

IN THE MATTER OF
FLEMING BROTHERS

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

Docket 2014. Complaint, Mar. 1, 1932.—Order, June 8, 1932

Consent order requiring respondent corporation, its agents, etc., in connection with sale or offer in interstate commerce of its so-called "Fleming No. 6 Powder" from representing directly or by implication that said preparation is a preventive or cure of the horse disease known as heaves.

Mr. PGad B. Morehouse for the Commission.

Mr. Edward Clifford and *Mr. H. H. Shinnick*, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, 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," the Federal Trade Commission charges that Fleming Bros., a corporation, has been and is now using unfair methods of competition in interstate commerce, in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Fleming Bros. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with principal place of business located in the city of Chicago, State of Illinois. It is now and for more than one year last past has been engaged in the manufacture of veterinary remedies, including an alleged remedy for heaves formerly sold by respondent under the name "Tonic Heave Powders", and now sold and distributed as "Fleming's No. 6 Powder". When sold, respondent causes the said product to be shipped and transported from the place of manufacture in the State of Illinois into and through various other States of the United States to the purchasers thereof.

In the course and conduct of the business as aforesaid, respondent is in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of veterinary remedies and tonics for livestock.

PAR. 2. In the course and conduct of its business as aforesaid, by the use of various advertising media brought to the attention of prospective purchasers, respondent does represent and has represented falsely both by direct statement and by implication, that the powder or veterinary remedy as aforesaid is an efficient preventive

and cure of a disease common to horses known as heaves; that the consumer purchasers of the said Fleming's No. 6 Powder believing and relying upon the truth of said representation buy this product from the respondent, whereas in truth and in fact the said Fleming's No. 6 Powder is not an efficient preventive or cure for the heaves.

PAR. 3. The foregoing false representation is calculated, and has a tendency to mislead and deceive purchasers and prospective purchasers of respondent's aforesaid product into the erroneous belief that the use of it in accordance with directions will operate as an efficient preventive or cure for heaves in livestock; and to induce the purchase by consumers of respondent's aforesaid powder in reliance upon such erroneous belief; and to divert trade from and otherwise injure competitors of respondent.

PAR. 4. The above acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, 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 come on to be heard by the Federal Trade Commission upon complaint and substitute answer of respondent, in which respondent refrains from contesting the proceeding and and consents that the Commission may make, enter, and serve upon it an order to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises having thereupon considered that the respondent has violated 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 respondent Fleming Bros., a corporation and its agents, representatives, servants, and employees, in connection with the offering for sale, or sale, in interstate commerce of a certain preparation or product now sold and distributed as Fleming No. 6 Powder, cease and desist from representing, either by direct statement or implication, that said preparation or powder is a preventive or cure of a disease common to horses known as heaves.

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.

IN THE MATTER OF
INECTO, INCORPORATED

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

Docket 1452. Complaint, Apr. 6, 1927—Decision, June 20, 1932

Where a corporation engaged in manufacture and sale of a hair dye, which was (1) professedly based on a patent which set forth "Para" or "Paraphenylene diamine," the so-called "Criminal Ingredient," as a component part of "the best example" of the dye in question, and was (2) disclosed by analyses as based principally on the amino compound paratoluylene diamine, the toxic, poisonous, and harmful effects of which were similar to those caused by amino compound paraphenylene diamine; in offering and selling aforesaid dye, which it extensively advertised in women's and other periodicals and in circulars and other trade literature, to the purchasing and consuming public throughout the United States, through drug stores, department stores and other dealers, beauty parlors and hair dressing establishments, and direct by mail order for home use,

- (a) Featured and stressed in aforesaid advertisements the alleged natural and effective action of said dye in performing its function, and the long desired safe and harmless qualities, and results, thereof, and welcome absence therefrom of "Para," dangers of which it set forth and emphasized, or of any other poisonous or injurious ingredient, and resulting advantages to hair dressers, who were thereby relieved of necessity for the common "behind the ear" test, and danger of suits or difficulties attendant upon use of other dyes not so safely compounded, and represented aforesaid asserted safety as demonstrated by thousands of sales, from none of which had there been adverse effects or claims against the company through which it insured its dealers; facts being preparation in question was dangerously toxic, and poisonous, contained a toxic dye base and poisonous and injurious ingredients, was neither safe nor harmless, and had led to serious ailments and difficulties for users in a great many instances, reported from time to time to it and aforesaid insuring company, and to numerous claims against the latter; and
- (b) Featured trade or brand name "Notox" in sale, labels, and advertisement of its aforesaid product, together with such statements as "No Para—No Toxins—Notox", "Notox is safe", "Notox is non-toxic", "No element of chance in Notox", "Non-toxic dye base", "Safe because * * * free of paraphenylene diamine", and falsely represented said name, "suggested by the words, non-toxic" as proven an appropriate selection by hundreds of thousands of successful and safe applications, and advertised same to women as "a symbol of safety";

With capacity and tendency to lead public to believe dye in question to be a nontoxic or nonpoisonous and therefore safe and harmless hair dye, and to induce purchase and resale and/or use in reliance upon such erroneous belief, and upon the truth of the aforesaid various representations, and with result of increasing its sales at the expense of competitive products through thus taking advantage of public's preference for nontoxic, safe,