

Complaint

IN THE MATTER OF

H. GORDON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2269. Complaint, Dec. 18, 1934—Decision, Mar. 9, 1935*

Where an individual engaged in conducting a jobbing and wholesale shoe business, caused the words "Dr. Gordon's Healthopedic", or "Fashion Built Healthopedic Combination Last" to be stamped on the soles of certain shoes sold by him, and branded other shoes "Dr. Gray's Style-Fit Health Shoe", and "Dr. Williams' Arch Support"; notwithstanding fact shoes thus stamped or branded were not made in accordance with any design, or under the supervision of a doctor, did not contain special, orthopedic or scientific features that were the result of medical advice, and were not constructed to correct or alleviate any foot trouble or weakness; with capacity and tendency to mislead many among the trading and consuming public into the belief that said products were made or designed by doctors or others with knowledge of orthopedics, or at least contained some feature or features not common to the ordinary line of foot wear, designed or intended to correct some foot ailment or weakness or afford some relief therefrom, and with effect of unfairly diverting trade thereby from competitors and otherwise injuring the same:

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

Mr. Morton Nesmith for the Commission.

Stein & Stein, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 H. Gordon 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. H. Gordon is the sole owner and operator of a jobbing and wholesale business in shoes with his principal place of business at 107 Reed Street, New York City. Said respondent is now, and has been for the past ten years, engaged in the business of selling shoes at wholesale, being a wholesaler thereof between and among the different States of the United States. He has sold and has caused and still causes the said articles in which he deals, to be

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transported from his said place of business into and through other States of the United States to various jobbers and retailers located at points in different States of the United States. In the course and conduct of his said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of shoes in commerce between and among the different States of the United States.

PAR. 2. The respondent, H. Gordon, in the course and conduct of his business as aforesaid, in soliciting the sale of and selling his product in interstate commerce, caused the words "Doctor Gordon's Health-O-Pedic" to be stamped on or across the sole of a certain brand of shoe sold by him in interstate commerce, and said respondent further caused and still causes the words "Fashion Bilt Health-O-Pedic Combination Last" to be stamped on or across the sole of a certain brand of the shoes sold by him in interstate commerce. Said respondent also caused three other types of shoes, which he labeled and branded as "Dr. Gray's Style-Fit Health Shoe", "Dr. Starr's Health Shoe", and "Dr. William's Arch Support", to be sold by him in interstate commerce. Said respondent also caused and still causes certain of his shoes to be packed and shipped in interstate commerce in cartons or boxes on which the words:

STYLE PLUS COMFORT

ARCH SUPPORT

HEALTH-O-PEDIC

HEALTH IN EVERY STEP

are conspicuously displayed.

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised, and sold, as described in paragraph 2 hereof, were not made in accordance with the design and/or under the supervision of a doctor, and did not contain special, orthopedic or scientific features which were the result of medical advice or services, nor was such footwear manufactured or constructed upon a special last, nor is such footwear intended to be designed or constructed for the purpose of correcting or alleviating any form of foot trouble or weakness of the feet; all of which has the capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes have been fashioned or designed by doctors or others with a knowledge of orthopedics, or at least had some feature or features not common to the ordinary run of footwear, which features were designed or intended to correct some foot ailment or intended weakness, or at least afford some relief therefrom.

PAR. 4. The respondent, H. Gordon, in the sale of his products as aforesaid, ships and delivers to his jobber and retailer customers his products so labeled and branded, and said jobbers and retailers resell said products so labeled and branded to the consuming public.

PAR. 5. There are among the competitors of the respondent, referred to in paragraph 1 hereof, many persons, firms, and corporations who sell at wholesale shoes which contain special features designed and intended to correct and alleviate certain foot ailments and weaknesses. There are also among the competitors of the respondent persons, firms and corporations who sell at wholesale shoes and footwear manufactured along standard lines and according to standard methods but for which no special feature claims or representations are made, and the use by the respondent of the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name or with any other word or words or in any way as a trade name, brand or designation for his products or in his advertisements of said products, together with other special feature representations, has unfairly diverted trade from and otherwise injured and prejudiced respondent's competitors in interstate commerce.

PAR. 6. 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 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.

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 a complaint on December 18, 1934, upon the respondent H. Gordon, an individual owning and operating a jobbing and wholesale shoe business in New York City, N. Y., charging him with the use of unfair methods of competition in commerce as commerce is defined in said act. The respondent, H. Gordon, through counsel, filed his answer to said complaint, which answer was received by the Commission January 8, 1935.

Thereafter on February 5, 1935, a hearing in New York City was set before a trial examiner theretofore duly appointed and thereafter in lieu of testimony and evidence the respondent through his attorney desired to enter into a stipulation as to the facts and to consent to an order to cease and desist, and the attorney for the

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Commission having agreed to the entrance upon the record of a stipulation as to the facts and a consent order to cease and desist, a stipulation as shown in the transcript was made and entered into.

Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answer and stipulation as to the facts, and the respondent and counsel for the Commission having waived the filing of briefs and oral argument, said cause was duly submitted, and, the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. Gordon, is the sole owner and operator of a jobbing and wholesale business in shoes with his principal place of business at 118 Duane Street, New York City, respondent having prior to that time occupied the premises at 107 Reade Street, New York City. Said respondent is now and has been for the past ten years engaged in the business of selling shoes at wholesale and has sold the same during said time between and among the several States of the United States. Respondent has sold and still causes the articles in which he deals to be sold and transported from his place of business into and through the other States of the United States to various retail dealers located at points in different States of the United States. In the course and conduct of his business as aforesaid, respondent has been and is in competition with other individuals, partnerships and corporations engaged in the sale and transportation of shoes in interstate commerce.

PAR. 2. The respondent in the course and conduct of his business as aforesaid, in soliciting the sale of and selling his products in interstate commerce has caused the words "Doctor Gordon's Health-O-Pedic" to be stamped on or across the sole of a certain brand of shoes sold by him in interstate commerce and respondent caused the words "Fashion Bilt Health-O-Pedic Combination Last" to be stamped on or across the sole of a certain brand of shoes sold by him in interstate commerce. Said respondent also caused two other kinds of shoes which he labeled and branded as "Dr. Gray's Style-Fit Health Shoe" and "Dr. Williams' Arch Support", to be sold by him in interstate commerce. Said respondent never caused any shoes to be labeled or branded as "Dr. Starr's Health Shoe". Said respondent also caused and still causes some of his products to be packed and shipped in interstate commerce in cartons or boxes on which the words—

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Conclusion

STYLE PLUS COMFORT

ARCH SUPPORT

HEALTH-O-PEDIC

HEALTH IN EVERY STEP

are conspicuously displayed.

PAR. 3. In truth and in fact the shoes so marked, stamped, branded, or labeled, and sold as "Dr." or "Doctor" as described in paragraph 2 hereof were not made in accordance with any design or under the supervision of a doctor and do not contain special, orthopedic, or scientific features that were the result of medical advice, nor was such footwear manufactured or constructed for the purpose of correcting or alleviating any foot-trouble or weakness of the feet; all of which has a capacity and tendency to mislead many among the aforesaid trade and among the consuming public into the belief that said shoes have been or were manufactured or designed by doctors or others with the knowledge of orthopedics or at least contained some feature or features not common to the ordinary line of footwear which features were designed or intended to correct some foot ailment or weakness or at least to afford some relief therefrom, all of which has unfairly diverted trade from and otherwise injured respondent's competitors in interstate commerce.

PAR. 4. The shoes of the respondent which were marked, labeled, branded, or designated with the words:

STYLE PLUS COMFORT

ARCH SUPPORT

HEALTH-O-PEDIC

HEALTH IN EVERY STEP

in truth and in fact did contain certain orthopedic principles, namely, a flexible steel shank and arch support counter, a combination last and said shoes are two widths larger in the upper than in the counter.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors 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".

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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, the answer of respondent, the transcript containing stipulated facts, and, findings as to the facts; and the Commission having duly considered the matter, and being fully advised in the premises—

It is now ordered, That respondent, H. Gordon, his agents, servants and employees in connection with the advertising by any means whatsoever, or on labels, cartons, or the offering for sale, or sale in interstate commerce of shoes, do cease and desist from:

(1) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with a name, or with any word or words, or in any way as a trade name in the advertising or designation of his shoes; or in any way which may have the tendency and capacity to confuse, mislead or deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific or orthopedic features which are the result of medical advice or services, when such is not the fact.

(2) Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with the name, or with any word or words, or in any way as a trade name, brand, label or designation on his shoes; or in any way which may have the capacity and tendency to confuse, mislead and deceive purchasers into the belief that said shoes are made in accordance with the design, or under the supervision of a doctor, and contain special, scientific or orthopedic features which are the result of medical advice or services, when such is not the fact.

It is further ordered, That the respondent, H. Gordon, shall within 30 days from the service of a copy upon him 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 subparagraph (1) of the order to cease and desist, in so far as advertising matter is concerned, and,

It is further ordered, That respondent, H. Gordon, shall within 60 days after the service of a copy of this order upon him, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which he has complied with subparagraph (2) of the order to cease and desist, in so far as the labeling and branding of his shoes are concerned.

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IN THE MATTER OF

A. C. HAYSLER, JR., TRADING UNDER THE NAME AND
STYLE OF DR. SOUTHLINGTON REMEDY COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2202. Complaint, June 20, 1934—Decision, Mar. 18, 1935*

Where an individual engaged in the sale of certain so-called prescription compounds and suppositories, for women, advertised, represented, and held out by him as remedies for or affording relief in cases of pain, disturbances, and ailments, caused or produced by amenorrhea, dysmenorrhea, and other diseases and ailments peculiar to women, and, in the case of the last-named product, as a contraceptive—

Made such statements in labels, leaflets, periodicals, and other printed matter describing and offering the same as "I positively guarantee", "End pain and worry", "Successful relief compound", "End pain and delay", "have safely relieved some of the most obstinate and abnormal cases in from three to five days", will never "disappoint in a single instance where they are properly and faithfully used", "A grand good remedy and often worth its weight in gold", and others of similar tenor, notwithstanding fact that aforesaid preparations did not have the effects thus indicated or represented, or any effect in female diseases and troubles, and were not beneficial in their treatment, and said suppositories were not effective for the purpose for which offered;

With tendency and capacity to confuse and mislead members of the public into believing that aforesaid preparations had general curative properties in relieving cases of pain and distress due to said ailments, and would restore health and constituted remedies for or would give relief in, such diseases or ailments, generally, or afford prevention, without qualification or limitation, and to induce members of the public to purchase and use said compounds, medicines or products because of the erroneous beliefs thus engendered, and with effect of diverting trade to said individual from competitors engaged in sale of similar products or those adapted to and used for treatment of such ailments, and for said purposes, including those who in nowise misrepresent the therapeutic uses or effects of their compounds and medicines, and with tendency so to divert:

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

Mr. Carrel F. Rhodes for the Commission.

Mr. Clinton Robb, of Washington, D. C., 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