

Complaint

12 F. T. C.

IN THE MATTER OF

ABBOTT E. KAY AND R. T. NELSON, AS INDIVIDUALS
AND AS COPARTNERS, DOING BUSINESS UNDER THE
NAME OF AABAN RADIUM COMPANYCOMPLAINT (SYNOPSIS), MODIFIED FINDINGS AND ORDER IN REGARD TO THE
ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT.
26, 1914*Docket 943. Complaint, Dec. 14, 1922—Modified Findings and Order, June 21,
1928¹*

Where two individuals engaged under a trade name including the word "radium" in the sale of a substance which they advertised and sold as radium but which showed no radio activity upon being subjected to the usual and accepted tests and was not the genuine and far more expensive radium; with the effect of deceiving and misleading the public as to the true character thereof and inducing its purchase as and for radium or containing radium or possessing radio active properties as known to the scientific or commercial world, and with the capacity and tendency so to do: Held, that such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. J. T. Clark 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 Abbott E. Kay, and respondent R. T. Nelson, engaged individually and as partners, under the name Aaban Radium Co., in the manufacture and sale of a product which purported to contain, but contained no radium, 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.

Respondents, as charged, engaged as above set forth, advertised in magazines and other periodicals of general circulation throughout the United States as well as by circulars and letters to prospective customers that the product dealt in by them as above set forth, contains radium, with the tendency to mislead and deceive the purchasing public into believing the same to be genuine radium; all to the prejudice of the public and of respondents' competitors.

Upon the foregoing complaint, the Commission made the following REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND MODIFIED ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a com-

¹ Original findings and order Nov. 10, 1923. Sec. 7, F. T. C. at p. 16 et seq.

plaint upon the respondents, Abbott E. Kay and R. T. Nelson, as individuals and as copartners doing business under the firm name of Aaban Radium Co., 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 so-called radium and held themselves out to the public as partners acting under the name and style of Aaban Radium Co. 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

Findings

12 F. T. C.

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 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 photographic test; that both the said tests showed that said product had no radioactivity 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 radioactivity 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 product sold by respondent or either of them, as above set forth, is not radium and contains no radium or radio-active properties, as known to the scientific or commercial world.

PAR. 9. The representations by respondents, or either of them, as set forth in the preceding paragraphs have the capacity to and do deceive and mislead the public as to the true character of the product

so represented by respondents, and cause and induce purchasers thereof in the belief that it is radium or contains radium, or possesses radio-active properties, as known to the scientific or commercial world.

PAR. 10. The respondent, Abbott E. Kay, claimed that he produced the substance claimed by him to be radium in a laboratory located in his own house in the city of Chicago, when according to his 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".

MODIFIED 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 copartners, doing business under the name of Aaban Radium Co., 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 or as containing radium, or possessing radio-active properties, the product heretofore sold and advertised as and for radium by respondents.

2. Applying, employing, or using descriptively the word "radium" or any compound thereof implying radio-activity in connection with the sale, offering for sale, or advertising of the product heretofore sold and advertised as and for radium by respondents.

Order

12 F. T. C.

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 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.

Syllabus

IN THE MATTER OF

SIMON B. BLUESTINE AND SAMUEL L. BLUESTINE,
PARTNERS, DOING BUSINESS UNDER THE TRADE
NAMES AND STYLES NUSTILE HOSIERY MILLS, AND
NUSTILE HOSIERY COMPANY

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

Docket 1351. Complaint, Oct. 22, 1925—Decision, June 30, 1928

Where a firm engaged in the sale of hosiery through salesmen to the consuming public in the different States, and neither owning nor operating any hosiery factory or mills, but purchasing the hosiery dealt in by them from others and reselling the same to the public in due course of commerce among the States,

- (a) Set forth their trade name Nustile Hosiery Mills in their advertisements in trade publications of general circulation, soliciting persons to sell their hosiery by house-to-house canvass, and represented themselves to customers and prospective customers, in circulars, circular letters, pamphlets and other advertising matter, as hosiery manufacturers, enabling the public by reason of their alleged direct sales from manufacturer to consumer to purchase better hosiery for less money, directing their salesmen so to represent them to customers and prospective customers, using their aforesaid trade name in such circulars, letters, and pamphlets, and setting forth therein pictorial representations of a five-story mill or factory with their aforesaid trade name across the front thereof, and of various rooms labeled to represent rooms of their purported factory, and making statements relative to the alleged advantages resulting in quality, value, delivery, uniformity, and satisfaction of customers, through their pretended direct selling, and through their alleged business policies, such as "we have merited an institution which has no counterpart in catering to the direct selling hosiery field"; and
- (b) Represented hosiery dealt in by them, through pamphlets and other advertising matter, as "Silk", "Pure Thread Silk" and "Japanese Silk", the fact being that the tops thereof were cotton and the legs contained but 13.1 per cent silk, with the balance rayon;

With the capacity and tendency to mislead and deceive the purchasing public respectively into buying the hosiery last above described as hosiery composed entirely of silk, and into purchasing hosiery from them as from the manufacturers thereof, selling their product directly to the users at prices substantially below those prevailing for a comparable product sold in the usual course of trade from manufacturer to jobber to retailer to public, to the injury of manufacturers selling directly to the public and of dealers purchasing from the manufacturer and reselling to the public:

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

Mr. W. T. Chantland for the Commission.

Mr. Reuben Levi, of Philadelphia, Pa., for respondents.