

Complaint

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

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Crushed Shell Company, 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, William F. Lorenz, Jr., is now and has been engaged for more than two years last past in the business of buying crushed fresh water mussel shell and selling the same as a jobber to wholesale and retail dealers located in various States of the United States for ultimate resale to members of the purchasing public for use in feeding chickens to supply the calcium carbonate element of their diet. That said respondent conducts said business under the name and style of Southern Crushed Shell Company and has his office and place of business in the city of Sioux City in the State of Iowa. That respondent buys his said product from button manufacturers located mostly in the State of Iowa but in some instances in other States and the respondent causes the same to be transported in interstate commerce from the various plants where it is produced to, into, and through States of the United States other than the State of origin of the respective shipments thereof, to the buyers thereof to whom or to which it is or has been sold.

PAR. 2. That 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 crushed fresh water mussel shell, crushed oyster shell, and crushed limestone intended and used for feeding chickens to supply the calcium carbonate element of their diet. 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 his said product with such other individuals, firms, and corporations.

PAR. 3. That respondent in connection with the sale of his said product as aforesaid represents in the manner and form as hereinafter set out that it is crushed oyster shell. That he has made use of a folder which he has distributed to buyers and prospective buyers of his said product in various States of the United States which contained on the front page thereof in large conspicuous red letters the words "LEADING-----OYSTER" while between said words in small type are the words "brand" and "mussel" and a picture of a baby chicken on a pile of shells. On the following pages of said folder said product is referred to as "Leading Brand Oyster" or

"Leading Oyster" without any modifying or explanatory words or phrases.

That all of said representations, taken in connection with the words "Pure Kiln Dried Triple-Screened Shells" on the front page of said folder and statements as to the use of the product to increase egg production imply to the purchasing public that respondent's product is crushed oyster shell when in truth and in fact it is crushed fresh water mussel shell. That such misleading effect is further increased by the use of the address "Gulfport, Miss.", as one of respondent's places of business when, in fact, respondent has no office or place of business at Gulfport, Miss., and never has had an office or place of business there. At one time he made use of a mailing address at said town. That points along the Gulf of Mexico are sources of origin of oyster shells used in making chicken feed for the purpose aforesaid. None of respondent's product comes from Gulfport, Miss., or from any other point on or near the Gulf of Mexico.

That respondent also makes use of other advertising and printed matter circulated as aforesaid on which is printed the same wording and picture as given on the front page of the folder above referred to. A large reproduction of the same wording and picture is also printed on the sacks in which respondent's product is displayed and sold to the purchasing public. At no place in respondent's advertising matter is it stated or explained that respondent's product is crushed fresh water mussel shell.

PAR. 4. As a part of the folder referred to in the preceding paragraph, respondent had printed therein what purported to be an exact reproduction of a letter from an official of the United States Department of Agriculture which purports to refer to respondent's "Leading Brand Shell" and which purports to be of the comparatively recent date of "February 3, 1932." Said purportedly reproduced letter contains the following references to respondent's product:

... we completed one year's work with the feeding of Leading Brand Shell, ...

... we could find no differences in the results secured in using Leading Brand Shell as compared with oyster shell, ...

... we have found Leading Brand Shell of equal value to other oyster shell as a source of lime for laying hens.

... we hope that this information will be of interest and value to you in your work with Leading Brand Shells.

That the true date of said letter was February 3, 1923, and it made no reference whatever to "Leading Brand Shell" but only generally to "mussel shell" in the portions thereof where respondent used "Leading Brand Shell" as aforesaid. Said original let-

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ter did not contain the word "other" in the third quotation given above but the statement as originally made was as follows:

... we have found mussel shell of equal value to oyster shell as a source of lime for laying hens.

PAR. 5. That in other advertising matter, distributed by respondent as aforesaid, respondent caused to be reproduced therein a letter written to respondent containing a report from a chemist of an analysis of two samples of shells furnished by respondent and labeled respectively "Mixed Shells" and "Reef Shells". In said report the chemist referred to the samples by the names given on the samples as aforesaid but in respondent's purported reproduction of the report such references have been changed respectively to "Leading Brand Shell" and "Competitive Gulf Shell" thereby changing and destroying the meaning of the original report.

PAR. 6. That in one of his advertising circulars respondent caused to be inserted the following paragraph:

The Iowa State College, Ames, Iowa, advises as follows:

As a general rule if a hen is fed a normal ration properly from a protein and energy standpoint the only additional mineral which is needed is calcium carbonate (lime) for eggshell formation. This particular need may be satisfied by keeping the hen constantly supplied with Leading Brand Crushed Shell, 95 to 99 percent Calcium Carbonate, which is palatable to hens and does not contain injurious impurities.

thereby implying that such statement was issued by said college and that the use of respondent's product was recommended.

That, in truth and in fact, a somewhat similar statement was contained in an official publication issued by the Agricultural Experiment Station of Iowa State College of Agriculture and Mechanical Arts, but said statement made no reference whatever to respondent's product. Instead of reading as above quoted, the last sentence should read as follows as given in the official publication, to wit:

This particular need may be satisfied by keeping the hen constantly supplied with oyster shell, 95 to 99 percent calcium carbonate, limestone, clean mussel shells, or any other source of calcium carbonate which is palatable to the hens and does not contain injurious impurities.

PAR. 7. That crushed oyster shell is well known in the trade and among poultry raisers who purchase products such as respondent has for sale as a food for hens to be used for the purpose of supplying calcium carbonate in the diet on account of its effect in eggshell formation. That many dealers in and purchasers of such products prefer crushed oyster shell for such feed for hens to other feed containing calcium carbonate and believe that it is superior to other such feed. That crushed oyster shell sells at a higher price

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than does crushed fresh water mussel shell. That crushed fresh water mussel shell is not as salable for the use above stated as is crushed oyster shell.

PAR. 8. That the representations of respondent as aforesaid have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that his crushed fresh water mussel shell is oyster shell, that purported quotations from letters and other sources set out in his advertising matter are exact quotations from the original sources thereof and that respondent's product was referred to therein and had been tested and was recommended by the authors thereof or the agencies where they originated, when such are not the facts. That such misleading representations have the tendency and capacity to induce members of the public to buy and use respondent's said product because of such erroneous beliefs and to divert trade to respondent from competitors engaged in the sale in interstate commerce of products used for the same general purpose for which respondent's product is advertised and used as aforesaid.

PAR. 9. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate 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.

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 the substituted answer of the respondent thereto wherein he waives hearing on the charges set forth in the complaint, refrains from contesting the proceedings and, pursuant to paragraph 2 of Rule III of the Rules of Practice and Procedure, as amended and revised on August 20, 1934, consents that the Commission may make, enter, and serve upon him, without evidence and without findings as to the facts, or other intervening procedure, an order to cease and desist from the violations of law as charged in said complaint; and the Commission having duly considered the matter and being fully advised finds that respondent has violated the provision 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 now ordered, That the respondent, William F. Lorenz, Jr, doing business under the name and style of Southern Crushed Shell

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Company, his agents, servants, and employees cease and desist from directly or indirectly:

(1) Using the word "oyster" in advertisements or on containers or other printed matter or otherwise to represent, describe, or designate crushed shell which respondent sells or offers for sale in commerce among the several States of the United States (a) unless such crushed shell is composed entirely of the crushed shell of the bivalve commonly known as the oyster, or (b) unless, 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.

(2) Using an address in advertisements or other printed matter or otherwise in connection with the sale or offers 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.

(3) Publishing and circulating, or causing to be published and circulated, in connection with the sale or offers 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:

(a) That the United States 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;

(b) 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;

(c) That any corporation, firm, association, or person has made an analysis or conducted comparative tests of respondent's product and/or recommended its use.

It is further ordered, That the respondent, William F. Lorenz, Jr., doing business under the name and style of Southern Crushed Shell Company, shall, within 60 days after the service upon him of a copy of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

BATTLE CREEK APPLIANCE COMPANY, LTD., (ALSO
KNOWN AS W. T. B. LABORATORIES, ETC.) ET AL.

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

Docket 2017. Complaint, Mar. 9, 1932—Decision, Nov. 19, 1934

Where a partnership engaged in selling by mail order a goitre treatment consisting of, (1) diagnosis from answers to questions on its so-called diagnosis chart, (2) liquids, pills, medicines, and salve, with printed instructions for their use, and (3) printed instructions as to patient's diet and general care, in competition, among others, with many large pharmaceutical houses selling preparations, for administration on physicians' prescriptions, to jobbers, wholesale and retail drug stores, and hospitals and boards of health—

Represented that it could determine the absence or presence and type of goitre from the patient's answers to said question, and properly and efficaciously treat such patient, by mail, without having seen him, making such statements in newspaper and periodical advertisements of general circulation and through booklets and leaflets published and distributed to patients and prospective patients, as that a new treatment had been developed for goitre, which many believed would prove to be the "long-sought specific for this unsightly and dangerous disease", had caused many of the largest and most hideous goitres to recede almost in a day, causing them to "gradually get smaller, and in many cases" to be "entirely gone in a few weeks", was "equally efficient in cases of toxic and so-called inside goitre", and was one which was "harmless" and could be used by anyone "with perfect safety at home", and that "200,000 others have treated goitre at home by this harmless easy method", which "ends goitre quick without danger or operation", and that "surgery should never be considered except as a last resort", together with other statements of similar tenor, and set forth in the book "Goitre, its Causes, Dangers, and Treatment", sent prospective patients, many purported testimonials of laymen claiming that they had been cured thereof by the treatment in question;

The facts being such members of the laity were not able to say truthfully whether they had ever had such affliction or not, or been cured or relieved thereof by said treatment, and the so-called diagnosis chart, with the numerous questions therein propounded, did not afford, as claimed, a means of ascertaining, without physical examination, the absence or presence of goitre, for which purpose careful examination by a skilled physician alone suffices, said various preparations were not specifics for goitre, and would not cause recession within one day or any specified time, contained possibilities of temporary or permanent injury to patient by reason of their properties, or the delay in adequate treatment thereby brought about, said treatment was neither scientific, nor harmless, and goitre cannot be treated properly or successfully at home without the