

Syllabus

IN THE MATTER OF

WILLIAM F. SCHIED AND H. H. BARD, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAMES AND
STYLES OF AMERICAN SPECIALTY COMPANY AND
AMERICAN SEED 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 1333—April 9, 1926

SYLLABUS.

Where a firm engaged in the sale of snap dress fasteners and of vegetable and flower seeds through agents, mostly school children, whom it solicited to act for it through the offer of various premiums for the sale of a specified number of cards of fasteners or packages of seeds, as the case might be,

- (a) Misrepresented the number of cards or packages required by them to be sold to entitle the agent to a premium in that it sent an additional number to be sold and remitted for, to those agreeing to act as its agents in response to such solicitation, upon the pretext of insuring the delivery of the premium post paid, insured, delivery of which premium it advised its agents, it could not otherwise guarantee;
- (b) Misrepresented the nature, quality and origin of the seeds dealt in by it in the advertising matter furnished its agents, making such false statements as that its seeds had been carefully selected and tested, had been tested by the agricultural departments of many of the leading states, had always received the highest recommendations, were prize winning seeds, were "best by test", "fresh new seeds direct from the grower—sure to grow";
- (c) Supplied the seeds in packages upon which appeared the trade name under which it conducted its seed business, together with the legend "Quality seeds from * * * Lancaster, Penn., the Garden Spot of America," and furnished agents with pamphlets containing statements to be made by them in dealing with prospective customers, such as "You can not get seeds of equal fine, fresh quality from the finest farming district in the world such as Lancaster County, Pennsylvania, produces at a smaller price," and in their catalogues and other advertising matter made such statements as "Lancaster County, Pennsylvania, the banner county of the United States is truthfully termed 'The Garden Spot of America' * * * clearly, then, this is the place to buy seeds," "You can bring right into your own garden and plant there the seeds that have helped to produce the bumper crops of Lancaster County," "Sow seeds from the Garden Spot of America and get the big crops," the fact being that the seeds dealt in by it were not grown in Lancaster County, but were purchased by it from seed growers in other parts of the United States;

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With the effect of causing many of the public to become agents for the sale of its products, and to purchase its seeds in reliance upon the aforesaid statements and representations, to the prejudice of competitors dealing in prize winning seeds and competitors truthfully labeling and advertising the seeds dealt in by them:

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

Mr. G. Ed. Rowland for the Commission.

Mr. Charles W. Eaby, of Lancaster, Pa., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, partners doing business under the trade names and styles American Specialty Co. and American Seed Co. and engaged in the sale of snap dress fasteners under the former trade name and style, and of vegetable and flower seeds under the latter, with their place of business in Lancaster, Pa., with offering deceptive inducements to secure the sale of their products and 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 the following acts and practices.

Respondents, as alleged, after securing persons to act as their agents, largely school children, through the offer of a premium to be selected by the agents and thereafter promptly sent in return for the sale of 30 cards of snap dress fasteners at 10 cents per card and the remission of \$3, or of 40 packages of assorted vegetable and flower seeds at 10 cents each and the remission of \$4, when sending the articles to the agent thus secured, "enclose three extra packages of seeds, or cards of snap fasteners, together with a printed slip advising said agent that it is necessary to sell the three extra packages or cards in order to insure the delivery of the premium, post-paid, insured", the agent being further advised "that if the extra goods are not sold and the additional sum of money remitted, respondents will not be responsible for loss of or damage to the premium and will not guarantee delivery of the same," the fact being that the postage and fees for insurance do not amount to the additional 30 cents thus required by respondents of their agents in order to insure delivery of the premiums; thereby misrepresenting the number of packages which it is necessary for the agents to sell to secure a premium and thereby inducing their agents to "order seeds and/or snap fasteners from respondents because of the misrepresentations above set forth and sell said products, relying on the

aforesaid false and misleading statements and representations made by respondents regarding the number of said articles necessary to be sold in order to insure receipt by said agents of a premium."

Respondents, further, as alleged, in their circulars, letters, etc., sent to their agents relating to their said seeds, some of which literature was used by them in soliciting orders, made numerous false and misleading statements and representations, such as that their seeds "are all carefully selected and tested before they are packed," that their seeds have been tested by the departments of agriculture of many of the leading States and have always received the highest recommendations, "best by every test," that they were "fresh, new seeds direct from the grower—sure to grow," the fact being that the seeds in question had not been tested, nor won any prizes nor come direct from the grower, respondents purchasing all their seeds from western growers.

Respondents further, as alleged, supplied their agents with a pamphlet called "Agent's Guide to Success" wherein they instructed them to make such statements to respective customers as "You can not get seeds of equal fine, fresh quality from the finest farming district in the world such as Lancaster County, Pa., produces at a smaller price," sold their seeds in packages upon which appeared the words "Quality seeds from the American Seed Co., Lancaster, Pa., the Garden Spot of America," and in their catalogues and other advertising literature set forth, among others, the following statements: "Lancaster County, Pa., the banner county of the United States is truthfully termed 'The Garden Spot of America,' * * * clearly, then, this is the place to buy seeds"; "You can bring right into your own garden and plant there the seed that have helped to produce the bumper crops of Lancaster County"; "Sow seeds from the Garden Spot of America and get the big crops."

The effect of the foregoing, as alleged, was to mislead purchasers or prospective purchasers into the belief that the seeds sold by respondents are grown in Lancaster County, Pa., which has for a number of years past borne the reputation of being one of the richest agricultural counties in the United States, whereas in truth and in fact none of the seeds sold by respondents are grown in said county, but all of them are purchased by respondents from seed growers in other parts of the United States, the complaint further alleging that respondents' statements and representations, as in this complaint hereinbefore set forth, have the capacity and tendency to and do cause many of the public to become agents for the sale of respondents' products and/or to purchase respondents' said seeds in the belief that said statements and representations are true, when in truth and

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fact, said statements and representations are false, deceptive and misleading as hereinbefore set forth.

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 (38 Stat. 719), the Federal Trade Commission issued and served a complaint upon the respondents, William F. Schied and H. H. Bard, copartners, doing business under the trade names and styles of American Specialty Co. and American Seed Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents have entered their appearance and have made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and conclusion and such order as it may deem proper to enter therein, without the introduction of testimony and presentation of argument, in support of same or in opposition thereto. Thereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents are partners, doing business under the trade names and styles of American Specialty Co. and American Seed Co. with their place of business in the city of Lancaster, State of Pennsylvania. Under the trade name and style, American Specialty Co., they are engaged in the sale of snap dress fasteners, and under the trade name and style of American Seed Co., they are engaged in the sale of vegetable and flower seeds. The method of sale and distribution under both trade names is the same. Respondents purchase lists giving names and addresses of persons all over the United States and send a letter and circular in the name of American Specialty Co. and/or American Seed Co. to the names and addresses on said lists suggesting that the person receiving said letter and circular become an agent of respondents in the sale of their snap dress fasteners and/or vegetable and flower seeds, and offering various premiums which will be given by respondents as

prizes for the sale of their goods. Upon receipt of an answer from one of those solicited agreeing to become an agent to sell their said seeds and/or snap fasteners respondents send 30 cards of snap fasteners or 40 packages of garden seeds to be sold by said agent at 10 cents each. Together with said snap fasteners and/or seeds, respondents send various literature, catalogues, and other advertising matter, including a premium list and pamphlet giving directions for selling, to the agent. All of respondents' business is conducted by mail, and their snap fasteners and seeds are sold throughout the United States in competition with other individuals, partnerships, and corporations engaged in the sale of snap dress fasteners and/or seeds between and among the various States of the United States by mail or otherwise.

PAR. 2. In the course and conduct of their business, under the trade name and style of American Specialty Co., respondents represent that if an agent sells 30 cards of snap dress fasteners at 10 cents per card, he is entitled to a premium of his selection from said premium list upon remitting \$3 to respondents, which premiums will be sent promptly upon receipt of said remittance; and under the trade name, American Seed Co., the agent is informed that he is entitled to a premium of his selection from respondents' premium list upon selling 40 packages of assorted vegetable and flower seeds at 10 cents each, upon remitting \$4 to respondents, which premium will be sent promptly upon receipt of said remittance. These statements are false and misleading because when the respondents send the fasteners and/or packages of seeds to the agent for sale by him, they enclose three extra packages of seeds, or cards of snap fasteners, together with a printed slip advising said agent that it is necessary to sell the three extra packages or cards in order to insure the delivery of the premium, post paid, insured. The said agent is further advised that if the extra goods are not sold and the additional sum of money remitted, respondents will not be responsible for loss of or damage to the premium and will not guarantee delivery of the same. The majority of premiums sent by respondents are transmitted by parcel post through the mails and the postage and fees for insurance do not amount to the additional 30 cents which respondents require their agents to remit in order to insure delivery of the premiums; respondents thereby misrepresent to said agents the number of packages of seeds and/or snap fasteners which it is necessary for the agents to sell before being entitled to a premium. Respondents' said agents, a great number of whom are school children, are thereby induced to and do order seeds and/or snap fasteners from respondents because of the misrepresentations made by respondents regarding the number

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of said fasteners and/or packages of seeds necessary to be sold in order to insure receipt by said agents of a premium.

PAR. 3. Respondents, doing business under the trade name and style, American Seed Co., as aforesaid, send their said agents by mail, circulars, letters, catalogues, and other advertising literature descriptive of and relating to their said seeds, some of which literature is to be used by said agents in soliciting orders and shown by said agents to prospective purchasers in soliciting orders for respondents' seeds, in which said literature respondents cause to be set forth numerous false, deceptive, and misleading statements and representations concerning the nature, quality, and origin of their said seeds. Among the aforesaid false, deceptive, and misleading statements and representations are the following: That said seeds "are all carefully selected and tested before they are packed"; and "that its seeds have been tested by the departments of agriculture of many of the leading States and have always received the highest recommendations"; thereby implying that the respondents select and test their seeds and have them tested by the departments of agriculture of the several States; that their seeds "are prize-winning seeds" and "best by every test"; that their seeds are "fresh, new seeds direct from the grower—sure to grow." In truth and in fact, respondents do not test any of the seeds they sell nor do they have them tested by the departments of agriculture of any States; respondents' seeds have not won any prizes nor do they come to the purchaser direct from the grower, because respondents do not grow any seeds themselves but purchase all they sell from various seed growers in different parts of the United States, principally in the Western States.

PAR. 4. In the course of their aforesaid business, respondents supply their agents with a pamphlet called "Agent's Guide to Success" in which respondents instruct their said salesmen to make the following statement to prospective customers: "You can not get seeds of equal fine, fresh quality from the finest farming district in the world such as Lancaster County, Pa., produces at a smaller price." On the packages in which their seeds are sold, appear the words: "Quality seeds from the American Seed Co., Lancaster, Pa., the Garden Spot of America," and in their catalogues and other advertising literature appear among others the following statements: "Lancaster County, Pa., the banner county of the United States is truthfully termed 'The Garden Spot of America,' * * * clearly, then, this is the place to buy seeds"; "You can bring right into your own garden and plant there the seeds that have helped to produce the bumper crops of Lancaster County"; "Sow seeds from the Garden Spot of America and get the big crops." All of the

aforesaid statements and representations are calculated to and do mislead purchasers or prospective purchasers into the belief that the seeds sold by respondents are grown in Lancaster County, Pa., which has for a number of years past borne the reputation of being one of the richest agricultural counties in the United States, whereas in truth and in fact none of the seeds sold by respondents are grown in said county but all of them are purchased by respondents from seed growers in other parts of the United States, as set forth in paragraph 3 herein.

PAR. 5. All of the aforesaid statements and representations made by respondents in connection with and relating to their aforesaid seeds and also their representations concerning the amount of seeds and/or snap fasteners it is necessary for their agents to sell to entitle them to premiums, as in this complaint hereinbefore set forth, have the capacity and tendency to and do cause many of the public to become agents for the sale of respondents' products and/or to purchase respondents' said seeds in the belief that said statements and representations are true, when in truth and fact, said statements and representations are false, deceptive, and misleading as hereinbefore set forth.

PAR. 6. Many of respondents' competitors grow seeds which they sell and ship in interstate commerce in competition with respondents. Said competitors truthfully label and advertise the seeds which they sell as aforesaid. Among these competitors are many who grow and sell in interstate commerce seeds which actually are prize-winning seeds. The misbranding and misrepresentations by respondents of their seeds, as hereinbefore set forth, is to the prejudice and injury of the competitors of respondents, and trade is diverted from competitors who truthfully label and advertise their seeds, and those whose seeds are prize-winning seeds.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors and are unfair methods of competition in commerce and constitute a violation 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, answer of the respond-

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ents, and the statement of facts agreed upon by counsel for the respondents and counsel for the Commission, filed herein, and the Commission having made its findings as to the facts and 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,"

Now, therefore, it is ordered, That the respondents, William F. Schied and H. H. Bard, copartners, doing business under the names and styles of American Specialty Co. and American Seed Co., their successors, agents, servants, and employees, cease and desist from publishing or circulating any catalogues, letters, circulars, or other advertising literature or descriptive matter in interstate commerce containing false or misleading statements as to—

(1) That number of snap dress fasteners and/or vegetable and flower seeds it is necessary for an agent to sell to entitle him to a premium;

(2) The character, quality, or origin of the seeds sold by them, and more specifically any false or misleading statements concerning:

(a) Tests given their seeds for purity and germination.

(b) Prizes which seeds sold by them have won.

(c) The place where any seeds sold by them are grown.

(d) The source from which they obtain the seeds sold by them.

It is further ordered, That respondents, William F. Schied and H. H. Bard, copartners, doing business under the names and styles of American Specialty Co. and American Seed Co., shall within thirty 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.

Complaint

IN THE MATTER OF

BEN KREEGER, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE OF FEDERAL MAIL ORDER
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 1349—April 12, 1926

SYLLABUS.

Where an individual engaged in the sale by mail of wearing apparel for men, women and children; in advertising said apparel,

- (a) Described dresses composed wholly and chiefly, of cotton, as "wool finished serge", and "canton crêpe genuine silk", respectively;
- (b) Represented that he sold the former at a loss at the quoted price, solely in order to obtain new customers, and that the latter, sold at \$3.98 each, were of the value of fifty dollars, the fact being that he realized a profit on both classes of garments; and
- (c) Described certain ladies coats as trimmed with "genuine astrakhan", "astrakhan" and "astrakhan caracal", and as of the value of fifty dollars, and certain cotton "coat dresses" as "wool finished serge", trimmed with "genuine ermine fur", the fact being that the trimmings in question were much inferior in quality and value to those named, which they imitated in appearance, and that the former garments were sold by him at a profit at \$3.69 each;

With the effect of misleading and deceiving a substantial part of the purchasing public in reference to the nature and value of the aforesaid garments and of inducing the purchase thereof in such mistaken belief, and with the capacity and tendency to divert trade from and otherwise injure competitors who truthfully represented the apparel dealt in by them;

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

Mr. Robert O. Brownell for the Commission.

Mr. John A. Nash, of Chicago, Ill., 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, engaged in the sale by mail of wearing apparel for men, women, and children to purchasers in various States, with place of business in Chicago, with advertising falsely or misleadingly in violation of the provision of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.