

Complaint

IN THE MATTER OF

BABIGLO CO., INC., ET AL.

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

Docket 5652. Complaint, Apr. 26, 1949—Decision, Jan. 11, 1950

Where a corporation, and its two officers who formulated and controlled its policies, acts and practices, engaged in the interstate sale and distribution of soap products—

- (a) Represented through the statement "made with 100 percent genuine imported olive oil castile soap", on the wrappers of their "Kent Castile Soap" that the only oil used in the manufacture thereof was olive oil; when in fact none was used;
- (b) Represented through the statement "rich in olive oil" on their "Babiglo Castile" that said product contained significant quantities of said substance; the facts being it contained none nor was olive oil used in its manufacture;
- (c) Falsely represented through the use of the word "Hospital" in the name of its "Hospital Brand Castile Soap" on the wrapper, that said product had been approved or endorsed by a hospital; and
- (d) Falsely represented through the use of the words "Dr. Beck" in the name of its "Dr. Beck's Germicidal Soap", that said product was made from a formula or under the supervision of a doctor;

With tendency and capacity to mislead and deceive a substantial portion of the public and thereby induce its purchase of their said products; and with the result of placing in the hands of purchasers of such products for resale a means and instrumentality whereby they might mislead and deceive said public as to the actual composition of said products:

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

Mr. B. G. Wilson for the Commission.

Mr. Solomon Popkin, of New York City, 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 Babiglo Co., Inc., a corporation, and Louis Funder and Carrie Funder, individually and as officers of Babiglo Co., Inc., a corporation, hereinafter referred to as respondents, have 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 Babiglo Co., Inc., is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York. Respondents, Louis Fundler and Carrie Fundler, are individuals and are president, and secretary and treasurer, respectively, of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondents is located at 120 West Twentieth Street, New York, N. Y.

PAR. 2. The respondent Babiglo Co., Inc., and individual respondents, Louis Fundler and Carrie Fundler, are now, and have been for several years last past, engaged in the business of offering for sale, sale and distribution of soap products among them being those designated as "Kent Castile Soap," "Babiglo Castile," "Hospital Brand Castile Soap" and "Dr. Beck's Germicidal Soap."

The respondents cause and have caused the aforesaid products when sold to be transported from their aforesaid place of business to purchasers thereof at their respective points of location in various States of the United States.

The respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their said products, the respondents have caused to be printed on the wrappers enclosing their various kinds of soap products, the following statements and designations:

On Kent Castile Soap—"Made with 100% Genuine Imported Olive Oil Castile Soap."

On Babiglo Castile—"Rich in Olive Oil."

On Hospital Brand Castile Soap—"Hospital Brand Castile Soap. Rich in Olive Oil. Selected for Purity. Absolute Purity Guaranteed. Suitable for The Most Tender Skin."

In addition to the foregoing practices, respondents imprint on the wrappers of another soap, the words "Dr. Beck's Germicidal Soap."

PAR. 4. Through the use of the aforesaid statements and designations respondents represent that the only oil used in the manufacture of Kent Castile Soap is olive oil; that the Babiglo Castile contains significant quantities of olive oil. Further, through the use of the word "Hospital" as a part of the name Hospital Brand Castile Soap and the words "Dr. Beck" as a part of the name Dr. Beck's Germicidal Soap, respondents represent, respectively, that said Hospital Brand

Castile Soap is approved or endorsed by a hospital or hospitals and that Dr. Beck's Germicidal Soap is made from a formula or under the supervision of a doctor.

PAR. 5. The foregoing statements and designations are false, misleading and deceptive. In truth and in fact, olive oil is not used in the manufacture of Kent Castile Soap. There is no olive oil in Babiglo Castile and olive oil is not used in its manufacture. Hospital Brand Castile Soap has not been approved or endorsed by a hospital and Dr. Beck's Germicidal Soap is not made from a formula or under the supervision of a doctor.

PAR. 6. The use by respondents of the aforesaid false, deceptive and misleading statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations are true and causes a substantial portion of the public because of such erroneous and mistaken belief, to purchase respondents' said products. Said acts and practices of respondents also place in the hands of purchasers of said products for resale a means and instrumentality whereby they may mislead and deceive the purchasing public as to the actual composition of said products.

PAR. 7. The aforesaid acts and practices of respondents, 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 April 26, 1949, issued and thereafter served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On May 27, 1949, the respondents filed their joint answer to said complaint, and in such answer they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; 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, Babiglo Co., Inc., is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York. The respondents, Louis Funder and Carrie Funder, are individuals and are president, and secretary and treasurer, respectively, of the corporate respondent. These individuals formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both the corporate respondent and the individual respondents is located at 120 West Twentieth Street, New York, N. Y.

PAR. 2. The corporate respondent, Babiglo Co., Inc., and the individual respondents, Louis Funder and Carrie Funder, are now, and for several years last past they have been, engaged in the business of offering for sale, and in the sale and distribution of soap products. Among such products are those designated by the respondents as "Kent Castile Soap," "Babiglo Castile," "Hospital Brand Castile Soap" and "Dr. Beck's Germicidal Soap."

The respondents cause and have caused the aforesaid products, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products, the respondents have caused to be printed on the wrappers enclosing their various kinds of soap products the following statements and designations:

On Kent Castile Soap—"Made with 100% Genuine Imported Olive Oil Castile Soap."

On Babiglo Castile—"Rich in Olive Oil."

On Hospital Brand Castile Soap—"Hospital Brand Castile Soap. Rich in Olive Oil. Selected for Purity. Absolute Purity Guaranteed. Suitable for The Most Tender Skin."

In addition to the foregoing practices, the respondents imprint on the wrappers of another soap the words "Dr. Beck's Germicidal Soap."

PAR. 4. Through the use of the aforesaid statements and designations the respondents represent that the only oil used in the manufacture of Kent Castile Soap is olive oil, and that Babiglo Castile contains significant quantities of olive oil. Further, through the use of the word "Hospital" as a part of the name Hospital Brand Castile

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Soap and the words "Dr. Beck" as a part of the name Dr. Beck's Germicidal Soap, the respondents represent that said Hospital Brand Castile Soap is approved or endorsed by a hospital or hospitals and that Dr. Beck's Germicidal Soap is not made from a formula or under the supervision of a doctor.

PAR. 5. The foregoing statements and designations are false, misleading and deceptive. In truth and in fact, olive oil is not used in the manufacture of Kent Castile Soap. There is no olive oil in Babiglo Castile, and olive oil is not used in its manufacture. Hospital Brand Castile Soap has not been approved or endorsed by a hospital, and Dr. Beck's Germicidal Soap is not made from a formula or under the supervision of a doctor.

PAR. 6. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations are true, and causes a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondents' said products. Said acts and practices of the respondents also place in the hands of purchasers of such products for resale a means and instrumentality whereby they may mislead and deceive the purchasing public as to the actual composition of said products.

CONCLUSION

The acts and practices of the respondents as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the joint answer of the respondents, in which answer the respondents admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts; 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 the respondent Babiglo Co., Inc., a corporation, and its officers, and the respondents, Louis Funder and Carrie Funder, individually and as officers of said corporation, and the respective

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respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of soap products, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product the entire oil content of which is not olive oil is made exclusively of olive oil, or that any such product not containing significant quantities of olive oil is made with or contains olive oil.

2. Using the word "Hospital," or any other word or words or similar import or meaning, to designate, describe or refer to any such product which has not been approved or endorsed by a hospital; or otherwise representing, directly or by implication, that any such product has been so approved or endorsed.

3. Using the word "Doctor," or any abbreviation or simulation thereof, to designate, describe or refer to any such product not made from a formula or under the supervision of a doctor; or otherwise representing, directly or by implication, that any such product has been so made, or that it has special properties or characteristics which are the result of medical advise.

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 it.

Syllabus

IN THE MATTER OF
MORRIS SHAPIRO, CHARLES SHAPIRO, AND MARY SHAPIRO
TRADING AS U-C-A MANUFACTURING CO.

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

Docket 5190. Complaint, Nov. 24, 1947¹—Decision, Jan. 16, 1950

Where three individuals engaged in the interstate sale of salve, vapor balm, menthol inhalers and miscellaneous merchandise, through agents under the "return or remit plan", and in advertising a variety of articles offered to agents as premiums, commissions, or compensation for selling their products; through newspapers, magazines, premium lists, premium plan books, circulars, post cards, reward coupons and other mediums, by pictures and descriptive matter—

- (a) Represented that the articles described were given free to agents selling specified amounts of merchandise; and that other premiums were given free to those submitting orders within five days of the receipt of the order blanks, and to those submitting the proceeds from the sale of merchandise within ten days of receipt of the latter;

The facts being that none of the articles advertised as "free" or "given free" were actual gifts or given as a gratuity without consideration; but were simply additional compensation for the agents' services in selling their salve and balm, or admittedly extra commissions for prompt return of orders or proceeds of sale; with certain exceptions (stated in their premium list), all due postage or express charges were paid by the recipients; and some of the premiums represented as "given free" were in fact never delivered at all;

- (b) Made use of the terms "fleece twill" and "unexcelled value" in describing certain blankets offered by them as premiums; notwithstanding the fact that said products were not, as thus represented, made of wool, but were made of cotton, and worth no more than about a dollar;
- (c) Falsely represented certain billfolds made of sheepskin with cloth linings as "genuine leather", and certain fountain pens as equipped with 14 Karat gold plated pen points and as "amazing offers";
- (d) Falsely advertising certain clocks as "America's most beautiful," "masterpieces in time telling", and worth five dollars each;
- (e) Falsely represented certain sachet perfume as "given free" to purchasers of salve and balm; when in fact said perfume was not a gift but was a part of a combination offer with salve or balm, sold together for twenty-five cents;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby cause its purchase of substantial quantities of their products:

¹ Amended.