

Syllabus

IN THE MATTER OF
CALUMET BAKING POWDER COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 868—February 8, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of baking powder, and in the sale thereof in competition with manufacturers of self-rising flour, freely and extensively sold subject to the provisions of the Pure Food and Drugs Act and similar state laws—

- (a) Secretly caused persons who appeared to be disinterested authorities, to prepare and issue over their signatures articles or publications containing numerous disparaging and prejudicial statements, involving complex matters of opinion incapable of determination by the trade or consuming public relative to the ingredients and use of self-rising flour, and widely circulated the same, and articles or publications of a similar nature, without making known its connection therewith and responsibility therefor, in that it—
- (1) Circulated as above set forth, among domestic science teachers and others, many thousands of copies of a publication which it caused to be prepared by and issued under the authorship of, a medical man, entitled "Domestic Science Text Book, Baking Powder a Healthful Leavening Agent," in which were contained such statements as that by reason of the methods of manufacture, results to be anticipated from the use of self-rising flour were comparable to those to be expected "from the use of the cheapest baking powder, manufactured without chemical control * * *"; that inasmuch as excessive quantities of soda and acid were frequently added in manufacturing such product, the housewife in using the same prepared food containing excessive amounts of residue; and that "because of the large amount of water contained in flour, and the lack of protection from atmospheric moisture through the use of cloth bags as containers, the keeping qualities of the self-rising mixture are seriously impaired";
- (2) Circulated as above set forth a publication which it caused to be prepared by, and issued under the authorship of, a domestic science lecturer in its employ, entitled "Twenty Lessons in Domestic Science," in which were set forth verbatim prejudicial statements above referred to as included in the former publication, together with the explanatory note, "N. B.—The text of this chapter is taken with the permission of the author, (naming him) from 'Domestic Science Text Book, Baking Powder, A Healthful, Convenient Leavening Agent'";
- (3) Circulated among housewives and teachers of home economics, and under the name and over the signature of, the editor of the domestic science department of a woman's magazine, circular letters on the letterheads of the aforesaid magazine, setting forth, among other things, that the department in question was "engaged in a special investigation of so-called self-rising flour" to find out "whether the people who are using self-rising flour have ever investigated it or have ever been told of its questionableness from a health and efficiency standpoint", and also reprints of anonymous

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articles which had appeared in the journals of medical associations, and elsewhere, suggesting a possible connection between the use of the product involved and pellagra, asserting "that a great deal of sulphate of lime is used in cheap baking powder, especially so in self-rising flour; sometimes running as high as 25 per cent," that the Food Commissioner of a certain specified state had criticised such product, that the need of improvement therein was "backed up by thousands of domestic science teachers throughout the country," that "in most cases the product contained a poor grade of flour," etc.; and

- (b) Caused to be inserted in newspapers and other publications in which it had placed paid advertising, anonymous articles in the form of news matter, which contained assertions and statements similar to those set forth, and others, such as, "physicians can do much toward the enactment of laws that will * * * require a statement on self-rising flour of all the ingredients contained therein" and that "such laws will protect the health and the pocket book"; and
- (c) Published also anonymous advertisements warning the public against the use of the product herein concerned, stating that food authorities agree that pure baking powder and good plain flour are much better for food value and health than the self-rising flours", and implying that self-rising flour, cake mixes, and egg savers were non-glutinous and substitutes for plain flour and baking powder;

With the capacity and tendency to mislead and deceive the trade and consuming public, and to prejudice the same against said product to a greater degree than had it fully disclosed and identified itself as the active and interested agent in the preparation and circulation of such attacks, and to prevent manufacturers of the product in question from fixing responsibility upon it for the disparagement of their products, and to handicap them in defending the same:

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

Mr. Walter B. Wooden for the Commission.

Mr. Daniel R. Forbes, of Forbes & Daniels, of Washington, D. C., for respondent.

Mr. Marvin Farrington of Washington, D. C., for Soft Wheat Millers Asso., intervenor.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation engaged in the manufacture of baking powders and sale thereof to purchasers in the several States, with principal office in Chicago, with disparaging the products of competitors through apparently disinterested and technically qualified sources in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that "respondent, in order to protect the use and sale of its baking powders against the competition of self-rising flour,

adopted a practice of publishing to the purchasing public, adverse, disparaging, and derogatory opinions, statements, and comments as to the wholesomeness of self-rising flour, which practice it put into operation on an extensive scale and carried into effect vigorously throughout a wide area of population"; respondent carefully concealing "its connection with and interest in the various methods, devices, and agencies" employed, and causing "the expressions, opinions, and comments to seem to be either anonymous and therefore disinterested, or the voluntary contributions of disinterested and technically qualified authorities or persons acting in the public interest"; with a tendency through said practice, employed for several years and still continued, "to create a state of mind in the purchasing public which is detrimental to the purchase and use of self-rising flours, and consequently tends to the injury of the business conducted by the manufacturers thereof."

Upon the foregoing complaint, the Commission made the following

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 and later an amended complaint upon the respondent herein, in both of which complaints it was charged that said respondent was and had been using unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondent having entered its appearance by its attorney and having duly filed its answers to the original and amended complaints, admitting certain allegations therein, denying others, and setting up certain new matter in defense, and a stipulation as to the facts in lieu of testimony having been entered into by and between respondent and the chief counsel of the Commission, and the Commission having examined and considered the facts as stipulated, hereby makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondent is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its main office and principal place of business in the city of Chicago, State of Illinois. That the respondent is now and for more than five years last past has been engaged in manufacturing baking powders in the city of Chicago, State of Illinois, and selling and shipping said baking powders under its own brand to the trade among the several States of the United States, the Territories thereof, and the District of Columbia.

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PAR. 2. That in the course of respondent's manufacture and sale of baking powder among the various States it is in competition with manufacturers of self-rising flour, a product consisting of wheat flour mixed with certain ingredients which are similar to the leavening agents contained in baking power and which are intended for similar leavening purposes. Self-rising flour is produced and sold by a number of manufacturers who cause it to be transported and distributed to the trade among the several States of the United States, and a great industry has recently been developed in the manufacture and sale of self-rising flour. The Commission takes judicial notice of the provisions of the act of Congress known as the Pure Food and Drugs Act and of similar laws passed by various States of the United States designed to protect the public against the sale and consumption of deleterious, unwholesome, or adulterated food products; also that self-rising flour is sold freely and extensively in commerce and in territories which are subject to said laws.

PAR. 3. That for several years prior to the original complaint in this proceeding respondent prepared and/or circulated or caused to be prepared and/or circulated over wide areas of population and in various States of the United States large quantities of advertising matter, stating in numerous forms and under the names of various parties that self-rising flour is an unwholesome and deleterious article of food and that it should not be used as a substitute for baking powder and plain flour. Respondent concealed its responsibility for the preparation and/or circulation of said advertising matter and caused it to appear as the statements and opinions of disinterested persons, as hereinafter more fully set forth. Respondent also prepared and/or circulated, or caused to be prepared and/or circulated, through the medium of newspapers and otherwise, large quantities of advertising matter, in which respondent stated that self-rising flour is an unwholesome and deleterious article of food and withheld from such advertising any name by which its author might be identified or traced, all as hereinafter more fully set forth.

PAR. 4. That in 1915 respondent sought and secured the services of one Dr. Thomas G. Atkinson in preparing a book entitled—

DOMESTIC SCIENCE TEXT BOOK
BAKING POWDER
A HEALTHFUL LEAVENING
AGENT

Said Atkinson received a fee for his preparation of said book and in consideration thereof assigned and surrendered to respondent all right, title, and interest in same and in any financial or business returns therefrom. No record of said assignment was made in the

United States Copyright Office and the book still stands copyrighted in the name of said Atkinson. The publication of said book was at all times subject to the control and at the expense of respondent. Respondent also controlled the selection of title and illustrations, the style of binding and the printing and distribution of same. Said book was written for the use of domestic science teachers and has been distributed among such teachers by respondent company and to such other persons as have requested copies. A number of editions have been published and respondent has caused its salesmen and demonstrators to distribute the book to the extent of nearly 14,000 copies. While some copies of the last edition, which was published subsequently to the Commission's preliminary investigation, contained printed labels pasted on the inside cover, stating that the book was the property of respondent company, the parties among whom it was distributed were not advised of the facts concerning its authorship as herein set forth. The book above described contained the following statements with reference to self-rising flour, said statements either having been supplied or the sources thereof indicated to said Atkinson by respondent company:

Self-rising flour is nothing more than a mixture of flour and salt with soda and an "acid" ingredient, or in other words, with ingredients such as are used in making a baking powder. This mixing is almost (always) done without any chemical control of the purity or strength of the ingredients or of the proportioning of the ingredients. The soda and "acid" are purchased of the manufacturers, with a formula for mixing them. The formula is never changed, no matter how much the purity or strength of the ingredients may vary. Such a product subjects the user thereof to every inconvenience and disappointments as to flavor and color in the finished food, such as would result from the use of the cheapest baking powder, manufactured without chemical control. Inasmuch as excessive quantities of the soda and acid are frequently added, the housewife is also preparing food containing excessive amounts of residue, when she uses self-rising flour.

Because of the large amount of water contained in flour, and the lack of protection from atmospheric moisture through the use of cloth bags as containers, the keeping qualities of the self-rising mixture are seriously impaired.

PAR. 5. That in 1916 respondent had in its employ one Marian Cole Fisher, a lecturer on domestic science. While so employed said Marian Cole Fisher prepared a book entitled Twenty Lessons in Domestic Science and same was copyrighted in her name in 1916. All rights in the book, however, were assigned by her to respondent company. No record of such assignment was made in the United States Copyright Office and the copyright still stands in the name of Marian Cole Fisher. The printing, publication, and distribution of said book were at all times under the control and at the expense of respondent company. Respondent also controlled the selection of title, the illustrations, and the style of binding. Respondent has had twelve edi-

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tions of said book printed and distributed among the trade and consuming public. During the period 1917 to 1920, inclusive, respondent distributed some 15,000 copies of said book among domestic science teachers and to such others as requested a copy. The latest edition was published in April, 1922. While some copies of that edition contained a printed label pasted on the inside cover stating that the book was the property of respondent company, no information was given to parties receiving it as to the connection of the author with respondent company as above set forth. The various editions of this book incorporated therein the verbatim statements hereinbefore quoted from the Atkinson book with regard to self-rising flour as well as other portions thereof, with the following explanatory note:

N. B.—The *text* of this chapter is taken with the permission of the author, Thomas G. Atkinson, from Domestic Science Text Book, Baking Powder, A Healthful, Convenient Leavening Agent.

That this explanatory note was calculated to conceal and had the effect of further concealing the connection of said Atkinson with respondent company, as hereinbefore set forth.

PAR. 6. That during the year 1919 respondent caused to be circulated among housewives and teachers of home economics a circular letter on the letter head of *Milady Beautiful*, a monthly magazine for women. Said circular letter was signed by Maud Marie Costello, editor of the magazine's domestic science department. According to the statements in said circular letter the domestic science department of the magazine was "engaged in a special investigation of so-called self-rising flour," that "what we really want to find out is whether the people who are using self-rising flour have ever investigated it or have ever been told of its questionableness from a health and efficiency standpoint," and that "if the users of self-rising flour as a whole had been taught or told what self-rising flour contained, how it was manufactured, and continued to buy it regardless of warnings, we would not be inclined to put on an educational campaign as contemplated."

PAR. 7. That under the name of the aforesaid Maud Marie Costello respondent company circulated among housewives and teachers of home economics reprints of anonymous articles which had appeared in the journals of medical associations and societies of various southern States during the year 1917 and which articles suggested a possible connection between the use of self-rising flour and pellagra. Some of said articles included statements that self-rising flour "contains phosphate rich in calcium sulphate which latter is undesirable in food products." Calcium sulphate or gypsum is popularly known as plaster of paris. Others of said articles included statements that the phosphate used in self-rising flour "is generally adulterated with

from 5 to 15 per cent of gypsum, otherwise known as calcium sulphate," and that "no filler, such as calcium sulphate or gypsum, is used in any baking powder." Others of said articles thus circulated by respondent contained the following statement:

* * * the following is quoted from the New York Journal of Commerce in reporting the recent hearing of the joint committee on food standards:

"It came out that a great deal of sulphate of lime is used in cheap baking powder, especially so in self-rising flour, sometimes running as high as 25%."

PAR. 8. That during the year 1919 respondent caused to be published at its expense in various southern newspapers advertisements in the name and over the signature of the aforesaid Maud Marie Costello. Said advertisements criticized the wholesomeness of the ingredients used in self-rising flour, quoted from a criticism thereof purporting to have been made by the food commissioner of Tennessee, and stated that the need of improvement in self-rising flour was "backed up by thousands of domestic science teachers throughout the country"; also that in most cases self-rising flour contained "a poor grade of flour, a cheap grade of powder containing calcium sulphate or plaster of paris."

PAR. 9. That respondent inserted or procured the insertion in various newspapers and other publications with which it had placed paid advertising, various anonymous articles in the form of news matter, but which in fact were free advertising; that said articles disparaged the use of self-rising flour in part on the ground of its unwholesomeness, and that some of said articles contained the following:

It has been admitted by the manufacturers of acid phosphate that the phosphate used in self-rising flour frequently contains 25 per cent or over of calcium sulphate (gypsum). Physicians know the objections to introducing such an amount of unnecessary inedible material into the system.

The physician can do much toward the enactment of laws that will forbid the use of such material in the manufacture of self-rising flour and that will require a statement on self-rising flour of all the ingredients contained therein.

Such laws will protect the health and the pocketbook.

PAR. 10. That the aforesaid statements circulated by respondent regarding calcium sulphate as an ingredient in self-rising flour, although uniformly in disparagement of said product, are irreconcilable with each other. From one of said statements it appears that self-rising flour and some baking powders are composed of calcium sulphate or plaster of paris to the extent of one-fourth or more of their bulk. From another of said statements it appears that no such "filler" is used in any baking powder. Others of said statements circulated by respondent show that it is only the calcium phosphate leavening agent in self-rising flour and baking powders which may contain calcium sulphate and in much smaller proportions than 25

per cent. The Commission takes judicial notice of the fact that commercial leavening agents such as calcium phosphate form a very small proportion of the mixture which is to be leavened by them. That the anonymity with which respondent surrounded the circulation of said various inconsistent statements, at different times and through different mediums, tended substantially to increase the difficulty of the uninformed trade and consuming public in weighing the facts and arriving at the truth.

PAR. 11. That during the years 1919 and 1921 respondent published or caused to be published in various southern newspapers anonymous advertisements warning the public not to use self-rising flour, stating that "food authorities agree that pure baking powder and good plain flour are much better for food value and health than the self-rising flours," and implying that self-rising flour, cake mixes, and egg savers were nonglutinous and unnutritious substitutes for plain flour and baking powder.

PAR. 12. That under the circumstances set forth herein respondent's employment of domestic science teachers and lecturers, such as said Marian Cole Fisher and Maud Marie Costello, and of medical writers such as said Thomas G. Atkinson, as advertising agencies for the public disparagement of self-rising flour, was calculated to mislead and deceive the trade and consuming public into believing that their statements were those of disinterested persons having no affiliation with the respondent company; that the concealment of such affiliation was calculated to prevent self-rising flour manufacturers from fixing responsibility upon respondent for said disparagements of self-rising flour and to handicap said manufacturers in defending their product; that the attacks on self-rising flour prepared and/or circulated at the expense of respondent as herein set forth contained numerous statements adverse to self-rising flour which involved complex matters of opinion, either scientific, medical, or commercial, and incapable of determination by the uninformed trade or consuming public; that the complete anonymity with which respondent clothed its attacks in some cases and the concealment of its employment of other parties for similar attacks in other cases was calculated to prejudice the trade and consuming public against self-rising flour to a greater degree than had respondent fully disclosed and identified itself as the active and interested agent in the preparation and/or circulation of said attacks; that the methods devised and adopted by respondent as set forth herein constituted false and misleading advertising in that they were calculated to deceive the trade and consuming public regarding the source of the efforts made in such adver-

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tising to increase the consumption of baking powder and public good will there-toward and the source of the efforts to decrease the consumption of self-rising flour and destroy public confidence and good will therein; that the methods devised and adopted by respondent as set forth herein were calculated to deceive the trade and consuming public as to the origin and weight of the attacks made by respondent upon a competitive product; that by adopting the policy and course of action described herein and continuing same over a period of years as herein stated, respondent indicated that it considered such a deception a substantial competitive advantage.

CONCLUSION

That the practices of the respondent as set forth herein constituted unfair methods of competition in commerce in 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 amended complaint of the Commission, the answer to the amended complaint and the stipulation as to the facts wherein and whereby it was agreed by said respondent that said stipulation as to the facts should be taken by the Commission in lieu of testimony herein and that said Commission might proceed further upon said stipulation to make its report in this proceeding, stating its findings as to the facts and conclusion and entering its order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that the respondent has 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 therefore ordered, That the respondent, Calumet Baking Powder Co., its officers, directors, agents, representatives, and employees cease and desist from directly or indirectly—

(1) Employing professional or other writers publicly to disparage the wholesomeness of self-rising flour and circulating or causing to be circulated such disparaging articles or statements among the trade and consuming public under the name or names of the writer or writers so employed, and withholding or concealing from the trade and consuming public the fact of such employment.

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(2) Preparing and circulating or causing to be prepared and circulated among the trade and consuming public articles of anonymous authorship disparaging the wholesomeness of self-rising flour or the use thereof.

It is further ordered, That the respondent shall within sixty days after the service upon it of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order of the Commission to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

EDWIN A. AMES, EDWIN A. AMES, TRADING AS OSTERMOOR & COMPANY, AND OSTERMOOR & COMPANY, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 1133—February 15, 1926

SYLLABUS.

Where an individual and his corporate successor, engaged in the manufacture of mattresses composed of compressed, superimposed layers or bats of cotton felt, and in the sale thereof; used in their labels and trade-marks, and in their advertising matter pictorial representations showing said mattresses with an uncovered end flaring to a thickness very greatly in excess of the expansion actually possessed by the aforesaid superimposed bats or layers, and in their advertising emphasized the supposed extraordinary resiliency of such mattresses falsely implied by the aforesaid representations, with the result that substantial numbers of purchasers were misled and deceived and induced to purchase the same in preference to the products of competitors who did not engage in such misrepresentation: *Held*, That such misbranding or mislabeling, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

Mr. C. C. Cousins, of Foster, LaGuardia & Cutler, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, and respondent corporation, his successor in business, a New York corporation, organized and controlled by him and engaged in the manufacture, among other things, of mattresses composed of superimposed layers of cotton felt or "bats," and in the sale thereof throughout the States, with principal place of business in New York City, with misbranding or mislabeling and with advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that they sold their mattresses with brands or labels attached thereto containing depictions or representations which were designed to and did deceive and mislead purchasers and