

Syllabus

IN THE MATTER OF
CHOCOLATE PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4371. Complaint, Nov. 8, 1940—Decision, Dec. 4, 1941*

Where a corporation engaged in the manufacture, and in the interstate sale and distribution of a chocolate syrup product, formerly called "Stillicious Vitamin A, B, D" and thereafter "Stillicious Vitamin," allegedly containing vitamins A, B, D, and G, to wholesalers and retailers in small cans or containers for resale to public, and in large quantities to dairies which made use thereof in making bottled chocolate drinks sold to the public under the trade name "Stillicious," pursuant to agreements with said corporation; directly or by implication—

Represented that said chocolate drinks made by dairies, were made with milk, and that its product, because of its vitamin A content, helped to build resistance to colds and infection, through such advertising as "MY Goodness [picture of cow head] MORE Vitamin B. STILLICIOUS Vitamin B. Chocolate Contains Dextrose and Levulose [picture of milk bottle and glass, both with 'Stillicious' thereon]," "And now, with Stillicious Vitamin A, B, D Chocolate Syrup, we offer today's big Vitamin bargain. A 20-oz. tin * * * contains an extra supply of Vitamin A to help build resistance to colds and infection";

The facts being the chocolate beverage in question did not contain milk as understood by the purchasing public, i. e., milk from which no part of the cream had been removed, but contained skim milk or a mixture of whole and skim milk, and its said products did not help build resistance to colds or infection, even in exceptional cases involving a recognizable deficiency of vitamin A, quantity of which in its product was insufficient to overcome such deficiencies or afford any substantial assistance in building resistance to colds or infection;

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the properties of said product and the content of beverages made therewith, and thereby inducing it to purchase substantial quantities of said product and beverages made therefrom, and with further effect of placing in the hands of uninformed or unscrupulous dealers and dairies means and instrumentalities whereby they were enabled to mislead and deceive the public;

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

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. Maurice C. Pearce and *Mr. John M. Russell* for the Commission.

Mr. John B. Hosty, of Chicago, Ill., for respondent.

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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 Chocolate Products Co., a corporation, hereinafter referred to as respondent, has violated the provisions of 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, Chocolate Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its office and principal place of business at 415 West Scott Street, in the city of Chicago, in the State of Illinois.

PAR. 2. Respondent, Chocolate Products Co., is now and has been for more than 2 years last past, engaged in the business of manufacturing, selling, and distributing a certain chocolate syrup product formerly called "Stillicious Vitamin A, B, D," now designated "Stillicious Vitamix," alleged to contain vitamins A, B, D, and G.

Respondent sells its product in small cans or containers to wholesale and retail dealers, and such retail dealers resell said product to the public. Respondent also sells its product in large quantities to dairies, which use said product in making bottled chocolate drinks or beverages which, pursuant to agreement with respondents, are sold to the public under the trade name "Stillicious."

Respondent causes its said product when sold to be transported from its place of business in the State of Illinois to the purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements, concerning its said product by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce,

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as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by radio continuities and by counter display cards, circulars, and other advertising literature are the following:

My goodness

(Picture of
cow's head)

and MORE Vitamin B

STILLICIOUS

Vitamin B. Chocolate Contains
Dextrose and Levulose.(Picture of milk bottle and glass,
both with "Stillicious" thereon.)

And now, with Stillicious Vitamin A, B, D, Chocolate Syrup, we offer today's big vitamin bargain. A 20-oz. tin, costing only 35¢, contains an extra supply of Vitamin A to help build resistance to colds and infection.

PAR. 4. Through the use of the aforesaid representations and others of similar import not specifically set out herein, the respondent represents, directly or by implication, that the said chocolate drinks or beverages made by said dairies with respondent's product and sold by said dairies under the name "Stillicious" are made with milk; that respondent's product, by reason of its Vitamin A content, helps to build resistance to colds and infection.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the drinks made and sold by said dairies as aforesaid do not contain milk. The term "milk" denotes whole milk, that is, milk from which no part of the cream or butterfat content has been removed, and such term is so understood by the purchasing public. The further understanding of the public is that the milk content of a chocolate beverage purporting to be made with milk is entirely whole milk. In truth and in fact, the milk content of the beverages made by said dairies with the respondent's product is not in any case whole milk, but is skimmed milk or a mixture of whole milk and skimmed milk.

Respondent's product does not help to build resistance to colds or infection. Even in the exceptional cases where members of the public are suffering from a recognizable deficiency of vitamin A, the quantity thereof in respondent's product is insufficient to overcome such deficiency or afford any substantial assistance in building resistance to colds or infection.

PAR. 6. The acts and practices of the respondent have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public with respect to the properties of respondent's product and with respect to the content of the beverages made with

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such product. As a result, the purchasing public has been induced to purchase, and has purchased, substantial quantities of said product and beverages. The respondent's acts and practices serve also to place in the hands of uninformed or unscrupulous dealers and dairies means and instrumentalities whereby such dealers and dairies are enabled to mislead and deceive the purchasing public.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices 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 November 8, A. D. 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Chocolate Products Co., a corporation, charging it with unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, evidence in support of the allegations of the complaint was introduced by Maurice C. Pearce, attorney for the Commission, before Andrew B. Duvall, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding; and John B. Hosty, attorney for the respondent, in a stipulation entered on the record, admitted on behalf of respondent all the material facts alleged in the complaint. The evidence and the stipulated facts were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the complaint, the answer thereto, the evidence and stipulated facts, the report of the trial examiner thereon, and brief filed on behalf of the Commission. 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, Chocolate Products Co., is a corporation duly organized under the laws of the State of Illinois, having its principal place of business at 415 West Scott Street, in the city of Chicago, in the State of Illinois.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing a chocolate syrup product formerly called "Stillicious

Vitamin A, B, D," and now designated "Stillicious Vitamix," alleged to contain vitamins A, B, D, and G. Respondent sells its product in small cans or containers to wholesale and retail dealers, and such retail dealers resell said product to the public. Respondent also sells its product in large quantities to dairies, which use the same in making bottled chocolate drinks or beverages, which, pursuant to agreements with respondent, are sold to the public under the trade name "Stillicious." Respondent causes its said product, when sold, to be transported from its 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 and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its product, by means of the United States mail and by various other means, in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements, concerning its product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as herein set forth, by means of the United States mail, by radio continuities, and by counter display cards, circulars, and other advertising literature, are the following:

My Goodness (picture of cow head) MORE vitamin B

STILLICIOUS

Vitamin B. Chocolate. Contains (Picture of milk bottle and glass, both with "Stillicious" thereon).
Dextrose and Levulose.

And now, with Stillicious Vitamin A, B, D Chocolate syrup, we offer today's big vitamin bargain. A 20-oz. tin, costing only 35¢ contains an extra supply of Vitamin A to help build resistance to colds and infection.

PAR. 4. Respondent, through use of the aforesaid representations, and others of similar import, represents directly or by implication that the chocolate drinks or beverages made by said dairies or dealers with respondent's product, and sold by them under the name "Stillicious," are made with milk, and that respondent's product, by

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means of its vitamin A content, helps to build resistance to colds and infection.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the drinks made and sold by said dairies as aforesaid do not contain milk. The term "milk" denotes whole milk, that is, milk from which no part of the cream or butterfat content has been removed, and such term is so understood by the purchasing public. The public further understands that the milk content of a chocolate beverage purporting to be made of milk is of entirely whole milk. In truth and in fact, the milk content of the beverages made by said dairies with respondent's product is not in any case whole milk, but is skim milk or a mixture of whole milk and skim milk.

Respondent's products do not help to build resistance to colds or infection even in the exceptional cases where members of the public are suffering from a recognizable deficiency of vitamin A; the quantity of said vitamin in respondent's product is insufficient to overcome such deficiencies, or afford any substantial assistance in building resistance to colds or infection.

PAR. 6. The acts and practices of the respondent as herein set forth have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public with respect to the properties of respondent's product and with respect to the content of the beverages made with said product. As a result, the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's product and of said beverages. The respondent's said acts and practices serve also to place in the hands of uninformed or unscrupulous dealers and dairies means and instrumentalities whereby such dealers and dairies are enabled to mislead and deceive the public.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair and deceptive acts and practices 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, evidence introduced before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding and the

stipulation as to the facts entered into by the attorney for the Commission and the attorney for the respondent, the report of the trial examiner thereon and brief filed on behalf of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent, Chocolate Products Co., a corporation, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Chocolate Products Co., a corporation, its officers, directors, agents, representatives, and employees, jointly and severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its chocolate syrup product, or any similar or like product sold under the name "Stillicious Vitamin A, B, D," or "Stillicious Vitaminix," or under any other name or designation, do forthwith cease and desist from directly or indirectly—

1. Disseminating or causing to be disseminated any advertisement by means of the United States mail, or by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, by means of pictorial representations, or in any other manner, that chocolate drinks or beverages made by dairies or other producers with respondent's product are made with whole milk or milk, when such drinks or beverages are made with skim milk or skim and whole milk, or which advertisement represents that the vitamin content of respondent's product helps to build resistance to colds and infection: *Provided, however*, That this order shall not prohibit respondent from using the term "milk" to describe the aforesaid drinks or beverages when such term is properly and accurately qualified.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of respondent's product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent shall, within 60 days after the 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
MARION ALLEN, TRADING AS TRIANGLE SALES COM-
PANY, AND ALFRED J. LANDAY

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

Docket 4576. Complaint, Aug. 25, 1941—Decision, Dec. 4, 1941

Where an individual engaged in the competitive interstate sale and distribution of radios, bedspreads, cameras, fountain pens, and other articles, by means of lottery devices, and one "A. L.," engaged in distributing for her sales literature, etc., as below set forth, to pushcard operators and the purchasing public—

Furnished, among other things, pushcards and circulars explaining her plan of selling such merchandise and allotting it as premiums or prizes to the operators of the cards and the purchasing public, a typical pushcard being printed with 16 feminine names for use under a plan providing that the person selecting the name corresponding to that concealed under card's master seal received a camera, the three persons securing, by chance, certain numbers concealed by discs bearing feminine names, received "a genuine LEATHER BILLFOLD," and the amount paid by different customers was dependent upon numbers secured; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries or game of chance to procure an article at much below its normal price, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use any method involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of aforesaid competitors who do not use such methods, and with tendency and capacity to unfairly divert substantial trade in commerce to them from their said competitors:

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

Mr. J. W. Brookfield, Jr., 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 Marion Allen, an individual trading as Triangle Sales Co., and Alfred J. Landay, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by and in respect thereof would be in the public interest,