

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-

ment", for the purported relief and cure of rheumatism, gout, neuritis, sciatica, neuralgia, and lumbago, and with principal office and place of business in Brockton, Mass., with advertising falsely or misleadingly as to qualities or results 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, falsely and misleadingly represents through advertisements, pamphlets, and circular letters that his said medicines and drugs are an effective cure and remedy for, or beneficial in the treatment of, muscular or subacute rheumatism, neuritis, gout, sciatica, neuralgia, and lumbago, and the aches and pains of rheumatic, neurotic or gouty condition; the facts being that "while a few of the drugs contained in respondent's medicines are sometimes employed with results more or less beneficial in certain stages of some of the above diseases or ailments, yet the said medicines or drugs will not provide adequate treatment for the above-mentioned diseases or ailments and it is false and misleading to so represent or imply."

Respondent further, as charged, represents through advertisements, pamphlets, circulars, and letters that his said medicines and drugs are quickly absorbed through the stomach into the blood stream and carried to all parts of the body; that this is necessary to drive the aches and pains out and not from one part of the body to another; that they will drive out the aches and pains of the ailments referred to, have relieved the misery, etc., of people who had used crutches and canes, and in many instances were confined to their beds unable to walk; and brought comfort, happiness, and relief to a multitude of sufferers, including severe and chronic cases, where hope had been given up, and makes numerous other representations and assertions of similar tenor;¹ the facts being that said medicines and drugs are not efficacious in the treatment of said ailments, or the aches and pains thereof, but merely dull the sensitiveness of the user so that the user does not feel the aches and pains, and said dulling of aches and pain is of a temporary nature, and the said drugs and medicines do not effectively treat the cause of the said aches and pains, and many persons have purchased said medicines and drugs, in reliance on the truth of such statements, representations, and advertisements.

The use by respondent, as charged "of the false, misleading and deceptive advertisements and representations as hereinabove referred to constitute practices or methods of competition which tend

¹ Other claims and representations, as alleged in detail in the complaint, are set forth in the findings, *infra*.

to and do (a) prejudice and injure the public; (b) unfairly divert trade from and otherwise injure respondent's competitors; and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the sale of medicines and drugs in interstate commerce."

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, Paul Case, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed his answer and the case was set down for the taking of testimony before an examiner of the Commission. Evidence was adduced in support of the charges of the complaint. No testimony was offered by the respondent.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission and for the respondent. The Commission now having duly considered the record and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Paul Case, is an individual, engaged since 1923 in the business of selling and distributing a medicinal product known as "Case Combination Treatment." Respondent has his place of business in Brockton, Mass. Respondent advertises his product in magazines and periodicals, having a nation-wide circulation and sells his said product direct to the consumer and not through retail stores. When orders are received he sends his said product by mail to the purchasers thereof at their respective points of location in the several States of the United States. Respondent is not a physician nor is he a graduate of any college or university of medicine.

PAR. 2. Respondent's product is in tablet form and consists of two different kinds of tablets. Respondent in his literature refers to said tablets as Formula No. 1 and Formula No. 2.

Formula No. 1 contains the following medicines and drugs in the indicated quantities:

	<i>Grain</i>
Powdered willow charcoal.....	$\frac{1}{20}$
Extract Calchicum Root (commercial).....	$\frac{3}{4}$
Sodium Salicylate.....	2
Potassium Acetate.....	$\frac{1}{16}$
Potassium Sulphate.....	$\frac{1}{16}$

Excipients Q. S. to make a 4 grain tablet.

Tablets composed of Formula No. 1 are to be taken, according to the directions of the respondent, four times daily, one tablet at each meal time and one tablet before retiring.

Formula No. 2 contains the following medicines and drugs in the indicated quantities:

	<i>Grain</i>
Cascarin.....	$\frac{1}{4}$
Aloin.....	$\frac{1}{4}$
Podophyllin.....	$\frac{1}{16}$
Extract Belladonna.....	$\frac{1}{8}$
Gingerine.....	$\frac{1}{8}$
Sodium Bicarbonate.....	$\frac{1}{4}$

Respondent's directions for taking tablets composed of Formula No. 2 are "one or two as required to move the bowels twice a day, to be taken upon retiring."

PAR. 3. Respondent has advertised his "combination treatment" in magazines having a nation-wide circulation, such as Good Stories, Grit, Hearth and Home. Respondent has not advertised in such magazines since this proceeding was commenced. At the time of the hearings respondent was confining his advertising to distributing circulars and letters to prospective customers by mail. Among the representations and claims made by respondent in these circulars and letters are that the "Case Combination Treatment"—

(a) Will drive out aches and pains of muscular and subacute rheumatism, neuralgia, gout, sciatica, neuritis, and lumbago;

(b) Is an amazing discovery that has brought comfort and happiness to more than 100,000 sufferers;

(c) Has brought relief to those who have endured the aches and pains of rheumatism, gout, sciatica, neuritis, and lumbago for years, even in severe cases, reporting miraculous relief from their misery;

(d) Has completely relieved the aches and pains of so-called "old chronic" cases where hops had been given up;

(e) Will quickly and completely conquer your trouble.

PAR. 4. Respondent also makes numerous other representations, statements and claims in the circulars which he distributes as aforesaid. A few illustrations of such representations or claims are:

(1) The remarkable feature of the Case Combination Treatment is that in many cases a day's treatment has given relief when all other medicines taken had failed.

(2) You now have in your possession the amazing combination that has brought joy and relief to thousands of sufferers. Surely, you have every right to expect the same results.

(3) Within a few minutes after starting the treatment, the good work has begun. You may not feel the action at once (in some old chronic cases a week may be necessary to note decided improvement) but you may be sure the improvement has started and if you do not interrupt the treatment the trouble should certainly yield to the scientific combination of the medical formulae.

(4) What a happy day to look forward to—and it should be close at hand—when those aches and pains will have left you—when the memory of what you went through will make your dreams possible—when you will be again active with the vim of former years.

PAR. 5. Respondent also quoted numerous testimonials in his circulars and placed headlines above these individual testimonials. A few such headlines are:

(a) Suffered For 20 Years. Had Given Up Hope. Then Tried The Case Treatment.

(b) Could Not Move From Rheumatism. Now Says He Gets About Like A Three Year Old Colt.

(c) Says He Is Free From That Arch Fiend Neuritis, Since Taking The Case Combination Treatment.

(d) Laid Up 10 Months. Case Treatment Quickly Corrects Trouble.

(e) Neuritis Quickly Cleared Up.

(f) Now Goes About Without His Crutches Or Cane. Certainly A Remarkable Recovery.

(g) Could Not Work For A Year. Spent A Fortune Before Finding Relief With The Case Treatment.

(h) Discards Crutches. Sleeps All Night. Works In Garden.

(i) Feels 20 Years Younger. Walks Without Cane. Entirely Active Again.

(j) Throws Crutches Away After 30 Years of Suffering. Had Tried Many Kinds of Medicines Without Results.

(k) Suffered With Rheumatism For 10 Years. Pain Completely Relieved By Case Treatment.

PAR. 6. Four of the circulars above referred to were introduced into the record as exhibits. The evidence discloses that approximately 35,000 of each of such circulars were distributed by respondent to prospective customers from 1929 to the date of the hearing.

PAR. 7. Several medical experts were called as witnesses in this proceeding and testified that respondent's Formula No. 1 had a mild analgesic or anodyne effect when taken in accordance with respondent's instructions, that it would temporarily relieve mild pains, that it did not in itself have any appreciable therapeutic value in the treatment of rheumatism, neuritis, sciatica, lumbago and neuralgia, that Formula No. 2 was a mild cathartic, that the use of the two formulae would not cure nor have any appreciable therapeutic value in the treatment of the above mentioned diseases, that in some mild cases of rheumatism or simple cases of neuralgia the use of the above combination treatment might relieve the pain and the disease might subside, with or without treatment, but that the said medicines in and of themselves did not have proper therapeutic value to produce the results claimed by respondent. The respondent offered no witnesses and the above testimony stands uncontradicted.

PAR. 8. Based on the testimony of the medical experts called in this case the Commission finds that respondent's claims and representations as above recited are false and misleading and also finds that such claims and representations have had and do have the capacity and tendency to mislead and deceive and have misled and deceived customers and prospective customers into purchasing respondent's said product in the belief that it would produce the results claimed by respondent in its advertising as recited above.

PAR. 9. The above medical experts testified that there were numerous other preparations on the market that would have the same physiological action as respondent's product. Competitors of respondent were also produced as witnesses and testified that there were numerous products sold in interstate commerce which would have the same effect as respondent's product. Based upon the above-mentioned testimony, the Commission finds that there are numerous preparations sold in interstate commerce in competition with respondents Combination Treatment.

PAR. 10. The representatives of competitors of respondent above referred to testified that among the various products offered and sold in competition with respondent's product several of such products were not advertised as a cure for the several diseases mentioned and were not otherwise falsely advertised and the Commission now finds that a substantial number of respondent's competitors do not make false claims for their product.

PAR. 11. The Commission finds that the practices of respondent set forth above have the capacity and tendency to injure and do injure, to a substantial extent, respondent's competitors in the sale of their products, by unfairly diverting trade from such competitors to the respondent.

CONCLUSION

The acts and practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudices of the public and of respondent's competitors; are unfair methods of competition in commerce, and constitute 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 on the complaint of the Commission, the answer of respondent, the testimony and briefs and oral arguments of counsel and the Commission having made a report in writing in which is stated its findings as to the facts with its conclusions 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 the respondent, Paul Case, his agents and employees in connection with the advertising, offering for sale and selling in interstate commerce or in the District of Columbia the medical preparations now known and designated by him as Case Combination Treatment consisting of formulae No. 1 and No. 2, or any other medical preparation of the same or substantially the same ingredients or composition, shall cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, that the use of said medical preparations, or either of them, by whatever name or description known, will cure, or is a treatment for the relief of, rheumatism, neuritis, sciatica, lumbago and neuralgia.

It is further ordered, That the respondent shall within 60 days after service on him 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 this order.

IN THE MATTER OF
**WHITE-LITE DISTRIBUTING CORPORATION, AND
ALEXANDER H. FISHBERG, DOING BUSINESS UNDER
THE TRADE NAME AND STYLE OF SUN SALES DIS-
TRIBUTING 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 2022. Complaint, Mar. 26, 1932—Decision, Jan. 23, 1934

Where a corporation engaged in the sale of incandescent lamps or bulbs at prices substantially in excess of those ordinarily charged, and an individual, acting in his capacity as treasurer and manager thereof, and in his own behalf as a dealer in such lamps or bulbs, under the mark or designation "Sun-Glo"; in describing, offering and selling said lamps through price lists and salesmen,

- (a) Sold lamps so marked or branded as to indicate a wattage consumption substantially under the true amount, due allowance being made for tolerances prescribed for such products in Federal specifications and customarily recognized in commercial use by the manufacturing and distributing trades involved, and falsely represented said mislabeled lamps as superior to those sold in competition with them and correctly marked, and purported, by comparison between their own under-marked bulbs and their competitors' correctly branded products, to demonstrate the lighting superiority and economy of the former, the facts being their own product actually produced substantially less light per watts consumed than did their competitors';
- (b) Falsely represented said lamps, thus offered and sold, as made to comply with the Bureau of Standards' generally accepted specifications and as having been successfully marketed for many years, and as thus proved "lamps of highest quality", the facts being they fell substantially short of compliance with specified standards, due allowance being made for prescribed tolerances, both in the matter of marking and lighting efficiency as herein above set forth; and
- (c) Falsely represented said mark or designation "Sun-Glo" as registered in the Patent Office, through the legend "Trade Mark Reg. U.S. Pat. Office", printed immediately beneath the illustration of an incandescent lamp in connection with the aforesaid designation;

With effect of deceiving members of the public, users, and consumers of such lamps, into believing the same to be correctly marked, and to constitute lamps, which, compared with competitors', produced as much or more light with less current, and of inducing the purchase thereof, at higher prices, in such mistaken belief, instead of the lower priced, more efficient, and economical products of competitors, who were further deprived of the opportunity of selling bulbs to consumers to whom they had previously sold the same, during their use of the inferior lamps herein concerned, and