

IN THE MATTER OF
H. H. BROOTEN & SONS, 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 1927. Complaint, Mar. 16, 1931—Decision, Feb. 29, 1932

Where a corporation engaged in the distribution and sale in both liquid and solid form of a shalelike mineral of alleged therapeutic or curative properties, for external and internal use, and in the operation of a sanitarium for treatment based on application and use of aforesaid product,

- (a) Represented aforesaid so-called Brooten's Kelp Ore in circulars, leaflets, labels, and other advertising media as a remedy and cure for sugar diabetes, pernicious anaemia, tubercular formation of the bone, cancer, asthma, and arthritis, and as of substantial benefit to sufferers therefrom, facts being said product was of no particular therapeutic value nor of any substantial benefit for diseases and afflictions specified;
- (b) Falsely represented said product as effective for treatment of pain, inflammation, and catarrhal conditions in the body and "in treatment and elimination of glandular, follicular, and fibroid tumors," and as a "healing power," facts being said product had little effect, if any, on conditions specified, or in the treatment thereof;
- (c) Falsely represented said product as a "time-tried remedy" and a "remarkable combination of chemical essentials, compounded in the laboratories of Mother Nature," "used and recommended by thousands of sufferers from digestive, skin and constitutional diseases," and as "proving of inestimable value in hundreds of cases where the digestive and eliminative organs are at fault," and unexcelled as a local antiseptic, facts being it had little if any beneficial effect for aforesaid conditions and ailments or uses, and was not a time-tried remedy; and
- (d) Falsely represented said product as having magnetic healing powers, and vibration as the fundamental, creative vital force, and main agent in said Kelp Ore, and latter as so charged with vibration that it overpowered and corrected in users thereof alleged results of harmful vibrations, fact being product had no magnetic, vibratory healing properties;

With effect of operating to mislead and deceive public and particularly sufferers from various ailments into believing that through purchase and use of aforesaid product as directed, or through becoming patients at said corporation's sanitarium, they would be benefited, remedied or cured of the various diseases and ailments specified, and with tendency and capacity so to do, and thereby divert trade to said corporation from its competitors dealing in mineral salts, drugs, remedies, and other medicaments of therapeutic value:

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. Ellis Debruler for the Commission.

Mr. George P. Winslow, of Tillamook, Oreg., 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 Oregon corporation engaged in distribution and sale in liquid and solid form of a shalelike mineral of alleged therapeutic or curative properties, under designation "Brooten's Kelp Ore," and in transmitting through the mails circulars and other advertising literature soliciting customers and paying patients for its health resort at or near Cloverdale, where principal treatment or cure consisted in application and use, externally and internally of said kelp ore, with advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid in sale of said product from material mined on its premises, a mineral consisting of a shalelike clay with iron and aluminum sulphates with a trace of sulphur, represents in its aforesaid circulars, labels, etc., that said kelp ore, in both liquid and solid form and whether used externally or internally, according to directions, will be of substantial therapeutic benefit, remedy and cure for sugar diabetes, pernicious anaemia, tubercular formation of the bone, cancer, and various other diseases and ailments¹ and further that said ore has certain extraordinary vibratory magnetic healing properties,² facts being that while mineral material in question acts and operates as an antiseptic astringent mineral water, it will not act or operate as a benefit, remedy, or cure for the diseases and ailments specified or be effective therein, is not a healing power or time tried remedy, nor possessed of "magnetic vibratory healing properties."

The foregoing representations of fact, as alleged, distributed by "respondent in interstate commerce are calculated, have a tendency, and operate to mislead and deceive the public, and particularly that portion thereof which is suffering from various forms of human ailments, into the erroneous belief that by purchasing and using

¹ Set forth in the findings.

² As alleged in the complaint, "respondent represents to the public that vibration makes the world, is the founder of life and the main agent in Kelp Ore; that millions of years ago vibration was so immense that it worked on this kelp deposit and charged it so strong that to-day, when properly treated, it controls other vibrations which are a detriment to humans and cause much sickness; that intelligent human thoughts materialize in the body and form a silicate causing sickness, and that Kelp Ore has so many more vibrations than harmful or angry thoughts forming such silicate that when a human being drinks or takes a Kelp Ore bath or puts on a Kelp Ore poultice, vibrations are overpowered and brought back to normal; and that the said Kelp Ore has magnetic healing powers."

respondent's Kelp Ore according to directions, or by becoming paying guests at its health resort and sanitarium aforesaid, they will be benefited, remedied or cured of their divers and sundry diseases and ailments"; to the prejudice of the public and competitors.

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 above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent entered its appearance, through its attorney, and filed its answer herein, and thereafter a hearing was had and evidence was introduced before Commissioner William E. Humphrey, acting as an examiner of the Federal Trade Commission in such matter, he having been theretofore duly appointed by the Commission to sit in the taking of the testimony.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and also counsel for respondent having submitted briefs, neither counsel appearing to argue the matter orally before the Commission, and the Commission having duly considered the entire record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Oregon, and has its office and principal place of business at Cloverdale, Oreg., and is now and for more than two years last past has been engaged in the distribution and sale in both liquid and solid form of a shalelike mineral of alleged therapeutic or curative properties, which respondent designates as Brooten's Kelp Ore. In solid form this mineral is a shalelike clay, containing iron and aluminum sulphates with a trace of sulphur, and in liquid form it is an aqueous solution of iron and aluminum sulphates with traces of calcium, magnesium, and potassium salts.

One analysis furnished by respondent reads as follows:

(1) The acidity is rather high; the solution is acid to methyl orange indicator (Ph color change 4.4-4.6) Ph of solution is approximately 2.4.

(2) The solution contains considerable iron and aluminum sulphate in solution.

(3) The insoluble material contained in the bottle was found to consist of the oxides or hydrated oxides of ferric iron, aluminum, and silicon. By far the greater part of this precipitate is due to iron.

(4) No nitrates, carbonates, bromides, or iodides were found in the solution.

(5) The acidity of the solution is probably due to hydrolysis (the interaction of the ions of iron and aluminum sulphate with the ions of water).

Respondent mines said mineral on its premises at or near Cloverdale, Oreg., and when packed or bottled causes the same when sold to be transported from the city of Cloverdale, Oreg., into and through the various States of the United States for delivery to the purchasers thereof, and in transmitting the same through the mails from its principal place of business in Oregon as aforesaid to various and diverse places in the several other States of the United States uses circulars, leaflets, and other advertising literature, soliciting prospective customers and paying patients for its health resort or sanitarium located at or near Cloverdale, Oreg., known as Brooten's Baths and Sanitarium, where the principal treatment or "cure" given is the application and use, externally and internally, of the said shalelike mineral designated as Kelp Ore.

In the course and conduct of its business as heretofore set out, respondent is and has been at all times hereinafter referred to in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of mineral salts, drugs, remedies, and other medicaments of some therapeutic value.

PAR. 2. In the course and conduct of its business by means of circulars, leaflets, labels, and other advertising media, mailed and distributed in interstate commerce, respondent has represented and does represent that Brooten's Kelp Ore in both liquid and solid form, and when used either externally or internally or both according to directions, will be of substantial benefit, remedy and cure for:

Sugar diabetes

Pernicious anaemia

Tubercular formation of the bone

Cancer

Asthma

Arthritis

and that it is "effective where pain, inflammation, and catarrhal conditions are present in the vaginal cavities and in the treatment and elimination of glandular, follicular, and fibroid tumors"; that it is a "healing power"; that it is a "time-tried remedy"; that "this remarkable combination of chemical essentials, compounded in the laboratories of Mother Nature, is being used and recommended by

thousands of sufferers from digestive, skin and constitutional diseases"; that "Brooten's Kelp Ore is proving of inestimable value in hundreds of cases where the digestive and eliminative organs are at fault, and applied locally as an antiseptic it is unexcelled.

In certain of its circulars and advertisements also distributed in interstate commerce, respondent represents to the public that vibration makes the world. It is the founder of life and the main agent in Kelp Ore; that millions of years ago vibration was so immense it worked on this kelp deposit and charged it so strong that to-day when properly treated it controls other vibrations which are a detriment to humans and cause much sickness; that intelligent human thoughts materialize in the body and form a silicate causing sickness and that Kelp Ore has so many more vibrations than harmful and angry thoughts forming such silicates that when a human being drinks or takes a Kelp Ore bath or puts on a Kelp Ore poultice vibrations are overpowered and brought back to normal; and that the Kelp Ore has magnetic healing powers.

PAR. 3. The Commission finds that in truth and in fact the said mineral material known as Brooten's Kelp Ore or Kelp Ore, in both solid and liquid form, when used externally or internally or both according to respondent's directions, acts and operates, possibly, as an antiseptic astringent mineral water and is not of any particular therapeutic value, and is not of any substantial, if any, benefit or remedy, and is not a cure to or of persons afflicted with sugar diabetes, pernicious anæmia, tubercular formation of the bone, cancer, asthma, or arthritis, and that it has little, if any, effect where pain, inflammation and catarrhal conditions are present in the vaginal cavities, nor in the treatment and elimination of glandular, follicular or fibroid tumors, and is not a healing power nor a time-tried remedy, and has little, if any, beneficial effect for digestive, skin or constitutional diseases, and does not aid the digestive or eliminative organs, nor is it an unexcelled antiseptic, and that it has no magnetic vibratory healing properties.

PAR 4. The Commission further finds that the above and foregoing misrepresentations of fact concerning the curative properties of Brooten's Kelp Ore, or Kelp Ore, distributed by respondent in interstate commerce, are calculated, have a tendency to and operate to mislead and deceive the public, and particularly that portion which is suffering from various forms of human ailments, into the erroneous belief that by purchasing and using respondent's Kelp Ore according to directions, or by becoming paying guests at its health resort and sanitarium hereinabove referred to, that they will be benefited, remedied or cured of their diverse and sundry diseases and ailments.

and thereby to divert trade to respondent H. H. Brooten & Sons, Inc., from its competitors.

CONCLUSION

By reason of the foregoing, it is concluded by the Commission that the acts and things above alleged to have been done by respondent are to the prejudice of the public and to competitors of the 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony taken and briefs filed herein by counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts and conclusion that 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,"

It is now ordered, That respondent, H. H. Brooten & Sons, Inc., its officers, agents, representatives, and employees and all persons associated or connected with said corporation in any manner whatsoever cease and desist from making statements and representations in advertisements, circulars, leaflets, labels and/or other advertising media, mailed and distributed in interstate commerce—

(1) That Brooten's Kelp Ore, or Kelp Ore, or the same material or substance under any other name, in either liquid or solid form, when used either externally or internally or both, will be of substantial therapeutic benefit, remedy and cure for sugar diabetes, pernicious anaemia, tubercular formation of the bone, cancer, asthma or arthritis.

(2) That the use of Brooten's Kelp Ore, or the same material or substance under any name, is effective where pain, inflammation, and catarrhal conditions are present in the vaginal cavities, and in the treatment or elimination of glandular, follicular and fibroid tumors.

(3) That Brooten's Kelp Ore, or the same material or substance under any name, is a healing power and a time-tried remedy.

(4) That Brooten's Kelp Ore, or the same material or substance under any name, is a remarkable combination of chemical essentials

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compounded in the laboratories of Mother Nature, and that it is being used and recommended by thousands of sufferers from digestive, skin, and constitutional diseases.

(5) That Brooten's Kelp Ore, or the same material or substance under any name, is proving of inestimable value in hundreds of cases where the digestive or eliminative organs are at fault, and that when applied locally as an antiseptic it is unexcelled.

(6) That vibration makes the world and is the founder of life and the main agent in Kelp Ore, and that millions of years ago vibration was so immense that it worked on this kelp ore deposit and charged it so strong that to-day, when properly treated, it controls other vibrations which are a detriment to humans and cause much sickness.

(7) That intelligent human thoughts materialize in the body and form a silicate causing sickness, and that Kelp Ore has so many more vibrations than harmful or angry thoughts forming such silicate that when a human being drinks or takes a Kelp Ore bath, or puts on a Kelp Ore poultice, vibrations are overpowered and brought back to normal.

(8) That Kelp Ore has magnetic healing powers.

And it is further ordered, That respondent shall, within 60 days after the 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 this order has been complied with and conformed to.

Syllabus

IN THE MATTER OF

W. H. SNYDER, R. P. SNYDER, AND ROGER N. SNYDER,
PARTNERS, DOING BUSINESS AS W. H. SNYDER &
SONSCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1441. Complaint, Mar. 4, 1927—Decision, Mar. 3, 1932*

Where the words "Havana" or "Habana" had long since been used and understood by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers as meaning and designating tobacco grown in Cuba, of high grade, such tobacco had long been imported into the United States and extensively used and consumed therein in cigars made in whole or in part thereof, cigars made of such tobacco were considered by many as having an improved quality and desirability by reason of such fact, and enjoyed a large demand in the United States, and purchase thereof was preferred by many of the dealers and consuming public; and thereafter a domestic firm engaged in manufacture and sale of domestic cigars, containing no Havana or Cuban tobacco,

- (a) Named, banded, and advertised one of their aforesaid cigars as "Havana Fruit," and displayed said name and the words "Guaranteed Mild Havana" conspicuously in numerous places on the containers in which offered the public, together with glass display cigar box lids, supplied by it and bearing aforesaid name, and so framed and planned that retailer's use thereof resulted in display of aforesaid legends, and concealment of inconspicuous notice on inside hinge strap that cigars were made "from ripe domestic tobacco"; and
- (b) Named, banded, and advertised a cigar made and sold as aforesaid, "Havana Velvet," and so labeled the containers thereof, together with a depiction of Cuban tobacco plantation showing Havana tobacco under cultivation;

With effect of misleading and deceiving a large and substantial number of the purchasing and consuming public into buying aforesaid cigars as and for those composed in whole or in part of Havana, i. e., tobacco grown in Cuba, and of unfairly diverting trade from competitors dealing in cigars so composed in fact and rightfully and truthfully so advertising, representing, banding, and labeling the same, and from competitors dealing in cigars composed wholly of domestic tobacco and of non-Cuban tobacco, and neither banding, labeling, advertising, nor otherwise representing their said cigars as containing any Havana or Cuban tobacco, and with capacity and tendency so to mislead and deceive and unfairly divert trade from competitors, and to operate as a competitive burden upon sale of aforesaid competitive cigars:

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