

IN THE MATTER OF
SCIENTIFIC PRODUCTS, INC.

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

Docket 2176. Complaint, May 3, 1934—Decision, Jan. 16, 1935

Where a corporation engaged in the manufacture of can openers, and in the sale thereof through house-to-house canvassers or agents; in periodical advertising directed to securing the services of such agents, and in printed matter sent them for their use in demonstrating and soliciting the sale of its "Nu-Day Magnetic Can Opener"—

- (a) Represented that there had been "discovered" the "horrible danger of metal slivers in food from opening cans", and that such danger had been "revealed by scientific tests" and dwelt upon and elaborated such supposed danger through such statements as "are you feeding your family metal chips and slivers", "it has now been proved that ordinary can openers shave off sharp jagged metal slivers that drop into the food contents", and "it is only logical that metal chips and slivers, swallowed with food, can be just as dangerous, if not more so", as fish bones and other extraneous objects in food, pointed out by medical authorities as causes of serious injury, and called attention to the "nearly universal consumption of canned foods", and the "dangers to health" never "before realized", as lurking in the simple operation of can opening;
- (b) Represented that "a revolutionary new invention" to wit, its said Nu-Day Magnetic Can Opener "vanished" obsolete openers, and that its said product had been hailed as a safeguard to health and ended the danger of metal slivers in food through such statements as "revolutionary new invention", "hailed as a safeguard to health", and "now at last comes the safe, perfect little automatic opening machine that all America has prayed for", and "no other can opener at any price gives you this freedom from worry"; and
- (c) Included in its aforesaid advertising matter pretended depictions of other can openers and cans pretendably opened by other openers, and a magnifying glass showing pretended slivers or particles of metal from cans opened with other openers, together with such statements as "actual unretouched microscopic photograph showing the many metal slivers shaved off by any ordinary can opener";

The facts being that said Nu-Day Magnetic Can Opener does not prevent the falling of pieces of metal, if any there be, into the food contents of cans opened therewith, statements and representations regarding the alleged danger that may result from the use of openers other than those manufactured and sold by it are exaggerated, as respects the alleged danger or hazard of gastro-intestinal stomach disturbances, which may be caused by the ingestion of such pretended or alleged metal particles in food, and other competitive products deposit smaller amount of such particles in the can than does its own said product;

With tendency and capacity to mislead and deceive the purchasing public into the belief that said representations were true, and induce purchase and use of its said openers because of such erroneous belief, and divert trade to it from competitors, to the substantial injury of substantial competition: *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. John W. Hilldrop for the Commission.

Eilers & Schaumberg, of St. Louis, Mo., and *Mr. John A. Nash*, of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation, engaged in the manufacture of can openers and in the sale and distribution thereof through house-to-house canvassers or agents in various States, and with principal office and place of business in St. Louis, with advertising falsely or misleadingly as to properties of product, and competitive products, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair method of competition in interstate commerce, in that respondent, in periodical advertising soliciting the services of such agents to sell its aforesaid product, and in printed matter supplied them for their use in demonstrating and soliciting the sale thereof, grossly exaggerates, elaborates upon, and misstates the asserted newly discovered dangers to health from the presence in food taken from cans, of metal slivers or particles present therein, as a result of the operation of opening the can with an ordinary can opener, as compared with the freedom from such danger assertedly assured through the use of respondent's so-called "Nu-Day Magnetic Can Opener", alleged revolutionary new invention, the facts being said supposed dangers are grossly exaggerated and there are other competitive openers which deposit smaller amounts of metal particles in the can than does its own aforesaid product;¹ with tendency and capacity to mislead and deceive the purchasing public into the belief that said representations are true and induce purchase of said products by it and use thereof because of such erroneous belief, and to divert trade to it from competitors engaged in the sale in interstate commerce of other can openers, to the substantial injury of substantial competition, and to the injury and prejudice of the public and competitors, and in violation of the provisions of Section 5.

¹ Various statements made by respondent in said advertising matter as alleged in the complaint, are set forth in the findings *infra*, at page 79.

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 3d day of May 1934 issued, and thereafter served, its complaint against the respondent, Scientific Products, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed an answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence taken in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for hearing and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, Scientific Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located in the city of St. Louis in said State. It is now and for more than one year last past has been engaged in the manufacture, among other articles, of can openers and in the sale and distribution thereof in commerce between and among various States of the United States, the Territories thereof and the District of Columbia. It causes and has caused said can openers, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located in the State of Missouri and in other States of the United States, the Territories thereof, and the District of Columbia, and there is now, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such can openers between and among the various States of the United States, the Territories thereof, and the District of Columbia. In the course and conduct of its said business, said Scientific Products, Inc. is now and has been at all times hereinafter mentioned in competition with other corporations and with individuals, firms, and partnerships engaged in the sale of can openers in interstate commerce.

PAR. 2. The can openers which the respondent, Scientific Products, Inc., manufactures and sells in interstate commerce, are sold and

advertised under a trade designation, to wit: "Nu-Day Magnetic Can Opener." Respondent has solicited and still solicits the sale of said "Nu-Day Magnetic Can Openers" by and through its agents engaged in house-to-house canvass in various States; and as a means to obtain the service of such agents respondent has caused, and still causes, advertising matter to be placed in periodicals having interstate circulation in which said advertising matter the following statements, among others, have appeared:

Discovered! Horrible danger of metal slivers in food from opening cans now eliminated.

Horrible danger of sharp metal slivers falling into food revealed by scientific tests! Revolutionary new invention vanishes obsolete can openers! Remarkable Nu-Day Magnetic Can Opener hailed as safeguard to health; and

Ends danger of metal slivers in food.

Printed matter has been sent and is still being sent by said respondent to its agents for their use in demonstrating and soliciting the sale of and selling said "Nu-Day Magnetic Can Openers." These are used and shown by respondent's agents to purchasers and prospective purchasers in soliciting the sale of said "Nu-Day Magnetic Can Openers." In such printed matter there have appeared, and still appear, the following statements, among others:

Are you feeding your family metal chips and slivers?

The consumption of canned foods is now so nearly universal that one or more cans are opened almost every day in nearly every home. Yet no one has ever before realized what dangers to health may lurk in this simple operation.

It has now been proved that ordinary can openers shave off sharp, jagged metal slivers that drop into the food contents.

The last quoted statement was and is followed in such advertising matter by a purported pictorial representation of other can openers, cans that had been purportedly opened by some other can opener, and of a magnifying glass showing purported slivers or particles of metal from cans opened with such various other can openers. Under this pictorial representation appeared, and still appears, the statement, among others:

Actual unretouched microscopic photograph showing the many metal slivers shaved off by many ordinary can openers.

Other statements appearing in such advertising matter were, and are, among others, the following:

This means that every time you open cans you are exposing yourself and family to dangers to health.

It has been pointed out by medical authorities that such objects as fish bones, pieces of toothpicks, fingernails, chips of glass, etc., ingested with food, have caused serious injury * * *.

Conclusion

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It is only logical that metal chips and slivers, swallowed with foods, can be just as dangerous, if not more so.

These sharp, jagged metal slivers threaten in foods opened with ordinary can opener.

Now at last comes the safe perfect little automatic can opening machine that all America has prayed for; and

No other can opener at any price gives you this freedom from worry.

PAR. 3. In truth and in fact, the said can opener, designated by respondent, "Nu-Day Magnetic Can Opener", does not prevent the falling of pieces of metal, particles, chips or slivers, if any there be, into the food content of cans opened with said device. The aforesaid statements and representations, as set out in paragraph 2 regarding the alleged danger that may result from the use of can openers other than those manufactured and sold by the said respondent and known as "Nu-Day Magnetic Can Opener" are exaggerated in respect to the alleged danger of hazard of gastro-intestinal stomach disturbances which may be caused by the ingestion of such purported and alleged metal particles with food. In truth and in fact there are other can openers manufactured and sold by competitors of respondent which deposit less amounts of metal particles in the can than does the use of said "Nu-Day Magnetic Can Opener".

PAR. 4. The representations of respondent, as set out in paragraph 2 hereof, have had, and still have the tendency and capacity to mislead and deceive the purchasing public into the beliefs that the said representations are true, and to induce the purchasing public to purchase and use the said "Nu-Day Magnetic Can Openers" because of the said erroneous belief engendered as aforesaid, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of other can openers, whereby substantial injury is done by the respondent to substantial competition.

PAR. 5. 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 the respondent in interstate commerce, and constitute unfair methods of competition 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.

CONCLUSION

The practices of the said respondent under the conditions and circumstances stated in the foregoing findings are to the prejudice of the public and respondent's competitors, and constitute a violation 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".

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony, the evidence, briefs and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that the 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 now ordered, That respondent, Scientific Products, Inc., a corporation, its agents and employees, in connection with the selling or offering for sale, or in aid of the sale of its certain product, to wit, "Nu-Day Magnetic Can Opener", in interstate commerce between and in the several States of the United States and the District of Columbia, cease and desist from representing in advertisements through magazines, newspapers, booklets, pamphlets, pictures, letters, circulars, testimonials or otherwise, that—

(a) There has been discovered any "horrible" or real danger of metal slivers in food from opening cans and that such danger has been or can be eliminated by the use of respondent's said product, Nu-Day Magnetic Can Opener.

(b) That any "horrible" or real danger of sharp metal slivers falling into food has been revealed by any scientific tests.

(c) That a revolutionary new invention, to wit, respondent's said Nu-Day Magnetic Can Opener, vanishes obsolete can openers.

(d) That respondent's "remarkable" Nu-Day Magnetic Can Opener is or has been hailed as a safeguard to health and that said Nu-Day Magnetic Can Opener ends danger of metal slivers in food.

(e) From the circulation in interstate commerce of pictures describing or purporting to describe the dangers accruing to the public from the consumption of food eaten from cans opened by other can openers than respondent's Nu-Day Magnetic Can Opener, and by using in connection with said pictures any words, figures, or phrases which represent or have a tendency to represent and convey to the reading and buying public the idea and belief that the eating of food contained in cans opened by can openers other than respondent's Nu-Day Magnetic Can Opener is attended by serious, real danger by reason of jagged metal or other slivers or other foreign substances being deposited into the cans containing food when opened as aforesaid.

¹ Paragraph (e) of the order is published as slightly modified by order dated March 26, 1935.

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(f) From advertising in any manner whatsoever in interstate commerce that there is any serious patent and real danger to the consuming public from eating foods out of cans opened by can openers other than respondent's Nu-Day Magnetic Can Opener, and from advertising in any manner in interstate commerce false and exaggerated claims as to the alleged superiority of respondent's Nu-Day Magnetic Can Opener over other can openers being sold and delivered in interstate commerce.

It is further ordered, That the said respondent shall, within 60 days after 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 to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
HARRY WEISS TRADING AS WEISS SHIRT COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2195. Complaint, June 11, 1934—Decision, Jan. 16, 1935

Where an individual engaged in the manufacture of shirts and sale thereof to jobbers and retailers—

Sold shirts respectively labeled "144 x 76", and "2 x 1", notwithstanding fact that materials of which said shirts were composed were of a cheaper and inferior grade than thereby understood by a substantial number of the purchasing public, in that the "count" in the former did not contain 147 x 76 threads per square inch, but only 106 x 57 threads, and the "ply" in the latter did not consist of two strands twisted together into a single thread, but was only a "1 x 1";

With capacity and tendency to deceive and mislead jobber and retailer purchasers of said shirts, and with effect of enabling other such jobbers and retailers to mislead and deceive purchasing public into the belief that said shirts contained the "count" and "ply" thus represented, and induce purchase thereof in reliance on such erroneous belief, and unfairly divert trade from competitors, including those who sell shirts properly labeled as to "count" and "ply":

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

Mr. Morton Nesmith for the Commission.

Zukernick & Stein, of New York City, 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 Harry Weiss, doing business as The Weiss Shirt Company, hereinafter referred to as respondent, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Harry Weiss, is an individual doing business under the name and style of Weiss Shirt Company and his principal office and place of business is located in the City of New York in said State. Said respondent has been for more than one year last past, engaged in the manufacture of shirts and the