

Complaint

46 F. T. C.

IN THE MATTER OF
ELIZABETH Y. COUNCILL DOING BUSINESS AS BAKER
POTTERY COMPANY

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

Docket 5706. Complaint, Oct. 26, 1949—Decision, Mar. 3, 1950

Where an individual with place of business in Salisbury, N. C., engaged in the interstate sale and distribution of chinaware, earthenware, and other kinds of pottery through traveling salesmen whose orders were forwarded by her to one of several Ohio pottery factories, and filled by shipment to the purchaser under her trade name—

Represented that she owned, controlled, or operated factories in which her products were made, and maintained offices at locations elsewhere than in Salisbury, through letterheads on which were printed, in connection with her said trade name, the words "Southern Office: Salisbury, North Carolina," and through use of a printed invoice form bearing same legend, and the words "Factories: Sebring, Ohio; Scio, Ohio; Minerva, Ohio; Salem, Ohio;

When in fact she was a jobber only, had always purchased her products from others and resold them, and maintained no office other than that in Salisbury;

With tendency and capacity to mislead and deceive a substantial number of retail dealers—among whom a substantial portion prefers to deal directly with manufacturers in the belief that better prices and service and other advantages may thus be obtained—and thereby to cause them to purchase substantial quantities of her products;

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

Mr. Edward F. Downs for the Commission.

Linn & Shuford, of Salisbury, N. C., 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 Elizabeth Y. Councill, doing business as Baker Pottery Co., 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, Elizabeth Y. Council, is now and since about 1940, has been, engaged as a jobber in the business of selling chinaware, earthenware, and other pottery of various kinds. Her place of business is Room 417, Wachovia Bank Building, Salisbury, N. C.

PAR. 2. Respondent causes and has caused such pottery when sold to be shipped from factories in the State of Ohio, where it is made and where respondent purchases it, to the purchasers thereof, many of whom were and are located in States of the United States other than the points of origin of such shipments.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said chinaware, earthenware, and other pottery of various kinds in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business as aforesaid, respondent sells and has sold the usual line of domestic pottery to retailers in various assortments principally through the agency of traveling salesmen or solicitors whose practice is and has been to secure orders for the same. Such orders are then sent to respondent's place of business where they are typed up on order blanks and forwarded by respondent to one of several pottery factories located in the State of Ohio. Upon receipt of the order the factory fills it, making shipment to purchasers in respondent's trade name, Baker Pottery Co.

PAR. 4. It is and has been the practice of respondent to use stationery, in soliciting orders and in her general business correspondence, on which is printed the words "Southern Offices: Salisbury, North Carolina," and to use a printed invoice form on which appears, among other things, "The Baker Pottery Company," "Southern Office: Salisbury, North Carolina," and "Factories: Sebring, Ohio, Scio, Ohio, Minerva, Ohio, Salem, Ohio."

PAR. 5. Respondent, through the use of the said statements appearing on the stationery and invoice forms, represents and has represented that she has more than one office and that she owns, operates, and controls factories located in the State of Ohio.

PAR. 6. The representations of respondent as aforesaid are false, misleading, and deceptive in that respondent has had and now has only one office or place of business and neither owns, controls nor operates and has never owned, controlled, nor operated any factory or pottery wherein the products sold by her were or are made. On the contrary, it is and has been her practice to purchase such products from others for resale to the purchasing public.

Findings

46 F. T. C.

PAR. 7. A substantial portion of retailers have a preference for dealing direct with a factory and manufacturer of merchandise, such preference being based upon the belief that better prices and service and other advantages result from such dealings.

PAR. 8. The use by respondent of the foregoing false, misleading and deceptive representations, has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are and were true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase the merchandise sold by respondent.

PAR. 9. The aforesaid acts and practices of 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 October 26, 1949 issued and subsequently served its complaint in this proceeding upon the respondent, Elizabeth Y. Councill, doing business as Baker Pottery Co., charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondent of her answer to the complaint, a stipulation of facts was entered into between respondent and counsel supporting the complaint wherein it was stipulated and agreed that the facts set forth in such stipulation might be taken as the facts in his proceeding, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and might enter its order disposing of the proceeding without hearings or other intervening procedure. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint, answer and stipulation, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Elizabeth Y. Councill, is now, and for a number of years last past has been, engaged in the sale of china-

ware, earthenware, and various other kinds of pottery, with her place of business located in Salisbury, N. C.

PAR. 2. Respondent causes and has caused her pottery, when sold, to be shipped from factories in the State of Ohio where it is made and where respondent purchases it, to the purchasers thereof, many of whom are located in States of the United States other than the State of origin of such shipments. Respondent maintains and has maintained a course of trade in her products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. Respondent sells most of her pottery through the medium of traveling salesmen or solicitors who obtain orders for it. Such orders are then sent to respondent's place of business where they are typed on order blanks and forwarded by respondent to one of several pottery factories located in the State of Ohio. Upon receipt of the order the factory fills it, making the shipment to the purchaser under respondent's trade name, Baker Pottery Co.

PAR. 4. In her general business correspondence it has been the practice of respondent to use letterheads on which are printed, in connection with the respondent's trade name, the words "Southern Office: Salisbury, North Carolina." Respondent also uses a printed invoice form on which there appears, in connection with respondent's trade name, the legend quoted above and also the words "Factories: Sebring, Ohio; Scio, Ohio; Minerva, Ohio; Salem, Ohio."

PAR. 5. Through the use of the words and legends quoted above respondent has represented that she owns, controls or operates factories in which her products are made, and that she maintains offices at locations other than her place of business in Salisbury, N. C. Actually, respondent is a jobber only; she has never owned, controlled or operated any factory or manufacturing plant. It has always been her practice to purchase her products from others and to resell them as set forth above. Nor does respondent maintain any office other than that in Salisbury, N. C.

PAR. 6. There is a preference on the part of a substantial portion of retail dealers for dealing directly with manufacturers of merchandise, such preference being due to the belief on the part of such dealers that thereby better prices and service and other advantages may be obtained.

PAR. 7. The use by respondent of the misleading representations set forth above has the tendency and capacity to mislead and deceive a substantial number of retail dealers with respect to respondent's identity and business status, and the tendency and capacity to cause

Order

46 F. T. C.

such dealers to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice 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, the answer of respondent, and a stipulation of facts entered into between respondent and counsel supporting the complaint, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Elizabeth Y. Councill, doing business under the name Baker Pottery Co., or under any other name, and her agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pottery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using in connection with respondent's trade name the word "Factories" or the words "Southern Office"; or otherwise representing, directly or by implication, that respondent manufactures the products sold by her or that respondent maintains any office other than that located in Salisbury, N. C.

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

Syllabus

IN THE MATTER OF

W. L. ABT

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5455. Complaint, July 25, 1946—Decision, Mar. 8, 1950*

Where an individual engaged in the interstate sale and distribution of nine food and drug products designated Tasty Soup Mix, Erbecell, Garlic-Tabs, Laxa-Tabs, Carrot Tabs, Mucin Oide, Iron-X, Vitamin B Ration and Wheatex-B; In advertising his said preparations through circulars entitled "Presenting 10 Dietary Aids to Health and Vigor" and "Break the Chains that Sap your Health," sent to food stores dealing in his products for distribution to the public, and through advertisements in the magazines "Vita Health News," "Foods for Health and Enjoyment" and "Nature's Path", and otherwise, directly and by implication—

- (a) Falsely represented that his "Tasty Soup Mix" would "energize" the eater by increasing the capacity for exertion in some manner other than supplying nutrition, through the statement "* * * a delightful soup mix that nourishes and energizes";
 - (b) Falsely represented that his "Erbecell" would relieve the discomfort of dyspepsia and griping bowels; when in fact it had no more than a limited effect in the relief of flatulence;
 - (c) Falsely represented that "Garlic-Tabs" were an effective treatment for the symptoms of some types of high blood pressure; would relieve the associated symptoms of dullness, fatigue, nervousness, dizziness, ringing in the ears, and throbbing in the head; make abnormal blood normal; and impart vim and vigor; that it possessed tonic qualities and would reduce "intestinal putrefaction"; and that one was benefited by reducing such "putrefaction";
- The facts being said "Garlic Tabs" possessed no other therapeutic or tonic properties than those of a carminative agent; reduction of "intestinal putrefaction" of food, which is a normal part of the digestive process, would be highly detrimental; and accepted treatment for abnormal putrefaction is to eliminate the material itself; and said tabs would be wholly without effect for either;
- (d) Falsely represented that as a consequence of the use of "Laxa-Tabs" the bowels would regularly evacuate themselves without assistance; that they induced the natural bowel movements, and were "natural" regulators and eliminants; that their action was prompt and non-irritating; that they possessed tonic and astringent properties; and that the longer they were used the less they would be needed;
 - (e) Falsely represented that their "Carrot-Tabs" were an aid to digestion, possessed antiseptic qualities, and would limit or reduce putrefaction changes in the body to the benefit of the user; and that their "Mucin-Oide" was soothing to nervous or irritated stomachs, would palliate the pain incident to peptic ulcers or gastritis, and form a protective coating of the stomach which protected it against stomach acids;