

## Complaint

## IN THE MATTER OF

W. W. NUSS, DOING BUSINESS AS THE NUSS RESEARCH  
LABORATORY

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

*Docket 2148. Complaint, Jan. 15, 1934—Decision, Apr. 11, 1934*

Where an individual engaged in the sale of certain medicinal preparations designated and described by him as "Master Hormones",

- (a) Advertised said preparations as constituting an effective preventive of and competent and adequate remedy for all ailments of the body, including chronic diseases such as tuberculosis, carcinoma, undulant fever, etc., and represented that said "Master Hormones" constituted "the most rapid and positive method in the treatment of diminished resistance and the resulting diseases thereof", the facts being they did not constitute such a preventive or competent and adequate treatment for all diseases, nor for tuberculosis and other diseases named by him; and
- (b) Used a trade name, which included the words "Research Laboratory" on his letterheads, labels, and other literature and as a signature to letters, circulars, etc., sent out to prospective customers, notwithstanding fact that he neither owned nor operated a laboratory at any time, as usually understood by the term;

With capacity and tendency to confuse, mislead and deceive members of the public in the aforesaid respects, and to induce them to buy and use his said preparations because of the erroneous beliefs thereby engendered, and to divert trade to him from competitors engaged in the sale of medicines and preparations adapted to and used for the prevention and treatment of the various diseases and ailments for which his said "Master Hormones" were offered, without in any wise misrepresenting the therapeutic effects of their products, and with result of so diverting business, to the substantial injury of competitors and the public:

*Held*, That such practices, under the 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 individual, engaged in the sale and distribution of certain medicinal preparations which he designated and described as "Master Hormones", with advertising falsely or misleadingly as to qualities or properties of product, and with using

misleadingly trade name, 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 represents his said preparations as constituting an effective preventive or competent and adequate remedy for all diseases of the body, including such chronic diseases as tuberculosis, carcinoma, etc., and makes use of a trade name including the words "research laboratory" on letterheads, labels, and other literature and as a signature on letters, etc., sent to prospective customers, notwithstanding the fact that said preparations do not constitute such preventive or treatment for all ailments or for the chronic diseases named, and he neither owns nor operates a laboratory of any kind as the term is usually understood, and his said statements and representations, and their implications are greatly exaggerated and grossly inaccurate; with tendency and capacity to confuse, mislead, and deceive members of the public in the aforesaid respects, and to induce them to buy and use said preparations because of the erroneous beliefs engendered thereby, and to divert trade to himself from competitors engaged in the sale of medicines and preparations adapted for the prevention and treatment of the various diseases and ailments for which his own are offered; all to the injury and prejudice of the public and competitors.<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 15th day of January, 1934, issued its complaint against the respondent herein, W. W. Nuss, doing business under the name and style of The Nuss Research Laboratory, 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 18th day of January, 1934. Attached to said complaint and served upon respondent as aforesaid was a notice fixing the 23d day of February, 1934, 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

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<sup>1</sup> Allegations of the complaint are set forth substantially verbatim in the findings, respondent having defaulted under the rules of the Commission.

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, he 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, finds, 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, W. W. Nuss, is the sole owner and manager of the business conducted by him under the name and style of The Nuss Research Laboratory. Respondent has owned and conducted said business since the year 1932 and has his office and principal place of business in the city of Elkland in the State of Pennsylvania.

PAR. 2. Said business so owned and conducted by respondent consists in the sale and distribution in interstate commerce of certain medicinal preparations designated and described as "Master Hormones". Respondent in the course and conduct of his said business causes his said preparations to be transported in interstate commerce from his said place of business in Pennsylvania to, into, and through States of the United States other than Pennsylvania to various members of the public to whom they are or have been sold. Respondent usually sells his said preparations direct to physicians for ultimate distribution and sale to members of the consuming public.

PAR. 3. During the time above mentioned other individuals, firms and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of preparations similar in kind or as to purposes of use as those of respondent and also of those designed, intended and used for the treatment of the various diseases and bodily ailments for which respondent's said preparations are represented and advertised as

treatments as hereinafter shown, and such other individuals, firms, and corporations have caused and do now cause their said preparations, 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. Respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said preparations with such other individuals, firms, and corporations. Said competing preparations are sold in some instances to physicians for ultimate distribution and sale to members of the consuming public and in other instances to wholesale and retail druggists for ultimate resale to members of the public.

PAR. 4. Respondent, in advertising his said "Master Hormones" makes use of circular letters which he distributes by mail to doctors in various States of the United States in which it is represented that said "Master Hormones" constitute an effective preventative of and a competent and adequate remedy for all diseases of the human body including chronic diseases such as tuberculosis, carcinoma, undulant fever, etc. An example of the statements made by respondent in his circular letters is the following:

Master Hormones are the most rapid and positive method in the treatment of diminished resistance and the resulting diseases thereof.

Respondent also by the use of said trade name, "The Nuss Research Laboratory", on his letterheads, labels, and other literature and by the use of said trade name as a signature to letters, circulars, etc., sent out to prospective customers, represents and implies that he owns and operates a research laboratory.

PAR. 5. In truth and in fact respondent's said preparations do not constitute a preventative of or a competent and adequate treatment for all diseases of the human body and do not constitute such a preventative of or treatment for tuberculosis, carcinoma, undulant fever and other diseases named by respondent in his said circular letter. Respondent does not own or operate a laboratory of any kind as such term is usually understood. All of such statements, representations and implications are either untrue or greatly exaggerated and grossly inaccurate.

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 said preparations constitute a preventative of and a component and adequate treatment for all diseases of the human body and more particularly for the treatment of chronic diseases such as tuberculosis, carcinoma, undulant fever, etc., when in fact such are not the facts or only to a limited extent. The use of said trade name by re-

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## Order

spondent has had and does have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent owns and operates a research laboratory when such is not the fact. Said representations of respondent have had and do have the tendency and capacity to induce members of the public to buy and use said preparations 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 medicines and preparations adapted to and used for the prevention and treatment of the various diseases and ailments of the human body for which respondent represents his said preparation to be a preventative or treatment.

PAR. 7. There are among the competitors of respondent in the sale of his said products those who in no wise misrepresent the therapeutic effects of their competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from his 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 constitute 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 having 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, W. W. Nuss, doing business under the name and style of The Nuss Research Laboratory, or doing business under his own or under any trade name, his agents, representatives, servants and employees, in connection with the sale, offering for sale, or distribution in interstate commerce and the District of Columbia of any or all of his so-called "Master Hormones", or of preparations of the same or substantially the same composition,

respectively, under any other name or names, cease and desist from representing by express statements or by implication that any or all such preparations constitute an effective preventative of or a competent and adequate remedy for, or treatment of all diseases of the human body, including chronic diseases such as tuberculosis, carcinoma, undulant fever, etc., and from representing by express statement or by implication by use of the word "laboratory" in the trade name or otherwise, that he owns or operates a research or other laboratory unless such be the fact.

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

## Syllabus

IN THE MATTER OF  
WALTER A. VELLGUTH, INDIVIDUALLY AND TRADING  
AS THE WALTER A. VELLGUTH COMPANY<sup>1</sup>

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

*Docket 1925. Complaint, Mar. 7, 1931—Decision, Apr. 16, 1934*

Where an individual engaged in the manufacture and sale of candies, including four assortments composed of, (1) individually wrapped bars of uniform size, shape, and quality, within the wrappers of which there were concealed slips containing the figure 1¢, 2¢, or 3¢, as the case might be, as the price to be paid by the consumer to the retailer, depending on former's chance selection, (2) bars similarly wrapped, the concealed slips of which contained figures ranging from 1¢ to 5¢, as the case might be, as the price to be paid, determined as above set forth, (3) bars similarly wrapped, the concealed slips of which contained the figures 0¢ to 5¢, as the price to be paid, as aforesaid, and, (4) chocolate-covered penny candies of uniform size, etc., together with certain larger pieces or bars, acquisition of one of which, as a prize, was determined by purchaser's chance selection of one of a relatively few of said penny pieces, the color of the enclosed concealed centers of which differed from that of the majority, and acquisition of two of which was determined by similar chance selection of a still different color;

Sold said assortments, together with explanatory display cards for retailers' use in offering the same to the public, to wholesalers and jobbers, in competition with those who do not offer and place in the hands of others packages or assortments of candy to be distributed, or which may without rearrangement, be distributed by lot or chance, and in competition with candy, a substantial amount of which is sold by retailers without any such immoral scheme or device connected therewith, and sale of which is adversely affected by that of candy with the lottery or gaming feature;

With result that many of the consuming public were induced to purchase his candy in preference to that of competitors because of the chance of obtaining one of said bars for nothing, or for less than the particular assortment's maximum price, or of obtaining certain pieces free in accordance with color of center selected, many competitors who do not sell candy so packed and assembled that it can be resold to the public by lottery or chance, were put to a disadvantage and trade was diverted from them to him and to others using similar methods, gambling, and especially among children, was encouraged, a chance or lottery, instead of candy, was merchandised, retailers were provided with the means of violating the laws or public policy of many of the States in selling and distributing candy by lot or chance, the industry was injured and freedom of legitimate competition therein was restrained and impaired;

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

*Mr. Henry C. Lank and Mr. G. Ed. Rowland for the Commission.*

<sup>1</sup> For descriptive summary of large group of candy lottery cases decided as of April 3, see *ante*, pp. 269, 276, 277.