

Syllabus

IN THE MATTER OF

THE NATURAL BODY BRACE COMPANY, AND THE
POTTS-TURNBULL COMPANY

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

Docket 2274. Complaint, Dec. 28, 1934—Decision, Oct. 8, 1935

Where a corporation engaged in the sale of an appliance which it described and designated as a natural body brace, and which was similar to appliances sold and offered by others, without misrepresentation, for maintenance of correct body posture, and was held out for cure or relief of ailments for which others, without misrepresentation, offered medicinal preparations; in advertising the said "body brace" in various ways and particularly through radio broadcasting—

Represented that the use thereof would overcome, correct, remove, or relieve female weakness, backache, curvatures, nervousness, constipation, after-effects of flu, organic ailments of men and women, and numerous other ailments and conditions specified by it, and would cause the individual using the same to become 100 percent efficient, successful, useful and happy and confer upon such persons numerous benefits such as physical strength and good appearance and the blessings of comfort, health and a perfect figure, and that it cost nothing to try said device, which was made to the measurements of the individual purchaser after receipt of the order, and that health service was furnished free;

The facts being that while device might appreciably relieve distress and discomfort or be a useful agent in correcting faulty posture caused by fatigue, disease or other conditions, and in thus avoiding serious pathological situations to which such posture sometimes leads, including conditions in growing girls, at times chargeable to incorrect posture, and in relieving strain and possible constipation and other conditions due to weak abdominal muscles, and correction of such condition through use of a brace, the diseases, conditions and physical troubles for which it claimed relief, correction and cure were generally due to causes which could be neither directly nor indirectly, at all overcome, corrected, removed or relieved by the use of said device or any other physical appliance, and it was necessary for the purchaser to pay the required price for said brace, which was made after receipt of order, but promised health service was not furnished free;

With capacity and tendency to mislead and deceive purchasing public into belief that aforesaid representations were true, and into purchase of said product in reliance on such erroneous belief, and divert trade to it from competitors offering and selling body braces or appliances intended for or adapted to the maintenance of correct body posture, and from individuals and concerns selling medicinal preparations of various kinds for the cure or relief of the diseases which it represented could be cured or relieved by its said product:

Held, That such acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

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Before *Mr. Charles F. Diggs*, trial examiner.

Mr. James M. Brinson for the Commission.

Nash & Donnelly, of Washington, D. C., for The Natural Body Brace Co. and *Mr. Franklin D. Glore*, of Kansas City, Mo., for The Potts-Turnbull Co.

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 The Natural Body Brace Company and The Potts-Turnbull Company have been and are 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:

PARAGRAPH 1. Respondent, The Natural Body Brace Company, has been for several years last past and now is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business at Salina, in said State. It engages in the sale in commerce among and between the State of Kansas and the various other States of the United States, of an appliance which it describes and designates as a "Natural Body Brace". Such product it transports, or causes to be transported, from its said place of business at Salina, Kansas, to purchasers thereof, located in the various other States of the United States than the State of Kansas.

Respondent, The Potts-Turnbull Company, has been for several years last past and now 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 at Kansas City in said State. It engages in the business of an advertising agency, in the course of which it prepares advertisements of various kinds for its patrons and procures their publication in magazines, newspapers, and other periodicals, and also through the agency of radio broadcasting. Advertisements so prepared and published through the instrumentality of respondent, The Potts-Turnbull Company, embrace the offering for sale of various commodities in commerce among and between the various States of the United States.

In the course and conduct of its said business, respondent, The Natural Body Brace Company, has been and now is engaged in competition with individuals, partnerships, and corporations selling in interstate commerce body braces of various kinds, or who sell in such

commerce any other physical appliance or medicine or medical compound or drugs or preparations of any kind for use in connection with the diseases, or physical disorders, or troubles hereinafter mentioned in paragraph 2 hereof.

Respondent, The Potts-Turnbull Company, in the course of its said business has been and is engaged in competition with other advertising agencies which prepare advertisements in connection with the offering for sale commodities of various kinds in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business, it has been and is the practice of respondent, The Natural Body Brace Company, to offer for sale and sell its Natural Body Brace by means of advertisements of various kinds, particularly by radio broadcasting. Such advertisements have been prepared for respondent, The Natural Body Brace Company, at its instance and request by respondent, The Potts-Turnbull Company, with the full knowledge and expectation that such advertisements would be used and are used by respondent, The Natural Body Brace Company, in connection with the offering for sale and selling its Natural Body Brace in commerce among and between the State of Kansas and the various other States of the United States, and for the purpose of aiding, assisting, and promoting the sale of the product, Natural Body Brace, in such commerce. Respondent, The Potts-Turnbull Company, has rendered such service to respondent, The Natural Body Brace Company, in pursuance of contracts, the precise terms and provisions of which are unknown to the Commission.

In its aforesaid advertisements, it has been and is the practice of respondent, The Natural Body Brace Company, to make certain false and misleading representations to the effect that the use of its Natural Body Brace will overcome, correct, remove, or relieve female weakness, backache, curvatures, nervousness, constipation, the after effects of flu, organic ailments of men and women, indigestion, pains in the abdomen, bloating, unnatural thinness, inflammation of the bladder, colitis, floating kidney, or the usual kidney, bladder, or liver trouble, neuritis, or any nervous trouble, weak heart, palpitation from slight exercise or excitement, headache, pains between the shoulders, coldness, numbness, varicose veins, poor circulation, weakness of the lower limbs, lung trouble, navel or groin rupture, ovarian troubles, whites, menstrual troubles, or any female weakness, painful or frequent passing of urine; to the effect that it will cause you to become 100 percent efficient, 100 percent successful, 100 percent useful and happy, 100 percent in physical strength and good appearance; to the effect that it will enable you in later life, as well as now, to enjoy the

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blessings of comfort, good health, and a perfect figure; and to the effect that it will cost nothing to try said Natural Body Brace, that said Natural Body Braces are made to the individual measurement of the purchaser, that they are made after the receipt of orders, and that any health service is furnished free.

In truth and in fact, the above described or mentioned diseases, conditions, or physical troubles have been and are generally due to causes which can be neither directly, indirectly, nor at all overcome, corrected, removed, or relieved by use of product of respondent, The Natural Body Brace Company, or any other similar physical appliance. Some of the diseases, conditions, or troubles mentioned may be aggravated by use of product of respondent, The Natural Body Brace Company, and in many of such diseases, conditions, or troubles it would be and is dangerous to rely on the representations of respondent, The Natural Body Brace Company, because diseases, conditions, or troubles which can in no way be overcome, corrected, removed, or relieved by use of a brace may develop or progress to such an extent as to become incurable or impossible of relief or correction. It is necessary for the purchaser to pay the required price for the Natural Body Brace of respondent, The Natural Body Brace Company, and such brace is neither made to the individual measurement of the purchaser nor after the receipt of orders, nor is the promised health service furnished free.

PAR. 3. There have been for several years past and now are individuals, partnerships, and corporations engaged in the sale in interstate commerce of natural body braces, the purpose, use, and effect of which have been and are truthfully advertised and described, and there have been and are other individuals, partnerships, and corporations engaged in the sale in interstate commerce of drugs, compounds, medicaments, and preparations of various kinds, offered for sale and sold for use in connection with each and all of the diseases, ailments, and physical troubles described in paragraph 2 hereof, which have been and are truthfully advertised and described.

PAR. 4. The representations of respondent, The Natural Body Brace Company, described in paragraph 2 hereof, have had and have the capacity and tendency to mislead the consuming public into the belief that use of product of respondent, The Natural Body Brace Company, will cure or relieve or correct the diseases, physical troubles, or ailments described in paragraph 2 hereof, and into the purchase of the said Natural Body Brace in reliance on such erroneous belief.

The aforesaid representations of respondent, The Natural Body Brace Company, have had, and each of them has had and has the

capacity and tendency to divert trade to itself from individuals, partnerships, or corporations engaged in the sale of body braces or similar physical appliances, or of drugs, compounds, medicaments, or preparations of any kind truthfully advertised and sold for use in connection with said diseases, conditions, or troubles, or any of them.

PAR. 5. The acts and practices of respondents described in paragraph 2 hereof have been and are all to the prejudice of the public and of respondents' competitors, and have been and are unfair methods of competition in violation of the provisions of Section 5 of an Act 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 issued and served a complaint upon the Natural Body Brace Company, a corporation, and The Potts-Turnbull Company, the correct name of which is "Potts-Turnbull Advertising Company", a corporation, charging them with unfair methods of competition in interstate commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed answers, hearings were held at Chicago, Ill., and Kansas City, Mo., before an examiner for the Commission, theretofore duly designated for such purpose, and in the course of such hearings counsel for the Commission and counsel for the respondent Natural Body Brace Company, a corporation, entered into a stipulation as to the facts subject to the approval of the Commission. Submission of further testimony and evidence, report of the trial examiner, briefs and oral argument were duly waived in such stipulation. A stipulation of the facts in relation to its connection with respondent Natural Body Brace Company was also duly made by respondent Potts-Turnbull Advertising Company, erroneously named in complaint "Potts-Turnbull Company", with counsel for Commission subject to its approval. And the proceeding regularly came on for final hearing before the Commission on the complaint, answers and stipulations. The Commission having duly considered the same now 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 Natural Body Brace Company has been for several years last past and now is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business at Salina, in said State. It engages in the sale in commerce among and between the State of Kansas and the various other States of the United States, of an appliance which it describes and designates as a "Natural Body Brace." Such product it transports, or causes to be transported, from its said place of business at Salina, Kans., to purchasers thereof, located in the various other States of the United States than the State of Kansas.

In the course and conduct of its said business, respondent The Natural Body Brace Company has been and now is engaged in competition with individuals, partnerships, and corporations selling in interstate commerce body braces of various kinds, or who sell in such commerce any other physical appliance or medicine or medical compound or drugs or preparations of any kind for use in connection with the diseases, or physical disorders, or troubles hereinafter mentioned in paragraph 2 hereof.

PAR. 2. In the course and conduct of its business, it has been and is the practice of respondent the Natural Body Brace Company to offer for sale and sell its Natural Body Brace by means of advertisements of various kinds, particularly by radio broadcasting.

In its aforesaid advertisements, it has been the practice of respondent The Natural Body Brace Company to make certain representations to the effect that the use of its Natural Body Brace will overcome, correct, remove, or relieve female weakness, backache, curvatures, nervousness, constipation, the after effects of flu, organic ailments of men and women, indigestion, pains in the abdomen, bloating, unnatural thinness, inflammation of the bladder, colitis, floating kidney or the usual kidney, bladder, or liver trouble, neuritis, or any nervous trouble, weak heart, palpitation from slight exercise or excitement, headache, pains between the shoulders, coldness, numbness, varicose veins, poor circulation, weakness of the lower limbs, lung trouble, navel or groin rupture, ovarian troubles, whites, menstrual troubles, or any female weakness, painful or frequent passing of urine; and representation also to the effect that it will cause the individual using it to become 100 percent efficient, 100 percent successful, 100 percent useful and happy, 100 percent in physical strength and good appearance; also to the effect that it will enable the individual in later life, as well as now, to enjoy the blessings of comfort,

good health, and a perfect figure; and also to the effect that it costs nothing to try said Natural Body Brace, that said Natural Body Braces are made to the individual measurement of the purchaser, that they are made after the receipt of orders, and that any health service is furnished free.

In truth and in fact, the above described or mentioned diseases, conditions or physical troubles have been and are generally due to causes which can be neither directly, indirectly, nor at all overcome, corrected, removed, or relieved by use of the Natural Body Brace of the respondent The Natural Body Brace Company or any other similar physical appliance. It is necessary for the purchaser to pay the required price for the Natural Body Brace of respondent the Natural Body Brace Company and such brace is made after the receipt of orders, but the promised health service is not furnished free.

Faulty posture may be caused by fatigue, disease, abnormal physique, improper balance of the muscles, or laziness, or indifference, or many other factors. Such faulty or incorrect posture may produce in some instances and contribute to in other instances, various physical conditions which may or may not develop into serious pathological situations.

For example, if the normal development of the chest is prevented by stooping shoulders, the space provided by nature for the lungs and their expansion is narrowed. Undue pressure may, in extreme cases, be exerted on the heart and the large blood vessels.

In growing girls, poor posture with sagging abdomen may lead to deficient circulation in the abdominal and pelvic organs, and possibly to chronic diseases. If a properly fitted brace is worn before the incorrect posture has developed a pathological situation, the use of such brace until the posture is corrected, may serve to avert any of the serious consequences of incorrect posture. Respondent's product may be a useful agent in this respect.

In cases of weak abdominal muscles, resulting in sagging abdomen, and a consequent strain on other organs, a brace which restores the abdomen to its normal place and maintains it there, may relieve such strain, and may relieve constipation when such disease is caused by such abdominal and pelvic condition. It may also appreciably relieve distress and discomforts, in such conditions as have resulted from incorrect posture, or to which incorrect posture has contributed.

PAR. 3. There have been for several years last past and now are individuals, partnerships, and corporations engaged in the sale in interstate commerce of natural body braces, the purpose, use and effect of which have been and are truthfully advertised and de-

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scribed, and there have been and are other individuals, partnerships, and corporations engaged in the sale in interstate commerce of drugs, compounds, medicaments, and preparations of various kinds, offered for sale and sold for use in connection with each and all of the diseases, ailments, and physical troubles described in paragraph 2 hereof, which have been and are truthfully advertised and described.

PAR. 4. The connection or relations of the respondent The Potts-Turnbull Advertising Company, erroneously called Potts-Turnbull Company, with respondent The Natural Body Brace Company ceased on or about September 30, 1934. Prior to September 30, 1934, the advertisements prepared by respondent The Potts-Turnbull Advertising Company contained none of the representations, express or implied, or statements as charged in the complaint against The Natural Body Brace Company and respondent The Potts-Turnbull Advertising Company; and, as a matter of fact, all of the advertising matter placed by respondent The Potts-Turnbull Advertising Company with publications at the instance and direction of the respondent The Natural Body Brace Company during the year 1934 was no more than a continuation or repetition of advertising matter prepared by such company for respondent The Natural Body Brace Company during the year 1933 in pursuance of its specific instruction thereunder.

There were perhaps a few advertisements prepared in 1933 which in some respects resembled the phraseology of some of the charges in the complaint, but in each and every instance thereof it is the fact that the respondent The Potts-Turnbull Advertising Company qualified and explained the representations or statements of such advertising matter as provided and directed in a stipulation entered into by the Federal Trade Commission with the respondent The Natural Body Brace Company on September 21, 1932. And if there should appear in any of the advertising matter used by respondent The Natural Body Brace Company any statements such as those charged in the complaint which omitted the qualifying or explanatory clause required by such stipulation, it was without the knowledge, approval, or consent of respondent The Potts-Turnbull Advertising Company.

Any and all radio continuities prepared by respondent The Potts-Turnbull Advertising Company for use by respondent The Natural Body Brace Company in radio broadcasting always included a qualification or explanation such as suggested in the stipulation with the Commission to the effect that, in order to relieve or correct the troubles mentioned, they must have been the result of incorrect posture, misplaced organs, improperly supported abdomen, strained muscles or ligaments, or weak back or spine.

PAR. 5. The representations made by respondent The Natural Body Brace Company as described in paragraph 2, have had and have the capacity and tendency to mislead and deceive the purchasing public into the belief that they have been and are true, and into the purchase of respondent's product in reliance on such erroneous belief.

The aforesaid representations of respondent The Natural Body Brace Company have also had and have the capacity and tendency to divert trade to respondent from competitors offering for sale and selling in interstate commerce body braces or appliances intended for, or adapted to, the maintenance of correct bodily posture, and from other individuals, partnerships or corporations, selling in interstate commerce medicinal preparations of various kinds for the cure or relief of the diseases which respondent The Natural Body Brace Company represents, as described in paragraph 2, can be cured or relieved by its product.

CONCLUSION

The acts and practices of respondent The Natural Body Brace Company as described in the foregoing findings of fact have been and are all to the prejudice of the public and of respondent's competitors, and have been and are 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.

There is no evidence to support the complaint against respondent The Potts-Turnbull Company or respondent The Potts-Turnbull Advertising Company.

ORDER TO CEASE AND DESIST

This proceeding, having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answers of respondents thereto and stipulations of the facts by and between counsel for the Commission and respondents which are hereby approved, and submission of evidence having been waived in such stipulations and the report of the trial examiner, briefs and oral arguments also having been waived by respondent Natural Body Brace Company, which further agreed that the Commission may forthwith file its report stating its findings as to the facts, and its conclusion drawn therefrom, and may thereupon enter and serve upon respondent Natural Body Brace Company its order to cease and desist based or predicated upon its aforesaid stipulation of facts, and in accordance therewith and

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the Commission having considered the record and being fully advised in the premises—

It is ordered, That respondent Natural Body Brace Company in connection with offering for sale or selling in interstate commerce its product called the "Natural Body Brace", or any other similar product, in advertisements in newspapers, magazines, trade journals, periodicals, pamphlets, leaflets, prospectuses, or by means of radio broadcasting directly and indirectly cease and desist from:

1. Representing that the use of its natural body brace or any similar product can overcome, correct, remove, or relieve female weakness, backache, curvatures, nervousness, the after effects of flu, organic ailments of men and women, indigestion, pains in the abdomen, bloating, unnatural thinness, inflammation of the bladder, colitis, floating kidney, or the usual kidney, bladder, or liver trouble, neuritis, or any nervous trouble, weak heart, palpitation from slight exercise or excitement, headache, pains between the shoulders, coldness, numbness, varicose veins, poor circulation, weakness of the lower limbs, lung trouble, navel or groin rupture, ovarine troubles, whites, menstrual troubles, or any female weakness, painful or frequent passing of urine, that it will cause the individual using it to become 100 percent efficient, 100 percent successful, 100 percent useful and happy, 100 percent in physical strength and good appearance, or that it will enable the individual in later life, as well as now, to enjoy the blessings of comfort, good health, and a perfect figure, or that it costs nothing to try said Natural Body Brace and that they are made after the receipt of the order.

2. Representing that its Natural Body Brace can accomplish any useful result, except that in cases of weak abdominal muscles resulting in sagging abdomen and a consequent strain on other organs, the brace may restore the abdomen to its normal place, maintain it there and relieve such strain, and may relieve constipation when such disease is caused by abdominal and pelvic conditions resulting from sagging abdomen, and that it may also appreciably relieve distress and discomforts in such conditions generally as have resulted from incorrect posture or to which incorrect posture has contributed.

It is further ordered, That the complaint against respondent Potts-Turnbull Company, more correctly called "Potts-Turnbull Advertising Company", be and hereby is dismissed.

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

Complaint

IN THE MATTER OF

VINCENT MAGGIORE, TRADING AS THE AMO-LINE
COMPANY AND AMO-LINE COMPANY

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

Docket 2491: Complaint, July 3, 1935—Decision, Oct. 8, 1935

Where a corporation engaged for years in the manufacture, distribution, and sale of a cleanser and water-softener under its registered trade name "Climalene" and in its light blue registered cartons with dark blue overprintings, and through sale of said water-softener under said name and in such cartons and the wide advertisement thereof throughout the United States, acquired a wide and favorable reputation for said product which was in great demand by the trade and purchasing public; and thereafter an individual sold a similar product under the name "Amo-Line" and employed therefor cartons or packages which were of the same size, and colored light greenish blue with dark blue overprintings, and which imitated the former in many particulars; with capacity and tendency to confuse, deceive, and mislead trade and public under conditions usually prevailing in the sale of such products, and with result of inducing members of such trade and public to buy the product of said individual as and for that of such corporation, and of thus unfairly diverting trade from latter and its dealers to said individual and his dealers, and of placing in the hands of retailers an instrumentality permitting them more easily to substitute such goods of said individual for those of another, and with capacity and tendency so to do:

Held, That such practices, under the conditions and circumstances set forth, were each and all to the substantial prejudice of the public and of said competitor, and constituted unfair methods of competition.

Mr. J. T. Welch for the Commission.

Mr. Gerard Manack, of Navarre, Ohio, 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 Vincent Maggiore trading as The Amo-Line Company and Amo-Line 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