

IN THE MATTER OF
HOBART BRADSTREET, INC., KLING-GIBSON COMPANY
AND WILLIAM R. DURGIN

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

Docket 1394. Complaint, Ju'y 20, 1926—Decision, June 30, 1927

Where a corporation engaged in the sale of courses of instruction in gymnastics and physical exercises by mail, including a course designated by it as "Spine Motion"; in advertising said course in well-known periodicals and publications of general circulation throughout the United States (and originally and prior thereto, in conjunction with an advertising agency and its chief copy writer, until the severance of business relations between them by said agency),

- (a) Reproduced two pictures of the same man over the legends, respectively, "Before taking * * * Spine Motion" and "* * * after taking Spine Motion just five weeks," the fact being that the subject of the pictures, taken only a few minutes apart, was a professional model or poser and that the difference in appearance was due to the use of light extremes and retouching, and not to said "Spine Motion";
- (b) Reproduced a picture of a white haired, dignified appearing man of advanced age on whose shoulder leaned a young woman, over the caption "Bride and Groom," together with statements to the effect that the "Groom" in the picture had, through the use of "Spine Motion," advanced in less than a year from a condition in which "he had become a mere spectator in life's race" to one of "almost youthful energy," "on the rise ever since," and to entering into a happy marriage with the youthful "Bride," under 20, therein depicted, the fact being that the pretended "Bride" was a professional model and the pretended "Groom" was not the personage he was therein represented as being, but a jewelry salesman employed at times as a model, who had never purchased or used "Spine Motion";

With the capacity and tendency to deceive the purchasing public, and induce the purchase of the course in question in reliance upon the truth and good faith of the aforesaid advertisements:

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

Mr. Alfred M. Craven for the Commission.

Winston, Strawn & Shaw of Chicago, Ill., for respondent Hobart Bradstreet, Inc.

Kirkland, Patterson & Fleming of Chicago, Ill., and *Mr. Vernon W. Van Fleet*, of Washington, D. C., for respondents Kling-Gibson Co. and William R. Durgin.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission

charged Hobart Bradstreet, Inc., an Illinois corporation engaged in the sale of courses and methods of gymnastics under the name and designation "SPINE MOTION," and "SOMATIC MOTION," and in advertising the same in well-known magazines or publications such as "Physical Culture," "World's Work" and other publications of general circulation among the several States, respondent Kling-Gibson Co., also an Illinois corporation, engaged in the advertising business, and respondent Durgin, said last-named corporation's chief copywriter, all with principal office and place of business in Chicago, with conspiring and agreeing together to deceive and defraud the public and wrongfully secure purchasers for said courses and methods, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, pursuant to the aforesaid conspiracy devised and circulated false and misleading advertising matter, including the following:

Falsely representing Hobart Bradstreet as the inventor of said "Spine Motion," representing said method as a strange one and representing it as a cause for wonder "that such a basic secret of youth was so long in the discovery," together with other similar statements and representations, the fact being that the course or method was neither strange nor a recent discovery and did not possess unusual merits and was not a basic secret of youth;

Portraying two pictures of the same man, captioning one "BEFORE taking," etc., and the other "AFTER— * * * just five weeks," with the statement "Hobart Bradstreet 65 years young," with the intent and effect of misleading and deceiving purchasers and others among the general public in that the pictures were taken only a few minutes apart, the subject was a clothing salesman who sat as a model for illustration of men's suits, etc., was not Hobart Bradstreet, was 53 years old instead of 65, had never heard of spine motion, and was ignorant of the use to be made of his pictures, and that the difference therein "was due to the use of light extremes and retouching in the photographic art and not to Spine Motion;" and

Displaying a two-column picture "of a white haired dignified appearing man of advanced age on whose shoulder a petite appearing, teen age female smilingly leans," with the title "Bride and Groom," the fact being that the bride was a professional model 18 years old, the so-called groom was a jewelry salesman employed at times as a model, was not Colonel Bemis, had never heard of Hobart Bradstreet or spine motion and had a spine of normal length.

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Among various false and misleading statements which appeared in connection with the aforesaid picture were the following:

"A man who is almost youthful at 58 because he keeps his spine one-half inch longer than it would ordinarily measure"; "December and May. Once I would have condemned any mating of age with youth. Yet a month ago I was best man for my old friend, Col. Bemis—and 'old' friend he is, for the Colonel is in his fifty-eighth year—and his petite bride who then lacked a few days of being twenty. There isn't a happier couple in the State. But I wonder what others would think if they had seen Col. Bemis as I saw him less than a year ago—before he had taken the big brace that two physicians said a man of his age could never take! Bemis had let-up and slowed-down; he had become a mere spectator in life's race when something happened. The remarkable means by which this man regained an almost youthful energy should interest any man who has lost even part of his normal capacity for work and play. This is the story: Did you ever hear of Spine Motion? Neither did I until two years ago. Neither did Col. Bemis until less than a year ago. But within a month spine motion moved him up several notches physically and his energies have been on the rise ever since. * * * Spine motion is absolutely all that Colonel Bemis used to recover the energies nature had provided so liberally."

According to the complaint, "the said advertisements, statements and representations described in this complaint, as well as divers other advertisements, statements and representations, were devised, printed and distributed among the several States in pursuance of the unlawful conspiracy of the respondents to affect and influence interstate trade and commerce. Such advertisements, statements and representations were intended to and did affect and influence the sale among the several States of courses of gymnastics and methods of gymnastic exercises. Such advertisements, statements and representations were intended to and did mislead and deceive purchasers among the several States of courses and methods of gymnastic exercises, and such advertisements, statements and representations were false and misleading as set out in this complaint, and in divers other respects. The acts of the respondents and each of them, as set out in this complaint, constituted unfair methods of competition in commerce within the meaning of the act of Congress hereinabove mentioned."

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, entitled "An act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents, Hobart Bradstreet, Inc., Kling-Gibson Co. and William R. Durgin, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

The respondents having entered their appearance and filed their answers herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondents before John W. Addison, an examiner of the Federal Trade Commission theretofore duly appointed; whereupon 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. Respondent Hobart Bradstreet, Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at Chicago, Ill. It is now, and since its incorporation in 1922, has been, engaged in selling courses of instruction in gymnastics and physical exercises and distributing same in interstate commerce from Chicago, Ill., through the United States mail, to the purchasers thereof, in all of the States of the United States.

Said respondent is, and has been since its incorporation, in competition with many other individuals and corporations likewise engaged.

PAR. 2. Among the courses referred to in paragraph 1 hereof is one called by said respondent "Spine Motion" which consists of ten pictures, illustrating five physical exercises, and certain instructions relative thereto. This course has been sold and distributed by said respondent since its incorporation, and its sale and distribution constitutes the principal portion of respondent's business.

PAR. 3. Respondent Hobart Bradstreet, Inc., since July, 1922, and up to the present time, has advertised "Spine Motion" in such magazines as Physical Culture, Review of Reviews, Sample Case, Atlantic Monthly, and other publications of general circulation throughout the United States.

PAR. 4. One of the advertisements of the respondent Hobart Bradstreet, Inc., which was given wide circulation by means of the publications mentioned in paragraph 3 hereof was one which contained two pictures of the same man, underneath one of which pictures were the words "Before taking Bradstreet's Spine Motion." Under the

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other picture appeared the words "After—the same man after taking Spine Motion just five weeks." Said advertisement and representation was false and misleading in the following particulars: The pictures were pictures of the same man taken a few minutes apart and not five weeks apart. The subject of both pictures was a clothing salesman who was also a professional model or poser for illustrations and pictures, and the difference in his appearance as shown in said pictures was due to the use of light extremes and retouching in the photographic art and not to Spine Motion.

PAR. 5. Another of the advertisements of respondent commonly inserted in the magazines and publications referred to in paragraph 2 hereof contained a two-column picture of a white-haired, dignified appearing man of advanced age on whose shoulder leaned a young woman. Underneath this picture appeared the title "Bride and Groom," after which followed statements concerning the "Bride and Groom" as follows:

A man who is almost youthful at 58 because he keeps his spine one-half inch longer than it would ordinarily measure; December and May. Once I would have condemned any mating of age with youth. Yet a month ago I was best man for my old friend, Col. Bemis—and "old" friend he is, for the Colonel is in his fifty-eighth year—and his petite bride who then lacked a few days of being twenty. There isn't a happier couple in the State. But I wonder what others would think if they had seen Col. Bemis as I saw him less than a year ago—before he had taken the big brace that two physicians said a man of his age could never take! Bemis had let-up and slowed-down; he had become a mere spectator in life's race when something happened. The remarkable means by which this man regained an almost youthful energy should interest any man who has lost even part of his normal capacity for work and play. This is the story: Did you ever hear of Spine Motion? Neither did I until two years ago. Neither did Col. Bemis until less than a year ago. But within a month Spine Motion moved him up several notches physically and his energies have been on the rise ever since. * * * Spine Motion is absolutely all that Col. Bemis used to recover the energies nature had provided so liberally.

The said advertisement was false and misleading. The "Bride" in the picture was not a bride but a professional model. The "Groom" in the picture was not a groom and was not Col. Bemis, but was a jewelry salesman employed at times as a model. He had never purchased or used Spine Motion.

PAR. 6. The advertisements mentioned in paragraphs 4 and 5 hereof were false and misleading and each of them had the capacity and tendency to deceive the purchasing public and induce the purchasing public to purchase respondent's course in reliance upon the truth and good faith of such advertisement.

PAR. 7. The respondent Kling-Gibson Co. is a corporation organized under the laws of the State of Illinois with its principal

place of business at Chicago, Ill., and is engaged in the business of an advertising agency which includes the business of writing advertisements and placing them in circulation. The respondent William R. Durgin is its chief copy writer. In July, 1922, the respondent Hobart Bradstreet, Inc., employed the said respondent Kling-Gibson Co. as its advertising agent, and in such capacity said Kling-Gibson Co., acting through its chief copy writer, the respondent Durgin, wrote and prepared for publication the advertisements mentioned in paragraphs 4 and 5 hereof, and said respondent Kling-Gibson Co. thereafter, with the approval of the respondent Hobart Bradstreet, Inc., placed such advertisements in the various publications and magazines referred to in paragraph 3 hereof. The respondent Kling-Gibson Co. in December, 1924, terminated all its business relations with respondent Hobart Bradstreet, Inc., and since said last mentioned date has not performed any work or services in connection with the advertising of respondent Hobart Bradstreet, Inc. The cessation of the business relations between respondents Hobart Bradstreet, Inc., and Kling-Gibson Co. antedates the issuance of the complaint herein by a period of over 18 months.

CONCLUSION

The practices of the said respondent Hobart Bradstreet, Inc., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's 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, the answers of the respondents and the briefs of counsel, and the Commission having made its findings as to the facts and conclusion that respondent Hobart Bradstreet, Inc., 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 now ordered, That this proceeding as to the respondents Kling-Gibson Co. and William R. Durgin be and the same hereby is dismissed for the reason that said respondents long prior to the issuance of the complaint herein had ceased doing the things charged against them in the complaint.

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It is further ordered, That respondent Hobart Bradstreet, Inc., its officers, agents, representatives, servants, and employees do cease and desist from—

(1) Circulating or causing to be circulated the advertisements mentioned in paragraphs 4 and 5 of the findings as to the facts, or any other advertisement of like character.

(2) Making in its advertisements or otherwise any untruthful or misleading statement or representation concerning any of its courses of instruction.

It is further ordered, That respondent Hobart Bradstreet, Inc., shall within 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.

By the Commission: Commissioner Nugent dissenting from the order of dismissal of the complaint against Kling-Gibson Co. and William R. Durgin.

Complaint

IN THE MATTER OF
HANFORD F. SMITH

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

Docket 1456. Complaint, Apr. 19, 1927—Decision, June 30, 1927

Where an individual engaged in conducting a correspondence school from his residence without the assistance or services of any other person; in advertising and describing said school in letters, catalogues, etc., sent to prospective pupils, and through oral statements by his agents,

- (a) Falsely represented that (1) his courses of study were offered by "Princeton University," and, in some instances, by "Princeton N. I. University", setting forth the aforesaid names upon his envelopes, letterheads and other stationery, together with a list of purported professors and instructors on the faculty thereof, and the various branches of learning taught by them, and, separately, a list of the arts, sciences, trades and branches of learning purportedly offered to pupils by such fictitious educational institution; and (2) that such institution maintained and conducted sundry departments in which were taught, respectively, various courses of instruction; (3) was manned by a large and properly qualified faculty of professors and instructors who were learned and skilled in the teaching of said courses; and (4) owned and possessed sundry buildings and grounds in which its educational activities were conducted and carried on; and
- (b) Falsely represented that such fictitious institution would confer appropriate degrees and diplomas upon pupils taking the various courses, and, in accordance with such representation sent pupils a pretended diploma purporting upon its face to be the official diploma thereof;

With the effect of causing many of the public to take and purchase his courses of instruction, in reliance upon the truth of such statements and representations, and of diverting business, from and otherwise prejudicing competitors who did not falsely represent the nature and character of their business and professional organization, and of the courses offered by them;

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

Mr. Robert O. Brownell for the Commission.

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 individual engaged in teaching various arts, sciences, trades and branches of knowledge to persons in various States, by mail, and from his personal habitation in Elkhart, Ind., and with-