

Complaint

IN THE MATTER OF

YOUELLS-PRIVETT EXTERMINATING CORPORATION

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

Docket 2068. Complaint, Oct. 15, 1932.—Decision, Sept. 26, 1933

Where a corporation engaged in the manufacture of vermin exterminator and in the sale thereof to druggists and other retailers, for resale to the ultimate purchaser, falsely represented through labels and other advertisements that said product would mummify carcasses of rats and mice and prevent offensive odors therefrom, and supplied retail customers with advertising of similar tenor for soliciting the business of the ultimate purchaser; with result that such customers bought said product in reliance upon the truth of such false representations, and repeated the same to the ultimate purchaser who bought in reliance upon the truth thereof, and with tendency to increase the sale of said product to the injury of competitors who did not pursue such methods, and whose ability to compete was lessened and injured thereby, and to mislead and deceive prospective purchasers as to effect, results and value of product in question, and divert trade to it from its competitors:

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. PGad B. Morehouse for the Commission.

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 New Jersey corporation, engaged in the manufacture and sale of an alleged vermin exterminator under the names of "Rat Snap" and "Youells Original Rat Snap", and with principal place of business in Plainfield, with misbranding or mislabeling, advertising falsely or misleadingly as to nature of product, and offering deceptive inducements to purchase, 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 for more than two years last past, in the sale of said product principally to various druggists and other retail customers in the various States, through its labels and other published advertisements "represents to its prospective customers that the said product, when used according to directions printed upon the package, will mummify the carcasses of the killed rats and mice, prevent offensive odor from the same, and that cats and dogs will not touch it."

Respondent further, as alleged "also places in the hands of its aforesaid retail customers advertising matter setting forth said false representations, knowing and intending that the said representations are to be passed on to the ultimate consumer with the object and result of effecting a sale by the said retailer customer to the said ultimate consumer."

Respondent also, "as a further inducement to its prospective retail customers", "has promised to cause to be inserted and paid for advertisements containing such false claims with the intent and object and effect of promoting the resale of said product, and respondent has thereafter failed and refused to perform according to such promise."

Respondent's prospective retail customers, as alleged "believing and relying upon the truth of the aforesaid representations, have purchased and do purchase respondent's said product, have resold and do resell the same to the ultimate consumer, and have repeated or passed on the aforesaid false representations to the ultimate consumer, who in turn, believing and relying upon the truth of respondent's representations relative to the effect of his said product, purchase the same from the said retailers"; to the detriment of the public and competitors, including those who do not pursue such methods of competition, and whose ability to compete with it is and has been lessened and injured thereby.

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, Youells-Privett Exterminating Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered its appearance and filed answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondent before a trial examiner of the Commission, duly appointed thereunto. Thereupon, this proceeding came on for consideration without oral argument, upon the record herein and brief of counsel for the Commission, after due notice to respondent, and the Commission having duly considered the matter and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing in the State of New Jersey with principal place of business at Plainfield, in said State. Since 1926, it has been engaged in the manufacture and sale of vermin exterminator under the name "Youell's Original Rat Snap" principally to various druggists and other retail customers for resale to the ultimate purchasers. Respondent has caused such product, when sold, to be shipped from its place of manufacture in the State of New Jersey through and into various other States of the United States to the purchasers thereof. The Commission finds that in the conduct of its business, respondent was and is in competition with other corporations, partnerships, firms and individuals engaged in the sale and distribution of rat poisons in interstate commerce.

PAR. 2. In the course and conduct of its business, as aforesaid, through its labels and other published advertisements, respondent has represented to its prospective customers that the said product, when used according to directions printed upon the package, will mummify the carcasses of killed rats and mice, prevent offensive odors from the same, and that cats and dogs will not touch it. Respondent also places in the hands of its aforesaid retail customers advertising matter setting forth said representations knowing and intending that the said representations are to be passed on to the ultimate purchaser with the object and result of effecting a sale by the said retail customer to the said ultimate purchaser.

PAR. 3. The product manufactured and sold by respondent is a hard cake composed of approximately 48 percent molasses, 35½ percent grain cereal, 2.6 percent mineral constituent, 1¼ percent phosphorus, 13.3 percent water, a very small amount of hydrochloric acid, and a trace of cyanide. The product is administered by leaving crumbled portions thereof where they will be accessible to rats and mice.

On behalf of respondent, lay testimony was received of instances where rodents had succumbed to this poison and had left no odor. A sample of respondent's product furnished by it was tested by the Bureau of Biological Survey through its Division of Predatory Animal and Rodent Control. The testimony of the witnesses who conducted such test was that rats and mice after eating the poison died but did not become mummified or dried up, and that there was a most offensive odor therefrom. Briefly, these tests consisted of placing hungry rats of different species in separate cages with five grams of respondent's product in each cage. The following day all

Findings

18 F.T.C.

of the rats were dead and no offensive odors were noticed. The second day there was a noticeable odor. The third day the odor was very noticeable and on the fourth day the odor became so strong and repulsive that it was necessary to remove the dead rats from the laboratories. The carcasses at that time were round and inflated from decomposition and were not dried up nor mummified in any way.

From a consideration of all of this testimony the Commission finds that respondent's representation that the said product, when used according to directions, will mummify the carcasses of the killed rats and mice is false and misleading; and respondent's representation that it will prevent offensive odors from the same is false and misleading. In paragraph 2 of the complaint it was alleged that respondent falsely represented that cats and dogs would not touch his product. The Commission finds nothing in the evidence to sustain this allegation.

PAR. 4. Respondent's prospective retail customers believing and relying upon the truth of the aforesaid false representations have purchased and do purchase respondent's said product; have resold and do resell the same to other ultimate purchasers, and have repeated or passed on to the ultimate purchasers the aforesaid false representations and the ultimate purchasers believing and relying upon the truth of such representations relative to the effect of the said product have purchased the same from the said retailers.

PAR. 5. The testimony of representatives of competitive firms was to the effect, and the Commission finds that such claims tended to increase the sales of respondent's product to the injury of competitors who do not pursue the methods of competition hereinabove described and whose ability to compete with respondent is and has been lessened and injured by reason thereof.

PAR. 6. The use by respondent of the foregoing false representations in connection with the interstate sale of its product has the capacity and tendency to mislead and deceive prospective purchasers as to the effect, results and value of the use of this said product and tends to divert trade from its said competitors to respondent.

PAR. 7. The complaint further charged that respondent, as an additional inducement to its prospective retail customers, promised to cause to be inserted and paid for, advertisements containing such false claims with the intent, object and effect of promoting the resale of said product and that respondent thereafter failed and refused to perform according to such promise. Respondent's testimony was to the effect that promises of free advertising were never made

in bad faith, but that in certain instances such contracts were not carried out, due to lack of capital. There is no evidence that such failures constituted a method or business practice on the part of respondent in connection with its interstate trade.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in interstate commerce, and constitute a violation 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, the answer of respondent thereto, the testimony taken and brief filed in support of the complaint, and the Commission having made its findings as to the facts and 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 the respondent Youells-Privett Exterminating Corporation, a corporation, and its agents, representatives, servants, employees, and each of them, in connection with the sale or offering for sale in interstate commerce of a rat poison of the same or substantially the same composition as the poison heretofore known as "Youell's Original Rat Snap", cease and desist from making the following statements and representations or statements and representations of like or similar import or effect:

(1) That such poison will mummify the carcasses of killed rats or mice.

(2) That such poison will prevent offensive odors from killed rats and mice.

It is further ordered, That so much of the aforesaid complaint as charges the respondent with falsely representing that cats and dogs will not touch the said poison and with breach of agreements with customers relative to advertising be, and the same is, hereby dismissed on the ground that such charges have not been proven.

It is further ordered, That the respondent shall within 60 days after 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 it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
S. W. PIKE, SEEDSMAN, 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 2086. Complaint, Jan. 19, 1933—Decision, Sept. 26, 1933

Where a corporation engaged in the sale of seeds of various kinds, through advertisements in newspapers and magazines of general circulation, and through such agencies as post cards, catalogs, leaflets, and other printed and written matter distributed through the mail,

- (a) Represented that it would send free of charge two dozen Giant Darwin Tulips, five packages of assorted flower seed, one package of new Everblooming Easter Lily and its catalog, for five names of friends who love flowers and 20 cents to cover packing and postage, and that if accepted within ten days it would send free of charge a beautiful hardy Chinese Regal Lily bulb, and sent post-card communications or advertisements advising the addressee that "As your friend informed us you are interested in flowers, we have a *free offer* of 2 dozen Giant Darwin Tulips together with our catalog to send you", and offered also to "send post paid 5 pkts. assorted flower seed for fall or spring planting; 1 pkt. New 'Everblooming Easter Lily' which will blossom most all summer if planted now (also a wonderful house plant) all for only five names of friends who love flowers and 20 cents to cover packing and postage", with the further offer to include, in event of acceptance within ten days, "Free, a beautiful hardy, Chinese Regal Lily bulb", along with the assertion "This opportunity may never come to you again";

The facts being no Giant Darwin Tulips were sent, pursuant to said first advertisement, and the so-called "Free offer" was predicated upon an order from its catalog, of \$3 or more, neither said tulips nor lily bulb were included without charge, but cost thereof was included in that of the other items, and orders were received and accepted irrespective of any ten-day limitation, which it included to indicate as unusual, its usual and characteristic method of competition; and

- (b) Made such pretended free offers in catalogs and other advertising distributed among purchasers and prospective purchasers as "we will send 40 large pkts. assorted vegetable and flower seed; one-half dozen fine Everblooming Tuberoses and 25 of our best named Gladioli in assorted colors, measuring 3½ to 5 inches circumference, all for only 98 cents"—together with offer to include, in event of acceptance within ten days, "free a large blooming size Regal Lily that sells for 50 cents—don't ask how we are able to do this, but take advantage of it now, for this offer may never be made again", along with the assertion that "In appreciation of your order, we give these wonderful *free* offers * * * taken from our select stock", and "being large growers we are in a position to give these wonderful offers to you", and made it its practice to distribute with its catalog a so-called free offer of two dozen large Giant Darwin Tulips;

The facts being that shipment of the tulips was conditioned upon the making up of an order of \$3 or more hereinabove set forth, and cost thereof and of the Regal Lily bulbs was included in prices charged for other items, so that it derived a compensation from any and all transactions resulting from its so-called "free offers", or any of them;