among the various States of the United States and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other individuals, and with partnerships and corporations, engaged in the sale and distribution of soap and soap products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Some of the soap which respondent offers for sale and sells, as aforesaid, is put up in cartons, 3 cakes to the carton, and sold by house-to-house canvassers. The said cartons bear fictitious price marks. Representative of the fictitious price marks borne by said cartons are the following: "Combination Deal, 75¢" and "Cherry's Original Skin Balm Facial Soap, 75¢." Various other

fictitious representations with respect to the retail price of the soap appear on the cartons.

PAR. 3. The aforesaid fictitious price marks serve as representations on the part of respondent to purchasers and prospective purchasers that respondent's said soap has actual values or retail selling prices closely approximating such fictitious price marks and far in excess of the actual values or retail selling prices of said soap.

In fact, the prices marked on the respondent's cartons, as aforesaid, in no sense represent the actual values or retail selling prices of the products so marked but are fictitious and are greatly in excess of the actual values or the true retail selling prices thereof. The said fictitious prices are intended by the respondent to be far in excess of the prices actually charged the ultimate customer purchasing such soap in the usual course of trade.

PAR. 4. The public generally understands the custom of marking or stamping the actual retail price or value on various commodities, and has been led to, and does, place its confidence in the price markings so stamped on the commodities and the representations thereby made as to the quality and price of such products to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. As a result of respondent's representations, aforesaid, members of the purchasing public are led to erroneously and mistakenly believe that the actual values and selling prices of respondent's soap are the prices stamped or marked thereon when, in fact, the prices so stamped or marked on said cartons are fictitious and in no sense represent the actual retail selling prices or true values of said soap.

PAR. 5. The use by respondent of the representations set forth herein, has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's soap as a result of such erroneous belief.

There are among the competitors of respondent as mentioned in paragraph 1 hereof, distributors of soap who do not misrepresent the values of their soap or the prices at which their soap is offered for sale and sold. By the representations aforesaid, trade is diverted unfairly to respondent from such competitors and as a result thereof, injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent-

ent'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 May 11, 1938, issued and served its complaint in this proceeding upon respondent, Albert T. Cherry, an individual, doing business as A. T. Cherry Co. and as Atco Soap 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, the respondent having filed no answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, S. B. Teu, and D. T. Puckett, attorneys for the Commission, before trial examiners 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. Respondent did not offer any evidence, file a brief, or request oral argument, though he was represented at some of the hearings by George F. Holland, Esq. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief in support of the complaint, 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 respondent, Albert T. Cherry, is an individual doing business as A. T. Cherry Co. and as Atco Soap Co. at 2200 Northwestern Avenue, Dayton, Ohio. Respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of soap and soap powder.

Respondent ships his products, when sold, from his place of business in Dayton, Ohio, to the purchasers thereof located in various States of the United States and in the District of Columbia. During all of the time mentioned herein, respondent has maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

Respondent is in active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of soap and soap powder in commerce among and

between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent's soap is offered for sale and sold in cardboard cartons, three cakes to the carton. On each carton is printed the brand name of the soap and the statement "Combination Deal 75¢" or some equivalent statement. The soap is sold by the respondent in case lots, 48 cartons to the case, at prices ranging from \$2.30 to \$3.00 a case. Respondent also sells soap powder to be sold in combination with his soap. The powder is offered for sale and sold in cardboard boxes which usually bear a trade name but do not bear price marks. The boxes of soap powder are sold by respondent in case lots, 100 boxes to the case. The price per case is \$1.75.

PAR. 3. The respondent sells his products to house-to-house canvassers, who sell said products in so-called "Combination Deals." A typical "deal" consists of two cartons of soap and four boxes of powder, the wholesale cost of which is approximately 18¢. In some instances "deals" consist of three boxes of powder and three cartons of soap; in others, one box of powder and one carton of soap. The respondent does not make up the deals but sometimes suggests to canvassers how they should be made up. Although each carton contains the statement "Combination Deal 75¢," or some equivalent statement, the "deals" are not uniform as to content or as to price, but each canvasser determines for himself the kind and number of articles to go into each "deal" and the price at which it is to be sold.

In truth and in fact, the price of 75¢ indicated on said cartons containing three bars of soap, or the other amount indicated thereon, does not represent the price at which said carton of soap is generally and customarily offered for sale and sold at retail. Said prices are wholly fictitious and in no sense represent the actual retail selling price of said soap but are greatly in excess thereof. The respondent thus supplies to, and places in the hands of, house-to-house canvassers the means whereby the purchasing and consuming public may be misled and deceived as to the regular retail price and the value of respondent's said soap products.

PAR. 4. The public generally understands the custom of marking or stamping actual retail prices on various commodities and relies upon such custom to the extent of accepting the prices so marked as indicating the quality and the fair market price of the commodity so price marked, and purchases a substantial volume of merchandise in reliance on said custom.

PAR. 5. The acts and practices of respondent in marking said cartons of soap containing three cakes of soap "Combination Deal 75¢,"

1262

Order

or some other equivalent statement indicating a price for three bars of soap, have led, and lead, many members of the purchasing public erroneously and mistakenly to believe that the regular and customary retail price of said soap is 75¢ per box of three cakes, or the amount indicated thereon, and have caused them to purchase a substantial quantity of respondent's said soap because of this erroneous and mistaken belief. As the result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted to respondent from his competitors who do not use deceptive and misleading representations in connection with the sale and distribution of their products.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before trial examiners of the Commission, theretofore duly designated by it, and brief filed herein in support of the allegations of the complaint (no brief having been filed by respondent and oral argument 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, Albert T. Cherry, an individual, trading and doing business as A. T. Cherry Co. or as Atco Soap Co., or trading under any other name, his agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of soap or soap products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the expression "Combination Deal 75¢" or the price mark "75¢," or any other expression or price marks indicating a price, on the container in which soap or soap products are sold, unless the quantity of soap or soap products enclosed in said container is regularly and customarily offered for sale or sold at 75 cents, or the sum indicated.

2. Representing as the customary or regular retail prices for soap or soap products prices which are in fact fictitious and in excess

Order

31 F. T. C.

of the prices at which said products are regularly and customarily offered for sale and sold in the normal course of business.

3. Supplying to, or placing in the hands of, house-to-house canvassers or others purchasing for resale any soap or soap products price marked or branded in violation of paragraphs 1 and 2 of this order.

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.

Syllabus

IN THE MATTER OF
JOSEPH SALADOFF, TRADING AS RELIABLE SALES
SERVICE COMPANY

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

Docket 3535. Complaint, Aug. 15, 1938—Decision, Nov. 2, 1940

Where an individual engaged in sale and distribution, to retail merchants at points in the various States and in the District of Columbia, of sales promotion cards which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by such merchants in promoting and increasing sales of their merchandise to consuming public, and included, as illustrative of various groups of such cards manufactured and distributed by him, and involving same lottery scheme or gift enterprise and varying in detail only from those described, cards (1) arranged for punching out \$5 or \$10 in trade, as case might be, and having concealed under card's "secret panel" legends entitling chance holder, upon the punching out of the total amount of trade called for and as set forth by card's explanatory notice and in accordance with particular legend as thus secured by chance, to amounts in trade ranging from 20 cents to \$5, and (2) so packed and assembled by said individual that his customers knew amount of award stated under such panels—

Sold, together with various display posters and advertisements furnished for use of such retail merchants in distributing and using same, said cards to such merchants, by whom they were distributed, as suggested by such individual or otherwise, to their customers and prospective customers upon the making of purchases thereby, and by whom awards, as shown under such "secret panels," were honored through the opening thereof when numbers had been duly punched and customer became entitled to and received from merchant goods in amount shown by legend, without additional cost, and by whom, through use of such cards, their merchandise was sold and distributed by means of game of chance, gift enterprise or lottery scheme; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale and distribution of their said products, contrary to an established public policy of the United States Government and in competition with many who make and sell various sales promotion cards, trade cards, premium cards, coupons and trading stamps for use by retail merchants in promoting or increasing the sale of their merchandise, and who are unwilling to offer or sell their said products so designed and arranged, as above set forth or otherwise, as to involve game of chance, gift enterprise or lottery scheme when used in connection with sale or distribution of merchandise by retailers, and who refrain therefrom;

With result that, because of element of chance involved in sale and distribution of merchandise by retailers thereof through his said cards, many members of consuming public were induced to deal with or purchase merchandise from such merchants using his said cards in preference to such merchants using products of aforesaid competitors, and many retailers were thereby