

Complaint

IN THE MATTER OF

FRANK A. SCERVINI, TRADING AND DOING BUSINESS
AS F. & S. MANUFACTURING COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2537. Complaint, Aug. 30, 1935—Order, Oct. 1, 1935*

Consent order requiring respondent individual, his agents, etc., in connection with the sale or offer in commerce among the several States and in the District of Columbia, of certain pharmaceutical and druggists' supplies, including gelatin capsules containing various preparations and compounds of a medicinal character, to cease and desist from—

- (a) Representing himself or his company directly or indirectly by advertisements, stationery, radio broadcasts, or in any manner or means as a manufacturer of pharmaceutical and druggists' supplies as above set forth, until he owns, operates and controls a factory or factories in which said products are made; or
- (b) Using the word "Manufacturing" as a part of or in connection with any trade name under which he carries on the aforesaid business, or the words "Makers of", independently or in connection with any other word or words or in any way having the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that he owns, operates or controls a factory or laboratory in which the pharmaceutical and druggists' supplies sold and distributed by him are made and compounded, until he in fact owns, operates and controls a factory or factories making said products.

Mr. J. T. Welch 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 Frank A. Scervini, doing business under the trade name and style of F. & S. Manufacturing Company, hereinafter designated as respondent, is now and has been, 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent, Frank A. Scervini, is an individual who is now, and has been at all times mentioned herein, doing business under the trade name and style of F. & S. Manufacturing Company, at 100 Fifth Avenue, New York, N. Y. Respondent is now, and has

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been, engaged in the business of selling and distributing pharmaceutical and druggists' supplies, including gelatin capsules containing various preparations and compounds of a medicinal character, to wholesale and retail druggists for resale, and to others, in commerce, as herein set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said pharmaceutical and druggists' supplies, including said gelatin capsules above described, when sold, to be transported from his principal office and place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now and has been at all times mentioned herein, a constant current of trade and commerce in the above described products sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been, in substantial competition with other individuals, firms and corporations likewise engaged in the business of selling pharmaceutical and druggists' supplies, including gelatin capsules, described as aforesaid, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of his business, as detailed in paragraphs 1 to 3 hereof, and for the purpose of inducing individuals, firms and corporations to purchase said pharmaceutical and druggists' supplies, including the gelatin capsules hereinabove described, has, from time to time, caused advertisements, wherein he claims to be the manufacturer of the products sold by him, to be inserted in newspapers, trade journals and magazines of general circulation throughout the United States, and has had printed and circulated to customers and prospective customers throughout the various States of the United States, through the United States mails, price lists, letterheads, invoices, and other advertising literature wherein similar claims are made. In all of the advertisements, letterheads, invoices, and other advertising literature herein referred to, the respondent has caused his trade name, F. & S. Manufacturing Company, to appear, together with the statement:

You save money when you buy F. & S. capsules. Concentrating as we do on the manufacture of capsules, we are enabled to produce a quality product at prices unattainable by those with whom capsules are merely a side line.

as an inducement to wholesale and retail druggists to purchase the products sold by him.

The letterheads used by the respondent contain the following language:

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F. & S. Manufacturing Company
Makers of
Soft Elastic Capsules
100 Fifth Avenue
New York City

together with other words.

The invoices used by the respondent contain the same statements appearing on the letterheads hereinabove referred to.

PAR. 5. The use of the word "manufacturing" in respondent's trade name, as indicated on the advertisements, letterheads; and invoices herein referred to, together with the statements appearing in said advertisements, letterheads and invoices as hereinabove detailed, particularly with reference to respondent's operation of a plant for the manufacture of gelatin capsules, purport to be descriptive of the respondent's business and the products sold by him.

Respondent does not own or operate or control any plant or machinery for the manufacture of pharmaceutical or druggists supplies, including gelatin capsules hereinabove described. The only place of business of respondent is located at 100 Fifth Avenue, New York, N. Y., and this place of business is not equipped for the manufacture of the products hereinabove referred to.

Respondent is not engaged in the business of manufacturing and is not a manufacturer, as those terms are understood by the trade and the public generally. Respondent is engaged solely in the business of distributing and selling pharmaceutical and druggists' supplies, including gelatin capsules, that have been manufactured by others.

PAR. 6. A substantial portion of the wholesale and retail druggist trade, as well as a substantial portion of the medical profession and of the public, prefer to deal direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices and superior quality in dealing direct with the manufacturer rather than a selling agency or middleman.

PAR. 7. The use by respondent of the word "manufacturing" in his trade name, as set out in paragraph 4, in describing the products sold by him or in designating his business or in advertisements in newspapers, trade journals and magazines, letterheads, invoices and other advertising literature, as well as in his general business correspondence; and the use by respondent of the several statements hereinabove detailed in describing and designating his business in offering for sale and selling the products so advertised, was and is calculated to, and had, and now has the tendency and capacity to, and did and now does mislead and deceive a substantial portion of the wholesale

and retail druggists' trade and the purchasing public into the erroneous belief:

- (1) That respondent is conducting a business much larger in size and scope than it is;
- (2) That respondent owns, operates and controls a manufacturing plant for the manufacture of pharmaceutical and druggists' supplies, including gelatin capsules;
- (3) That when they purchase products sold by the respondent they are dealing directly with the factory and are securing for themselves and their customers the advantage of close prices and superior quality; and
- (4) That in purchasing products from the respondent they are saving a middleman's profit for themselves and their customers by purchasing direct from a manufacturer.

As a direct consequence of the mistaken or erroneous belief induced by the acts, practices and representations of the respondent hereinabove outlined, a substantial number of wholesale and retail druggists, and others, have purchased a substantial volume of the products sold by the respondent, including gelatin capsules, with the result that substantial injury has been done to substantial competition in commerce among the various States of the United States and in the District of Columbia.

PAR. 8. There are among respondent's competitors many who manufacture pharmaceutical and druggists' supplies, including gelatin capsules, and who sell such products when so produced, and transport them or cause them to be transported to, into and through other States of the United States, to the purchasers thereof at their respective points of location, and who truthfully advertise and represent themselves to be the manufacturers of said products; there are others among respondent's competitors who do not manufacture pharmaceutical and druggists' supplies, including gelatin capsules, but who do sell and distribute the said products, when so produced, and transport them, or cause them to be transported to, into and through other States of the United States to the purchasers thereof at their respective points of location and who do not, by any means or in any manner, hold themselves out or represent themselves to be the manufacturers of the products above referred to; and the alleged acts, practices and representations of the respondent divert a substantial volume of trade from and otherwise prejudice and injure a substantial number of such competitors.

PAR. 9. The above and foregoing acts, practices, and representations of respondent have been and are, all to the prejudice of the public and respondent's competitors, and have been, and are, unfair

methods of competition within the meaning and intent 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

Frank A. Scervini, trading and doing business as F. & S. Manufacturing Company, the respondent herein, having filed his answer to the complaint in this proceeding, in which answer he states that he desires to waive hearing on the charges set forth in the complaint herein and not to contest the proceeding, consenting in and by his said answer that as provided in paragraph (b) of Rule V of the Commission's Rules of Practice, the Commission, without trial, without evidence and without findings as to the facts or other intervening procedure, may make, enter and serve upon said respondent an order to cease and desist from the methods of competition alleged in the complaint.

And the Commission having considered the said answer and being fully advised in the premises—

It is now ordered, That the respondent, Frank A. Scervini, trading and doing business as "F. & S. Manufacturing Company", and his agents, servants, representatives and employees, in connection with the sale or offering for sale, in commerce between and among the several States of the United States and in the District of Columbia, of certain pharmaceutical and druggists' supplies, including gelatin capsules containing various preparations and compounds of a medicinal character, cease and desist from:

(1) Advertising or in any way otherwise representing, directly or by implication, himself or his company by advertisements, advertising literature, stationery, radio broadcasts, or in any manner or means whatsoever as a manufacturer of pharmaceutical and druggists' supplies, including gelatin capsules containing various preparations and compounds of a medicinal character, until he owns, operates and controls a factory or factories in which said products are manufactured.

(2) The use of the word "Manufacturing" as a part of or in connection with any trade name under which he carries on his said business of selling pharmaceutical and druggists' supplies, including said gelatin capsules, until he owns, operates and controls a factory or factories in which the said products are manufactured.

(3) The use of the words "makers of", either independently or in connection with any other word or words, or in any way which may have the tendency or capacity to confuse, mislead, or deceive pur-

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chasers into the belief that he owns, operates or controls a factory or laboratory wherein the pharmaceutical and druggists' supplies which he sells and distributes are manufactured or compounded, until he owns, operates, and controls the factory or factories in which the said products are manufactured.

It is further ordered, That respondent shall, within 60 days from the date of the service upon him of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which he has complied with the order herein set forth.

Syllabus

IN THE MATTER OF
SECURITY SILVERWARE DISTRIBUTORS, INC., ET AL.
COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF
AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2387. Complaint, May 14, 1935—Order, Oct. 4, 1935

Consent order requiring respondent corporation and respondent individuals, officers thereof, their agents, etc., in connection with the offer and sale in interstate commerce of certificates, coupons, cards, tickets or written or printed matter for redemption in china or chinaware, silver or silverware, through advertisements in periodicals and newspapers, prospectuses, or any form of written or printed matter, or by broadcasting, to cease and desist, directly and indirectly, from—

- (a) Using the words "Advertising Department" after or in connection with the names of two certain corporations, in their advertisements, or in connection with the name or names of any other individual or concern, or representing that they are connected with or are agents of said two corporations or of any other individuals or concerns, or that said two corporations, because of the expense of periodical and newspaper advertising, have developed the plan presented of advertising through the cooperation of retail dealers in such a way that such cooperation will increase the business of such dealers without any cost to them, or to their customers, for the redemption of such certificates, etc., unless and until they are in fact connected with or representatives of said two corporations or of such other individuals or concerns and unless and until such a plan has in fact been developed by such two corporations and been adopted and followed by them;
- (b) Representing that for each payment of \$4.50 for 1,000 of such certificates, etc., purchased of them, there will be returned to the purchasing retailer \$5 when such certificates, etc., are redeemed by the retailer's customers, or that such certificates, etc., will involve no cost either to the retailers on their customers, notwithstanding practice of notifying retailers, after sale of such certificates, etc., that payment of one cent will be necessary with each certificate, etc., for redemption, or that such certificates, etc., are sold only to one retailer in the various communities and localities in the United States, unless and until they adopt and follow said respective practices; or
- (c) Representing that the silverware in which such certificates, etc., are redeemable is Rogers "1847" silverware, or that they will supply retailers purchasing such certificates, etc., with samples or display sets of silverware, earthenware or chinaware, unless and until they do in fact thus redeem such certificates in such Rogers "1847" silverware and adopt and follow said last-claimed practice.

Before *Mr. Charles F. Diggs*, trial examiner.
Mr. James M. Brinson for the Commission.