

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

Complaint

13 F. T. C.

soaps, cold cream, and other toilet articles, with office and principal place of business in Binghamton, N. Y., 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, represents in her advertisements that the patented so-called orthopedic device, referred to as a "nose-shaper" will be effective in the case of any purchaser in giving such purchaser a perfect-looking nose, that such device "corrects all ill-shaped noses, quickly, painlessly, permanently, and comfortably at the home of such purchaser; and that a purchaser who has a hump, hook, low, flat, broad, or pug nose, or a long, pointed, crushed, or broken nose, may and will by the use of said device, to wit, said nose-shaper, according to such directions so given by respondent, permanently transform such nose in such way and to such degree as to have thereafter great facial improvement and a perfect-looking nose"; the facts being that the most that can be claimed is slight temporary change of appearance of the nose in relatively very few cases and that in the case of a vast majority of users of the device and in relation to most defects, the statements are false, deceptive, and misleading, and that the use of the device can cause no substantial or permanent improvement in the condition or appearance thereof.

Respondent further, as charged, in advertising her "Universal Earshaping treatment for correcting prominent or outstanding ears", alleged to be caused by the lack of a certain "fold" found in perfectly formed ears, said treatment involving the use of a material named "Oro", falsely represents that through the use of said "Oro", the ingredients of which will not irritate the most sensitive skin, "cauliflower or outstanding ears" will be caused permanently to assume a position close to the head and the defect will be completely and permanently cured.

The making and publication of such false and deceptive and misleading statements, representations, and promises by respondent, as alleged, has the tendency and capacity to and probably will mislead and deceive the public and prospective purchasers into believing the aforesaid statements, etc., to be true, and injuriously affect said public and purchasers and respondent's competitors through inducing the purchase of said articles in reliance upon the truth of such statements, etc., and in preference to competitive articles by reason of said false statements, etc., and thereby to divert prospective purchasers from respondent's competitors; all to the prejudice of the public and of such 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, Margaret Hilgers, doing business under the trade name of "M. Trilety", 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 AS TO THE FACTS

PARAGRAPH 1. Respondent, Margaret Hilgers, is engaged in the certain commercial enterprise and business that is hereinafter set forth, having and maintaining her office and principal place of business in the city of Binghamton, in the State of New York. Respond-

Findings

13 F. T. C.

ent carries on her said business under the trade name of "M. Trilety", and is known to the public and to her patrons and prospective patrons by that name.

PAR. 2. Respondent, Margaret Hilgers, so doing business under said trade name of "M. Trilety", at her said office and principal place of business is engaged in the business of offering for sale and selling, and furnishing and delivering to purchasers thereof, certain nose-shapers and other orthopedic devices and certain ear-shapers, together with certain soaps, cold cream, and other toilet articles, to persons hereinafter referred to as purchasers, such purchasers residing and being and remaining at various places in the several States of the United States.

PAR. 3. Respondent, when a purchaser enters into a contract for the purchase of any article or articles, undertakes to sell and deliver such article or thing to such purchaser, through the United States mails, or otherwise.

Thereafter, in pursuance of such contract, respondent furnishes and causes to be transported from her said place of business, or from some other place of business maintained by respondent for that purpose, through the United States mails, or otherwise, into and through the several States of the United States, and to be delivered to such purchaser at the place of residence of such purchaser the article or articles so sold to such purchaser.

PAR. 4. In all of her said business, and in the several parts thereof, and in the procurement of purchasers of said articles so being offered for sale and sold by respondent, respondent is in competition with other persons, firms, associations, and corporations who are engaged in offering for sale and selling to the public like or competitive articles for the same or similar purposes and uses, and in advertising for and procuring purchasers thereof, and agreeing to transport and deliver such competitive or similar articles to the several purchasers thereof by the United States mails, or otherwise, into and through the several States of the United States to the respective places of residence of such several purchasers, such purchasers residing, being and remaining at various places in and throughout the several States of the United States.

PAR. 5. At various points in and throughout the several States of the United States the competitors of respondent referred to in paragraph 4 of these findings, have been and are engaged in said competitive activities and business, as described in said paragraph 4, and are offering for sale and selling, furnishing, transporting through the United States mails, or otherwise, and delivering such articles from their respective places of business in the several States of the United States into and through the several States of the United

States to the respective places of residence of the several purchasers of such articles in and throughout the several States of the United States.

PAR. 6. In all her said business and for the purpose of inducing prospective purchasers to enter into contracts for the purchase of such article or articles so being offered for sale and sold by respondent, and to pay the purchase price thereof, respondent causes advertisements and descriptions of such articles 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 the several parts thereof, and in order blanks and other blanks, in catalogues, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter.

In all such advertisements and descriptions and in all said written, mimeographed, or printed matter, together with pictorial representations incorporated therein, respondent makes the statements, representations, and promises thereafter referred to, as follows:

1. That a certain patented so-called orthopedic device, which is one of the said articles so being offered for sale, and sold by respondent, the same being referred to and known by and under the name of nose-shaper, 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.

In truth and in fact the certain orthopedic device produced and offered for sale and sold by respondent, to wit: A certain nose-shaper 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.

2. That one of the articles so being offered for sale and sold by respondent is the Universal Earshaping treatment for correcting prominent or outstanding ears; that such defect of ear, commonly known as cauliflower or outstanding ear, is caused by the lack in such ears of a certain "fold" which is found in perfectly formed ears and which is a continuation of the large ear cartilage; that such treatment involves the use of a certain material sold under the name of Oro, the ingredients of which will not irritate the most delicate skin, and by the use of which, without the slightest pain or inconvenience, cauliflower or outstanding ears, may and will be caused permanently to assume a position close to the head, and such defect of said ears to be completely and permanently corrected.

Findings

13 F. T. C.

In truth and in fact the certain Universal Earshaping treatment for correcting prominent or outstanding ears or cauliflower or outstanding ears, offered for sale and sold by the respondent under the name of Oro, can not be effectively used to cause ears that are outstanding from the head continuously to assume a position near to the head of the user of said treatment, otherwise than by the continuous application and use of said Oro for that purpose.

PAR. 7. 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.
3. That purchasers and users of said Universal Earshaping treatment for correcting prominent or outstanding ears and of said material, designated as Oro, will be enabled thereby to, and thereby will, correct said alleged defect in their prominent or outstanding ears, to wit: The absence of said fold found in normal or well-shaped ears, and will cause such prominent or outstanding ears permanently to assume a position close to the head, and such quality or feature of being prominent or outstanding to be completely and permanently eradicated from such ears.

PAR. 8. 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.

Order

PAR. 9. 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, Margaret Hilgers, doing business under the trade name of "M. Trilety", 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 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, Margaret Hilgers doing business under the trade name of "M. Trilety", her 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, the products hereinafter designated or referred to:

1. That the certain orthopedic device produced and offered for sale and sold by respondent, to wit: A certain nose-shaper 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.

Order

13 F. T. C.

2. That the certain Universal Earshaping treatment for correcting prominent or outstanding ears or cauliflower or outstanding ears, offered for sale and sold by the respondent under the name of Oro, can be effectively used to cause ears that are outstanding from the head continuously to assume a position near to the head of the user of said treatment, otherwise than by the continuous application and use of said Oro for that purpose.

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

UNIVERSAL LOCK-TIP CO. ET AL.

199

Syllabus