

Complaint

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IN THE MATTER OF
FAIRYFOOT PRODUCTS COMPANY

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

Docket 2178. Complaint, May 4, 1934—Decision, Dec. 18, 1934

Where a corporation engaged in sale and distribution of a medicated pad for bunions, falsely advertised that through use thereof pain would be stopped quickly and permanently and bunion caused to melt away and disappear, and the foot to resume its normal shape, and thus enable purchaser to wear smaller shoes and enjoy bunion-free feet, and that it had the approval of leading physicians and surgeons, facts being it could not accomplish, to a substantial extent, any of the results claimed for it, there is no medication known to medical science which will dissolve or remove bunions after the first or incipient stage has been passed, and its virtue was limited to its mechanical effect in relieving pressure upon the affected part and the temporary relief of pain; with capacity and tendency to deceive retailers and using public into belief that said product was a cure for and would give permanent relief in all cases at any stage, and with effect of so doing, and of thereby diverting business to it from competitors, who honestly represent their products:

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

Mr. Robt. N. McMillen for the Commission.

Mr. Harry F. Williams, of Chicago, Ill., for respondent.

COMPLAINT

Acting in the public interest, 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 Fairyfoot Products Company, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fairyfoot Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State.

PAR. 2. A substantial part of respondent's business is the sale and distribution of a medicated pad, designated by it as "Fairyfoot",

which it advertises and otherwise represents to be a treatment for bunions on the feet. Sales are made by respondent to retail druggists and direct to the using public, and when such sales have been made shipment is made from respondent's place of business in the State of Illinois to the purchasers in many other States of the United States.

PAR. 3. In advertisements inserted in magazines and newspapers and in representations contained in circular letters mailed to prospective customers, respondent makes, in substance, the following representations:

That by the use of respondent's said treatment bunions are dissolved; pain is stopped almost instantly, and permanent relief follows; painful, ugly bunions are gradually dissolved; the user is enabled to wear smaller shoes; that the bunion is made to disappear as though it were melted away, and the foot again resumes its natural appearance and shape; in a surprisingly short period the deformed foot may again have its natural size and shape; bunion suffering is ended completely; that the treatment is approved by leading physicians and surgeons; that the normal functions are stimulated and the bunion is subjected to a continuous massage; that the absence of irritation and the gentle, continuous massage of the plaster plus the special Fairyfoot formula gradually reduces the unsightly bunion hump, thus helping the toe to straighten out; that many devices have been offered by others for the purpose of relieving bunions, and that some of these make matters worse while few, if any, do the slightest good; that Fairyfoot gently dissolves swelling caused by inflammation and should restore the foot to its normal appearance; when Fairyfoot is given a thorough and fair trial it brings sure and certain relief from bunion suffering, and the user can know once more the pleasure of bunion-free feet.

PAR. 4. In truth and in fact such representations are false and misleading in that respondent's product and the method of applying same will not dissolve or remove bunions and will not restore the foot to its normal shape; it operates to relieve pain only to the extent that it relieves the pressure of the shoe upon the affected part and any relief gained thereby is not lasting or permanent and is not due to any medication contained in or constituting the Fairyfoot formula; it is not, and has not been, approved by leading physicians and surgeons; the preparation or treatment contains nothing that will reduce the bunion except to the extent it may relieve by mechanical means the pressure of the shoe upon the affected part, as hereinbefore alleged.

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PAR. 5. There are in the United States persons, firms, and corporations engaged in the business of manufacturing and/or selling and distributing in interstate commerce mechanical devices for the relief and amelioration of the pain and discomfort of bunions and preparations for the treatment of such condition, and with these persons, firms, and corporations, respondent is in substantial competition.

PAR. 6. That the false and misleading advertisements and misrepresentations hereinbefore set out are to the prejudice of the said competitors of respondent and are prejudicial to the public interest, in that such false and misleading advertisements and misrepresentations have the capacity and tend to divert business to respondent from its competitors and to deceive and defraud the purchasing public.

PAR. 7. The said false and misleading advertising and misrepresentations as hereinabove alleged constitute unfair methods of competition 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent above named, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed answer, hearings were had before a duly qualified examiner of the Federal Trade Commission and evidence was introduced on behalf of the Commission and of the respondent.

Thereafter briefs were filed by counsel for the Commission and counsel for respondent and oral argument presented. And the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Fairyfoot Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its place of business at Chicago in said State.

PAR. 2. A substantial part of respondent's business consists in the sale and distribution of a medicated pad designated by it as "Fairy-

foot", which it advertises and otherwise represents to the public to be a treatment for bunions. Sales are made to retail druggists and to the using public and, pursuant to such sales, shipment is made from respondent's place of business in the State of Illinois to purchasers in many States of the United States.

PAR. 3. There are in the United States, and have been during all the time respondent has been engaged in so advertising and selling its said Fairyfoot remedy, persons, firms, and corporations engaged in manufacturing and selling in interstate commerce mechanical devices for the relief and amelioration of the pain and discomfort of bunions and preparations for their treatment, and with these persons, firms, and corporations respondent has been and is in substantial competition.

PAR. 4. In the course and conduct of its said business and in soliciting prospective purchasers of, and for the purpose of creating a demand for, its said product, respondent has advertised and does advertise in magazines and newspapers, and has represented and represents in circular letters mailed to prospective customers, substantially as follows:

That by the use of Fairyfoot, bunions are dissolved; pain is stopped almost instantly and permanent relief follows; painful, ugly bunions are gradually dissolved; the user is enabled to wear smaller shoes; the bunion is made to disappear as though it were melted away and the foot again resumes its natural appearance and shape; bunion suffering is ended completely; the normal functions are stimulated and the bunion is subjected to a continuous massage; the absence of irritation and the continuous massage of the plaster plus the special "Fairyfoot" formula gradually reduces the unsightly bunion hump, thus helping the toe to straighten out; it brings sure and certain relief from bunion suffering and the user can know once more the pleasure of bunion-free feet; and many other similar claims and representations either asserting or implying that "Fairyfoot" works a cure of or permanent relief from bunions in any stage, and is approved by leading physicians and surgeons.

PAR. 5. Such representations so made by respondent in its advertising and otherwise are false and misleading in that said pad and its medication will not accomplish the things, or any of them to a substantial degree, so represented by respondent. In truth and in fact there is no medication known to or recognized by medical science that will dissolve bunions or make them disappear, or that will substantially relieve and reduce them after the first or incipient state has been passed. Neither will the medicinal formula with which the Fairyfoot pad is treated instantly nor almost instantly

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stop pain or give permanent relief. The pad and its medicinal treatment have no other virtue or effect than that of a mechanical device for relieving the pressure or friction of the shoe upon the affected part and temporarily relieving the pain.

PAR. 6. Such false and misleading representations by respondent of and concerning its "Fairyfoot" bunion remedy have the capacity and tendency to and do in fact deceive retail merchants and the using public into the belief that respondent's said product is a cure for, or will give permanent relief in cases of, bunions at any stage, thus diverting business from those of its said competitors who honestly represent competing products and preparations.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings have been and are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and a violation of Section 5 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 matter having been considered by the Federal Trade Commission upon the complaint, the answer of the respondent, the testimony taken and evidence introduced at hearings, and upon briefs and oral argument of counsel for the Commission and for the respondent, and the Commission having fully considered the record and having made its findings as to the facts and its conclusion that respondent has violated the provisions of the 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, Fairyfoot Products Company, its officers, agents, and employees, forthwith cease and desist from representing in advertising matter, circular letters, by means of radio broadcast, or otherwise, in or in connection with selling or offering for sale in interstate commerce, its device or preparation known as "Fairyfoot" bunion remedy or treatment:

That the treatment is approved by leading physicians and surgeons; that by the use of Fairyfoot, bunions are dissolved, pain is stopped instantly, or almost instantly, and permanent relief follows; the foot again resumes its natural appearance and shape; bunion suffering is ended completely, the normal functions are stimulated; the

absence of irritation and the continuous massage of the plaster plus the special "Fairyfoot" formula gradually reduces the bunion hump; that "Fairyfoot" gently dissolves the swelling caused by inflammation and should restore the foot to its normal appearance; it brings sure and certain relief from bunion suffering and the user can know the pleasure of bunion-free feet; and cease and desist from representing in any other or similar manner or words that its said device or preparation works a cure for, or gives permanent relief from, bunions, or attribute to it or its medicinal formula any result or effect other than that which may be derived from a mechanical device that relieves the pressure or irritation of the shoe at the affected part and temporarily relieves pain.

It is further ordered, That respondent shall within 30 days from the date of service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

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IN THE MATTER OF
HUGH WALLACE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2183. Complaint, May 19, 1934—Decision, Dec. 18, 1934*

Where a corporation engaged in production and sale of a fabric for use in making and trimming coats and other garments, with cotton back and worsted face of certain long staple wool, and pile which closely simulated or resembled "Persian Lamb Fur", to wit, the fur of certain very young lambs, to which a great good will attached, and for which, or garments made therefrom or trimmed therewith, there was a public demand, at high prices—

Adopted and employed the name "Persian-Laine" for use in the offer and sale of said fabric to wholesalers, jobbers, garment makers, retail dealers, and ultimate purchasers thereof or of garments made therefrom or trimmed therewith, and supplied purchasers thereof with tags to be sewed on or otherwise attached and fastened to said garments, upon which tags there was depicted a ram's head and the words "Wallace Persian-Laine," and thus represented to and assured purchasers of said fabric and of garments made therefrom or trimmed therewith, that the same was the fur skin of said lambs;

With effect of deceiving and misleading the purchasing public into the erroneous belief that said knitted fabric was the fur of such young lambs, and of unfairly diverting trade to itself from competitors who sell the fur of very young lambs or garments made therefrom or trimmed therewith, and from competitors who offer and sell, without misrepresentation, fabrics or products made in simulation or imitation of such fur, or otherwise competitive therewith, to its unfair advantage, and to the injury of competitors and the public, and with capacity and tendency so to deceive, mislead, and divert:

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

Mr. John W. Hildrop 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 Hugh Wallace Company, a corporation, 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: