

Complaint

IN THE MATTER OF
THE ANITA INSTITUTE

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

Docket 1690. Complaint, Aug. 29, 1929—Decision, Feb. 1, 1930

Where a corporation engaged in the manufacture and sale of so-called "Nose Adjusters"; in advertising and describing the same in newspapers, magazines, periodicals and other publications of general circulation in the United States, and in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed or printed matter,

Stated, represented, and promised that said device would give the purchaser a perfect looking nose, correcting all defects excepting those resulting from injuries requiring surgical operations, the fact being that the device could not change the shape of any bone or bony structure, or make any changes in shape or appearance that can only thus be made;

With the tendency and capacity to mislead and deceive the public and prospective purchasers into believing that purchasers and users would receive the full benefits thus set forth and to injuriously affect the public, prospective purchasers, and competitors by inducing purchase of said article for the sake of benefits that can not be realized, and thereby divert purchasers from competitors; to their prejudice and that of the public:

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

Mr. Edward L. Smith for the Commission.

Herrigel, Lindabury & Herrigel, of Newark, N. J., 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, a New Jersey corporation engaged in the manufacture of so-called Anita Nose Adjusters and in the sale of said devices to purchasers among the various States and Territories and with principal office and place of business in Newark, 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.

Respondent, as charged, engaged as above set forth, in advertising its said devices in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter, falsely and misleadingly represents that the device in question, used in accordance with in-

structions, will, in the case of any purchaser, reshape the nose to beautiful proportions while the purchaser sleeps, is safe and comfortable, with speedy permanent results guaranteed, will transform a poorly shaped into a well-shaped nose in from one to six weeks, no matter how irregular the fleshly contour thereof, accomplishing its results by raising, compressing, or distributing the unshapely flesh, filling in the hollows, and thereby effecting a normal formation, and making prominent nasal bones unapparent or less prominent; that said device is a result of inspiration followed by years of study in physiological research, is recognized by medical authorities as being the simplest, most scientific, and most effective method of correcting almost any nasal irregularity, easily, painlessly, and with lasting result, and that until the invention of such device it was necessary to resort to expense and painful operations in order to overcome the slightest deformity of this character; the facts being that the utmost benefits which can possibly accrue from the the use thereof is some slight temporary change in appearance, for a very few out of any group of 100 users, and that for the vast majority of all users and for all except very small classes of mild forms of defects, "said statements, representations, and promises are false, deceptive and misleading, and the use of said devices can not cause and does not cause any real, substantial, or permanent improvement in the condition, appearance, or looks of the nose; and when in truth and in fact the use of the said devices will not bring about the correction of deformities without resort to operations."

The use of such trade practices and methods of competition, namely, the making and publication of such false, deceptive, and misleading statements, representations, and promises, as charged, has a tendency and capacity to and will probably mislead and deceive the public and prospective purchasers into the erroneous belief that such statements, etc., are true, that purchasers and users of the device will, through use thereof, permanently transform their defective noses into perfectly shaped noses with resulting great facial improvement, and that use of such devices will make resort to surgical operations to overcome nasal deformities, unnecessary for the purchasers and further, use of said trade practices and methods, as charged, has the tendency and capacity to and probably will injuriously affect the public, prospective purchasers and competitors by inducing purchase of said device on account of such false, deceptive, and misleading statements, etc., for the sake of the supposed benefits which can not in fact be realized, to induce purchase thereof in preference to competitive products in order to

receive such supposed benefits, and to divert from competitors, prospective purchasers through the making and publication of the aforesaid false, deceptive, and misleading statements, representations and promises; all to the prejudice of the public and of respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

The above case coming on for consideration before the Commission on a written petition this day filed by respondent for leave to withdraw its answer heretofore filed to the complaint herein and for further leave to file in lieu thereof the certain amended answer to such complaint, and the Commission having inspected such petition and proposed amended answer, and having duly considered the same,

It is ordered, That said petition be, and hereby is, granted, and said answer heretofore filed to the complaint herein be, and hereby is, withdrawn.

It is further ordered, That respondent be permitted to file said proposed amended answer to such complaint and that the same be, and hereby is, noted as so filed.

And now the Commission having duly considered the said amended answer, together with the admissions of fact set forth therein, and also the express consent incorporated therein that the Commission may make, enter, issue, and serve upon respondent an order to cease and desist from the unfair methods of competition charged in the complaint herein; the Commission accepts such admissions and consent with all their force and effect under the rules of the Commission.

And now this case coming on for final determination before the Commission, upon the complaint herein, and the amended answer thereto, and the Commission being sufficiently advised in the premises, is of the opinion that the method of competition and the acts, policy, and practices of respondent, The Anita Institute, as alleged in the complaint and admitted by the amended answer to such complaint, are in violation of, and prohibited by, the Federal Trade Commission Act. Wherefore, the Commission now makes this its report in writing as to said respondent, stating herein its findings as to the facts and its conclusion thereon. The Commission finds the facts as so charged and admitted to be as follows:

Findings

13 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Anita Institute, is a corporation organized, existing, and doing business since February 7, 1923, under the laws of the State of New Jersey, with its principal office and place of business in Newark in said State. The name under which the company was organized, viz, The Anita Company, was changed on June 19, 1928, to the present name of the company, to wit, The Anita Institute. It now is and ever since its organization has been engaged in the business of manufacturing and selling between and among the various States and Territories of the United States and the District of Columbia certain devices which it calls Anita Nose Adjusters, causing the said devices, when so sold, to be transported from its place of business in Newark, N. J., to purchasers located in States other than the State of New Jersey. In the course and conduct of its business respondent has been and now is in competition with other corporations and with partnerships and individuals engaged in the manufacture and sale of competitive articles manufactured for the same or similar purposes and uses as those for which the said devices of the respondent are manufactured and sold.

PAR. 2. In its said business and for the purpose of inducing prospective purchasers to enter into contracts for the purchase of said devices offered for sale and sold by respondent and to pay the purchase price thereof, respondent causes advertisements and descriptions of such device to be inserted and made accessible to the public and to prospective purchasers, in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter.

In such advertisements and descriptions, respondent makes the following statements, representations, and promises, to wit:

That the said patented so-called orthopedic device so being offered for sale and sold by respondent, the same being referred to and known by and under the name of "Anita Nose Adjuster", is, and by use in accordance with instructions given by respondent may and will in the case of any purchaser become effective to give to such purchaser a perfect-looking nose; that such device when so used, corrects all ill-shaped noses, except such as may result from injury and necessitating surgical operations.

When in truth and in fact the said orthopedic device produced and offered for sale and sold by respondent, to wit: The "Anita Nose Adjuster", can not be effectively used to change the shape of any bone or bony structure of the nose or to make any change or

changes in the shape or appearance of the nose that can be made only by changing the shape of a bone or bony structure thereof.

PAR. 3. The use by respondent of said trade practice and method of competition, to wit: The making and publication of said false, deceptive, and misleading statements, representations, and promises, as above set forth, has the tendency and capacity to mislead and deceive the public and prospective purchasers, and will probably mislead and deceive the public and prospective purchasers, into the erroneous belief:

1. That such statements, representations, and promises are true.
2. That purchasers and users of said nose-shapers will be enabled thereby to, and thereby will, receive the full benefits so set forth in such extravagant, inaccurate, false, and misleading statements and representations.

PAR. 4. The use by respondent of said trade practice or method of competition, to wit: The making and publication of said extravagant, deceptive, and misleading statements, representations, and promises as above set forth, has the tendency and capacity to, and probably will, injuriously affect the public, prospective purchasers and the competitors of respondent in the particulars as follows:

1. To induce the public and prospective purchasers to purchase and pay for said article or articles solely on account of said extravagant, deceptive, and misleading statements, representations, and promises, and for the sake of the said pretended benefits that can not in fact be realized by such purchasers.
2. To divert from competitors of respondent prospective purchasers, solely by the making and publication of such extravagant, deceptive, and misleading statements, representations, and promises.

PAR. 5. Such acts and practices of the respondent are all to the prejudice of the public and of competitors of respondent, 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.

CONCLUSION

The respondent, The Anita Institute, by reason of the facts set out in the foregoing findings, has been and is using unfair methods of competition in commerce in violation of the provisions contained in 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.

Order

13 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the amended answer of respondent, and the admissions of fact incorporated in such amended answer, together with the consent therein set forth for the issuance and service of an order to cease and desist, 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", therefore,

It is now ordered, That respondent, The Anita Institute, its agents, representatives, and employees, cease and desist from stating or representing by written or printed statements or representations, with or without pictorial representations accompanying the same, published in newspapers or other publications, or upon labels, cartons, letterheads, or other literature, by oral statements, or otherwise, in aid of offering for sale or selling in interstate or foreign commerce, that its certain orthopedic device produced and offered for sale and sold by respondent, to wit: A certain "nose-shaper" called the Anita Nose Adjuster can be effectively used to change the shape of any bone or bony structure of the nose or to make any change or changes in the shape or appearance of the nose that can be made only by changing the shape of a bone or bony structure thereof.

It is further ordered, That the said respondent, within 60 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

MARGARET HILGERS, DOING BUSINESS UNDER THE
TRADE NAME OF M. TRILETY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 1572. Complaint, Feb. 25, 1929—Decision, Feb. 3, 1930

Where an individual engaged in the sale of nose shapers, ear shapers, and other orthopedic devices, together with certain soaps, and other toilet articles; in advertising and describing the same, together with pictorial representations, in newspapers and magazines, periodicals and other publications of general circulation in the United States and in the several parts thereof, and in order and other blanks, catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter,

- (a) Stated, represented, and promised that a certain patented "nose-shaper" would give the purchaser a perfect-looking nose, correcting all ill-shaped noses except such as resulted from injury and required surgical operations, the fact being that said device could not be used effectively to change the shape of any bone or bony structure, or to make any changes in shape or appearance that can only thus be made;
- (b) Stated, represented, and promised that its "Universal Earshaping treatment for correcting prominent or outstanding ears", would, without slightest pain or inconvenience, cause such "cauliflower or outstanding" ears permanently to assume a position close to the head and completely and permanently correct the defect, the fact being that said treatment could not be effectively used to cause outstanding ears continually to assume a position near the head otherwise than by the continuous application and use of its so-called "Oro";

With the tendency and capacity to mislead and deceive the public and prospective purchasers into believing that buyers and users of said device and treatment would receive the full benefits set forth, and to injuriously affect the public, prospective purchasers and competitors through thereby inducing purchase thereof and thus diverting purchasers from competitors; to their prejudice and that of the public:

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

Mr. Martin A. Morrison for the Commission.

Green, Blakeslee & Anderson, of Binghamton, N. Y., 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, an individual engaged in the sale of certain nose-shapers and other orthopedic devices, and ear-shapers, together with certain