

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 18, 1932, TO JUNE 18, 1933

IN THE MATTER OF

RADIUM-ACTIVE REMEDIES COMPANY

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

Docket 1885. Complaint, Dec. 12, 1930—Decision, July 18, 1932

Where a corporation engaged in manufacture and sale of products for self-treatment of diseases and ailments,

Called its preparations radium-active remedies, and represented and advertised that same contained a radium-bearing substance and as a result of the radium-active emanations and beneficial results thereof relieved and cured many specified diseases and ailments including anemia, high blood pressure, kidney and nervous disorders, fallen arches, etc., through such statements as "SAVE YOUR HEALTH—Radium Is Restoring Health to Thousands—Get a Radium-Active Pad * * *", "Radium-Active Remedies. Is still restoring health to thousands. Why not restore your health . . .";

Facts being substance in question had a radium activity of less than 232 millimicrograms of radium per gram, which does not suffice to impart a therapeutic effect to any medicament or medical appliance, and preparations in question had no therapeutic effect for various conditions and ailments for which prescribed and sold, its officers and personnel were, by and large, neither professional nor scientific, and no person connected with it had a reasonable basis either in fact or opinion for considering as true the statements and representations respecting the effect of the products in question by reason of their radium activity;

With capacity and tendency to mislead and deceive members of the public into buying and using products in question for self-medical treatment for diseases and ailments for which sold in preference to purchasers of competitors' products, and with effect of so misleading and deceiving said members, and thereby diverting trade from competitors who make and sell preparations for medical treatment without claiming that same cure diseases, etc., concerned, or are radium active or contain a radium-active ingredient or have therapeutic effects by reason of such supposed ingredient;

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. Edward E. Reardon for the Commission.

Mr. D. Lee McConaughy, of Pittsburgh, Pa., 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 Delaware corporation engaged in the manufacture and sale of alleged radium-active remedies for the "self-medical" treatment of anemia, heart trouble, high blood pressure and various other human ailments and afflictions,¹ including so-called water tubes, healing pads and other things,² and with place of business in Pittsburgh, with advertising falsely or misleading as to nature and results of product, and with misrepresenting orally through agents and employees in said respects, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, represented and represents in advertisements in newspapers and magazines, in circulars, other printed literature and verbally through officers and agents³ that—

"Its said products or articles are made up of, or contain, radium bearing substances;

"Certain radio-active emanations are given out or discharged from the said products or articles due to the combined forces of the radio-active elements contained in radium, polonium and actinium"; and

Its "said products or articles when taken internally or applied to the affected part of the human body, as directed by the respondent, in the treatment of diseases, ailments, afflictions and other pathological conditions of the human body, * * * discharge and have discharged their radio-active emanations into the body and cause and have caused the beneficial results" and cures and relief claimed.

The facts are, as alleged, that "the quantities of radium, polonium, and actinium, if any present in or contained in the respondent's so-

¹ As alleged in the complaint they include, among others, "Anemia, asthma, diabetes, dropsy, eczema, eye troubles, goiters, hay fever, hardening of the arteries, heart troubles, high blood pressure, low blood pressure, indigestion, inflammation, kidney disorders, liver trouble, nervous disorders, neuralgia, neuritis, rheumatism, sexual decline, stomach troubles, ulcers, sore feet, cold feet, and fallen arches."

² As alleged in the complaint they include, among other things, "so-called radium emanator water tubes, radium-active healing pads, goiter pads, neck pads, eye pads, and insoles and so-called radium-active ointment, tablets, suppositories, complexion soap, and greaseless cold cream."

³ Advertisements to secure inquiries, in response to which respondent sends circulars and other printed literature purporting to describe its products and the results thereof through purported testimonials and otherwise are set forth in the complaint as including the following:

"SAVE YOUR HEALTH. Radium is restoring health to thousands. Get a radium-active pad. Goiter, asthma, nervousness. Pad will last life—guaranteed to be radium active. Write for free booklet. Radium-Active Remedies Co., 7 Federal St., N.S., Pittsburgh, Pa."; and

MEDICAL—RADIUM-ACTIVE REMEDIES IS STILL Restoring health to thousands. Why not restore your health? Send for booklet. 7 Federal St., Pittsburgh, Pa."

1

Complaint

called Radium-Active Remedies are infinitesimal and are so infinitesimal that the radioactivity or radioactive emanations, if any, given out or discharged thereby from respondent's said products or articles, cannot reasonably be represented to be the cause of or to have caused or to have effected the results attributed to the use of respondent's so-called remedies by the statements and representations caused to be made by respondent."

No person connected with respondent, in the sale of its alleged remedies, as alleged, "is a medical doctor or a person learned or experienced in the medical treatment of diseases, ailments, afflictions, and pathological conditions of the human body," or "is, or was, competent or qualified by study of drugs or by experience in the use and effects of drugs and medicines, radium, polonium and actinium, in the treatment of diseases, and in the diagnosis and prognosis of disease and pathological conditions, or otherwise, to make the statements and representations to the public, * * * mentioned and referred * * * concerning the respondent's alleged Radium-Active Remedies and the effects of their medical use or application by members of the public, with reasonable grounds for belief in the truth of said statements and representations either as matters of fact or of opinion; or with any reasonable grounds for belief that the effects or results of the use of said so-called remedies have been derived from or occasioned by the alleged radium bearing substances in said remedies or the alleged radioactive emanations, if any, therefrom; or with any reasonable grounds for belief that said effects or results, including such results, as, that the said alleged Radium-Active Insoles are 'A sure relief for cold feet' and that 'Skin calluses may be relieved' by the use of respondent's alleged Radium-Active Ointment, may even be reasonably inferred to have been derived from or occasioned by the alleged radium bearing substances in said alleged remedies," and complaint charges that the statements and representations in question "concerning the result and effect of the use of said products, were known by the respondent through its said officers and agents at the time when made to have no reasonable foundation or basis that they were true."

Such representations and statements made by respondent, its officers and agents, as alleged, "were made and are still being made by them to the members of the public, who purchased and are purchasing respondent's so-called remedies, with the knowledge on the part of respondent's said officers and agents, at the time of said statements and representations; that—

"The said members of the public would believe and that they did believe that respondent's officers and agents had reasonable grounds to make said representations and statements by reason of

Complaint

17 F.T.C.

learning on the part of said officers and agents, from study and experience in the medical treatment of diseases, ailments, afflictions and pathological conditions of the human body and in the use and effect of drugs and medicines, radium, polonium and actinium in the treatment of said diseases, ailments, afflictions and pathological conditions; and * * * that in consequence of said belief on the part of said members of the public.

"The said members of the public would further believe and did further believe that the use of respondent's so-called Radium-Active Remedies in the treatment of the diseases, ailments, afflictions and pathological conditions mentioned and referred to * * * caused the effects and results above mentioned and referred to, represented and stated by respondent and its said officers and agents, as aforesaid."

In consequence of the foregoing, as charged, the respondent "was enabled to sell and did sell its so-called Radium-Active Remedies to the aforesaid members of the public at unusual, unreasonable, and exorbitant prices in interstate commerce," which various prices represented "to respondent an exorbitant profit of several hundred percent over the cost of production" and which prices and profit respondent was enabled to obtain "for its said so-called Remedies on the basis of the statements and representations made by it through its said officers and agents without any reasonable ground that said statements and representations were true or that they had any reasonable basis either as statements of fact or as statements of opinion, as above set forth."

"The statements and representations concerning its so-called radium-active remedies made by respondent through its said officers and agents," as alleged, "had the tendency and capacity" to—

"Deceive members of the public into the belief that the respondent through its officers and agents was reasonably qualified in, the respects above mentioned and referred to, to make the statements and representations made by the respondent concerning its so-called Radium-Active Remedies as set forth above;"

⁴As set forth in the complaint, for illustration, "respondent's so-called Radium-Active Complexion Soap is a soap made with cocoanut oil as to its fatty ingredient and such toilet soap without the addition to its composition of respondent's alleged radium-active material, in the size of respondent's said soap, is usually and regularly sold at from 5 to 10 cents per bar, 3 bars for 25 cents. The addition of the respondent's so-called Radium Compound to the composition of its said soap caused, if any, only a nominal increase in the cost of its product, and the respondent sold its said soap at the price of 35 cents a bar, \$1 a box—3 bars. The respondent sold its so-called Radium-A Emanating Water Tube at the price of \$50, which price represented a profit to respondent on the cost of production of said tube of several hundred percent. Its so-called Radium-Active Insoles respondent sold for \$2 a pair and its so-called Radium-Active Health Pads it sold at from \$10 to \$15."

"Cause the members of the public to believe that the said statements and representations were made by respondent through said officers and agents with reasonable grounds for belief on the part of the respondent and its said officers and agents in the truth of the same and that the respondent and its said officers and agents had reasonable grounds to represent that the use of respondent's so-called Remedies produced the effects or results which were set forth in or were reasonably to be inferred from the said statements and representations of the respondent;" and

"Cause members of the public in reliance in their belief as above set forth to purchase and use the so-called remedies of the respondent, instead of remedies of competitors of respondent, for the treatment of the diseases, ailments, afflictions and pathological conditions of the human body"; all to the injury and 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Radium-Active Remedies Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on regularly for final hearing and the Commission having duly considered the record and being 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. The respondent, Radium-Active Remedies Co., is a corporation organized March 17, 1928, under the laws of the State of Delaware, having its place of business at No. 7 Federal Street, Pittsburgh, Pa.

PAR. 2. The respondent is and has been continuously, since its organization, engaged in the manufacture and sale of products which are sold by it for the self-treatment of disease, ailments, afflictions or pathological conditions of the human body.

Findings

17 F.T.C.

PAR. 3. The respondent during all the times above mentioned and referred to has sold and still sells its products to members of the public, besides to those residing in Pennsylvania, in States other than Pennsylvania, for use in self-medical treatment as directed and advised by the respondent, of disease, ailments, afflictions and pathological conditions of the human body, among others, for the self-medical treatment of anemia, asthma, diabetes, dropsy, eczema, eye troubles, high blood pressure, low blood pressure, indigestion, inflammation, kidney disorders, liver trouble, nervous disorders, neuralgia, neuritis, rheumatism, sexual decline, stomach troubles, ulcers, sore feet, cold feet, and fallen arches.

PAR. 4. During the times above mentioned and referred to the respondent has caused its products when sold by it to members of the public, referred to in paragraph 3 hereof, to be transported in interstate commerce from its place of business in Pittsburgh, Pa., to, into and through States other than Pennsylvania to the said members of the public, the purchasers of the products.

PAR. 5. During the times above mentioned other individuals, firms and corporations, hereinafter referred to as "Sellers" located in the various States of the United States, have been engaged in the manufacture and in the sale of various products, which they have sold during said times to dealers who have resold them to members of the public for the self-medical treatment of disease, ailments, afflictions and pathological conditions of the human body, including those diseases, ailments, afflictions and pathological conditions mentioned and referred to in paragraph 3 hereof and during said times they have caused their products, when sold by them to be transported in interstate commerce to, into and through States, respectively, other than the State of the seller or the State of origin of the shipment of the products to the said dealers who have resold them to the members of the public, the purchasers and users thereof.

PAR. 6. The respondent during the time above mentioned was and still is in competition in interstate commerce in the sale of its products with individuals, firms and corporations mentioned and referred to in paragraph 5 hereof.

PAR. 7. One W. W. Riley, a plumber by trade, was respondent's treasurer from its organization until January, 1929, and its president from its organization until he died in 1930.

One Frank J. Coleman, a plumber by trade, was respondent's secretary from its organization until January, 1929, and respondent's vice president from its organization until the death of W. W. Riley, above mentioned, when he became respondent's president. which office he has since held and now holds.

One E. A. Zartman has been respondent's treasurer and manager from January 8, 1929, until the present time. He is employed as a teacher in a high school.

One George Heaton, a chiropractor, was respondent's secretary from January, 1929 to 1930. His duties from the time of his connection with the respondent to the present time are and have been to do whatever chiropractic adjustments are recommended by respondent's medical assistant or adviser for respondent's customers.

One David Huttinger, whose only occupation has been in connection with an automobile tire business, has been a director of the respondent since 1929 and its vice president since 1931. He has performed no duties in connection with respondent's business except his official duties as vice president and director.

One Charles G. Haag, Jr., who is 26 years old and who has been a ticket clerk for the Pennsylvania Railroad Co. for eight years, became a director of the respondent in 1930 and still is one of the directors.

One George Gerlach is respondent's secretary, succeeding its former secretary, George Heaton, above mentioned, in 1930. Said Gerlach is 22 years of age and is employed, off and on, by the Crucible Steel Co. He received his instruction in chemistry as taught in a high school in Pittsburgh.

One Henry Schmidtchen is a director of the respondent and has been employed by respondent from the beginning of its business to the present time as a general helper or general utility man at \$10 per week salary. The foregoing individuals constitute the officers and directors of the respondent from the time of its organization to the present time.

PAR. 8. None of the persons mentioned in paragraph 7 hereof has ever been a licensed practitioner in medicine in Pennsylvania, or in any other State or country and none of them has ever pursued as a student any course taught by any recognized college, school or institution of learning in any branch of chemistry or medicine, or has ever been a student of drugs and medicine or their therapeutic effects as remedies for human ailments.

The said George Gerlach is the sole person connected with respondent, who has more than an ordinary layman's knowledge of chemistry. He does not prepare the formulas for respondent's products. His duties are principally to put respondent's pills in pill boxes and solutions into bottles. He puts respondent's product called Stomach Relievers into envelopes containing one dose, but does not know the ingredients of which said product is composed. He does not know the composition of respondent's products.

Findings

17 F.T.C.

PAR. 9. The only other persons who are or have been connected with respondent's organization in any way from the time of its organization to the present time, besides those above mentioned are, one Hilda M. Reed, who is 19 years of age, a graduate of high school and who is employed as a bookkeeper and corresponding secretary and office assistant by the respondent at a weekly salary of \$15, and another person who is a licensed physician and surgeon of Allegheny County, Pa., and who is respondent's medical adviser or assistant.

The said Hilda Reed has never been enrolled as a student in any medical school or college nor in any school or institution of learning where the subject of drugs and medicines and their therapeutic effects as remedies for human ailments has been taught. She has substantially no competent knowledge of drugs and medicines and their therapeutic effects when used in medicine in the treatment of human diseases. She is not a graduate chemist but has studied chemistry as taught in a high school, and also, more or less under self-instruction. She has never been engaged in any other employment since her graduation from high school except her employment with the respondent.

PAR. 10. The medical adviser or assistant of the respondent above referred to does not know and has not known how to measure the radium-active substance which the respondent includes among the ingredients of its products above mentioned and does not know the name or identity of the radium-active substance that was used as an ingredient in respondent's products, and with which he claims to have experimented.

Respondent's said medical adviser or assistant does not know the ingredients of the products of the respondent which he has been prescribing to correspondents or customers of the respondent for their use and causing them to use as medicine for relief from various ailments.

Among other remedies which the respondent's said medical assistant has been prescribing for use by respondent's said customers and which the said customers have used is the product called Stomach Relievers. As to this product of the respondent its medical assistant testified that he did not know the difference between its composition and the composition of what are known as seidlitz powders, saying that "it is ridiculous to expect him to know what is in it."

The ingredients of respondent's Stomach Relievers actually are as follows: Tartaric acid, rochelle salts, bicarbonate of soda and 5 ounces of respondent's so-called Solution No. 4 to 40 pounds of the mixture of ingredients composing the Stomach Relievers.

Respondent's medical assistant testified that he did not know the composition of the base of a paste which was used in the manufacture of respondent's insoles, but testified that it has cured fallen arches. He also testified that he did not know the location of the metatarsal arches in the human body; that it made no difference not to be able to locate the metatarsal arches so long as you are curing them.

PAR. 11. The respondent, at all times since its organization, has called its remedies radium-active remedies and at all times since its organization has represented and claimed in advertisements, in circulars and other printed literature which it has caused to be published and circulated among the public in newspapers in Pennsylvania and in States other than Pennsylvania, and verbally through its officers and agents that its products were made containing radium bearing substance from which certain radium-active emanations were given out or discharged and that respondent's products when taken internally or applied to the affected part of the human body as directed by the respondent in the treatment of disease, ailments, afflictions and other pathological conditions including those mentioned and referred to in paragraph 3 hereof discharge and have discharged their radium-active emanations into the human body and that they cause and have caused thereby the beneficial results claimed by respondent, including the relief and cure of certain of the said diseases or ailments.

PAR. 12. Among the advertisements which respondent caused to be placed in newspapers and advertisements circulated among the public throughout the several States of the United States were the following:

SAVE YOUR HEALTH. Radium is restoring Health to thousands. Get a Radium-Active Pad. Cough, asthma, nervousness. Pad will last life—guaranteed to be Radium-active. Write for free booklet. Radium-Active Remedies Co., 7 Federal St., N.S., Pittsburgh, Pa., and

MEDICAL Radium-active remedies is still restoring health to thousands. Why not restore your health. Send for booklet. 7 Federal St., Pittsburgh, Pa.

PAR. 13. The respondent claims and has claimed in advertisements and verbally through its officers and agents including its said medical assistant and adviser, that its remedies relieve and cure the various diseases for which they were recommended by reason of the radium-active ingredient in their composition.

PAR. 14. The substance used as an ingredient in respondent's products which was claimed to be radium-active had a radium-activity of less than 2.32 millimicrograms of radium per gram. There is no therapeutic effect derived from the use of any medicament or medical appliance prescribed or used for the relief of disease or human ail-

ments which has a radium-activity of 2.32 millimicrograms of radium per gram.

PAR. 15. There is and has been no therapeutic effect from the use of the respondent's products by any of the purchasers or users of them in the treatment of the diseases, ailments, afflictions and pathological conditions of the human body mentioned and referred to in paragraph 3 hereof by reason of their radium-activity or of the radium-activity of any ingredient used in their composition, and no person connected with the respondent or with the sale or prescribing of any of its products had reasonable basis either of fact or opinion that the statements and representations, aforesaid of the respondent, or its agents were true regarding the effect of the said products by reason of their radium-activity.

PAR. 16. There are among the competitors of the respondent many who manufacture and sell products used for the medical treatment of diseases, ailments, afflictions or pathological conditions of the human body and who do not advertise or claim that their products cure diseases, ailments, afflictions or pathological conditions of the human body and who do not claim that their products are radium-active or that there is any radium-active ingredient used in their composition or that there is any therapeutic [benefit] derived from their said products in the medical treatment of diseases, ailments, afflictions or pathological conditions of the human body by reason of their radium-activity.

PAR. 17. The representations of respondent mentioned and referred to above to members of the public, purchasers and users of its products, to the effect that the products were radium-active and thereby had relieved and cured the diseases, ailments, afflictions or pathological conditions of the human body mentioned and referred to by respondent, had the tendency and capacity to mislead and deceive the members of the public to whom the said representations were made by respondent and they did mislead them into buying and using respondent's products for their self-medical treatment for the said diseases, ailments, afflictions and pathological conditions in preference to buying the products of respondent's competitors for that purpose and by reason thereof trade was diverted from respondent's competitors.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors and are unfair methods of competition in commerce and constitute a violation of section 5 of an

1

Order

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 up the complaint of the Commission, the answer of the respondent filed herein, upon the testimony and evidence and upon the brief by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of "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, Radium-Active Remedies Co., its officers, agents, and representatives, do—

Cease and desist from representing directly or indirectly in the sale of its products in interstate commerce (1) that its products, or any of them cure any diseases, ailments, afflictions or pathological conditions of the human body; (2) that its products or any of them, which it offers to sell or sells for the treatment of human diseases or ailments are radio or radium-active, unless and until its said products have a radio or radium activity of sufficient measure or quantity to give or add to its products a therapeutic effect when used in the treatment of diseases, ailments, afflictions or pathological conditions of the human body.

It is further ordered, That the respondent Radium-Active Remedies Co. shall, within 30 days after the service of this order on it, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with the above order to cease and desist.

IN THE MATTER OF

L. F. CASSOFF, AN INDIVIDUAL, DOING BUSINESS
UNDER THE NAMES AND STYLES OF CENTRAL PAINT
& VARNISH CO., CENTRAL SHELLAC WORKS, AND
CUMBERLAND PAINT WORKSCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1698. Complaint, Oct. 2, 1929—Order, Sept. 20, 1932*

Consent order requiring respondent, his agents, etc., in connection with sale in interstate commerce of any paint dealt in by him, to cease and desist from advertising, representing, describing, branding or labeling the same (1) with the words "Purest Paint, 50% white lead, 50% zinc"; or (2) with the phrases "100% Pure Ready Mixed Paint, Zinc, Lead, Linseed Oil", or "100% Pure Lead and Zinc"; or (3) from otherwise misrepresenting "kind, class, or proportion of the ingredients" of his paint in advertising or on labels as in said order set forth and qualified.

Mr. Henry Miller for the Commission.

Mr. Meyer Kraushaar, of New York City, and *Mr. George Schachter*, of Brooklyn, N.Y., 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 L. F. Cassoff, an individual doing business under the names and styles of Central Paint & Varnish Co., Central Shellac Works, and Cumberland Paint Works, hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, L. F. Cassoff, an individual, has for five years last past been engaged, under the names and styles of Central Paint & Varnish Co., Central Shellac Works, and Cumberland Paint Works, in the manufacture and sale of paints and varnishes, having his principal factory and place of business in the Borough of Brooklyn, city and State of New York. In the course of his business he has solicited in the period named and solicits, orders for his products, including those hereinafter described, through the mail by letters and circulars, and by agents, from dealers and consumers in various States other than New York, and thereby