

Complaint

IN THE MATTER OF
C. R. ACFIELD, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2643. Complaint, Dec 5, 1935—Order, Jan. 14, 1936*

Consent order requiring respondent corporation, its officers, etc., in connection with the offer for sale and sale in interstate commerce and in the District of Columbia of devices or appliances known and designated as "Perfection Toe Spring" and "Bentoe Splint", to cease and desist from directly or indirectly advertising, describing, designating or otherwise representing its said "Toe Spring" is a cure for bunions or will remove the actual cause thereof, or that its said "Splint" is a correction for or will straighten hammer-toe, and from making any other similar statements or representations in any manner whatsoever which may have the tendency or capacity to confuse, mislead or deceive purchasers in any material respect with reference to the results to be expected from the use of said appliances.

Mr. Marshall Morgan 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 C. R. Acfield, Inc., a corporation, 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. C. R. Acfield, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 36 West Thirty-fourth Street, New York City. Respondent is now, and for more than two years last past, has been engaged, as hereinafter described, in the business of manufacturing alleged remedies for foot ailments, including the "Perfection Toe Spring" for bunions, and a "Bentoe Splint" for hammer-toe, and selling the same to foot specialists, chiropodists, retail stores, and individuals in various parts of the United States other than the State of New York. Respondent's said products and appliances are manufactured at its place of business in New York City, where they are branded, labeled, and packed by respondent for sale and distribution to the purchasing and consuming public of the United States. In connection with the

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sale and distribution of its said products the respondent transports them or causes them to be transported from its place of business in the State of New York to the purchasers thereof located in a State or States of the United States other than the said State of New York.

In the course and conduct of its business as aforesaid, the respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of remedies for foot ailments and offering such products for sale in commerce between and among the various States and within the District of Columbia.

One C. R. Acfield is the president, treasurer, general manager and moving spirit of the respondent corporation, and directs the activities and controls the policies and affairs of such respondent corporation. The said Acfield is the sole employee of the respondent company and manufactures, advertises and sells for respondent the products manufactured by it as embraced in this proceeding.

PAR. 2. A bunion is an inflammatory swelling of the fleshy covering or tissue over the metatarsal joint of the great toe. A bunion may be the result of a congenital defect, involving a bad alignment of the metatarsal bone, or it may also be caused by any binding or restriction of the toe which bends it out of alignment. Any bunion, whether resulting from congenital or environmental defects, results in the growth of a bony structure in the toe which acts as a wedge at the junction between the great toe and the metatarsal bone. This bony structure must be cut away in order to straighten the toe and bring it back to a correct position. At times it is necessary for the surgeon to drive a wedge into the metatarsal bone at its base near the heel in order to bring the toe and bone into a single straight line. In either event, a surgical operation is necessary to remove the cause of the bunion before any hope for a cure thereof may be entertained. Even if a so-called toe spring should be used to pull the toe out and hold it there, when the appliance is removed, the bony growth, which would still act as a wedge, would force the toe back to its bent position.

Hammer-toe is a condition of permanent bending of the mid-phalangeal joint, one of the long bones of the toe.. It is due to a congenital defect, and is not due to a tight or poorly fitting shoe. This defect is characterized by a bony growth at the apex of an inverted V which develops in the toe and holds it bent. If the tendons be cut in an effort to prevent the muscles from holding the toe in a bent position, the tendons will subsequently grow back and unite with the scar tissue. The toe throughout all of this will remain bent, inasmuch as it is not a tendon which is pulling the toe into a bent shape. A surgical appliance or splint would have

no effect in correcting the bent condition since the splint has no effect of changing the structure of the bony wedge that causes the bending.

There is no medication known to recognized medical science that will dissolve bunions or make them disappear, or that will substantially relieve or reduce them after the first or incipient state has been passed, nor is there any known surgical or other appliance that will cure a bunion or hammer-toe or serve as a successful remedy therefor. A padded metal splint and the medicinal treatment in connection therewith can have no other virtue or effect than that of serving as a mechanical device for relieving the pressure or friction of the shoe upon the affected part and temporarily relieving the pain. In each instance the cause, as stated, must be removed surgically. Any other measures are at best purely palliative.

PAR. 3. In the course and conduct of its business respondent has offered its products for sale and has sold and transported, or caused the same to be transported, in commerce among the several States of the United States to the consuming public, through the medium of advertisements inserted and carried in magazines and daily papers of general circulation, and by means of letters, circulars, leaflets, pamphlets and other advertising matter distributed through the United States mail, and has caused various false, deceptive, and misleading statements to be inserted and to appear in said advertisements, letters, circulars, leaflets, and pamphlets so distributed by it. The statements contained in said advertisements, letters, circulars, leaflets, and pamphlets are addressed to and have been distributed among foot specialists, chiropodists, retail dealers, and individuals who have been induced to purchase the products offered for sale and sold by respondent under the erroneous belief that said false, deceptive, and misleading statements were and are true. Said products are and have been shipped in response to orders received by respondent through the mail and transported or caused to be transported by it in commerce among the several States of the United States.

PAR. 4. Respondent, C. R. Acfield, Inc., in further connection with the sale and distribution of its aforesaid products, has represented in advertisements in general circulation, and in letters, circulars, leaflets, pamphlets, and folders distributed by it in interstate commerce that its said "Perfection Toe Spring" will banish a bunion, will remove the actual cause of a bunion, is a cure for bunions; and that its "Bentoe Splint" is a remedy for and will relieve and correct hammer-toe.

Respondent's so-called "Perfection Toe Spring" is termed a surgical appliance, is patented, and consists of a padded metal splint

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affixed to the inside of the foot, running from the tip of the great toe along the side thereof back to a point about equal to the center of the instep. This padded metal splint is fastened against the side of the instep by an adjustable canvas strap and another adjustable strap is passed around the great toe, pulling that member out against the padded metal splint. The metal splint is hollowed out where it rests against the outside of the great toe at its principal joint. The appliance sold by respondent as a remedy or cure for hammer-toe consists of a patented padded metal splint which is run under the bottom of the foot from the middle of the instep to the tip of the bent toe. The splint is fastened to the foot under the instep by an adjustable canvas strap and the deformed or afflicted toe is strapped to and on top of the outer end of the splint by another adjustable canvas strap.

PAR. 5. Among the representations made by respondent in its advertising, by means of letters, circulars, pamphlets, and folders, as aforesaid, in connection with the sale and distribution in commerce of its aforementioned products were and are the following:

The treatment with the Perfection Toe Spring, which is a common-sense surgical appliance, is a complete one.

I have worn the Perfection Toe Spring about six months and my bunion is cured.

The Perfection Toe Spring will straighten the great toe and by doing so remove the ACTUAL cause of the enlarged joint or bunion.

The Perfection Toe Spring REMOVES THE ACTUAL CAUSE of the BUNION or enlarged joint.

ACFIELD'S PROTECTION TOE SPRING
reg. U. S. Pat. Off.

A common-sense surgical appliance for the cure of BUNIONS.

A REAL CURE FOR BUNIONS and enlarged joints that actually REMOVES THE CAUSE of the trouble.

The Bentoe Splint used at night straightens hammer-toes.

The Perfection Toe Spring will actually straighten the great toe and remove the cause of enlarged joint or bunion, * * *.

Very often the great toe, by being out of its correct position, has force the second toe over or under it, and in some cases has doubled it up and caused a "hammer-toe". The great toe has caused the mischief and is the one to correct; the Perfection Toe Spring will effectually do this, * * *.

I have long since discontinued the use of your toe spring, for the simple reason that the bunion I spoke of has entirely disappeared under your treatment, * * *.

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I have worn the Perfection Toe Spring for about six months and
my bunion is cured. * * *

ACFIELD'S
PERFECTION TOE SPRING
cures Bunions and
Enlarged Great Toe Joints
by STRAIGHTENING
the
Great
Toe.

PAR. 6. In truth and in fact said representations and statements made or circulated with respect to respondent's products were and are false, deceptive, and misleading in the following among other particulars:

- (1) The treatment with the Perfection Toe Spring is not a complete one.
- (2) The wearing of the Perfection Toe Spring for six months or for any other period will not cure a bunion.
- (3) The Perfection Toe Spring will not remove the actual cause of the enlarged joint or bunion by straightening the great toe.
- (4) The Perfection Toe Spring will not remove the actual cause of the bunion.
- (5) Acfield's Perfection Toe Spring is not a common-sense surgical treatment for the cure of bunions, nor is it a real cure for bunions and enlarged joints.
- (6) The Perfection Toe Spring has not cured a genuine bunion in six months or any other period of time.
- (7) The Bentoe Splint does not straighten or correct hammer-toe by straightening the great toe or otherwise.

PAR. 7. Respondent has further in the course and conduct of its business issued and distributed in interstate commerce statements, circulars and other literature containing testimonials in which statements are made by various persons to the effect that they were or had been suffering from bunions and hammer-toes and had been completely relieved and cured by the use of respondent's Perfection Toe Spring and Bentoe Splint, respectively, when in truth and in fact respondent was and is without actual first-hand knowledge as to the foot ailment or disorder from which said persons were or had been actually suffering.

A. C. Acfield, president, treasurer, and the moving spirit for the respondent corporation, in its company management and in the manufacture, advertisement, and sale of the products it sells, is not a doctor of medicine, nor a surgeon, and has never held himself out as having taken any educational course designed to enable him to treat foot ailments; his knowledge of foot ailments and the treatment thereof has been acquired merely through the sale of respondent's appliances; he has no X-ray apparatus to obtain photographs of the bones of the afflicted toes of patients to learn therefrom whether said

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patients are actually suffering from bunion or hammer-toe, and he does not come in contact with or examine or interview patients regarding their foot symptoms or ailments.

PAR. 8. The truth and facts are that respondent's product, "Perfection Toe Spring", advertised and represented by it as a remedy and cure for bunions, and respondent's product, "Bentoe Splint", advertised and represented by it as a remedy and cure for hammer-toe, do not possess such beneficial or curative qualities and characteristics as to be truthfully represented, respectively, as a cure for bunion and hammer-toe, there being no known appliance which can be successfully used to effect a cure in the case of bunion or hammer-toe, it being possible to remove such foot deformities only through the medium of surgery, as stated.

PAR. 9. The above and foregoing false and misleading representations of respondent appearing in respondent's advertisements, circulars, bulletins, letters, and pamphlets in connection with the offering for sale and sale of respondent's products have and have had the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public in regard to the character of respondent's products and as to the uses to which they may properly be put, and have misled and deceived such purchasing public into the erroneous belief that respondent's products known and termed as "Perfection Toe Spring" and "Bentoe Splint" are remedies for and will relieve or remove the cause of and cure bunions and hammer-toes, respectively, and have tended to induce and have induced the purchasers of respondent's so-called "Perfection Toe Spring" and "Bentoe Splint" to believe that the false and extravagant claims made for such products were and are true in fact. The aforesaid practices of respondent are further to the detriment and injury of manufacturers and sellers of products similar to those manufactured and sold by respondent, and have and have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce products of the nature of those sold by respondent, but who fairly and truthfully advertise and represent such products.

PAR. 10. The above alleged false, misleading and deceptive acts, practices and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful and constitute unfair methods of competition 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".

ORDER TO CEASE AND DESIST

The respondent herein having filed its answer to the complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answer and to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer attached to the said motion; and the Commission having duly considered the said motion—

It is hereby ordered, That the said motion be, and the same is hereby granted; that the said answer be, and the same is hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answer so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises;

It is hereby ordered, That the respondent, C. R. Acfield, Inc., its officers, directors, representatives, agents, servants and employees in connection with the offering for sale and sale in interstate commerce and in the District of Columbia of devices or appliances known and designated as "Perfection Toe Spring" and "Bentoe Splint", do cease and desist from directly or indirectly advertising, describing, designating or otherwise representing:

(1) That respondent's so-called "Perfection Toe Spring" is a cure for bunions or will remove the actual cause of bunions or enlarged joints;

(2) That respondent's "Bentoe Splint" is a correction for or will straighten hammer-toe;

(3) From making any other similar statements or representations in any manner whatsoever which may have the tendency or capacity to confuse, mislead or deceive purchasers in any material respect with reference to the results to be expected from the use of said appliances.

It is further ordered, That the respondent shall within 60 days after the service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

C. E. SISSELL AND L. L. SISSELL, DOING BUSINESS AS
SISSELL BROTHERSCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2543. Complaint, Sept. 3, 1935—Order, Jan. 14, 1936*

Consent order requiring respondent individuals to cease and desist from representing, either directly or indirectly, in connection with the offer for sale, or sale in interstate commerce of metal burial vaults, in purported certificates of warranty or guaranty, in advertising or in any other manner, that such vaults will resist rust or corrosion or that they are made of rust resisting material or that they are water or vermin proof at the time of interment thereof or that they will endure as such under burial or other conditions for a period of fifty years or for any fixed or stated period of time.

Mr. E. J. Hornibrook for the Commission.

COMPLAINT

Acting in the public interest and 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 charges that C. E. Sissell and L. L. Sissell, copartners, doing business under the name and style of Sissell Brothers, hereinafter referred to as respondents, have been and are now 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, states its charges in that respect as follows:

PARAGRAPH 1. The respondents, C. E. Sissell and L. L. Sissell are copartners doing business under the name and style of Sissell Brothers at 4322 East 3rd Street, Los Angeles, Calif. They are now, and for several years last past, have been engaged at the said city of Los Angeles in the business of manufacturing and selling metal grave vaults used to encase coffins in the burial of the dead, to purchasers thereof, many of whom reside outside the State of California, and when orders are received therefor, they are filled by respondents by shipping the same from the said city of Los Angeles, State of California, into and through other States of the United States to the respective places of business or residences of such purchasers.

PAR. 2. In the course and conduct of the said business, respondents are in substantial competition with other individuals, co-partnerships