

IN THE MATTER OF  
MEARS RADIO HEARING DEVICE 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 2079. Complaint, Dec. 5, 1932—Decision, Jan. 17, 1934*

Where a corporation engaged in the sale of a device, and oil for use in conjunction therewith, for the treatment and cure of the partially and totally deaf and those afflicted with head noises, in competition with many meritorious varieties of hearing devices, and devices for relief of such noises and symptoms of deafness, and for treatment of the deaf, and with many ear oils, advertised said device through newspapers of general circulation, magazines, letters, and circulars as a new invention, which exercises the ossicles and muscles of hearing until they become strong enough to work, and relieves deafness and head noises by removing the cause, helping to "restore your natural hearing" and affording "positive and complete relief from head noises", and with a record of accomplishing such results for many, including restoration of hearing after 20 years of extreme deafness, and represented that said oil, assertedly used theretofore by a noted New York physician with remarkable success, and recognized by doctors, had alone relieved many cases of deafness, and claimed through testimonial advertisements that use of said device and oil had relieved users of deafness, had enabled a person deaf for 25 years, to hear the "talkies", and would enable a person born deaf and dumb to acquire the sense of hearing;

Facts being that such device would not cure or aid in the cure of deafness or head noises, or relieve such ailments or noises or restore natural or any hearing to deaf persons, with or without said oil, and was not a new invention, but, formerly sold under a different name, had been discovered, tested and discarded as worthless by otologists a number of years ago, use thereof was dangerous, and treatment thereby afforded, with or without said oil, was neither scientific, efficacious or proper for deafness or head noises, and aforesaid oil did not possess such therapeutic value as to aid, cure or relieve deafness or head noises and was not used or recommended by reputable or noted doctors, or given its name, as asserted, by any physician;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers, including the millions of deaf and partially deaf, and those incurably so, and receptive to anything holding out hope of slightest relief, into believing that such representations were true, and inducing their purchase of said device and oil in such belief, and of unfairly diverting trade to it from its competitors, and with effect of postponing procurement of proper and efficacious treatment, by the user, for his deafness:

*Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

*Mr. E. J. Hornibrook* 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 Delaware corporation engaged in the sale of devices, apparatus, and medicines for the treatment of those who are hard of hearing, including a device called "Mears Airosage" and a medicine called "Mears Ear Oil" (sold for use in conjunction with said device), and with principal place of business in New York City, with advertising falsely or misleadingly as to history, results and qualities of product, in violation of the provisions of Section 5 of said act prohibiting the use of unfair methods of competition in interstate commerce; in that respondent represents that said device is a new invention and one which will cure and has cured and relieved head noises and deafness, even in extreme cases such as those of people born deaf and dumb, or deaf for twenty-five years, and in that it further falsely advertises said "Mears Ear Oil" as a preparation prescribed by a noted New York physician with remarkable success, used by it and so designated with his permission, and recognized as a preparation by physicians, which alone has relieved many cases of deafness and one which, if used in conjunction with said device, affords as scientific a treatment as could be asked for a congested and deafened ear; with tendency and capacity to deceive the purchasing public and induce the purchase of its said products in reliance upon such statements and representations, and unfairly divert trade from competitors to it and otherwise injure said competitors, to their prejudice and that of the public.<sup>1</sup>

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, on the 5th day of December, A.D. 1932, issued and thereafter served its complaint against the respondent, Mears Radio Hearing Device 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 an answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence taken

<sup>1</sup> Respondent's said statement, and representations, as alleged in the complaint in detail, are set forth in the findings, *infra*.

in support of the charges stated in the complaint, and in opposition thereto. Thereafter this proceeding came on regularly for final hearing and the Commission having duly considered the record and being now fully advised in the premises finds that this proceeding is in the interest of the public and 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, Mears Radio Hearing Device Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business in the City of New York, State of New York. It is now and for several years last past has been engaged in the sale of devices, apparatus, and medicines for the treatment and cure of persons who are hard of hearing, or totally deaf or afflicted with head noises; among which is a device called by respondent "Mears Airosage" and a medicine called "Mears Ear Oil". "Mears Ear Oil" is sold by respondent for use in conjunction with "Mears Airosage". These two last named products are sold by respondent in different States of the United States and when orders are received therefor, such orders are filled by respondent by packing the same in said City of New York and shipping the same, usually through the United States mails, from the said city to the purchasers thereof, many of whom reside outside the State of New York.

PAR. 2. In the course and conduct of said business respondent is in competition with individuals, copartnerships, and corporations engaged in the transportation and sale between and among various States of the United States of devices, apparatus, and medicines sold and used for the same purposes as are respondent's "Airosage" and "Mears Ear Oil".

The respondent's "Airosage" is in direct competition in interstate commerce with the hearing devices on the market, and there are many meritorious varieties of them sold in interstate commerce. Respondent represents in its advertising that the use of "Airosage" makes the use of hearing devices unnecessary.

There are also other mechanical devices sold in interstate commerce, not as a cure for deafness, but for the relief of head noises and symptoms of deafness only, which are in competition with "Airosage".

Respondent, in the sale of "Mears Ear Oil" is in competition with many ear oils and devices sold in interstate commerce for the treatment of the deaf.

PAR. 3. The device "Airosage" is operated by storage batteries. It has a cupped shaped vibrator which according to instructions is to be placed against the ear until it produces a tickling and tingling sensation in the inner ear. A hard rubber cone shaped device, called the applicator is then directed to be attached to the vibrator and inserted in the ear. Users are directed to continue this treatment for a full half minute and massage around the ear and across the throat and chin with the vibrator for a period of five minutes. Also users are directed to use another device to be attached to this vibrator for massaging the palm of the hand over the heart line thereof. This latter treatment is described by respondent as "Zone Therapy", and is represented by respondent to be efficacious in the treatment of deafness.

"Mears Ear Oil" consists of Homeopathic Oil of Mullen with twenty drops of Oil of Eucalyptus added to each pint of the oil of mullen. Users are directed to place two drops in each ear three times a week. Users are also directed to use it in conjunction with and as an aid to vibratory treatment produced by "Airosage". A month's supply of the ear oil accompanies each "Airosage Device".

Respondent sells this device for \$45 when sold alone. At this price a supply of "Mears Ear Oil" is included. Approximately 500 have been sold each year in the past two years. The device "Airosage" is also sold on a 30 days rent or trial plan whereby it and an ear phone are shipped to a prospective purchaser upon payment of \$5 and, if at the end of 30 days trial the prospect is satisfied, he may keep both devices upon further payment of \$55. In the advertisement of this trial plan the price quoted for each device, if sold separately, is \$45.

There are in the United States ten to sixteen million adults and one and one-half million children who are either totally deaf or deficient in the sense of hearing, and of these more than one and one-half million are incurable. These people are constantly and eagerly seeking something that will cure them or relieve their condition and will try out anything that seems likely to afford the slightest relief.

PAR. 4. The respondent expends in advertising its said "Airosage" and "Mears Ear Oil" from \$1,500 to \$2,000 per year.

The respondent advertises "Airosage" and "Mears Ear Oil" through the medium of magazines, letters, circulars, and newspapers having a general circulation throughout the United States, such as the Sunday American and other Hearst papers. Typical of these advertisements are the following:

1. Hearing has been restored by the use of the Airosage after twenty years of extreme deafness.

## Findings

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2. Many have had head noises eliminated and natural hearing restored by the use of Airosage.

3. The new invention, Airosage, helps restore your natural hearing.

4. Airosage relieves deafness and head noises by removing the cause.

5. Positive and complete relief from head noises.

6. Airosage imparts vibratory treatment that exercises the ossicles and muscles that control the hearing until they become strong enough to work.

7. A noted New York physician has prescribed Mears Ear Oil with remarkable success. He has agreed to allow us to use it and call it Mears Ear Oil. It is lubricating, healing and stimulating \* \* \*. Unaided it has relieved many cases of deafness and is recognized by physicians. What more scientific treatment can be congested and deafened ear receive than these two wonderful healing agents when used together.

In addition to the representations hereinabove stated in paragraph 4 above, respondent has represented in testimonial letter advertisements that by the use of said Airosage and Mears Ear Oil or either of them a person deaf for twenty-five years can now "hear the talkies; that by the use of said Airosage and Mears Ear Oil or either of them deafness has left a user or users thereof; that by the use of said Airosage and Mears Ear Oil a person born deaf and dumb will acquire the sense of hearing; that the sense of hearing of a person born deaf will be acquired by a user of said Airosage and Mears Ear Oil or either of them."

PAR. 5. The statements and representations set forth in paragraph 4 are false and misleading in that "Mears Airosage", whether used in conjunction with "Mears Ear Oil" or not, is not such a device, the use of which will cure, or aid in the cure of deafness or head noises or relieve deafness or head noises or restore natural or any hearing to deaf persons; nor is the said device, "Mears Airosage", a new invention but is a device formerly sold under the name "Aurosage" and which was discovered, tested, and discarded as worthless by otologists a number of years ago; nor is such device a scientific device; nor is the treatment by the use of such device in conjunction with or without "Mears Ear Oil" scientific, efficacious, or proper treatment for deafness or head noises; and the product "Mears Ear Oil" when used with the device "Airosage" or without it does not possess such therapeutic value as to cure or aid in the cure or relief of deafness or head noises, nor is it used or recommended by reputable or noted physicians and the name "Mears Ear Oil" was given it not by a physician, but by a layman. The use of "Airosage" in the treatment of the deaf is dangerous and likely to injure the ear. The use of "Airosage" and "Mears Ear Oil" or either of them in the treatment of deafness postpones the procurement of efficacious treatment in many instances.

The rent or trial plan of sale of "Airosage" as described in paragraph 3 hereof, when adopted by a prospective purchaser, has the tendency and capacity to postpone the procurement of proper and efficacious treatment for his deafness.

The president of respondent testified in this proceeding that the use of the testimonial and claim that "Airosage" would "help those born deaf" had been abandoned, but made no comment as to whether this statement would be resumed.

PAR. 6. Each and all of the representations as to the efficacy of respondent's "Airosage" and "Mears Ear Oil", contained in the advertising as set forth in paragraph 4, had and have a tendency and capacity to mislead and deceive the purchasers and prospective purchasers of respondent's said "Airosage" and "Mears Ear Oil" into the belief that such representations are true, and to induce them to purchase respondent's said "Airosage" and "Mears Ear Oil" in such belief and had and have the tendency and capacity to unfairly divert trade from said competitors to respondent.

#### 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 come on to be heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, the testimony and evidence, and briefs of counsel, and the Commission having made a report in writing in which it stated its findings as to the facts, with its conclusion that the respondent had violated the provisions 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", and the Commission being fully advised in the premises,

*It is ordered*, That respondent, Mears Radio Hearing Device Corporation, its agents, employees, and representatives, in connection with the advertising, offering for sale, and sale in interstate commerce, or in the District of Columbia, of the commodities "Airosage" and "Mears Ear Oil", or either of them, cease and desist from

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representing in any manner, including by or through the use of testimonials or endorsements, that the use of the device "Airosage" and "Mears Ear Oil" or either of them, or any similar device or medicine will cure, aid in the cure or relieve deafness or head noises or that the use of such device either in conjunction with or without "Mears Ear Oil" is scientific, efficacious or proper treatment for deafness or head noises or that "Mears Ear Oil" possesses therapeutic value in the treatment of deafness or head noises.

It is further ordered that respondent shall, within 60 days after service upon it 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 this order.

## Complaint

## IN THE MATTER OF

## PAUL CASE

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

*Docket 2091. Complaint, Feb. 24, 1933—Decision, Jan. 18, 1934*

Where an individual, neither a physician nor graduate of any college or university of medicine, engaged in the sale and distribution of a medicinal product, known as "Case combination treatment", and consisting of two different kinds of tablets, based on two separate formulae, for taking as prescribed,

Made such statements in advertising his said treatment in circulars and letters sent to prospective customers by mail, as that it would drive out aches and pains of muscular and subacute rheumatism, neuralgia, sciatica, neuritis, and lumbago, constituted an amazing discovery that had brought comfort and happiness to more than 100,000 sufferers, and had brought relief to those who had endured the aches and pains of the aforesaid ailments for years, even in severe cases, with reported miraculous relief from misery suffered, and headed numerous testimonials with such captions as "Suffered For 20 Years, Had Given Up Hope, Then Tried the Case Treatment", "Discards Crutches, Sleeps All Night, Works In Garden", "Feels 20 Years Younger, Walks Without Cane, Entirely Active Again", and made numerous other statements and representations of similar tenor, facts being that the use of the two formulae would not cure or have any appreciable therapeutic value in the treatment of the aforesaid diseases;

With effect of misleading and deceiving customers and prospective customers into purchasing said product in the belief that it would produce the results claimed for it as hereinabove set forth, and with tendency and capacity so to do, and with effect of injuring, to a substantial extent, competitors selling preparations with same effect as that of products herein concerned, including those not falsely advertised as a cure for the aforesaid diseases, or in other respects, and with capacity and tendency so to injure:

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

*Mr. Henry C. Lank* for the Commission

*Mr. H. Ralph Burton, Mr. Tench T. Marye, and Mr. Robert W. Burton*, of Washington, D.C. 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 individual, engaged in the sale and distribution of medicines and drugs described by him as "Case Combination Treat-