

With capacity and tendency to deceive the public and to induce persons to enroll as students in reliance upon the truth and accuracy of such representations, and to divert trade to it from competitors:

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

Mr. Alfred M. Craven and Mr. LeRoy A. Palmer for the Commission.

McKercher & Link, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Perfect Voice Institute, an Illinois corporation engaged in the sale of a course denominated Physical Voice Culture¹ and with office and principal place of business in Chicago, and respondent individual, its president and manager, with advertising falsely or misleadingly as to prices and free product, and nature of product or service, 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 course in newspapers, magazines, periodicals, and other publications of general circulation, and in catalogues, pamphlets, letters, circulars, etc., makes numerous false and misleading statements in the following respects, namely, that the course has been reduced for a limited time from \$150 to \$89.50 (its regular price), that certain apparatus, above referred to, and included in the price charged for the course as a whole, is offered to prospective pupils without compensation to it, and that its course rests upon its own unique system of developing and controlling the hyo-glossus muscle through silent exercises developing the singer's ability to groove the tongue, and making it possible for every student to have a beautiful speaking or singing voice, that said system was worked out by the

¹ Including a so-called set of "scientific apparatus consisting of a tongue support, tape measure, flashlight and mirror, depressions, tryhedron, and one harmonic resonator."

Feuchtinger family,* that through instinctive mastery of said muscle, after many years, Caruso finally became the century's greatest singer (a fact attested, by the great development of such muscle disclosed by a post mortem on the singer's body), that many continental opera stars have benefited by the system, and that anyone through a few simple scientific exercises in his own home and in a few months may obtain a powerful and beautiful voice, and that the system in question has been proved by every law of physics, anatomy, mechanics, and mathematics, and has proven infallible in practice by tests of thousands of students all over the world.

"In truth and in fact", as charged "none of said statements or representations is true in letter or in substance; nor has the hyo-glossus muscle any connection with voice quality or production"; and

"The statements and representations so made by respondent in the manner above alleged have the tendency and capacity to mislead and deceive the public and prospective pupils, and will probably mislead and deceive the public and prospective pupils, into the erroneous belief:

"That said respondent's said course of instruction, together with said complete outfit for practical work, are the result of long, successful scientific research and experimentation by generations of men unusually gifted in music and musical research and knowledge;

"That said course of instructions and articles incidental and accessory thereto constitute the one and only sure, unfailing, scientific method of voice culture and the development of one's voice or singing tone;

"That all said statements and representations are true;

"That, therefore, it is advisable to enroll as a pupil with said respondent and pay the tuition charged by him; and that it is inadvisable to become a pupil of any other person, teacher or school, or to purchase treatises, books of instruction, courses of instruction,

* Allegations of the complaint in respect to the supposed part played by such family in this matter follow:

(1) That three generations of Feuchtingers spent their lives working out the system of silent voice exercises, which has finally been perfected by Eugene Feuchtinger.

(2) That Eugene Feuchtinger finally perfected this system by his discovery of the functions of the hyo-glossus muscle.

(3) That Caspar Feuchtinger, grandfather of Eugene Feuchtinger, was court musician to the Duke of Waldeck, and one of the greatest artists of the 19th century.

(4) That the father of Eugene Feuchtinger inherited the family talent, was a real genius and was decorated with the Order of Arts and Sciences by the King of Wurtemberg.

(5) Eugene Feuchtinger had a thorough musical education and was a student of vocal anatomy and physiology, and that he worked out the methods of his father and grandfather.

(6) That Eugene Feuchtinger added from time to time, as a result of his own researches, much original matter.

(7) That his method of training (the voice) benefited many continental opera stars.

(8) That Eugene Feuchtinger's name was well known and respected by the elite of the European musical world.

Findings

14 F. T. C.

or any articles or things incidental or accessory thereto of any of said respondent's competitors"; all to the prejudice of the public and of respondents' competitors in violation 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat. 719), the Federal Trade Commission, on the 13th day of March, 1928, issued and thereafter served its complaint against the respondents Perfect Voice Institute and T. G. Cooke, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed an answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint, and in opposition thereto. Thereafter this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Perfect Voice Institute, is a corporation organized and existing under and by virtue of the laws of the State of Illinois and maintains its office and principal place of business at 1920 Sunnyside Avenue, in the city of Chicago, in the State of Illinois.

Respondent, T. G. Cooke, is president of respondent, Perfect Voice Institute, and as such is actively engaged in the management and control of the business and gainful activities of respondent, Perfect Voice Institute, hereinafter alleged or set forth.

Respondent, Perfect Voice Institute, at such place, is engaged in the business of offering for sale and selling to persons hereinafter referred to as pupils, such pupils residing and being and remaining at various places in the several States of the United States, a certain method or system of voice or singing tone development, which it denominates "Physical Voice Culture". Such method or system is set forth in thirty lessons which are embodied in a two-volume printed treatise or book, said treatise being published under the name of "A Manual of the Study of the Human Voice". Along with such

books and course of instruction, and as a part of the same transaction, said respondent offers to sell and furnish and sells and furnishes to such pupils a certain so-called set of "scientific apparatus consisting of a tongue support, tape measure, flashlight and mirror, depressors, tryhedron, and one harmonic resonator," such scientific apparatus being incidental and accessory to the said method or system of voice or singing tone development and to the study and practice thereof and the accomplishment of such voice or singing tone development.

PAR. 2. Said respondent, when a prospective pupil enters into a contract with it and enrolls as such pupil, in consideration of the agreed cash tuition paid and agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mail or otherwise, such two-volume treatise or book, such course of instruction and such scientific apparatus and the several articles of which it is composed as above set forth, together with certain written or printed advice and information by and through correspondence thereafter to be carried on by and between said respondent and such pupil.

Thereafter, and in pursuance of said contract with such pupils, said respondent, Perfect Voice Institute, furnishes and causes to be transported from its said place of business into and through the several States of the United States, and to be delivered to such several pupils at their respective place of residence, the said treatise or books, course of instructions, and the other articles and things above enumerated.

PAR. 3. In all of its said business, and in the several parts thereof, and in the procurement of pupils to enroll as such and to purchase said courses of instruction and said articles, and things above enumerated and to pay therefor, respondent, Perfect Voice Institute, is in competition with other persons who are likewise engaged in the same or similar lines of business activity and who are seeking to procure prospective pupils in and throughout the several States of the United States to enroll as such and to purchase, receive and pay for treatises and books to be transmitted by United States mail or otherwise, for courses of instruction by correspondence, as above set forth, and for printed matter and other articles and things to be sold, furnished, and delivered to such pupils as incidental or accessory to the learning and practice of said instructions and the accomplishment of voice or singing tone development.

PAR. 4. In aid of its said business and for the purpose of inducing prospective pupils to enter into contracts with it, to enroll as such pupils with it, and to purchase of it the treatises, books, courses of instruction, and the articles and things above enumerated, and to pay

Findings

14 F. T. C.

to it the purchase price thereof, respondent, Perfect Voice Institute, causes advertisements of said treatises and books, of its said courses of instruction and of said articles and things incidental and accessory thereto, to be inserted and made accessible to the public and to prospective pupils in newspapers, magazines, periodicals, and other publications of general circulation in the United States and in the several States thereof, and in catalogues, and in pamphlets, letters, circulars, and other forms of printed, written, or mimeographed matter.

In all such advertisements and in all such ways and manners respondent, Perfect Voice Institute, makes the statements and representations hereinafter referred to, as follows:

(1) Said respondent represents that it is offering to prospective pupils who shall enroll as such within a certain limited time such treatises, books, courses of instruction, and such articles and things so incidental and accessory thereto, for which the regular and full price is the sum of \$120, at the temporarily reduced and special price of \$89.50. In truth and in fact said pretended reduced and special price of \$89.50 is the regular, permanent, and full price of the whole of said treatise, books, and course of instruction, together with all such articles and things incidental or accessory thereto and all other considerations to pass to such prospective pupils under said pretended reduced and special price.

(2) Said respondent represents that it is offering to give to prospective pupils freely and without compensation to respondent a certain complete outfit for practical work, to wit: The certain scientific apparatus above referred to and which is represented to "consist of mirror, electric torch, tongue depressor, tryhedron, tongue support, breath measure, and special harmonic resonator, all free of charge." In truth and in fact all of said things so represented as free gifts are parts of, and included in, the course of instruction, service and articles for which pupils pay said respondent in the payment of said permanent, regular, and full price charged by said respondent as above set forth; and none of said things so promised is given to pupils without such full payment therefor.

PAR. 5. The respondent's system of voice culture above mentioned is based according to the claims made for it in the manual and lessons above referred to, as well as in its advertising on the alleged new and recent discovery of one Eugene Feuchtinger, of the true function of the hyo-glossus muscle. It is stated in the lessons comprising the instruction that the hyo-glossus muscle controls the singing voice, and that the voice in its qualities of resonance, clear-

ness, pitch, range, and beauty depends upon the development of this muscle. As illustrating these various claims, reference is made to certain portions of the lessons introduced in evidence as Commission's Exhibit 15, which is duplicated, except as to paging, by Commission's Exhibit 1.^a

(a) My method is the final solution of a singer's problems in voice training. (Page 5.)

(b) In referring to the general neglect of the voice, it must be stated that man has not been to blame; for never until now has there been a reliable, unfailing method of developing it. The real secret of voice building was only discovered and made practical within the past few years. (Page 6.)

(c) The vocal attack is made entirely through the action of the tongue, or, more exactly, through the instantaneous and automatic contraction of the hyo-glossus muscle, which connects the tongue with the larynx below and the palate above it. (Page 23.)

(d) The muscle which we are trying to control—the hyo-glossus muscle—starts from the back part of the tongue. (Page 34.)

(e) The voice student can neglect almost anything else, but he must know, understand and master the action of the hyoid bone and hyo-glossi muscles. His salvation depends upon this. (Page 96.)

(f) My method lays emphasis on the importance of isolating the hyo-glossus muscle, because on this muscle depends not only the strength to be obtained, but also the quality of the voice to be obtained. (Page 151.)

(g) No progress whatsoever can be expected until you have succeeded in forming the groove silently without motion of either palate or larynx. You must first learn to isolate the hyo-glossi muscles. This is imperative. (Page 153.)

(h) The exact and isolated control of the hyo-glossi muscles is the most essential part of the course so far. No great improvement in your voice can be expected until you can make the groove in the rearmost part of the tongue. (Page 176.)

The means recommended by respondent in its course of instruction for the making of a groove in the tongue, the isolation of the hyo-glossus muscle and its separate development, are entirely mechanical, consisting of inserting the finger tip under the tip of the tongue, the thumb, fleshy part uppermost, under the side of the tongue and toward the rear, and the use of certain instruments which constitute the free apparatus offered by respondent. The tongue support of the hard rubber is said to provide the mechanical resistance for strengthening the hyo-glossus muscle, serving the same purpose as the thumb. Certain tongue depressors, consisting of narrow strips of wood, are devised to be stuck down the throat, in order to tickle and depress the tongue, and assist in making a groove, which is said to be of importance. The student is taught to use these various appliances, as well as the thumb and the fingers, and other mechani-

^a Exhibits not published.

Findings

14 F. T. C.

cal means in order to produce a groove in the tongue and to develop the hyo-glossus muscle.

PAR. 6. The respondent, Perfect Voice Institute, in addition to the statements quoted in paragraph 5 hereof, represents by the methods and means mentioned in paragraph 4 hereof, as follows to wit:

(1) That every student can have a beautiful speaking or singing voice if he develops the hyo-glossus muscle by physical exercises, by performing a few simple silent exercises in the privacy of his own home and requires only a few minutes a day and the results are certain.

(2) Every day the student's voice will become stronger, richer, and wider in range by the simple silent exercises, if he trains his voice by Physical Voice Culture.

(3) That the primary cause of strong and weak, or perfect and imperfect voices, lies in the development and control of the hyo-glossus muscle.

(4) That my system of physical voice culture has been proved by every law of physics, anatomy, mechanics, and mathematics, and has proven infallible in practice by tests on thousands of students all over the world.

(5) That by just a few months of this wonderful silent exercises, the student can obtain a rich, powerful, beautiful, resonant, and vibrant voice.

The answer of the respondents admits the fact that such statements and representations are made by respondent, Perfect Voice Institute, and avers the same to be true.

The hyo-glossus muscle (plural, hyo-glossi, there being one on each side of the neck), is, as defined by physiologists and by the expert witnesses who testified at the hearings, both for the Commission and the respondents, a muscle which is attached to the hyoid bone and passes upwards and enters the side of the tongue. Its function is to depress the tongue and draw down its sides so as to render it convex from side to side.

This muscle serves no purpose in making a groove in the tongue. It is one of a very large group of swallowing muscles intimately connected and related, so that it is a physiological impossibility to isolate it or separately develop it. It serves no possible function in voice tone production. The so-called silent exercises taught by the respondent, Perfect Voice Institute, may enlarge the tongue and strengthen some of the muscles thereof, but such exercises can not and do not result in a "rich, powerful, beautiful, resonant, or vibrant voice", as represented by respondent. On the contrary, the probable result of such exercises would be to hinder the production of voice tones of the character contemplated by respondent's statements and representations.

All of the respondent's claims and representations mentioned in this paragraph of the findings, are false and misleading.

PAR. 7. Respondent also by the manner and means mentioned in paragraph 4 hereof, states and represents as follows:

That a post mortem examination of the throat of Caruso, showing a wonderful development of his hyo-glossus muscle, proves the amazing truth of the Feuchtinger discovery of the true functions of the hyo-glossus muscle.

Said statement and representation is false, the fact being that no post mortem examination of Caruso's throat, or any other part of his body, was ever had.

PAR. 8. Respondent further by the manner and means mentioned in paragraph 4 hereof, makes, as alleged in the complaint and admitted by the answer, the following statements and representations:

(1) That it took Caruso many years to instinctively control his hyo-glossus muscle, but in the end he became the greatest singer of this century.

(2) That the throat of every student is constructed exactly like the throat of Caruso and other world famous singers, with just one exception, they had developed their hyo-glossus muscle.

(3) That the main difference between the normal vocal organ of the student and the vocal organ of Caruso lies in the control, strength, and development of the hyo-glossus muscle.

The claims and representations in this paragraph set forth are false and misleading, in that, as heretofore found in paragraph 6 of these findings, the hyo-glossus muscle can not be isolated or separately developed, and has no function in voice tone production. There is not the slightest evidence in the record that Caruso either instinctively or consciously made any effort to control his hyo-glossus muscle, or that he ever in his lifetime claimed that his voice was due to his hyo-glossus muscle, or any other muscle. The implication from such representations that anyone by developing the hyo-glossus muscle, if such were possible, would become like Caruso, is wholly unwarranted and incredible. To suggest that any one of the pupils taking the course of instruction sold by respondent might develop a voice comparable with the voice of Caruso, is utterly unwarranted and deceptive.

PAR. 9. Each and all of the statements or representations set forth in paragraphs 6, 7, and 8 hereof have the capacity and tendency to deceive the public and induce persons to enroll as pupils of respondent, Perfect Voice Institute, in reliance upon the truth and accuracy of such representations, and to divert trade to respondent, Perfect Voice Institute, from its competitors.

CONCLUSION

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

Order

14 F. T. C.

of the public and respondents' 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 answer of the respondents, the testimony, brief, and oral argument, 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, Perfect Voice Institute, a corporation, its officers, agents, and employees and the respondent T. G. Cooke, in connection with the sale or offering to sell in interstate commerce between and among the various States of the United States and in the District of Columbia, the course of instruction denominated Physical Voice Culture, do cease and desist from, in any manner representing:

(1) That every student can have a beautiful speaking or singing voice if he develops the hyo-glossus muscle by physical exercises, by performing a few simple silent exercises in the privacy of his own home and requires only a few minutes a day and the results are certain.

(2) Every day the student's voice will become stronger, richer, and wider in range by the simple silent exercises, if he trains his voice by Physical Voice Culture.

(3) That the primary cause of strong and weak, or perfect and imperfect voices, lies in the development and control of the hyo-glossus muscle.

(4) That the system of instruction Physical Voice Culture has been proved by every law of physics, anatomy, mechanics, and mathematics, and has proven infallible in practice by tests on thousands of students all over the world.

(5) That by just a few months of this wonderful silent exercise, the student can obtain a rich, powerful, beautiful, resonant, and vibrant voice.

(6) That a post mortem examination of the throat of Caruso, showing a wonderful development of his hyo-glossus muscle, proves

the amazing truth of the Feuchtinger discovery of the true functions of the hyo-glossus muscle.

(7) That it took Caruso many years to instinctively control his hyo-glossus muscle, but in the end he became the greatest singer of this century.

(8) That the throat of every student is constructed exactly like the throat of Caruso and other world famous singers, with just one exception, they had developed their hyo-glossus muscle.

(9) That the main difference between the normal vocal organ of the student and the vocal organ of Caruso lies in the control, strength, and development of the hyo-glossus muscle.

(10) Representing that any price at which the course of instruction is offered is a special or reduced price, or is lower than the price ordinarily and usually received when such is not the fact.

(11) Representing that any apparatus or part thereof, or other article of merchandise is furnished free when the price or value of such article is included in the price specified as the price of the course of instruction.

It is further ordered that the said respondents shall, within 30 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.

Complaint

14 F. T. C.

IN THE MATTER OF
KEMPER SILK COMPANY, INC.

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

Docket 1685. Complaint, July 15, 1929—Decision, Jan. 5, 1931

Where a corporation engaged in the designing and sale of fabrics to retail dealers, garment manufacturers, and jobbers,

- (a) Designated a cotton and rayon fabric somewhat resembling silk, "Taffet-Ray", and employed said name in describing such fabric in advertisements in newspapers and trade journals, and on the packages in which shipped to purchasers, counter display cards furnished for retailers, and labels supplied to garment makers, with capacity and tendency to deceive purchasing public into believing such fabric to be taffeta or silk;
- (b) Designated a fabric composed entirely of rayon, resembling satin, "Sparkal Satin", and employed such name in designating such fabric in advertising and labeling same, as above set forth, with capacity and tendency to deceive purchasing public into believing such fabric to be made entirely of silk; and
- (c) Employed phrase "Creators and Manufacturers of Artificial Silk Fabrics", upon its letterheads and other trade literature, notwithstanding fact that it did no manufacturing, but had such fabrics as it created or designed, made by manufacturers; with tendency and capacity to deceive purchasing public and induce purchase of its products as and for those bought directly from a manufacturer at a saving in cost, and to divert trade unfairly from competitors:

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

Mr. Alfred M. Craven for the Commission.

Kahn & Zorn, 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 with principal place of business in New York City, engaged in the sale of textile fabrics to retailers and to garment makers for use in making dresses, underwear, slips, and other articles, with naming product misleadingly, misrepresenting business status, advertising falsely or misleadingly, and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.