

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

Docket 583—December 27, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a germicide, advertised and sold the same under the trade name and mark, "B-K, Bacilli-Kil," and included in its labels, bulletins and other advertising matter information and instructions relative thereto based on scientific tests, so that, as a result of its efforts and large expense, its said germicide had become widely and favorably known, and it had acquired a valuable good-will in the sale thereof as aforesaid; and thereafter a competing manufacturer of a product inferior in germicidal strength to its preparation, and a corporation, successor to said manufacturer's business,

- (a) Characterized and sold their product as, "B-D, Bacilli Destroy" and "Ginso's B-D, Bacilli Destroy," in containers with labels bearing such names designed in a manner closely simulating its trade-mark;
- (b) Used the same design in bulletins and other advertising matter issued and distributed by them in connection therewith;
- (c) Appropriated and used literally in their labels, bulletins, etc., large portions of the information contained in its labels, bulletins, etc., including its directions and instructions, although the same were not applicable to their product;

With a capacity and tendency to deceive and mislead the purchasing public as to the identity of the two products and to result in the passing off of the inferior for the superior germicide; and

- (d) Falsely and misleadingly advertised and represented by labels, bulletins and other advertising matter issued and distributed by them, that their product was ten times stronger as a germicide than undiluted U. S. P. carbolic acid;

Held, That such simulation of trade-mark, wrongful appropriation of competitor's matter, mislabeling, and false and misleading advertising, 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 G. Slocum, doing business under the name and style of Ginso Chemical Co., and Ginso Chemical Co., a Missouri corporation, hereinafter referred to as the respondents, have within four years last past, violated, and are vio-

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lating 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, G. Slocum, an individual doing business under the name and style of Ginso Chemical Co., with his principal place of business in St. Joseph, Mo., is now and since 1917 has been continuously engaged in the business of manufacturing and selling to the public, a preparation which purports to be a disinfectant and germicide, to which was given the name "B-D, Bacilli Destroy." That said preparation was and is sold by the said respondent, G. Slocum, in various states of the United States, and said respondent, G. Slocum during the aforesaid time, caused and still causes the same to be transported from the State of Missouri through and into various other states of the United States. That within the year last past, the respondent corporation, Ginso Chemical Co., was organized under and by virtue of the laws of the State of Missouri, with its principal place of business at St. Joseph, Mo., for the purpose of taking over and continuing the business of manufacturing and selling the aforesaid product. That in the conduct of said business, as aforesaid, said respondents have been and are in direct active competition with various manufacturers of similar products, which are sold and transported among the several states of the United States.

PAR. 2. That General Laboratories, a company of manufacturing chemists in Madison, Wis., have been engaged continuously since 1913 in the manufacture and sale of a disinfectant and germicide. That to such preparation said General Laboratories has given the name of "B-K, Bacili-Kil," which name is printed in a unique and fanciful form on the labels, circulars and advertisements of such preparation of said company. That General Laboratories registered in the United States Patent Office the said name "B-K, Bacili-Kil," in its said unique and fanciful form as a trade-mark, on July 31, 1915. That General Laboratories distributed and distributes to the public a circular, containing instructions for the use of said preparation, together with other printed matter, which circular is entitled "Bulletin 269," and was copyrighted under the laws of the United States in 1918. That General Laboratories distributes its said product in cans to which are affixed printed labels which bear the trade-marks aforesaid, together with certain specifications of the contents of such

cans and directions for its use. That in the course of its business, as aforesaid, General Laboratories has built up for itself a large and profitable business throughout the various States of the United States in the sale of its said product, which has become well known to the public under the said name and trade-mark; and that General Laboratories has spent large sums of money in advertising said product under said name and trade-mark, whereby the General Laboratories has acquired a valuable good-will in the sale of such product under the said name and by virtue of its said trade-mark and copyrighted circular.

PAR. 3. That the respondents since 1917 have manufactured a product purporting to be a germicide, which respondents have sold in interstate commerce under the name of "B-D Bacilli Destroy" as aforesaid. That respondents in the marketing of said product have simulated and are simulating the name and registered trade-mark of the germicide marketed by the said General Laboratories, and have simulated and are simulating the copyrighted circular issued by said General Laboratories, and also the labels as used by said company; all of which was and is designed and calculated by respondents to mislead and deceive the purchasing public, and to cause the public to believe that respondents' product was one and the same as that of General Laboratories. That the letters "B-D" adopted by respondents are designed in the same unique and fanciful form as the letters "B-K," used by the said General Laboratories; and that the name "B-D, Bacilli Destroy," as used by respondents, is a simulation of the trade-mark of General Laboratories. That respondents issued and are issuing a circular very similar in size, shape, and make-up to the copyrighted circular of General Laboratories, which circular of respondents literally reproduces the greater part of the circular of General Laboratories, and is so much like that of General Laboratories as to readily mislead and deceive the public into believing it to be that of General Laboratories. That respondents on such circular substituted the name of the Gonso Chemical Co. for that of General Laboratories, the natural tendency of which was and is to mislead and deceive the purchasing public into believing that the product of General Laboratories was manufactured and sold by respondents. That the labels heretofore and now used by respondents on the cans containing their product, were and are a simulation of the labels of General Laboratories. That the product of respondents is inferior to the product of General Laboratories. That the natural effect of such acts on the part of respondents, in the passing off of their inferior product as the product of General Labo-

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ratories, by means of the simulation of the name of the product and the circulars and labels of General Laboratories, and by the infringement of the trade-mark and copyright of General Laboratories, as aforesaid, has been and is to mislead and deceive the purchasing public into believing that the inferior product of respondents was and is the product of General Laboratories, and to appropriate to the use and benefit of respondents, part of the good-will enjoyed by General Laboratories, and to appropriate to the use and benefit of respondents, part of the good-will enjoyed by General Laboratories by reason of the advertising, and long course of business, and valuable trade-mark and copyright of said General Laboratories.

PAR. 4. That respondents have represented and held out and are representing and holding out to the purchasing public by means of their advertisements, circulars and labels aforesaid, that their product "Bacilli-Destroy" was and is a powerful sterilizer, deodorant, disinfectant and antiseptic and that it is ten times stronger than undiluted U. S. P. carbolic acid and is of great value generally as a disinfectant and germicide. That in truth and in fact said product of respondents is not a powerful sterilizer, deodorant, disinfectant and antiseptic and is not ten times stronger than undiluted U. S. P. carbolic acid but is on the contrary an inferior product, having little or no value generally as a disinfectant and germicide. That the natural effect of such false and misleading advertisements and representations by the respondents concerning their said product has been and is to mislead and deceive the purchasing public into believing that the product of respondents is a powerful and useful disinfectant and germicide when in truth and in fact said product has little or no antiseptic or germicidal value.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, M. G. Slocum, doing business under the name and style of Ginso Chemical Co., and Ginso Chemical Co., a Missouri corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having appeared, the defendant Slocum, in person, and the defendant Ginso Chemical Co., by its attorney, and the latter having filed its answer admitting certain of the allegations of the said complaint, and denying certain others thereof; and the Commission having introduced testimony and evidence in support

of the charges of said complaint, and the respondents having introduced testimony and evidence in support of their answer, and the Commission and the respondents having rested, and the respondents having waived the filing of briefs and the hearing of argument herein, and

Thereupon this proceeding having come on for final hearing without oral argument, and the Commission having duly considered the record, and it being fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, M. G. Slocum, an individual doing business under the name and style of Ginso Chemical Co., with his principal place of business in the city of St. Joseph, State of Missouri, was from about October, 1915, to about November, 1919, continuously engaged in the manufacture and sale of various chemical products; and that the respondent, Ginso Chemical Co., a Missouri corporation, was organized under and by virtue of the laws of the said State on or about the 28th day of November, 1919, with its principal place of business in the city of St. Joseph in said State, and took over the said business in which it has since been continuously engaged.

PAR. 2. That for several years last past the said respondents in the course of their said business have manufactured at St. Joseph, Mo., a germicide which they have sold, principally in the States of Missouri and Kansas, but to some extent in other States as well, under the names "B-D, Bacilli Destroy," and "Ginso's B-D, Bacilli Destroy"; and that in the sale of their said product the said respondents have been and are engaged in competition with other manufacturers of similar products.

PAR. 3. That about the year 1913 a corporation was organized under the name General Purification Co., with its principal place of business in the city of Madison, State of Wisconsin; that on or about March 8, 1916, the name of the said corporation was changed to General Laboratories; that since its organization the said corporation has been continuously engaged in the manufacture and sale of a germicide under the name "B-K, Bacilli-Kil"; that the said name, designed in a unique and fanciful form, was registered in the United States Patent Office by the said corporation as a trade-mark for the said germicide on or about February 1, 1916; that the said name and trade-mark appears on labels affixed to the containers in which the said corporation markets its said germi-

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cide, and on all bulletins, circulars, and other advertising matter issued, distributed, and published by the said corporation in connection therewith; that the said labels, bulletins, circulars, and other advertising matter contain certain information prepared by the said corporation, including directions and instructions for the proper method of diluting and applying the said germicide in the various uses to which it may be put, such directions and instructions being based upon actual scientific tests; and that the said corporation has expended large sums of money in advertising and popularizing the said germicide under the said name and trade-mark and has thus built up for itself a large and profitable business throughout the various States of the United States in the sale of the said germicide, which has become well known to the purchasing public under the said name and trade-mark, whereby the said corporation has acquired a valuable good will in the sale of the said germicide under the said name and trade-mark.

PAR. 4. That the respondents aforesaid have marketed their aforesaid "B-D, Bacilli Destroy" and "Ginso's B-D, Bacilli Destroy" in containers to which were affixed labels bearing the said names, designed in a manner closely simulating the trade-mark of the General Laboratories aforesaid, and have used the same design on bulletins, circulars, and other advertising matter issued, distributed, and published by them in connection with their said germicide; that the respondents, in their said labels, bulletins, circulars, and other advertising matter have literally appropriated and reproduced large portions of the information contained in the labels, bulletins, circulars, and other advertising matter used, issued, distributed, and published by the said General Laboratories as aforesaid, including the directions and instructions for the proper method of diluting and applying the germicide manufactured and sold by the said General Laboratories, although the said directions and instructions were not applicable to the respondents' germicide, which was inferior in germicidal strength to the product manufactured and sold by the said General Laboratories.

PAR. 5. That the simulation by the respondents of the trade-mark of the General Laboratories and their appropriation and reproduction of the directions, instructions, and other information prepared by the General Laboratories as aforesaid was calculated to deceive and mislead the purchasing public as to the identity of the germicides in question and result in the passing off of the respondents' inferior product for the product of the General Laboratories.

PAR. 6. That the respondents, by means of their labels, bulletins, circulars, and other advertising matter used, issued, distributed, and

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published as aforesaid, have made the false and misleading representation that their said product was ten times stronger as a germicide than undiluted U. S. P. carbolic acid.

PAR. 7. That since the beginning of this proceeding the respondents have abandoned the names "B-D, Bacilli Destroy" and "Ginso's B-D, Bacilli Destroy," and have adopted for their said product the name "Electrofied Chlorine," which name now appears upon the labels affixed to the containers in which the said product is marketed and in the bulletins, circulars, and other advertising matter issued, distributed, and published in connection therewith.

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of the provisions of section 5 of the 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.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto of the respondents and the testimony and evidence introduced on behalf of the respondents, and the Commission having considered the record and made its findings as to the facts with its conclusion that the respondents have violated the provisions of the 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."

It is now ordered, That the above-entitled respondents, M. G. Slocum, whether doing business under the name and style of Ginso Chemical Co. or under any other trade name, and Ginso Chemical Co., a Missouri corporation, its officers, directors, agents, servants, and employes, cease and desist from:

I. Displaying the names "B-D, Bacilli Destroy" or "Ginso's B-D, Bacilli Destroy" designed in simulation of the trade-mark "B-K, Bacilli-Kil" as registered by the General Laboratories of Madison, Wis., on any carton, container, or package in which the respondents market any antiseptic, disinfectant, germicide, or similar product in interstate commerce, or on any label, bulletin, circular, or other advertising matter used, issued, distributed, or pub-

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lished in connection with the sale of such products in interstate commerce.

II. Appropriating and reproducing on any carton, container, or package in which the respondents market any antiseptic, disinfectant, germicide, or similar product in interstate commerce, or in any label, bulletin, circular, or other advertising matter used, issued, distributed, or published in connection with the sale of such products in interstate commerce, any instructions, directions, or other information prepared by the said General Laboratories and contained in the labels, bulletins, circulars, or other advertising matter used, issued, distributed, or published by the said General Laboratories in connection with the marketing of its product known as "B-K, Bacilli-Kil."

III. Misrepresenting the germicidal strength of any antiseptic, disinfectant, germicide, or similar product manufactured and sold in interstate commerce by the respondents, either on the cartons, containers, or packages in which such sales are made, or in the labels, bulletins, circulars, or other advertising matter used, issued, distributed, or published in connection with such sales, or in any other way.

And it is further ordered, That the respondents shall file with the Federal Trade Commission within sixty (60) days from the date of this order their report in writing, stating the manner and form in which this order has been complied with, and shall attach to such report two copies of all wrappers, labels, bulletins, circulars, and other advertising matter used, issued, distributed, or published by the respondents in connection with the sale of antiseptics, disinfectants, germicides, or similar products in interstate commerce subsequent to the date of this order.

MARX FINSTONE.

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