

Complaint

IN THE MATTER OF
EASTMAN, SCOTT & COMPANY, TRADING AS HOME
RESEARCH, INC.

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

Docket 2234. Complaint, Sept. 27, 1934—Order, Nov. 6, 1934

Consent order requiring respondent corporation, its agents, etc., to cease and desist from selling, shipping, mailing, or otherwise circulating in interstate commerce its so-called "Mystery Book" containing false, exaggerated, unfair, and misleading statements to the general effect that foods in electric refrigerators lose water to such an extent that their nutritive properties are impaired, distorting diets and disarranging food balances, retarding digestion and assimilation and leading to indigestion, constipation, and numerous other ailments, and that gases, volatile matter and odors given off from foods in so-called "airtight" chamber of an electric refrigerator are absorbed by and contaminate other foods, rendering them unsanitary and dangerous to health, and that foods refrigerated in an electric refrigerator cause toxic poisoning, constipation, appendicitis, and numerous other ailments, or from selling, etc., said book or pamphlet until the statements theretofore contained therein are true in fact.

Mr. John W. Hilldrop for the Commission.

Harold Hirsch and *Marion Smith*, of Atlanta, Ga., for respondent.

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 Eastman, Scott & Company, a corporation trading as Home Research, Inc., has been and 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 thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eastman, Scott & Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia with its principal office and place of business in the city of Atlanta, in said State, and now and for more than two years last past has traded under the name Home Research, Inc. It is now and for more than two years last past, under the name Home Research, Inc., been engaged in creating, formulating,

and publishing advertising matter in the form of books and in other forms and in the sale of such advertising matter including books, between and among the various States of the United States and in the District of Columbia and now and for more than two years last past has caused such advertising matter, including books, when sold, to be transported from its principal place of business in the city of Atlanta aforesaid to the purchasers thereof located in the State of Georgia and in other States of the United States and in the District of Columbia and there is now and has been for more than two years last past a constant current of commerce by the respondent in such advertising matter including books, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business respondent is now and for more than two years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the distribution and in the sale of advertising matter including books between and among various States of the United States and in the District of Columbia.

PAR. 2. Certain persons, firms, associations, and corporations have been, and are, engaged in offering for sale and selling in commerce between and among the several States of the United States refrigerators that depend for their cooling processes upon the use of ice that is placed therein for that purpose. In the trade and by the public such refrigerators are commonly known and designated as nonmechanical refrigerators. Certain persons, firms, associations, and corporations have been, and are, engaged in offering for sale and selling in commerce between and among the several States of the United States and the District of Columbia, refrigerators that do not depend for their processes upon the use of ice that is placed therein for that purpose. In the trade and by the public such non-ice-using refrigerators are commonly known and designated as mechanical refrigerators. One type of such mechanical refrigerators depends for its cooling processes upon certain appliances and processes operated by currents of electricity. Refrigerators of this type are in the trade and by the public commonly known and designated as electric refrigerators. In recent years many electric refrigerators have been sold to the public and are in use by the public. The number thereof is increasing rapidly.

The sellers of said nonmechanical refrigerators above referred to are in competition in such commerce between and among the several States of the United States and the District of Columbia with other persons, firms, associations, and corporations likewise engaged in offer-

ing for sale and selling such nonmechanical refrigerators in said commerce, and are also in competition in said commerce with the aforesaid persons, firms, associations, and corporations so offering for sale and selling in such commerce said mechanical refrigerators, including said electric refrigerators. Said sellers of said several types of refrigerators are and have been in competition in said commerce between and among themselves as to each and all said types of refrigerators. All such sellers of refrigerators have been, and are, continually causing such refrigerators, when sold, to be transported from their several places of business into and through the several States of the United States and the District of Columbia to the several purchasers thereof located at various places in such several States and the District of Columbia.

PAR. 3. In such competition between the sellers of nonmechanical refrigerators and the sellers of electric refrigerators one fact of controlling influence upon the purchasing public is the popular opinion as to the comparative desirability, effectiveness, and safety in actual operation of said two types of refrigerators. The use of ice in refrigerators has long been practiced and its desirability, effectiveness, and safety, such as they may be, are well known to the public. Because of their recent invention and introduction into popular use, the public is not so well informed as to the desirability, effectiveness, and safety of such electric refrigerators. Sellers of nonmechanical, or ice-using, refrigerators are, therefore, interested in and engaged in presenting to the purchasing public all available reasons or arguments against the desirability, effectiveness, and safety of said electric refrigerators in actual use.

The use of said electric refrigerators destroys in that degree the demand for, and sale of, ice for use in refrigerators. The increasing sales of electric refrigerators has become, and is, a menace to the sale both of nonmechanical refrigerators and of ice for use therein, and has caused the sellers of nonmechanical refrigerators and the sellers of ice for use therein to make common cause in creating sentiment adverse to the use of electric refrigerators.

PAR. 4. To meet the needs of sellers of nonmechanical refrigerators and the sellers of ice for use therein, respondent, under the false and misleading trade name of Home Research, Inc., compiled, printed, and published a certain book of propaganda against the desirability, effectiveness, and safety of electric refrigerators. Said book purports to state certain facts which Home Research, Inc., claims to have discovered which are claimed to demonstrate that electric refrigerators are in actual use undesirable, ineffective, and unsafe in their effect upon articles of food kept therein and upon persons eating

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such food. Respondent names and designates such book as "Mystery Book". In order to make such propaganda effective in behalf of sellers of nonmechanical refrigerators and sellers of ice for use therein, respondent planned to sell and furnish copies of said book to sellers of such ice to be by them, in such ways as they deemed most effective, gotten into the hands of the public to influence public opinion and create sales resistance as against such electric refrigerators.

PAR. 5. Among the books so offered for sale and sold by respondent, as set out in paragraph 1 hereof, is said so-called "Mystery Book". For a period of two years last past respondent has been, and now is, selling and delivering said book to the public in commerce between and among the several States of the United States and the District of Columbia. Respondent makes such sales and deliveries of said book principally to sellers of ice to be used in nonmechanical refrigerators, to be by them resold, or otherwise disposed of, to the public and particularly to users of refrigerators.

In the ways above indicated and by reason of the facts above alleged, sellers of ice for use in nonmechanical refrigerators, as well as sellers of such refrigerators, have an interest adverse to the sale of electric refrigerators and are in practical effect in competition with such sellers of electric refrigerators along with the sellers of nonmechanical refrigerators. The sole purpose and effect of said "Mystery Book" being disparaging propaganda in aid of the sale of nonmechanical refrigerators and of ice for use therein, and the sole demand therefor being the desire of such sellers of ice and of nonmechanical refrigerators to use the same in aid of the sale of their said products, respondent has practically made common cause with such sellers of ice and nonmechanical refrigerators and furnishes to them the means of misleading and deceiving the public in aid of the sale of their several products.

PAR. 6. For the purpose and intent and with the effect of disparaging electrical refrigerators sold in interstate commerce and for the purpose and with the intent of promoting the sale in interstate commerce of nonmechanical refrigerators, and of the sale of ice for use in such nonmechanical refrigerators, the respondent in such "Mystery Book" hereinbefore mentioned has falsely represented, directly and by implication and inference among other things:

(1) That foods in electric refrigerators lose water to such an extent that their nutritive properties are impaired, distorting diets and disarranging food balances, retarding digestion and assimilation

and leading to indigestion, constipation, and numerous other ailments;

(2) That gases, volatile matter, and odors given off from foods in what the respondent in its said "Mystery Book" calls the "airtight" chamber of an electric refrigerator are absorbed by and contaminate other foods rendering them unsanitary and dangerous to health and that foods refrigerated in an electric refrigerator cause toxic poisoning, constipation, appendicitis and numerous other ailments.

In truth and in fact foods in electric refrigerators do not lose water to an extent that their nutritive properties are impaired. In truth and in fact foods in electric refrigerators do not distort diets or disarrange food balance, do not retard digestion or assimilation and the use of such foods in truth and in fact does not lead to indigestion, constipation, or any other ailment. In truth and in fact gases, volatile matter, and odors given off from foods in an electric refrigerator are not absorbed by and do not contaminate other foods, do not render them unsanitary and dangerous to health and in truth and in fact foods refrigerated in an electric refrigerator do not cause toxic poisoning, constipation, appendicitis, or any other ailment.

PAR. 7. The aforesaid false and misleading representations so made in said "Mystery Book" as above alleged have the tendency and capacity to mislead and deceive the purchasing public into the false and erroneous belief that said statements are true and that electric refrigerators are undesirable, ineffective, and harmful in the ways alleged and dangerous to the eaters of food kept therein. Said false and misleading statements have the tendency and capacity to, and probably will, divert trade to sellers of nonmechanical refrigerators from sellers of electric refrigerators, to divert trade to sellers of ice to be used in nonmechanical refrigerators from sellers of electric current to be used in operating electric refrigerators; and to induce the public to purchase nonmechanical refrigerators and ice to be used therein, in and because of such erroneous belief that electric refrigerators are undesirable, ineffective, and dangerous for the reasons and in the ways alleged in said "Mystery Book".

PAR. 8. The above acts and things done by respondent are all to the injury and prejudice of the public and of respondent's competitors in commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

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ORDER TO CEASE AND DESIST

This proceeding having come on for final hearing by the Federal Trade Commission upon respondent's answer waiving all further procedure, and consenting that the Commission may make, enter, and serve upon it an order to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises—

It is now ordered, That respondent, Eastman, Scott & Company, a corporation, either under said corporate name or under the trade name of Home Research, Inc., or under any other name or designation, and its agents, servants, and employees, cease and desist from:

(a) Selling, shipping, mailing, or otherwise circulating in interstate commerce a certain book or pamphlet described in the complaint and admitted in the original answer of the respondent as "Mystery Book" until such time as the statements heretofore contained in said "Mystery Book" are true in fact.

(b) From selling, mailing, shipping, or otherwise circulating in interstate commerce the said "Mystery Book" containing the following false, exaggerated, unfair, and misleading statements or other statements of like purport and meaning, to wit:

(1) That foods in electric refrigerators lose water to such an extent that their nutritive properties are impaired, distorting diets and disarranging food balances, retarding digestion and assimilation and leading to indigestion, constipation, and numerous other ailments;

(2) That gases, volatile matter, and odors given off from foods in which the respondent in its said "Mystery Book" calls the "air-tight" chamber of an electric refrigerator are absorbed by and contaminate other foods rendering them unsanitary and dangerous to health and that foods refrigerated in an electric refrigerator cause toxic poisoning, constipation, appendicitis, and numerous other ailments.

It is further ordered, That the respondent shall within 60 days from the date of the service upon it of a copy 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 the order herein set forth.

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IN THE MATTER OF

WILLIAM F. LORENZ, JR., DOING BUSINESS UNDER THE
NAME AND STYLE OF SOUTHERN CRUSHED SHELL
COMPANY

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

Docket 2213. Complaint, Aug. 7, 1934—Order, Nov. 16, 1934

Consent order requiring respondent individual, his agents, etc., in connection with the sale or offer of crushed shell in commerce among the several States, to cease and desist from directly or indirectly—

- (a) Using the word "oyster" in advertisements or on containers or on other printed matter or otherwise to represent, describe, or designate, crushed shell dealt in by him, unless (1) such crushed shell is composed entirely of the crushed shell of the bivalve commonly known as the oyster, or (2) where such crushed shell is composed partly of oyster shell, the word "oyster" is accompanied by a word or words, in equally conspicuous form and color, aptly and truthfully describing the other material or materials of which such product is composed;
- (b) Using an address in advertisements or other printed matter or otherwise in connection with the sale or offer for sale of crushed shell by respondent in commerce among the several States of the United States, unless respondent maintains an office or a place of business at such address; or
- (c) Publishing, circulating, or causing to be published and circulated, in connection with the sale or offer for sale of crushed shell in commerce among the several States of the United States, advertisements, circulars, or any other printed or written matter whatsoever, wherein it is falsely stated, set forth or held out to the public, (1) that the Government, or any department, branch or agency thereof, has made an analysis or conducted comparative tests of respondent's product and/or recommended its use; or (2) that any university, college, or other school, or any department, division, or branch thereof, has made an analysis or conducted comparative tests of respondent's product and/or recommended its use; or (3) that any corporation, firm, association, or person has made an analysis or conducted comparative tests of respondent's product, and/or recommended its use.

Mr. Edw. W. Thomerson 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 William F. Lorenz, Jr., doing business under the name and style of Southern