

Complaint

IN THE MATTER OF
FOX SHOE COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2220. Complaint, Aug. 15, 1934—Order, Sept. 26, 1934*

Consent order requiring respondent, in connection with the sale of its products in interstate commerce, and the solicitation thereof, to cease and desist from directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr.", in connection or in conjunction with the name of, or with any word or words, or in any way as a trade name, brand or designation for, its products, or for the products of others, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific or orthopedic features which are the result of medical advice or services, when such is not the fact.

Mr. Morton Nesmith for the Commission.

COMPLAINT

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, having reason to believe that Fox Shoe Company, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Fox Shoe Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business at 64 North Fourth Street, Philadelphia, Pa. Said respondent is now and since its incorporation in, to wit, 1930, has been engaged in the sale of shoes, being a wholesaler thereof between and among the different States of the United States. It has sold, and has caused and still causes, the said articles in which it deals, to be transported from its said place of business into and through other States of the United States to various jobbers and retailers located at points in different States of the United States. In the course and conduct of its said

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business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of shoes in commerce between and among the different States of the United States.

PAR. 2. The respondent, Fox Shoe Company, in the course of the conduct of its business as aforesaid, in soliciting the sale of and selling its products in interstate commerce, caused and still causes the words "Dr. Fox" to be stamped on or across the sole of a certain brand of the shoes sold by it in interstate commerce. Said respondent also caused and still causes said shoes to be packed and shipped in cartons or boxes on which the words "Dr. Fox's Nature Shape (said words 'Nature Shape' branded on the outline of a foot pictured immediately under the words 'Dr. Fox')", are conspicuously displayed.

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised, and sold, as described in paragraph 2, were not made in accordance with the design and/or under the supervision of a doctor and did not contain special, scientific, or orthopedic features which were the result of medical advice or services, nor is such footwear intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet; all of which has the capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes had been fashioned or designed by doctors or others with a knowledge of orthopedics or at least had some feature or features not common to the ordinary run of footwear, which features were designed or intended to correct some foot ailment or weakness, or at least afford some relief therefrom.

PAR. 4. The respondent, Fox Shoe Company, in the sale of its said products as aforesaid, ships and delivers to its jobber and retail customers its products so labeled and branded and said jobbers and retailers resell said products so labeled and branded to the consuming public.

PAR. 5. There are among the competitors of the respondent, referred to in paragraph 1 hereof, many persons, firms, and corporations who sell at wholesale shoes which contain special features designed and intended to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent persons, firms, and corporations who sell at wholesale shoes and footwear manufactured along standard lines and according to standard methods but for which no special feature claims or representations are made, and the use by the respondent of the word "Doctor" or the

abbreviation "Dr." in connection or in conjunction with a name or with any other word or words or in any way as a trade name, brand, or designation for its products or in its advertisements of said products, together with other special feature representations, has unfairly diverted trade from and otherwise injured and prejudiced respondent's competitors in interstate commerce.

PAR. 6. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record including the complaint of the Commission and respondent's answer thereto, that it waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and pursuant to Rule III of the Commission's Rules of Practice, as amended and revised to August 20, 1934, consents that the Commission may make, enter, and serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That respondent, Fox Shoe Company, a corporation, in connection with soliciting the sale of, and selling its products in interstate commerce, cease and desist from:

Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr.", in connection or in conjunction with the name, or with any word or words, or in any way as a trade name, brand, or designation for its products, or for the products of others, or in advertising said products, or in any way which may have the capacity and tendency to confuse, mislead or deceive purchasers into the belief that said products are made in accordance with the design and/or under the supervision of a doctor and contain special, scientific, or orthopedic features which are the result of medical advice or services, when such is not the fact.

It is further ordered, That respondent Fox Shoe Company, a corporation, shall, within 60 days after the service upon it of a copy

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of this order, file with the Federal Trade 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.

MEMORANDA

The Commission also made three other similar consent orders, in three other proceedings which also involved the unwarranted use of the word "Doctor", etc., as hereinabove set forth, and in which Mr. Morton Nesmith appeared for the Commission, following substantially similar complaints, as noted below:

P. TRACHTENBERG, trading as HILL SHOE Co. Docket 2219. Complaint, August 15, 1934. Order, October 5, 1934.

Respondent, trading as aforesaid, with principal place of business in Philadelphia, and engaged in sale of shoes at wholesale to various jobbers and retailers in different States, in the course of the conduct of his said business, in soliciting the sale of and selling his said shoes in interstate commerce, which shoes were not "made in accordance with the design and/or under the supervision of a doctor and did not contain special, scientific or orthopedic features which were the result of medical advice or services, nor * * * intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet", causes a label to be affixed to said shoes on which appears the words "Dr. CHAPMAN'S Reg. U. S. Pat. Off. HEALTH SHOES NATURE'S LAST."

Said respondent also caused and still causes said shoes to be packed and shipped in cartons on which appear the words "Dr. CHAPMAN'S Reg. U. S. PAT. OFF. HEALTH SHOES NATURE'S LAST Copyright 1931—Hill Shoe Co. Philadelphia, Pa.", together with the words, "See for yourself why Dr. Chapman's Health Shoes will keep growing feet healthy . . . These shoes are constructed with the finest materials obtainable and are made on Nature's Form-Fitting Lasts. Hill Shoe Company, Distributors."

Said respondent further caused certain business cards to be printed on which appeared the following words "HILL SHOE COMPANY Wholesale Shoes Distributors of Dr. Chapman's Shoes."

ABRAHAM SCHWARTZ ET AL., trading as A. SCHWARTZ & SONS. Docket 2224. Complaint, August 17, 1934. Order, October 6, 1934.

Respondents, trading as aforesaid, with principal place of business in Philadelphia, and engaged in the sale, but not manufacture, of shoes at wholesale to various jobbers and retailers in different States,

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in the course and conduct of said business, in soliciting the sale of and selling their shoes in interstate commerce, which were not made in accordance with the design "and/or under the supervision of a doctor and did not contain special, scientific, or orthopedic features which were the result of medical advice or services, nor * * * intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet", caused and still cause certain of their shoe products to be packed in boxes or cartons on the outer surfaces of which appeared in part "Dr. Allen's Golden Eagle FUT FITTERS Scientifically Designed For Growing Feet", which products, so represented, designated and labeled, said respondents sold and shipped or distributed in interstate commerce.

Said respondents further caused and still cause certain of their stationery or letterheads to be distributed in interstate commerce and wherein there appeared as the heading thereof, "A. Schwartz & Sons Modern Footwear Manufacturing Wholesalers", etc.¹

BLEECKER SHOE Co., INC. Docket 2221. Complaint August 15, 1934. Order, October 20, 1934.

Respondent, with principal place of business in New York City, engaged in the sale of shoes at wholesale to various jobbers and retailers in different States, in soliciting the sale of and selling its said shoes in interstate commerce, which shoes were not made in "accordance with the design and/or under the supervision of a doctor and did not contain special, scientific or orthopedic features which were the result of medical advice or services, nor * * * intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet", caused and still causes certain of its shoes to be packed and shipped in cartons or boxed on which appear the words "We Recommend Dr. Miles Health Shoes."

Said respondent causes and still causes said advertising matter such as catalogs and display cards to be furnished to its retail trade upon which appear the words "Dr. Miles Health Shoes", some of said advertising carrying pictures of "Dr. Miles" shoes and the following description "Scientific Foot Comfort Shoes At Mill-End Savings. Famous Dr. Miles Health Shoes."

Said respondent further caused or causes certain other of its shoes to be packed and shipped in cartons or boxes upon which appear the following words "Orthopedic Dr. Miles Health Shoes Reg. U. S. Pat. Off."

¹ Order did not cover this part of the charge.

IN THE MATTER OF

B. M. ROSS

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

Docket 2078. Complaint, Feb. 23, 1933 — Decision, Oct. 23, 1934

Where an individual, engaged in the shipping and sale, by mail, of twenty so-called "prescription courses" consisting of one, two, three or four ingredients as the case might be, as treatments for specified ailments and afflictions, represented in its booklet "Tested Prescription", sent in response to advertisements in newspapers and periodicals of nation-wide circulation, and pamphlets and circular letters inviting the reader to send for "free book of tested prescriptions on nervous and chronic diseases by a specialist of over 30 years of practice and experience", "used successfully in thousands of cases by said specialist", that said "courses" were all approved, tested, harmless, scientifically indicated, effective, and complete treatments and cures for kidney and bladder troubles, diseases of women, rheumatism, venereal diseases, and numerous other conditions and afflictions, some of the symptoms of which it there described, and invited the prospect to order by identifying number the particular course listed for the ailment he thought he had, with or without competent medical advice or other means of knowledge;

The facts being that none of them constituted a complete, proper, effective, or safe treatment for any of said afflictions and conditions in any and all persons and in any and every case, but might be helpful, harmful, or useless, depending on the varying and unknown physical condition of the individual purchaser and user, who could not know without competent medical examination, advice, and supervision, whether in his case the particular course would be helpful, harmful, or useless, and that in some instances a course which was not beneficial might be potentially harmful in lulling the customer into a false sense of security and thereby delaying the obtaining of proper and adequate treatment;

With capacity and tendency to confuse, mislead, and deceive members of the public into the belief that said courses constituted cures, remedies or competent and adequate treatments for the various afflictions and conditions for which variously recommended, as aforesaid, and that they would give relief in all such cases to all purchasers when bought and used as directed, and to induce members of the public to buy and use said medicines because of such erroneous beliefs thus engendered, and thereby divert trade to it from competitors engaged in sale of similar preparations, and of those intended for the treatment of the aforesaid various ailments and conditions, and from competitors engaged as manufacturing chemists in sale and distribution of substantially similar, and of identical proprietary medicines which they had long made and sold, and the advertisement of which was limited by most of them to a correct statement of the medicines' therapeutic effects; to the substantial injury and prejudice of competitors who do not misrepresent the effects of their products, and to the injury of the public:

¹ Amended.