

Complaint

IN THE MATTER OF
CREOMULSION COMPANY, INC.

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

Docket 2244. Complaint, Oct. 31, 1934—Decision, Jan. 21, 1935

Where a corporation engaged in the sale and distribution of a medicinal preparation; in its advertisements thereof in various publications, and through radio broadcasts, advertising literature, and otherwise—

- (a) Represented that it constituted a cure for colds that hang on and that it would check the growth of germs, and that coughs or colds could be stopped by the use thereof, through such statements as "coughs from colds may lead to serious trouble. You can stop them now with Creomulsion. * * * attacks the seat of the trouble and checks the growth of the germs", "For the cough from colds that hang on", "developed as a maximum help for colds that hang on", "Coughs—Don't let them get a strangle hold. Fight germs quickly"; and
- (b) Represented said preparation as a preventive of pneumonia, and as having a tonic effect through such statements as "Colds may develop into pneumonia", "coughs from colds may lead to serious trouble. You can stop them now with Creomulsion", etc., as above set forth, and "Beware of the cough from colds that hang on", "Colds that develop into pneumonia", "goes farther and reaches the cause of the cough from inside", and "excellent for building up the system after colds or flu";

The facts being that said statements were incorrect, exaggerated, and misleading, and had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of said products into the erroneous belief that it constituted a competent treatment for coughs from colds that hang on and could be relied upon to prevent flu or pneumonia, and constituted a germicide:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted an unfair method 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 Creomulsion Company, Inc., 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:

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PARAGRAPH 1. Respondent, Creomulsion Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, having and maintaining its principal office and place of business in the city of Atlanta in the State of Georgia. Said respondent has been and is engaged in the business of manufacturing and offering for sale and selling a certain medical preparation by the name and under the designation of "Creomulsion."

Said respondent, Creomulsion Company, Inc., offers for sale and sells said Creomulsion to jobbers to be by them resold to retail merchants, and to retail merchants to be by them resold to the public. Said respondent, Creomulsion Company, Inc., has been and is causing said Creomulsion when sold to be transported into and through the several States of the United States and the District of Columbia to the respective purchasers thereof located in various portions of said several States and the District of Columbia. In the course and conduct of said business said respondent, Creomulsion Company, Inc., is in substantial competition with other persons, firms, associations and corporations engaged in offering for sale and selling like and competitive products to jobbers, retail merchants, and the public in said commerce between and among said several States and the District of Columbia, and of causing the same when sold to be transported into and through said several States and the District of Columbia to the respective purchasers thereof located in various portions of said several States and the District of Columbia. Said competitors of said respondent, Creomulsion Company, Inc., are so engaged in offering for sale and selling in said commerce said like or competitive products for use by the purchasers thereof as remedies for, or to give relief from, the same diseases and ailments for which said Creomulsion is represented by respondent to be useful and for which said like or competitive products are sold and are intended to be used by purchasers thereof.

PAR. 2. In connection with the sale of its said product, and in aid thereof, and for the purpose of creating a public demand therefor, respondent, Creomulsion Company, Inc., has been and is causing exaggerated, inaccurate, false and misleading statements as to the characteristics and therapeutic properties, action and powers of said Creomulsion to be published in various newspapers, magazines, and other publications published and circulated in, between, among and throughout the several States of the United States and the District of Columbia.

Such exaggerated, inaccurate, false and misleading statements and representations have been and are in the words hereinafter set forth

or in similar words or in words which have the same or equivalent or like tenor and effect, to wit:

Colds may develop into Pneumonia;

Coughs from colds may lead to serious trouble. You can stop them now with Creomulsion, an emulsified creosote that is pleasant to take;

Creomulsion is a medical discovery with two-fold action; it soothes and heals the inflamed membranes and inhibits germ growth;

Of all known drugs creosote is recognized by high medical authorities as one of the greatest healing agencies for coughs from colds and bronchial irritations;

Creomulsion contains, in addition to creosote, other healing elements which soothe and heal the inflamed membranes and stop the irritation, while the creosote goes on to the stomach, is absorbed into the blood, attacks the seat of the trouble and checks the growth of the germs;

Creomulsion is guaranteed satisfactory in the treatment of coughs from colds, bronchitis and minor forms of bronchial irritations, and is excellent for building up the system after colds or flu;

Money refunded if not relieved after taking according to directions. Ask your druggist;

Creomulsion for the cough from colds that hang on;

Creomulsion is guaranteed satisfactory in the treatment of coughs from colds, bronchitis, and minor forms of bronchial irritations, and is excellent for building up the system after colds or flu;

Money refunded if any cough or cold, no matter of how long standing, is not relieved after taking according to directions. Ask your druggist.

Coughs. Don't let them get a strangle hold. Fight germs quickly. Creomulsion combines the 7 best helps known to modern science. Powerful but harmless. Pleasant to take. No narcotics. Money refunded if any cough no matter of how long standing is not relieved. Ask your druggist for Creomulsion;

Beware of the cough from colds that hang on;

Coughs from colds may lead to serious trouble. You can stop them now with Creomulsion;

An Emulsion with Creosote, Syrup of Pine Tar, Cascara, Ipecac, Wild Cherry and Menthol. It is pleasant to take;

A medical discovery with twofold action. Soothes and heals the inflamed membranes, helps to inhibit germ growth and acts as a mild laxative. Endorsed by highest authorities;

Of all known drugs, creosote is recognized by high medical authorities as one of the greatest healing agencies for coughs from colds and especially soothing to membranes affected by chest colds. Creomulsion contains, in addition to creosote, other healing elements which soothe and heal the inflamed membranes and stop the irritation, while the creosote goes on to the stomach, is absorbed into the blood, attacks the seat of the trouble and helps to check the growth of the germs;

Creomulsion guaranteed satisfactory in the treatment of coughs from colds, bronchitis, and bronchial irritations due to colds and chest colds, and is excellent for building up the system after colds or flu. It combines seven of the best helps in one—it is a super help. It is for those who want to do the utmost for safety's sake. All druggists are authorized to promptly refund the price if not entirely satisfied. Ask your druggist.

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In truth and in fact said preparation is merely a treatment for some classes of coughs only, to wit, for coughs due to colds or to minor irritations of the bronchial tubes and throat; and is not a cure for coughs due to incipient tuberculosis or to any cause or causes other than those above enumerated. Said preparation has no other characteristics or therapeutic properties, action or powers.

Each of the following statements and representations so made by said respondent, Creomulsion Company, Inc., either expressly or by implication, in the language above alleged referred to or set forth is exaggerated, inaccurate, false and misleading to the purchasing public, to wit:

1. That said preparation is a competent treatment for coughs from colds that hang on.

2. That all coughs or colds or coughs and colds generally can be stopped by the use of said preparation.

3. That said preparation will attack the "seat of the trouble" or that it will check the growth of germs.

4. That said preparation is a germicide.

5. That said preparation has any tonic property or effect.

6. That said preparation is useful for building up the system after colds or flu.

7. That said preparation will prevent pneumonia, flu or other serious ailment.

8. That said preparation reaches the cause of the cough from the inside.

9. That said preparation affords the user thereof a sure relief.

10. Generally, that said preparation has therapeutic properties, action or powers greater than, or other than, those herein above enumerated.

PAR. 3. Certain of the said competitors of said respondent, Creomulsion Company, Inc., in connection with or in aid of the sale of their said like or competitive products, refrain from making the same or like or equivalent exaggerated, inaccurate, false and misleading statements and representations as to the characteristics or therapeutic properties, action and powers of their said respective like and competitive products. The use by respondent, Creomulsion Company, Inc., of the method of competition above described and set forth, and the making by said respondent of said exaggerated, inaccurate, false and misleading statements and representations, and the publication by respondent, Creomulsion Company, Inc., of the exaggerated, inaccurate, false and misleading statements and misrepresentations in certain newspapers and magazines and by other methods of advertising, and the sending of same through the

United States mail and otherwise to the several States in interstate commerce, have the tendency and capacity to induce the public and prospective purchasers to believe that said statements and representations are true and to purchase Creomulsion in, and because of, such belief and in preference to said like and competitive products so offered for sale and sold by said respondent's said competitors above referred to.

Said exaggerated, inaccurate, false and misleading statements and representations so made by respondent, Creomulsion Company, Inc., and published and advertised as aforesaid, have the tendency and capacity to divert trade and custom to respondent, Creomulsion Company, Inc., from its said competitors, to the substantial injury of such competitors; to lessen competition between and among those who offer for sale and sell said Creomulsion, and said like and competitive products; all to the substantial injury of said competitors and of the public.

PAR. 4. The above acts and practices of respondent, and of each of them, are all to the prejudice of the public and of the competitors of respondent, Creomulsion Company, Inc., and 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, 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 31st day of October 1934 issued and thereafter served its complaint against the respondent named in the caption hereof, charging it with the use of unfair methods of competition in commerce in violation of the said act. Respondent, after entering its appearance and filing its answer and demurrer to said complaint, thereafter, to wit, on the 10th day of January 1935 entered into a stipulation as to the facts with W. T. Kelley, chief counsel for the Federal Trade Commission, in which it was stipulated and agreed that the statement of facts in said agreement between respondent and chief counsel may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclu-

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sion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs.

The Commission, being fully advised in the premises, now approves, ratifies, and confirms the said stipulation and agreement entered into as aforesaid by and between respondent and W. T. Kelley, chief counsel of the Federal Trade Commission, and, having duly considered the same, makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom, as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal office and place of business located in the city of Atlanta, State of Georgia. Respondent is now and for more than three years last past has been engaged in the business of selling and distributing a medicinal preparation designated as "Creomulsion". Respondent causes said medicinal preparation, when so sold, to be transported from its place of business in the city of Atlanta, State of Georgia, into other States of the United States to purchasers thereof at their respective locations. In the course and conduct of said business respondent is in competition with other corporations, partnerships, and individuals likewise engaged in the sale and transportation in commerce between and among the various States of the United States of similar articles of commerce.

In the aid of the sale of such commodities, respondent has made the following statements and representations, by advertisements inserted in various publications, including the Newark Ledger, issue of January 29, 1931, by radio broadcasts, advertising literature, and otherwise:

COLDS MAY DEVELOP INTO PNEUMONIA

Coughs from colds may lead to serious trouble. You can stop them now with Creomulsion. * * * attacks the seat of the trouble and checks the growth of the germs. * * * is excellent for building up the system after colds or flu * * *.

CREOMULSION

For the Cough from Colds that Hang On

BEWARE THE COUGH FROM COLDS THAT HANG ON

A THREE DAYS' COUGH IS YOUR DANGER SIGNAL

COLDS THAT DEVELOP INTO PNEUMONIA

Creomulsion was developed as a maximum help for coughs from colds that hang on. * * *

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* * * So experts combine in Creomulsion all the best helps known to give quick and sure relief.

* * * Creomulsion not only acts just as quickly in soothing the membranes by direct contact, but goes farther and reaches the cause of the cough from inside.

COUGHS

Don't let them get a strangle hold. Fight germs quickly. * * *

PAR. 2. The foregoing statements and representations made by the respondent in aid of the sale of its product, "Creomulsion", are incorrect, exaggerated, and misleading, and have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's said product into the erroneous belief that said product is a competent treatment "for coughs from colds that hang on", and that it can be relied upon to prevent flu or pneumonia, and that it is a germicide.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings of fact are to the prejudice of the public and to the competitors of respondent, and are unfair methods of competition in commerce in violation 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

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 issued its complaint against the respondent, Creomulsion Company, Inc., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Thereafter the respondent filed its answer to the charges set forth in the complaint and on, to wit, the tenth day of January 1935, a stipulation as to the facts was entered into by and between the chief counsel for the Federal Trade Commission and the respondent, wherein it was stipulated and agreed that the statement of facts thus agreed to might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and the Commission having accepted and approved the said stipulation as to the facts and having made its findings as to the facts and conclusion that the respondent has violated the

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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 the respondent, Creomulsion Company, Inc., a corporation, its agents, representatives, and employees, in connection with the sale and the advertising and offering for sale in interstate commerce of its medicinal preparation designated as "Creomulsion" do cease and desist from representing:

(1) That said preparation is a competent treatment for coughs from colds that hang on, unless the word "colds" as thus used be prefaced by the word "common" or the word "ordinary";

(2) That coughs or colds can be stopped by the use of said preparation;

(3) That said preparation will check the growth of germs;

(4) That said preparation has any tonic effects;

(5) That said preparation is useful for building up the system after colds or flu;

(6) Directly or by inference that the use of said preparation will prevent pneumonia or flu; and

(7) From making any other claims or assertions of like effect or import.

It is further ordered, That the respondent, Creomulsion Company, Inc., shall, within 60 days after 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 it has complied with and is complying with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

PABST PHARMACEUTICAL COMPANY, INC., DOING BUSINESS UNDER THE NAME AND STYLE OF PABST CHEMICAL COMPANY

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

Docket 2210. Complaint, July 19, 1934—Decision, Jan. 22, 1935

Where a corporation engaged in carrying on under the same trade name long theretofore employed (with the management of which corporation there was actively associated the owner of the former business, who became its president and treasurer), the sale to wholesale and retail druggists, of its "Pabst's Okay Special", a preparation theretofore long and extensively advertised on tin signs, in the papers, periodicals, circulars, directions and otherwise, and widely sold through hundreds of jobbers and thousands of druggists, as "Pabst's Okay Specific", as a definite and positive cure for various venereal diseases and ailments, and thereby associated by the trade and public, through said long used trade names, with such claims, notwithstanding fact it was not a specific, and had no direct curative effect on the diseases for which principally offered, and was not efficacious or beneficial in the treatment of a certain woman's ailment, for which recommended—

Advertised said preparation over the old business trade name, continued by it, as aforesaid, as "Pabst's Okay Specific", and, as later changed as "Pabst's Okay Special", by means of said signs, framed placards, and gummed stickers displayed in public places, and on pocket match packets distributed to the public, as a cure, remedy or competent and adequate treatment for the aforesaid diseases and ailments, through such statements as "Has the reputation of giving satisfactory results, no matter whether used in new cases or those of long standing * * * take it strictly according to directions and you *will not be disappointed*", etc., "When in trouble use the Okay Specific", "It does the work", "Chronic cases * * * is especially beneficial in * * *", "These cases * * * which frequently refuse to yield to other kinds of treatments, generally disappear after using the Okay Specific", and thus designated and referred to its said product in letterheads used in correspondence, and in said letterheads and in folders of directions sent to those making inquiry, or enclosed with the product, set forth and displayed the old well known trade name of the former business, thus continued by it.

Facts being said change in name was of such character as still to suggest to the trade and purchasing public the old name of the product, especially as used by it in connection with the previously established trade name of the business, and said product did not constitute a specific, cure, remedy, or competent and adequate treatment for the diseases and ailments for which recommended, as aforesaid, and to represent it as such was inaccurate, exaggerated and untrue;

With tendency and capacity to mislead and deceive members of the public as to the qualities or properties of said medicine and induce purchase and use