

Complaint

18 F.T.C.

IN THE MATTER OF
WORTH ENGLISH, 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 2131. Complaint, Nov. 10, 1933—Decision, Jan. 25, 1934

Where a corporation engaged in the sale and distribution of face creams and cosmetics, described, characterized and represented as containing turtle oil as an active ingredient thereof,

Represented through labels, circulars, newspaper advertising and radio talks that the aforesaid substance constituted the effective ingredient of said preparations, and penetrated and nourished the skin, removed lines and wrinkles, built up sagging muscles and underlying flesh, rejuvenated the skin and tended to build and firm the bust, through such statements as "Marvelously effective because of the magical qualities of the turtle oil they contain", "Penetrates quickly, cleansing and nourishing the pores and has remarkable rejuvenating properties", "Penetrates every pore and helps build up sagging muscles", contains "imported turtle oil that erases lines and softens wrinkles";

The facts being that none of said various products, nor the ingredient turtle oil, nourish the skin beyond the outer layer thereof, nor do they have rejuvenating properties, or the quality of affecting the muscles, flesh or layers of skin beneath the epidermis;

With tendency and capacity to confuse, mislead and deceive the public into believing that its said products and the said ingredient thereof had the aforesaid properties, and to induce the purchase and use thereof because of such erroneous beliefs thereby engendered, and thereby to divert trade to it from competitors, including those who in nowise misrepresent the functions, uses or effects of their competing products, and with effect of so diverting, to the substantial injury and prejudice of such competitors:

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

Mr. Harry D. Michael 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 York corporation engaged in the sale and distribution of face creams and cosmetics, including its "English's Turtle Oil Creme", referred to also as "English's Turtle Oil Cream", "English's Turtle Oil Cleansing Cream", and "English's Turtle Oil Skin Freshener and Tonic", and with its office and principal place of business in New York City, with advertising falsely or misleadingly and misbranding or mislabeling as to qualities 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, engaged as aforesaid, as charged, "makes use of labels, circulars, newspaper advertising and radio talks in which it is represented or implied that turtle oil is the effective ingredient thereof and that such ingredient penetrates and nourishes the skin, removes lines and wrinkles, builds up sagging muscles and underlying flesh and rejuvenates the skin", and will "build and firm the bust when applied and pressed into the skin"; the facts being that none of said products, nor the ingredient, turtle oil, therein will remove, erase or lessen lines or wrinkles on the human face or of the skin elsewhere on the human body, or nourish the skin or the pores thereof or penetrate the skin beyond the outer layer thereof or epidermis, or have rejuvenating properties or qualities of affecting the muscles, flesh or layers of skin beneath the epidermis, the skin not being nourished by any such preparation or said ingredient externally applied.

Said representations, as alleged, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's products and said turtle oil ingredient have the property and capacity to nourish and rejuvenate the skin, remove or reduce lines and wrinkles in the face or in the skin in other parts of the human body, build up sagging muscles, penetrate the skin beyond the epidermis and build and firm the bust, and to induce members of the public to buy and use said products because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of face creams and cosmetics; all to the injury and 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, on the 10th day of November, 1933, issued its complaint against the respondent herein, Worth English, Inc., a corporation, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Said complaint was duly served upon said respondent on the 15th day of November, 1933.

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Attached to said complaint and served upon respondent as aforesaid was a notice fixing the 15th day of December, 1933, and the office of the Federal Trade Commission in Washington, D.C., as the time and place of hearing upon the charges set forth in said complaint. Said notice further notified said respondent that an answer to said complaint would be required to be filed with the Commission on or before said date for hearing and that upon failure to appear or answer the following provision of the Rules of Practice adopted by the Commission would be applicable, to wit:

Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearings on the charges set forth in the complaint.

Said respondent having failed either to appear or to file answer to the complaint herein, it is hereby found and adjudged to be in default by reason of such failure to appear or to file answer.

Thereupon this proceeding came on for hearing by the Commission on said default, and the Commission, having duly considered the matter and being fully advised in the premises, find, pursuant to said Rules of Practice, that the allegations of said complaint are true and that respondent has waived hearings on the charges set forth therein. The Commission further finds that this proceeding is to 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, Worth English, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its office and principal place of business in the City of New York, in said State.

PAR. 2. Said respondent is now and has been engaged since May, 1932, in the sale and distribution in interstate commerce of face creams and cosmetics described, characterized, and represented as containing turtle oil as an active ingredient thereof. The particular products so described, characterized and represented are "English's Turtle Oil Creme", referred to also as "English's Turtle Oil Cream", "English's Turtle Oil Cleansing Cream", and "English's Turtle Oil Skin Freshener and Tonic." Respondent in the course and conduct of its said business causes its said products to be transported in interstate commerce from its said place of business in New York to, into and through States of the United States other than New York to persons, firms, and corporations to whom or to which they are or have been sold. Respondent sells its said products to

wholesale and retail druggists and other wholesale and retail stores for ultimate resale to members of the public in the various States where said products are ultimately sold.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in the various States of the United States are and have been engaged in the sale and distribution in interstate commerce of face creams and cosmetics, and such other individuals, firms, and corporations have caused and do now cause their said products, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Said respondent has been during the aforesaid time, in competition in interstate commerce in the sale of its said products with such other individuals, firms, and corporations.

PAR. 4. Respondent, in advertising its said products and the claimed functions and effects thereof, makes use of labels, circulars, newspaper advertising, and radio talks in which it is represented or implied that turtle oil is the effective ingredient thereof and that such ingredient penetrates and nourishes the skin, removes lines and wrinkles, builds up sagging muscles and underlying flesh and rejuvenates the skin. In advertisements caused to be inserted by respondent in newspapers circulated to the purchasing public in various States of the United States, respondent's said three products are referred to as:

English Turtle Oil Preparations

and the following statements are made in regard thereto:

Nourishing, Cleansing.

Marvelously effective because of the magical qualities of the turtle oil they contain.

In an advertising circular furnished to dealers by respondent and distributed to the purchasing public, the following statements are made in regard to "English's Turtle Oil Creme":

. . . this cream contains pure turtle oil.

Have you looked in the mirror lately and noticed lines appearing around the eyes and mouth? Or traces of a sagging chin? If these signs are present, then correction is important . . . prevent these by taking action now . . .

Here is a smooth, light, nourishing cream, with a delightful, fresh perfume. It penetrates quickly, cleansing and nourishing the pores and has remarkable rejuvenating properties.

In radio advertising talks on behalf of respondent and its products broadcast to the purchasing public, the following statements have been made:

. . . Turtle Oil Creme nourishes the skin, penetrates every pore and helps build up sagging muscles. Its gentle action benefits lines and wrinkled skin, whether from approaching old age or exposure to sun and wind.

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On a sticker or label on the jar in which said "English's Turtle Oil Creme" is displayed for sale to the purchasing public, the following statements appear:

A Rich Nourishing Cream, containing imported Turtle Oil that erases lines and softens wrinkles.

This cream will also tend to build and firm the bust when applied and pressed into the skin.

PAR. 5. In truth and in fact, none of said products nor the ingredient, turtle oil, therein will remove, erase or lessen lines or wrinkles of the human face or of the skin elsewhere on the human body. Nor does any of said products or the ingredient, turtle oil, nourish the skin or the pores thereof or penetrate the skin beyond the outer layer thereof or epidermis. Neither does any one of said products or said ingredient have rejuvenating properties or qualities of affecting the muscles, flesh or layers of skin beneath the epidermis. The skin is not nourished by any such preparation or said ingredient externally applied.

PAR. 6. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's products and said turtle oil ingredient thereof have the property and capacity to nourish and rejuvenate the skin, remove or reduce lines and wrinkles in the face or the skin in other parts of the human body, build up sagging muscles, penetrate the skin beyond the epidermis and build and firm the bust when in truth and in fact neither any of said products or said ingredient has any of said effects or functions. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy and use said products because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of face creams and cosmetics.

PAR. 7. There are among the competitors of respondent in the sale of its said products those who in nowise misrepresent the functions, uses or effects of their competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors, and con-

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Order

stitute unfair methods of competition in commerce and are in 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 duly heard by the Federal Trade Commission upon the record, and the Commission made its findings as to the facts and its conclusion that said 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 ordered, That respondent, Worth English, Inc., a corporation, its officers, directors, agents, representatives, servants, and employees, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of the face creams and cosmetics described in the findings of fact this day made by this Commission in this proceeding or any other face creams or cosmetics of the same or substantially the same composition or ingredients, cease and desist from representing by express statements or by implication that such face creams or cosmetics or the ingredient, turtle oil, therein, will penetrate and nourish the skin, remove or reduce lines or wrinkles, build up sagging muscles or underlying flesh, rejuvenate the skin, or build and firm the bust.

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

IN THE MATTER OF
WALKER'S NEW RIVER MINING COMPANY

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

Docket 2028. Complaint, Apr. 28, 1932—Decision, Feb. 1, 1934.

TRADE NAMES—GEOGRAPHICAL NAMES—SECONDARY MEANING—"NEW RIVER"
COAL FROM NEW RIVER FIELD AND GEOLOGISTS' "NEW RIVER" GROUP OF THE
POTTSVILLE SERIES—SALE AS "NEW RIVER" OF COAL FROM SAME GEOLOGICAL
CLASSIFICATION, BUT DIFFERENT FIELD.

Where a coal field in southern West Virginia, contiguous or adjacent to the New River, had long since come to be known and designated as the New River field, and the coal there mined had come to be well and favorably known as New River coal due to operators' care in selling under such name only coal of the highest grade, character, and quality, irrespective of the particular seam from which taken, and to said operators' long advertisement thereof, under said name, at large expense, so that the words had come to signify to wholesalers, retailers, and the consuming public, coal of high character, quality, and utility produced in the aforesaid particular section, and such coal under said name had come to enjoy a widespread and continuous domestic and foreign demand and sale; and thereafter a corporation engaged in mining coal from the same seam and geological classification, to wit, the "New River group of the Pottsville series", in a locality 75 to 100 miles distant from the aforesaid field, and in selling said coal in competition with the genuine New River product in various sections of the United States, including several New England States, certain large eastern cities, including New York, and various points in Ohio, Michigan, and Wisconsin, to many of which sections the former enjoyed a more favorable freight rate than the latter.

- (a) Adopted as and for its corporate and trade name, a name including words "New River", and featured said name containing the words "New River" in advertisements and advertising matter offering its said coal, and upon letterheads and stationery used in soliciting the sale thereof; and
- (b) Described its said coal in advertisements as "New River coal" and so offered, sold and invoiced the same, and as "N.R. Nut and Slack" thereby signifying New River nut and slack;

With result that purchasers thereof and said purchasers' vendees advertised and/or sold the same as and for "New River coal", and wholesale and retail coal dealers were furnished with the means enabling them to mislead and deceive their respective purchasers into believing such coal to have been produced in the New River field, and with capacity and tendency to mislead and deceive the public into believing such coal to have been there produced, and to have the uniform characteristics and qualities associated therewith, irrespective of geological origin or mining fluctuations, and to induce its purchase in such belief, and to divert trade to it from competitors offering and selling either coal produced in such field, or coal truthfully advertised, described and represented, from its own, or any other, district:

Held, That such practices, under the conditions set forth, constituted unfair / methods of competition.