FEDERAL TRADE COMMISSION

v.

WILLIAM H. PLUNKETT TRADING AS PLUNKETT CHEMICAL CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 572.—September 14, 1920.

SYLLABUS.

Where an individual engaged in the manufacture and sale of cleaning and disinfecting fluids and similar products,

(*a*) Circulated among customers, dealers, and the public, printed pamphlets containing excerpts from an address by a physician, and printed in a public health bulletin by the United States Public Health Service, so gotten up as reasonably to lead readers to believe that said Public Health Service had sweepingly condemned the use of drip machines employed by his competitors as toilet disinfectors, the fact being that the individual quoted was not connected with said service and did not speak for it; and

(*b*) Falsely stated that he had the word of every health authority in the country that drip cans were a fraud, and that their use had been discarded and prohibited as unsanitary in every United States public building:

Held, That such false and misleading advertising and such false statements, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that William H. Plunkett (trading under the name and style of Plunkett Chemical Co.), hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect upon information and belief as follows:

PARAGRAPH 1. That the respondent, William H. Plunkett (trading under the name and style of Plunkett Chemical Co.), is a resident of the city of Chicago, in the State of Illinois, and for more than one year last past has been engaged in the manufacture and sale of cleansing and disinfecting fluids and similar products, and in the transportation of the same from his place of business in the city of

Chicago, in the State of Illinois, to purchasers thereof in other States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other individuals, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent for more than one year last past in the conduct of his business has published and circulated throughout the States of the United States letters, pamphlets, and other advertising matter, in which he quotes an excerpt from an article which appeared in a bulletin of the United States Public Health Service, said article being as follows:

> The fallacious drip machine, the so-called continuous toilet disinfector, should be mentioned only to be condemned. It does not disinfect; it only distills an odor, sometimes worse than the one it tries to hide, and diverts attention from conditions that need mending.

That the said article was written by a private physician not in the employ of or connected in any way with the United States Public Health Service, and did not receive the sanction and approval of said service by reason of its being published in one of its bulletins; that the respondent uses language such as "only to be condemned, says Uncle Sam," in said advertising matter, and other language which misleads the public into the belief that the United States Public Health Office had condemned the use of the drip disinfectors; that the respondent knowingly published and circulated said articles and statements with the intent, purpose, and effect of hindering, harassing, and embarrassing competitors engaged in the manufacture of said drip disinfectors and to prevent the sale thereof.

PAR. 3. That the respondent for more than one year last past, in the conduct of its business, has circulated letters to the public throughout the various States of the United States in which it makes the statement that drip cans are a fraud; that every health authority in the country has condemned them and that they have been discarded and prohibited in every United States public building as unsanitary; that said statements are false and misleading and that respondent knowingly circulated said statements with the intent, purpose, and effect of hindering, harassing, and embarrassing competitors in the manufacture of drip disinfectors and to prevent the sale thereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, William H. Plunkett, trading as

Plunkett Chemical Co., had been and then was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered his appearance by attorneys and having duly filed his answer admitting certain of the allegations of said complaint and denying certain others thereof, and the attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said agreed statement of facts should be taken by the Commission in lieu of testimony and that the Commission should forthwith proceed upon such agreed statement of facts to make and enter its report stating its findings as to the facts and its conclusions and an order disposing of the proceeding; the Commission and respondent having through their respective attorneys filed briefs and arguments, and the Commission having duly considered the same and the record and being fully advised in the premises, makes this its report and findings of facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, William H. Plunkett, is and for more than one year last past has been a resident of the city of Chicago, State of Illinois, doing business under the trade name and style of Plunkett Chemical Co.; that he has been and is engaged in the manufacture of cleaning and disinfecting fluids and similar products, and the sale and distribution of the same, from his principal place of business in said city of Chicago, State of Illinois, to purchasers thereof in the several States of the United States, and the Territories thereof, and the District of Columbia, and foreign countries, in competition with other individuals, partnerships, and corporations engaged in a similar occupation.

The respondent maintains, and for more than one year last past has maintained, a branch office and place of business at 61 Park Place, New York City, State of New York, known as the "General Eastern Office," with an officer or agent in charge thereof known as the "General eastern manager"; said general eastern office is the general office of the respondent in the Eastern States of the United States; one F. W. Gates has been and still is the officer or agent in charge of said general eastern office, and was and is authorized and empowered to transact and conduct the respondent's business throughout the Eastern States of the United States.

PAR. 2. In the conduct of respondent's business in said city of Chicago and in said city of New York for more than one year last past the respondent has published and distributed, through the United States mail and otherwise, to customers, dealers, and the public generally, a printed pamphlet advertising his said business, labeled and entitled on the outside of the first cover page as follows:

"Conservation of Health," "A word on an important subject," "From Plunkett Chemical Company, main office and laboratory, Chicago, U. S. A."; that on the inside of the back cover page of this pamphlet were the following words and figures, to wit:

Extracts from Public Health Report, issued by United States Public Health Service, Washington, D. C., August 11, 1916. Volume 31, No. 32, page 2141.

The fallacious drip machine, the so-called continuous toilet disinfector, should be mentioned only to be condemned. It does not disinfect; it only distills an odor, sometimes worse than the one it tries to hide, and diverts attention from conditions which need mending.

Copies may be had for 5¢ a copy by addressing the Superintendent of Documents, Government Printing Office, Washington, D. C.

PAR. 3. The respondent also published another printed pamphlet and distributed the same, through the United States mail from his said Chicago and New York offices, to customers, dealers, and the public generally, which pamphlet was labeled and entitled on the first page of the cover sheet as follows: "Stop," "Flagged!" "Just in time to prevent your plant from becoming a disease-breeding spot for your operatives." "Set the switch 'clear' to-day." On the inside page of the back cover sheet of said printed pamphlet are the words and figures, to wit:

Warning from Uncle Sam!

The fallacious drip machine, the so-called continuous toilet disinfector, should be mentioned only to be condemned.

It does not disinfect; it only distills an odor, sometimes worse than the one it tries to hide, and diverts attention from conditions that need mending.

(Extract from U. S. Public Health Bulletin, Aug. 11, 1916, page 2141, issued by the U. S. Public Health Service, Washington, D. C.)

PAR. 4. Both of the excerpts set forth in Findings 2 and 3 were copied from an address delivered by Thomas R. Crowder, M. D., of Chicago, before the meeting of the New York Railroad Club held April 21, 1916, and published in the Public Health Report of August 11, 1916, a report issued weekly by the United States Public Health Service. On the page of said Public Health Report for August 11, 1916, facing the table of contents appears the following:

53 Findings.

UNITED STATES PUBLIC HEALTH SERVICE.

RUPERT BLUE, *Surgeon General.*

DIVISION OF SANITARY REPORTS AND STATISTICS.

Asst. Surg. Gen. JOHN W. TRASK, *Chief of Division.*

The Public Health Reports are issued weekly by the United States Public Health Service through its Division of Sanitary Reports and Statistics, pursuant to acts of Congress approved February 15, 1893, and August 14, 1912.

They contain: (1) Current information of the prevalence and geographic distribution of preventable diseases in the United States in so far as data are obtainable, and of typhus fever, cholera, plague, yellow fever, smallpox, and other communicable diseases throughout the world. (2) Sanitary legislation, including court decisions on matters relating to public health administration and the laws and regulations being enacted or adopted by State and municipal authorities for the safeguarding of the public health. (3) Articles relating to the cause, prevention, or control of disease. (4) Other pertinent information regarding sanitation and the conservation of the public health.

The Public Health Reports are intended primarily for distribution to health officers, members of boards or departments of health, and those directly or indirectly engaged in or connected with public health or sanitary work. Articles of general or special interest are issued as reprints from the Public Health Reports or as supplements, and in these forms are available for general distribution to those desiring them.

Requests for and communications regarding the Public Health Reports, reprints, or supplements should be addressed to the Surgeon General, United States Public Health Service, Washington, D. C.

A reprint was made of Dr. Crowder's address by the United States Public Health Service, and a supply kept on hand for general distribution. The excerpts from the address of Dr. Crowder were printed in respondent's said pamphlets in such a manner as to reasonably lead the reader to believe that it was the utterance of a public health official of the United States Public Health Service.

PAR. 5. On August 14, 1919, F. W. Gates, the general eastern manager, in charge of respondent's general eastern office, wrote and sent through the United States mail to Wm. Wrigley, Jr., & Co., Brooklyn, N. Y., a letter in which among other things, he said:

> Drip cans are a fraud. We make that statement just as flat, broad, and unqualified as it is possible. We have the word of every health authority in the country. They have been discarded and prohibited in every United States public building as *unsanitary.*

Said letter was not circularized generally to the customers, the trade, and the public; two or three letters containing similar language to that hereinabove in this finding quoted were written and sent by said general eastern manager to other persons.

Neither the respondent nor the respondent's general eastern manager had obtained the word of every health authority in the country

concerning "drip cans." "Drip cans" had not, at the time said letters were written, and have not yet, been discarded and prohibited in every United States public building as unsanitary.

CONCLUSIONS.

Under the conditions and circumstances set forth in the foregoing findings of fact, the acts and practices of the respondent constitute unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the above-named respondent having entered his appearance by his attorney and having duly filed an answer admitting certain of the allegations of the complaint and denying others therein contained, and thereafter the respective attorneys for the Federal Trade Commission and said respondent having signed and filed an agreed statement of facts wherein and whereby it was agreed that the said statement of facts should be taken by the Federal Trade Commission in lieu of testimony; and the Commission having heretofore made and filed its report stating its findings as to the facts and conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is hereby ordered, That the respondent, William H. Plunkett, trading as Plunkett Chemical Co., his agents and employees, do cease and desist from incorporating the following excerpts as an utterance or statement of an official of the United States Public Health Service in any and all printed pamphlets, circulars, letters, and other advertising media hereafter published and circulated among the trade and purchasing public throughout the United States:

Warning from Uncle Sam!

The fallacious drip machine, the so-called continuous toilet disinfector, should be mentioned only to be condemned.

It does not disinfect; it only distills an odor, sometimes worse than the one it tries to hide, and diverts attention from conditions that need mending.

(Extract from U. S. Public Health Bulletin, Aug. 11, 1916, page 2141, issued by the U. S. Public Health Service, Washington, D. C.)

It is further ordered, That the respondent, William H. Plunkett, trading as Plunkett Chemical Co., his agents and employees do cease and desist writing and circulating among the trade and purchasing public throughout the United States any letter, circular, pamphlet, or other advertising media containing the statement that—

Drip cans are a fraud. We make that statement just as flat, broad, and unqualified as it is possible. We have the word of every health authority in the country. They have been discarded and prohibited in every United States public building as *unsanitary*.

It is further ordered, That the said William H. Plunkett file a report in writing with this Commission, within 30 days after the service upon him of this order, showing the manner and extent of his compliance therewith.

FEDERAL TRADE COMMISSION

v.

EVERYBODY'S MERCANTILE COMPANY.