

NAME OF AABAN RADIUM COMPANY.

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

Docket 943—November 10, 1923.

SYLLABUS.

Where individuals engaged in the manufacture and sale of a substance as radium, which substance, when subjected to the most approved tests, showed no radio activity; in the advertisement and sale thereof

(a) Assumed and used the name "Aaban Radium Co."; and

(b) Represented said substance to be radium:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. W. T. Roberts for the Commission.

Mr. Charles Fensky of St. Louis, Mo., for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions 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," the Federal Trade Commission charges that Abbott E. Kay and R. T. Nelson, as individuals, and as co-partners, doing business under the name of Aaban Radium Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Abbott E. Kay and R. T. Nelson, are residents of the City of Chicago, State of Illinois, and as individuals, and as co-partners, under the name of Aaban Radium Company, are engaged in the manufacture and sale of a product purporting to contain radium, but which, as a matter of fact, contains no radium. Respondents, and each of them, cause the product hereinbefore referred to and falsely held out and represented to contain radium, to be sold and transported from the City of Chicago, State of Illinois, to purchasers, through and into various other States of the United States. In the course of the business above referred to respondents have been, and now are, in competition with other persons, partner-

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ships, and corporations engaged in the manufacture and sale of radium and radium products in interstate commerce.

PAR. 2. The above named respondents, and each of them, advertise in magazines and other periodicals of general circulation throughout the United States, as well as by circulars and letters transported through the mails to prospective purchasers in the several states of the United States to the effect that the product above referred to contains radium, with the tendency to mislead and deceive the purchasing public into the belief that such product is genuine radium.

PAR. 3. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 a complaint upon the respondents, Abbott E. Kay and R. T. Nelson, as individuals and as co-partners doing business under the firm name of Aaban Radium Company, charging them with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents, Abbott E. Kay and R. T. Nelson, having made answer and entered their appearances individually and in person; hearing was had before Web Woodfill, the examiner heretofore duly appointed; evidence both oral and documentary was introduced in behalf of the Commission and the respondents, and this proceeding came on for final hearing; and the Commission being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That Abbott E. Kay is a resident of the City of Chicago, State of Illinois, and has resided in said city for more than ten years last past; that he is a graduate of the medical department of Illinois University and has been engaged in the practice of his profession in said city for a number of years last past; that the respondent, R. T. Nelson, is a resident of said city also and is engaged in the business of loaning money on real estate mortgages and has been interested in the subject of radium for some time past; that the respondents acted together in the production and sale of

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so-called radium and held themselves out to the public as partners acting under the name and style of Aaban Radium Company by having said name printed on the office door which they were preparing to use jointly in the sale and distribution of the product claimed by them to be radium.

PAR. 2. That the respondent, Abbott E. Kay, is engaged in the manufacture and sale of a product claimed by him to be radium and that he caused said product to be transported from the City of Chicago, State of Illinois, through and into various other States of the United States to prospective purchasers located in the several States as aforesaid, and that he offered said product for sale at the price of \$10 per milligram to various persons located in other States to whom he shipped tubes and plaques of said product, the same being offered for sale when the said prospective purchasers so desired on what the said respondent terms the "escrow plan," which said plan is as follows: The said product being delivered to the prospective purchaser as aforesaid, said money being held in the said home bank by agreement for ninety days, after which time it is forwarded to said respondent, Abbott E. Kay. If, however, before the end of the said ninety days said prospective purchaser of said product decides that said product is not of the value as represented by said respondent, Abbott E. Kay, the said prospective purchaser may return said product to said home bank and after same has been identified said money so held in said bank is to be returned to said prospective purchaser.

PAR. 3. That the respondent, Abbott E. Kay, in his offer for sale and in causing his said product to be transported as heretofore set out is in active and direct competition with other persons, firms and corporations engaged in the sale of genuine radium.

PAR. 4. That the said respondent, Abbott E. Kay, has advertised said product for sale in the Boston Medical & Surgical Journal which is a journal of general circulation throughout the United States; that he also advertised said product in other publications and in circulars and letters to prospective purchasers of said product in the several States, in all of which advertising matter the said respondent claimed that the product so offered for sale by him was genuine radium.

PAR. 5. That the United States Bureau of Standards at Washington, D. C., acting on the request of several of the said prospective purchasers who had received packages of said so-called radium from the said Abbott E. Kay, examined and tested the product so claimed to be radium by the methods usually employed for such purpose, the same being what is known as electroscopic test as well as a

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photographic test; that both the said tests showed that said product had no radio activity and that the same is not radium but is some other substance the exact character of which has not been determined.

PAR. 6. The evidence shows that the prevailing price for radium throughout the United States for several years last past has ranged from \$70 to \$120 per milligram.

PAR. 7. The product known as radium is largely used by the medical profession in the treatment of cancer and various skin diseases and the usual and customary way of determining whether or not the substance claimed to be radium is in fact radium is and has been for many years past to submit the product to the Bureau of Standards in order that the same may be tested and its radio activity determined by the use of instruments and other facilities provided by the United States Government at said Bureau for the determination of such question.

PAR. 8. The respondent, Abbott E. Kay, claimed that he produced the substance claimed by him to be radium in a laboratory located in his own home in the city of Chicago, when according to the testimony a large and extensive plant is required to separate or extract the product known as radium from the rocks and ores in which it is found and mined, it sometimes being necessary to reduce as much as a ton of ore in order to find one milligram of radium.

CONCLUSION.

The above practice of the said respondents under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a violation 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 of respondents, testimony and evidence received by the Examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions 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,"

It is now ordered, That respondents, Abbott E. Kay and R. T. Nelson, as individuals and as co-partners, doing business under the

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name of Aaban Radium Company, their servants, agents and employees, cease and desist from further, in any manner whatsoever,

1. Selling or offering for sale or advertising as and for radium the product heretofore sold and advertised as and for radium by respondents.

2. Applying, employing or using the word "radium" in connection with the sale, offering for sale, or advertising of the products heretofore sold and advertised as and for radium by respondents.

3. Making or causing to be made in advertising matter or otherwise representations, statements or assertions that the product heretofore sold and advertised by respondents is radium, or that said product contains radium.

4. Making or causing to be made any false statement, claim or representation of similar import or effect in connection with the sale of any other product or substance.

It is further ordered, That the respondents shall, within sixty (60) days after the service upon them of a copy 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 the order to cease and desist hereinbefore set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

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FEDERAL TRADE COMMISSION
v.
STANDARD EDUCATION SOCIETY.