

Complaint

IN THE MATTER OF
BOAL'S ROLLS CORPORATIONCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1712. Complaint, Oct. 23, 1929—Decision, June 30, 1930*

Where a corporation engaged in the manufacture and sale of medicinal products, including a laxative, qualities of which were due to the presence therein of phenolphthalein, cascara and senna and not to any fruit ingredient and which was not a preventative for influenza and constipation; made such statements in the advertisements thereof as "to prevent constipation and the flu", and described and labeled the same as a "Delicious fruit laxative composed of figs and other fruit" or "A luscious laxative, real fruit medicated for constipation", together with an illustration of a bowl of various kinds of fruits; with the capacity and tendency to mislead and deceive the purchasing public into believing said product to be a natural fruit laxative and a preventative for constipation and influenza:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Mr. Edward S. Rogers, of New York City, 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 York corporation engaged in the manufacture, advertisement, and sale of medicinal products in interstate commerce, and with principal place of business in Chicago, with advertising falsely or misleadingly as to qualities and composition of product, and misbranding or mislabeling in regard thereto, 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 product in newspapers and other publications made such statements as "Why experiment? Tonight take a Boal's Roll. To prevent constipation and the flu", and in a circular sent out with samples of said product described the same as a "Delicious fruit laxative composed of figs and other fruit" and labeled the containers thereof with depictions of a bowl of various fruits other than figs and raisins, together with the statement "Boal's Rolls. A

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luscious laxative real fruit medicated for constipation", the facts being that the laxative properties of the product in question were not due to "a fruit ingredient but to the presence therein of phenolphthalein, cascara, and senna" and that "said product" was not "a preventive for constipation and influenza."

The use of such phrase and illustrations, in connection with or as designating and describing the product concerned, has the capacity and tendency, as alleged, "to mislead and deceive the purchasing public into the belief that its said product so represented, designated, and described is a natural fruit laxative, a preventive for constipation and influenza", and said acts and things as charged, "are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5".

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, the Federal Trade Commission issued and served a complaint upon the respondent, Boal's Rolls Corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent, having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondent before a trial examiner of the Commission duly appointed thereto, and said trial examiner having filed his findings of facts herein and counsel for the Commission having filed his exceptions thereto.

Thereupon this proceeding came on for consideration on the record herein, and brief of counsel for the Commission having been filed, and the filing of briefs and oral arguments having been waived by counsel for the respondent, and the Commission having duly considered the matter and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Boal's Rolls Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Chicago in the State of Illinois. It is now and for more than one year last past has been engaged in the business of manufacturing, advertising, and selling

in interstate commerce medicinal products under the trade name of Boal's Rolls. It causes said product when sold to be shipped or transported from its principal place of business located in the State of Illinois to retail dealers or ultimate consumers located in a State or States of the United States other than the State of Illinois. In the course and conduct of its business Boal's Rolls Corporation was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. The respondent in the course and conduct of its business as set out in paragraph 1 hereof in soliciting the sale of and selling its products in interstate commerce causes advertisements to be inserted in newspapers having a circulation between and among various States of the United States, which said advertisements contained among other things the following language:

WHY EXPERIMENT? TONIGHT TAKE A BOAL'S ROLL
TO PREVENT CONSTIPATION AND THE FLU

The circular sent out with samples of the product described it as a—

DELICIOUS FRUIT LAXATIVE COMPOSED OF FIGS
AND OTHER FRUIT

The containers of the product shipped by said Boal's Rolls Corporation had labels affixed thereto upon which appeared an illustration of a bowl of various kinds of fruit, depicting fruits other than figs and raisins with the following among other printed matter:

BOAL'S ROLLS. A LUSCIOUS LAXATIVE, REAL FRUIT
MEDICATED FOR CONSTIPATION

In truth and in fact the laxative properties of the respondent's product are not due to a fruit ingredient, but to the presence therein of phenolphthalein, cascara, and senna, nor is the said product a preventative for constipation and influenza.

PAR. 3. The use by the respondent of such phrases and illustrations as above set out in connection with or as designating and describing its product has the capacity and tendency to mislead and deceive the purchasing public into the belief that its said product so represented, designated, and described is a natural fruit laxative, and also a preventative for constipation and influenza.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice

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of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation 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".

ORDER TO CEASE AND DESIST

This proceeding having been considered by the Federal Trade Commission on the complaint of the Commission, the answer of respondent thereto, the testimony, evidence, and brief of counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that respondent has been using unfair methods of competition in commerce in violation of the provisions of section 5 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 the respondent, Boal's Rolls Corporation, its officers, agents, representatives, and employees in connection with the advertising, offering for sale and sale in commerce among the several States of the United States of the product Boal's Rolls, do cease and desist from directly or indirectly—

1. Representing that Boal's Rolls prevent constipation;
2. Representing that Boal's Rolls prevent influenza;
3. Representing that Boal's Rolls are a fruit laxative.

It is further ordered, That the respondent, Boal's Rolls Corporation, shall within 60 days after service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

HAMILTON GARMENT COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1713. Complaint, Oct. 23, 1929—Decision, June 30, 1930

Where a corporation engaged in the sale of various articles of merchandise by mail order, described itself as a manufacturer in its catalogues and made such representations as that it manufactured practically "all of the ready-to-wear in this catalogue", "Buying direct from the manufacturer you eliminate the middleman's profit and save \$5 to \$15", and "With our sanitary daylight factories under our close supervision we can give our customers the assurance of getting only the best quality", etc., the facts being that the women's coats and dresses referred to were made for it under contract pursuant to which the factory's entire output was contracted for, stock was removed from the factory to its workrooms and shipped therefrom to the buyer, it retained ownership of all goods and designs and reserved to itself right of inspection, supervision, and discharge of employees suffering from or afflicted with communicable diseases, or stopping of work on any garment not made in accordance with its design and plan, factories doing its work were large daylight establishments, meeting all requirements of the factory laws, it had thus taken entire output of some factories for ten or fifteen years past, and Bureau of Census insisted on classifying it as a manufacturer of garments and compelled it to report as such, but it had no proprietary interest in aforesaid factories or machines making said garments, or other control over the contractors' factory buildings or employees; with capacity and tendency to deceive and mislead the purchasing public into believing it to be the manufacturer of all or some of the products sold by it, eliminating profit of middleman in such instances:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Mr. Henry Ward Beer, of New York City, 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 York corporation engaged in the sale by mail of various articles of merchandise direct to purchasers in various States, and with principal office and place of business in New York City, with advertising falsely or misleadingly as to composition and nature thereof and as to business status, in violation of the provisions of