

Complaint

IN THE MATTER OF

H. & S. PUBLISHING 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 2070. Complaint, Oct. 21, 1932—Decision, Dec. 12, 1932

Where a corporation engaged in publication and sale of a monthly magazine, made such representations in connection with sale of a certain variety of soybeans sold in conjunction with subscriptions to its said publication, as "*Coffee 1 cent per pound—Grow your own coffee and cut down the high cost of living. The domestic coffee berry makes a delicious, nourishing drink, * * * send 25 cents and 10 cents extra * * * and we will send you our publication for one year and one packet of seed * * ** You can raise all the coffee you want and sell the balance to your neighbors * * *", facts being seed in question was not that of a coffee berry; with tendency to mislead and deceive prospects into believing that through subscribing they could buy, grow, and produce coffee at a cost of 1 cent per pound, and with result of bringing about their subscriptions, and purchases of said seed in reliance upon truth of such misleading and false representations, and a tendency to divert trade from and otherwise injure its competitors:

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

Mr. PGad B. Morehouse for the Commission.

Mr. Stephen A. Day, of Chicago, Ill., 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 Illinois corporation engaged in publishing, soliciting, and obtaining annual subscriptions for, and circulating a monthly periodical, and also in the sale, in conjunction with subscriptions, of packets of seed advertised and sold by it as the seed of "coffee" or "domestic coffee berry", and with principal place of business in Chicago, with advertising falsely or misleadingly as to nature of product, 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 aforesaid, in its advertisements of said seed, represents the same as "Coffee 1 cent per pound" and invites the prospect to "Grow your own coffee and cut down the high cost of living",¹ etc., thereby representing to prospective sub-

¹ The advertisement alleged in the complaint is set forth in the findings *infra* at page 167.

scribers that it will sell them "one or more packets of coffee seeds from which coffee can be grown and produced at a cost of 1 cent per pound, when in truth and in fact, the seed so offered for sale and sold is not the seed of a coffee berry but is a variety of soybean seed and when planted and grown will not produce coffee."

"The foregoing false and misleading representation", as alleged, "is calculated and has a tendency to mislead and deceive prospective subscribers into the erroneous belief that by subscribing to respondent's magazine, they can buy, grow, and produce coffee at a cost of 1 cent per pound, and relying upon the truth of such representation and actuated by such erroneous belief said prospective subscribers have purchased of the respondent, annual subscriptions to the aforesaid publication, and have bought such bean seed from respondent. Such misleading and false representation is likewise calculated and has a tendency to divert trade from and otherwise injure the competitors of respondent"; all 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served a complaint upon the respondent H. & S. Publishing Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent after having stated by letter of October 28, 1932, that it was desirous of expediting this said proceeding and avoiding the expense incident to the taking of testimony, stipulated and agreed as to the facts involved, and further stipulated and agreed that the Commission might thereupon proceed to make its report, state its findings as to the facts (including all reasonable inferences which it might draw from the said stipulated facts), make its conclusion based thereon, and enter its order disposing of the proceeding without presentation of argument or filing of briefs.

Thereupon this proceeding came on for final hearing upon the complaint, respondent's statement of October 28, 1932, in lieu of answer and the agreed statement of facts, 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. & S. Publishing Co., a corporation, organized and existing under the laws of the State of Illinois, with principal place of business in the city of Chicago, State of Illinois, for more than two years last past, has been engaged in publishing, soliciting and obtaining annual subscriptions for, and circulating a monthly magazine entitled "Everyday Life". This publication, when subscribed to by the public, was by respondent sold and distributed by mail from its principal place of business as aforesaid into and through various other States of the United States to the subscribers. Respondent also has been engaged in selling a certain variety of soybean seed in conjunction with its aforesaid publication. A small number of these seeds were placed in small packets and when sold, likewise were distributed from its principal place of business as aforesaid into and through various other States of the United States to the purchasers thereof. These seeds were advertised and sold by respondent as the seed of "coffee" or "domestic coffee berry".

PAR. 2. In the course and conduct of its business as aforesaid respondent has been in competition with others who are and have been engaged in the sale and distribution in interstate commerce of magazines of a like or similar character, and with others who are and have been engaged in the sale and distribution in interstate commerce of coffee or coffee substitutes or soybeans or seed for growing the same.

PAR. 3. In the course and conduct of its business as aforesaid respondent caused to be published in other magazines and periodicals advertisements of its monthly magazine "Everyday Life" and in such advertisements it solicited annual subscriptions as aforesaid in words and figures following:

COFFEE 1 CENT PER POUND

Grow your own coffee and cut down the high cost of living. The Domestic Coffee Berry makes a Delicious, Nourishing Drink, to take the place of injurious coffee. It is a pure food drink that gives health and strength to young and old. The best coffee substitute ever discovered, and thousands pronounce it as good or better than the best coffee. It has the rich deep brown color of old Java. One of the hardiest, easiest grown and most productive of all plants. Can be successfully grown in any climate, and is sure to ripen even in the extreme north. As easily grown as corn or beans, and does well on all soils. Thousands suffer untold injuries from store coffee. Better grow the new kind and save your health and money. To introduce our monthly publication Everyday Life, send 25 cents and 10 cents extra (35 cents in all) and we will send you our publication for one year and one packet of

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seed. Send 60 cents and we will send the paper and three packets of seed. 12 packets of seed and the paper one year for \$1. You can raise all the coffee you want and sell the balance to your neighbors. Don't wait—Send now as supply of seed is limited. Everyday Life, 337 W. Madison Street, Dept. 20-d, Chicago, Ill.

Thereby, respondent impliedly represented to the prospective subscribers that it would sell such subscriber one or more packets of coffee seeds from which coffee could be grown and produced at a cost of 1 cent per pound, when in truth and in fact, the seed so offered for sale and sold was not the seed of a coffee berry but a variety of soybean seed and when planted and grown would not produce coffee.

PAR. 4. The foregoing false and misleading representation has a tendency to mislead and deceive prospective subscribers into the erroneous belief that by subscribing to respondent's magazine, they can buy, grow, and produce coffee at a cost of 1 cent per pound, and relying upon the truth of such representation and actuated by such erroneous belief said prospective subscribers have purchased of the respondent, annual subscriptions to the aforesaid publication, and have bought such bean seed from respondent. Such misleading and false representation likewise has a tendency to divert trade from and otherwise injure the competitors of respondent.

PAR. 5. The above acts and practices of respondent were all to the prejudice of the public and respondent's competitors, and constituted 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.

PAR. 6. Respondent has abandoned the unfair methods above set out.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings have been to the prejudice of the public and of respondent's competitors and were unfair methods of competition in commerce and constituted a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, statement of respond-

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ent filed October 28, 1932, in lieu of formal answer and agreed statement of facts filed herein and the Commission having made its findings as to the facts and its conclusion that the 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. & S. Publishing Co., a corporation, its agents, servants, and employees in soliciting the sale of and selling and advertising of a periodical or publication known as "Everyday Life" or seed in interstate commerce cease and desist from representing directly or by implication that any seed of the soybean variety is the seed of coffee or is the "domestic coffee berry" or that coffee can be raised therefrom, and that by means of the planting thereof coffee can be produced or grown for 1 cent or any other price per pound.

It is further ordered, That the said respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission its report in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
T. H. BANFIELD, AN INDIVIDUAL, DOING BUSINESS
UNDER THE TRADE NAME AND STYLE OF PACIFIC
EXTENSION UNIVERSITY

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

Docket 2051. Complaint, June 7, 1932—Decision, Dec. 19, 1932

Where an individual engaged in sale of correspondence courses in secretarial duties and business, together with second-hand and rebuilt typewriters, to students in various States, through so-called "registrars" or agents,

- (a) Included the word "university" in the trade name employed by him, and in his representations to students and prospective students referred to himself and his organization as a "university", notwithstanding fact he did not teach the arts and sciences taught in universities, did not have a staff consisting of learned instructors in the various higher branches of learning, and was not authorized to confer degrees of higher learning, and his business and organization did not constitute a university;
- (b) Referred to supposed role of a purported "Students' Foundation" as a cooperating agency assisting pupils, in acknowledging receipt and acceptance of contracts from enrolling students, and set forth assignment of particular student's account thereto, and employed such name thereafter in dunning delinquents, facts being business involved was not an investment for benevolent purposes, or a donation, legacy, or fund for the support of such institutions as schools or hospitals, or of some specific object in connection therewith, but was a purely commercial enterprise for profit, and had no endowment or foundation connected therewith, and purported foundation was fictitious; and
- (c) Represented through agents and impliedly in contracts that regular prices varied from \$251.50 to \$295 depending upon deferred-payment arrangements, and that he was offering to waive the \$120 charge incorporated in said amounts for tuition as distinguished from price of typewriter and other materials, facts being balance thus left and charged constituted the regular price ordinarily received by him for the course, typewriter, and materials, was not special or reduced, and involved no free tuition;

With capacity to mislead prospective students and to induce them to enroll and pay for the course as and for that of a true university and believing in the truth of aforesaid representations, and thereby divert to himself patronage from competitors:

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

Mr. Eugene W. Burr for the Commission.

Phillips & Munck, of Oakland, Calif., for respondent.