

IN THE MATTER OF

RICHARD A. O'BRIEN, TRADING AS O'BRIEN & CO.

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

Docket 2083. Complaint, Dec. 16, 1932—Order, Feb. 7, 1933

Consent order requiring respondent individual, in connection with sale and offer of his so-called "P.H. Powder" in interstate commerce, to cease and desist from representing in his advertisements or otherwise, that said powder is effective to rid animals of worms, or is an animal conditioner, cures or prevents distemper or has been proved by experience so to do, or cures or prevents certain other ailments, or has certain tonic and fortifying effects, as in said order set forth and specified.

Mr. Alfred M. Craven for the Commission.

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 Richard A. O'Brien, trading as O'Brien & Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Richard A. O'Brien, is engaged at Seattle, Wash., in the business of selling to the trade and to the public generally, a preparation intended for, and used as, a conditioner, tonic and medicine for animals, particularly fur-bearing animals, said preparation being generally known in the trade and to the public as "P.H." Powder—and in the shipment thereof in interstate commerce from his principal place of business in Seattle, Wash., to the purchasers thereof located in Alaska and in various States of the United States other than the State of Washington. In the course and conduct of his said business, respondent is and has been in competition with other individuals, partnerships, and corporations located in the United States, engaged in the sale and distribution in interstate commerce of stock powders and medicines which are used for the same purposes as those for which respondent's said powder is used.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting orders for and selling said "P.H." Powder, causes advertisements and advertising matter to be inserted in magazines of national circulation, wherein such statements as the following appear:

Get rid of worms without pilling. "P.H." Powder will do it. * * * World's Greatest Animal Conditioner and Worm Expeller. Given to the Animal with its Food. * * * It also Cures and Prevents Distemper. * * * Worms are blood-sucking parasites that cause 90% of all livestock losses. "P.H." Powder will get them. It will also give keener appetites. It will enrich their blood and will fortify their systems against infectious diseases. * * * It will cure and prevent coccidiosis, snuffles and disease. * * * It acts as a tonic, fights the worms and fortifies the animal system against infectious diseases.

Respondent, in further promotion of his said business and in the sale of said powder, distributes in interstate commerce among his customers and prospective customers, circulars, leaflets, and other advertising matter, and makes therein, among other claims and representations, the following:

"P.H." for the cure of worms and perfect health and condition in dogs, or all fur-bearing animals. * * * "P.H." is a beneficial tonic and conditioner and will eliminate all intestinal parasites and digestive disturbances in its food. "P.H." stimulates the appetite, enriches the blood, thereby fortifying the system against worms and infectious diseases, such as colds, distemper, ear canker, mange, etc. "P.H." is a proved specific for coughs or parasitic bronchitis. * * * "P.H." will cure and prevent distemper and diseases. * * * "P.H." has been thoroughly tested and experiments made with it by qualified British chemists for the cure and prevention of distemper and claims were only made for it when it had been proven beyond a doubt that it would effect a cure and prevent the disease. * * *

Respondent, both in his magazine advertising and in his circulars, leaflets, and similar advertisements, makes other claims and representations in effect the same as the claims and representations quoted in this paragraph.

PAR. 3. Said claims and representations are, all and singular, false and misleading, in that the said powder, administered to animals as directed by the respondent or otherwise, is not effectual to prevent, remedy or cure any of the diseases mentioned, or to bring about the results claimed in such representations and advertising matter, or any of them.

PAR. 4. The various claims and representations set forth in paragraph 3 hereof, all and singular, have the tendency and capacity to mislead and deceive purchasers and to induce the purchase by them of said powder in and on account of their belief in the truth of said claims and statements, and thus to divert trade from respondent's competitors to the respondent, to the injury of said competitors.

ORDER TO CEASE AND DESIST

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 Stats. 719), the Federal Trade Commission, on the 16th day of December, 1932, issued and thereafter served its complaint against the respondent Richard A. O'Brien, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent thereafter filed an answer to said complaint, which answer is in the following language, to wit:

* * * That respondent refrains from contesting this proceeding and consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violation of the law alleged in the complaint.

Thereafter this proceeding came on regularly for disposition and decision by the Commission under subdivision 2 of Rule III of the Rules of Practice and Procedure adopted by the Commission, and the Commission being fully advised in the premises:

It is ordered, That the respondent, Richard A. O'Brien, in connection with the sale and offering for sale of the medicinal preparation designated in the complaint as P. H. Powder, in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from making in his advertisements of said powder or by any other means whatsoever representations or statements either in substance or effect as follows:

1. That said powder is effective to rid animals of worms.
2. That said powder is an animal conditioner.
3. That said powder cures or prevents distemper or has been proved by experience to effect a cure or prevent distemper.
4. That said powder enriches the blood or fortifies the system against infectious or other diseases.
5. That said powder cures or prevents coccidiosis, snuffles or any other diseases of dogs or fur-bearing animals.
6. That said "P.H. Powder" will eliminate intestinal parasites or digestive disturbances.
7. That said "P.H. Powder" fortifies the system against worms and infectious or other diseases.
8. That said "P.H. Powder" is an approved specific for coughs or parasitic bronchitis.

It is further ordered, That the respondent shall within 30 days after the service upon him of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
HELLER MANUFACTURING 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 2055. Complaint, July 2, 1932—Decision, Feb. 14, 1933

Where a corporation engaged in sale of "tackers" to jobbers and retailers, and of staples or tacks for use therewith,

Included word "manufacturing" in its corporate name and displayed said name upon its advertisements, circulars, price lists, billheads, and other business stationery, and upon the labels on its products and the containers thereof, and through said corporate name, advertising, labeling, and orally by agents, represented itself as manufacturer of the products dealt in by it, facts being it neither owned nor operated a factory or plant making the same and was not a manufacturer thereof;

With tendency and capacity to mislead and deceive purchasers of its products into believing that in buying from it they were dealing with the manufacturer of the products purchased and thereby gaining an advantage by saving themselves the profit of the middleman, and with effect of unfairly diverting trade to it from its competitors and with capacity and tendency so to do:

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. Alfred M. Craven for the Commission.

Mr. Jerome M. Friedlander and Smith, Olds, Thompson & Harris, of Cleveland, Ohio, 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 Ohio corporation engaged in the sale of tackers and staples to jobbers and retailers throughout the United States, and with principal place of business in Cleveland, with using misleading corporate name, misrepresenting business status and advertising falsely or misleadingly and misbranding or mislabeling in said respects, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce; in that respondent, engaged as aforesaid, and neither owning nor operating a plant making the products dealt in by it, which it purchases from the manufacturers thereof, uses a corporate name including the word "manufacturing", and displays the same in its advertising circulars and price lists, and other business stationery, and on labels attached to the containers of its products; with