

Complaint

IN THE MATTER OF

MATHEW W. M. DEVITT, ROY D. SCHLEGEL AND ROBERT
E. SARGENT, TRADING AS AUTOGROOM COMPANY

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

Docket 3702. Complaint, Feb. 7, 1939—Decision, June 24, 1942

Where three individuals, engaged in manufacture and competitive interstate sale and distribution of their "Auto-Groom" for cleaning and polishing automobiles, and previously in the employ of a concern which made and sold its similar "Karsmetik" product; in soliciting sales from garages, service stations, and distributors, upon many of whom they had formerly called as salesmen for said "Karsmetik"—

Represented to such former purchasers that the company which formerly made "Karsmetik" was no longer in business, and that such product was no longer being offered; that the chemist who was formerly employed by it and developed the formula was in their employ, and that "Auto-Groom" was the same product as the other, differing therefrom only in trade name and color;

The facts being that said older concern was then manufacturing and offering its said product in active competition with them; formula for the new product was not developed as claimed, but obtained from a collection of formulae distributed by a chemical manufacturer, and while similar to that for the older product, was not in all respects the same; and they did not have any such chemist in their employ;

With effect of causing former purchasers of said competitive "Karsmetik" mistakenly to believe that aforesaid representations were true, and with consequence that many of them, particularly those formerly making their purchases from one of said individuals, discontinued purchasing it, and they and others purchased "Auto-Groom" instead of "Karsmetik"; whereby trade was diverted to them from said competitor:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mr. Joseph A. Kaufmann, of Washington, D. C., for respondents.

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 Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, trading as Autogroom

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Co., hereinafter referred to as respondents, have 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. Respondents, Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, are individuals, doing business under the firm name and style of Autogroom Co., with their principal office and place of business located at 11 East Forty-Fourth Street, in the city of New York, State of New York, and 5013 Georgia Avenue NW., city of Washington, D. C. Their manufacturing plant is located at 2416 Forty-seventh Street, city of Long Island City, State of New York. For more than 1 year last past said respondents have been, and are now, engaged in the offering for sale, sale, and distribution in commerce among and between the various States of the United States and in the District of Columbia of a product, under the trade name "Auto-Groom," used for cleaning and polishing automobiles. In the course and conduct of their said business, respondents have caused, and now cause, said product, when sold or ordered, to be shipped and transported from their aforesaid places of business to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia.

PAR. 2. In the course and conduct of their business as aforesaid respondents have been, and are now, in competition with other corporations, and with partnerships and individuals engaged in the business of offering for sale, selling, and distributing products used or useful for the cleaning and polishing of automobiles in commerce among and between the various States of the United States and in the District of Columbia. Among said competitors are many who do not disparage their competitors' products and who do not misrepresent the efficacy of their products or pass their products off as that of a competitor. Among said competitors is one offering for sale and selling in said commerce an automobile cleaner and polisher under the trade name "Karsmetik." The product Karsmetik has been on the market for several years in the trade territory in which the respondents offer for sale and sell their said product Auto-Groom. The product Karsmetik has been on the market for a much greater period of time than has respondents' said product. Said product Karsmetik has long been recognized by the purchasers and users of automobile cleaners and polishers as a product of merit and excellence and there has been created, as a result of the reputation established because of the merit of said product, a good will among purchasers and users thereof of substantial value to the sellers of said product.

All of said respondents were connected with the seller of the product Karsmetik, at one time or another prior to the time they began the distribution of the product Auto-Groom, and through such connection they had occasion to and did become acquainted and familiar with the purchasers and users of the product Karsmetik located in the trade territory in which respondents now offer for sale and sell the product "Auto-Groom."

PAR. 3. Respondents, in the course and conduct of their said business in said commerce as aforesaid, have defamed and disparaged, and do defame and disparage, their competitor and its product by representing to former purchasers and prospective purchasers of the product Karsmetik that the company manufacturing and distributing said product is no longer in business and that said product is not being offered for sale and sold. Respondents further represent that the chemist who discovered the formula for, and supervised the preparation of, the product Karsmetik is now in the employ of the respondents and that the product "Auto-Groom" is in all respects the same as the product Karsmetik. In some instances, the respondents represent that the product Karsmetik is, in all respects, inferior to the product Auto-Groom.

In truth and in fact the company manufacturing the product Karsmetik has not discontinued business but has been and is now manufacturing said product and offering for sale and selling the same in the trade territory in which respondents operate. Respondents do not have in their employ the chemist who discovered the formula for the product Karsmetik, and the product Auto-Groom is not made from the formula used to make Karsmetik, nor is the product Auto-Groom in all respects the same as Karsmetik. The product Karsmetik is in no wise inferior to, but is in many respects superior to, the product Auto-Groom.

PAR. 4. The acts and practices of the respondents in making and using the representations aforesaid in connection with the sale and distribution of said product Auto-Groom in said commerce have the tendency and capacity to and do cause former purchasers and prospective purchasers of the product Karsmetik erroneously and mistakenly to believe that said representations are true and that the manufacturer of said product Karsmetik is no longer engaged in business and that such product is no longer obtainable under its original trade name Karsmetik; that the product Auto-Groom is made from the formula for Karsmetik and under the supervision of the chemist who formerly supervised the manufacture of Karsmetik; and that the product Auto-Groom is the same as, or superior to, the product Karsmetik.

Because of the mistaken and erroneous beliefs engendered as aforesaid many former purchasers, more particularly those formerly making their purchases of the product Karsmetik through one of the respondents while in the employment of the manufacturer of said product, and prospective purchasers of the product Karsmetik have discontinued purchasing or declined to purchase said product and have purchased respondents' product in lieu and instead of the product Karsmetik which they would have purchased but for the false and misleading representations so made and used by the respondents.

As a consequence thereof, trade in said commerce has been and is diverted unfairly to the respondents from their competitors who do not defame and disparage competitors or their products and who truthfully represent their products, to the injury of said competitors and to the injury of the public.

The aforesaid acts and practices are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce and 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 February 7, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, individuals, trading as Autogroom Co., charging them with the use of unfair methods of competition in commerce and 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 a joint answer thereto by the respondents, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and in opposition to the allegations of the complaint by the attorney for the respondents, before John W. Addison, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the joint answer thereto, testimony, and other evidence, and briefs in support of and in opposition to the complaint and oral argument; 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, Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, are individuals, trading as Auto-groom Co., with their principal office and place of business located in the city of New York, State of New York, and with a place of business in the District of Columbia and a manufacturing plant located in Long Island City, Long Island, in the State of New York.

PAR. 2. The respondents since sometime in the year 1938 have been engaged in the manufacture and in the sale and distribution of a product for use in the cleaning and polishing of automobiles. Said product is sold under the trade name "Auto-Groom," and sales are made directly to operators of automobile garages and service stations and to distributors who buy the product from the respondents and resell to their own customers. In filling all of their orders respondents ship the cleaner and polish from their factory in the State of New York direct to the purchasers, many of whom are located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are and have been in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Among such competitors of respondents is the Karsmetik Co., Incorporated, a New York corporation, with its factory and principal place of business located in New York, N. Y. This corporation manufactures and sells under the trade name "Karsmetik" a cleaner and polish similar to the product sold by respondents. The company was incorporated in the year 1937, but it appears from the testimony of George H. Deters, president and general manager of said corporation, that the business was organized in 1934 and that the product "Karsmetik" has been manufactured and sold continuously since that time.

PAR. 5. All of the respondents, prior to the time they began the distribution of their product "Auto-Groom" were engaged in one way or another in the business of selling and distributing the product "Karsmetik." Respondent, Devitt purchased the product direct from the manufacturer and resold it to his own customers in the State of New York; respondent, Schlegel carried on business in a

similar manner under the name K. & M. Products Corporation in the States of Maryland and Virginia and in the District of Columbia; while respondent, Sargent was employed directly by the "Karsmetik" manufacturer and worked in the factory, in the office, or solicited sales, as directed by Deters. The connection of each of the respondents with the Karsmetik Corporation, was severed in the latter part of 1937 or early part of 1938, however, and as above stated, it was about this time that the respondents began the manufacture and sale of the product "Auto-Groom."

PAR. 6. In the course and conduct of their business, and the purpose of furthering the sale of their product, the respondents have solicited sales from various automobile garages, service stations, and other establishments and individuals whose businesses involve the use and resale of products such as respondents sell. These solicitations are made in part through personal visits by respondents, and among those they have called on have been many former purchasers of the product "Karsmetik" While the evidence is conflicting to some extent, there is substantial testimony to the effect and the Commission finds that respondents have made the following representations to these former purchasers of "Karsmetik": that the company formerly manufacturing "Karsmetik" was no longer in business and that said product was no longer being offered for sale; that the chemist who was formerly employed by the Karsmetik Corporation and who developed the formula for "Karsmetik" was in the employ of the respondents; and that "Auto-Groom" was the same product as "Karsmetik," differing only in trade-name and color. Numerous operators of garages and service stations testified that one or another of the respondents made these or substantially similar representations to them, and that they had purchased respondents' product in the belief that the manufacturer of "Karsmetik" was out of business, or at least that the product "Karsmetik" was no longer obtainable. This testimony was corroborated by the fact that in 1937 the volume of sales of the Karsmetik Corporation amounted to something over \$15,000 and that in 1938 the volume dropped to approximately \$8,000. In 1939 the sales of said corporation dropped still lower to \$3,435.92.

PAR. 7. The evidence shows that the company manufacturing the product "Karsmetik" has not discontinued business. Said company has been and is now manufacturing its product and offering the same for sale and has been and is now in active competition with the respondents. The evidence shows further that the respondents do not have in their employ the chemist who developed the formula for "Karsmetik." Said formula in fact was not developed by any

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chemist connected with the Karsmetik Corporation, but was obtained by Deters, president of the corporation, from a collection of formula for cleaners and polishes distributed by a certain chemical manufacturer. While this formula and the formula for the respondents' product "Auto-Groom," are substantially similar, they are not in all respects the same.

The Commission, therefore, finds that the representations made by the respondents were false, misleading, and deceptive.

PAR. 8. The Commission further finds that the acts and practices of the respondents as herein described have the tendency and capacity to and do cause former purchasers of the product "Karsmetik" erroneously and mistakenly to believe that the aforesaid representations are true and that the manufacturer of said product is no longer engaged in business and said product is no longer obtainable under its regular trade name "Karsmetik"; that "Auto-Groom" is made of the formula for "Karsmetik" and under the supervision of the chemist who developed the formula for "Karsmetik," and that the product "Auto-Groom" is the same as the product "Karsmetik."

Because of the mistaken and erroneous beliefs so engendered many former purchasers of "Karsmetik," particularly those formerly making their purchases from one of the respondents while engaged in selling said product, and prospective purchasers, have discontinued purchasing or have declined to purchase said product, and have purchased respondents' product in lieu of and instead of "Karsmetik." As a consequence thereof, substantial trade has been diverted to the respondents from their said competitor.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitor, and constitute unfair methods of competition in commerce and 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, and joint answer of respondents, the testimony and other evidence introduced before John W. Addison, a duly appointed trial examiner of the Commission theretofore designated to serve in this proceeding, the report of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint; and the Commission having made its

findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Mathew W. M. Devitt, Roy D. Schlegel, and Robert E. Sargent, individuals, trading as Autogroom Co., or trading or doing business under any other name or designation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a cleaner and polish for automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that a competitor who manufactures and sells a cleaner and polish for automobiles known as "Karsmetik" has discontinued business.

2. Representing that the product known as "Karsmetik" is no longer being offered for sale or sold.

3. Representing that the chemist who developed the formula for the product known as "Karsmetik" is in the employ of respondents.

4. Representing that respondents' product "Auto-Groom" is in all respects the same as the product known as "Karsmetik."

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.

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IN THE MATTER OF
JAMES J. REISS COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4502. Complaint, May 13, 1941—Decision, June 30, 1942*

Where a corporation, engaged in the competitive interstate sale and distribution of candy, including certain assortments which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers, typical assortments consisting of a number of uniform small, individually wrapped pieces, together with a number of larger pieces or bars, secured without further charge by those purchasers of the small penny candies who obtained by chance a piece of different color from the majority; and of 150 uniform pieces of penny candy, together with some 18 to 35 larger candy bars, with a push card for use in sale thereof under a plan by which purchasers of the penny candy who punched from said card one of several numbers listed thereon received, in addition, his choice of one of the larger bars;

Sold such assortments to wholesalers, jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with aforesaid plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its product, in competition with those who do not use any such plan or method;

With the result that many persons were attracted by its said sales plan because of element of chance involved, and purchased its candy in preference to that of its aforesaid competitors, whereby trade was unfairly diverted to it from them:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Henican, Carriere & Cleveland, of New Orleans, La., 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 James J. Reiss Co., Inc., 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,