

IN THE MATTER OF
UNITED STATES ELECTRIC MANUFACTURING
CORPORATION

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

Docket 2504. Complaint, July 31, 1935—Decision, Feb. 6, 1936

Where a corporation engaged in the manufacture and sale of flashlight and dry cell batteries sealed with a strip of bakelite instead of the usual wax-top—

Represented and described such batteries as having a special patented "Lok-Top" and advertised and offered them under the trade name "Usalite Lok-Top" batteries, and made use of the word "patented" in its advertising matter in such a way as to deceive purchasers into the belief that it had the exclusive right to make or sell the feature thus referred to;

The facts being that products in question were not patented under the laws of the United States or any other country and it had no exclusive right to make the cell thus designated to indicate aforesaid difference;

With capacity and tendency to mislead and deceive a substantial part of the purchasing public and induce their purchase of said batteries in and because of the erroneous belief that same had been patented, and with effect of placing in the hands of dealers therein the means of defrauding the purchasing public through the sale of said products, and with capacity and tendency unfairly to divert trade from and otherwise injure the business of competitors and with effect of so doing:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

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 United States Electric Manufacturing Corporation, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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. United States Electric Manufacturing Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal

place of business located at New York, in the State of New York. It is now and, for more than one year last past, has been engaged in the manufacture of flashlight and dry cell batteries, under the trade name of "Usalite Lok-Top" batteries, and in the sale and distribution of said products, in commerce, between and among various States of the United States; causing said products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York. In the course and conduct of its business, respondent United States Electric Manufacturing Corporation was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent United States Electric Manufacturing Corporation, in soliciting the sale of and selling its flashlight batteries in interstate commerce, represented, referred to, and described the same as having a "special patented Lok-Top"; when in truth and in fact, said corporation had no United States or other patent on its said flashlights, or on the method of construction of the same or any part thereof.

PAR. 3. In the course and conduct of said business, in promoting and furthering the sale and distribution of its said product in commerce among the several States of the United States, as hereinbefore set forth, respondent, for more than one year last past, has caused and continues to cause said product to be advertised, represented, described, offered for sale, sold and distributed as and for flashlight and dry cell batteries under the trade-name of "Usalite Lok-Top" batteries, and has used the word "patented" and other words of equivalent meaning in its advertisements or advertising matter distributed in interstate commerce in a manner having the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it has the exclusive right to make or sell the feature of its said batteries so referred to, when such is not the fact.

PAR. 4. The said trade-name of "Usalite Lok-Top" when applied to respondent's product as aforesaid, is false, misleading, and deceptive. Respondent's use thereof, as hereinabove set forth, was and is calculated, has and had the capacity and tendency to and does mislead and deceive substantial parts of the purchasing public, and to cause them to purchase said so-called "Usalite Lok-Top" batteries in and because of the erroneous belief that said product has been patented as described.

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PAR. 5. The aforesaid use by respondent of said trade-name "Usalite Lok-Top" places in the hands of dealers of said products the means or instrument by which they may commit a fraud on the purchasing public, and such use of said trade-name is calculated to, has had the capacity and tendency to, and does aid or enable dealers in said product to pass off and sell to the purchasing public flashlight and dry cell batteries under the trade-name "Usalite Lok-Top" batteries, and described in its advertising circulars as having unit cells made with "special patented Lok-Top" contrary to the fact.

PAR. 6. The above alleged false, misleading, and deceptive acts and practices of respondent, under the circumstances and conditions hereinabove set forth, have had and have the capacity, tendency and effect of unfairly diverting trade from and otherwise injuring the business of respondent's competitors, all to the prejudice and injury of the public, 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 July 31, 1935, issued and served its complaint in this proceeding upon respondent, United States Electric Manufacturing Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the Commission received a letter from respondent, as an answer thereto, dated August 3, 1935, which was accepted and filed as an answer thereto.

Thereafter testimony and evidence in support of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it at a hearing held in New York City, N. Y., on October 15, 1935, and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the said answer thereto, and said testimony and evidence; and the Commission having duly considered the same, and being fully advised in the premises finds that the pro-

ceeding is in the interest of the public and makes this, its report, stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. United States Electric Manufacturing Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at New York, in the State of New York. It is now and, for more than two years last past, has been engaged in the manufacture of flashlight and dry cell batteries, under the trade name of "Usalite Lok-Top" batteries, and in the sale and distribution of said products, in commerce, between and among various States of the United States; causing said products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York. In the course and conduct of its business, respondent, United States Electric Manufacturing Corporation, was at all times herein referred to in competition with other corporations, individuals, firms and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 2. In the course and conduct of the business as described in paragraph 1 hereof, respondent, United States Electric Manufacturing Corporation, in soliciting the sale of and selling its flashlight and dry cell batteries, represented and described the same as having a "special patented Lok-Top". The designation "Lok-Top" was used to indicate the difference between batteries, which were sealed with a strip of bakelite under the zinc and which covered up the entire cell, and the ordinary wax-top sealed batteries, commonly used in the trade, which said wax-top sealed batteries were closed by the pouring of wax over the top of said batteries. The representation by respondent that its flashlight and dry cell batteries had a "special patented Lok-Top" was designed to import and imply, and did import and imply, that the respondent manufactured said flashlight and dry cell batteries under patents issued by the United States Government or other Governments. In fact, the flashlight and dry cell batteries so represented and sold by respondent were not patented under the patent laws of the United States, or any other country.

PAR. 3. In the course and conduct of said business, in promoting and furthering the sale and distribution of its said product in commerce among the several States of the United States, as hereinbefore set forth, respondent, for more than two years last past, and

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until on or about the first day of February 1935, caused said product to be advertised, represented, described, offered for sale, sold, and distributed as and for flashlight and dry cell batteries under the trade-name of "Usalite Lok-Top" batteries, and used the word "patented" and other words of equivalent meaning in its advertisements or advertising matter distributed in interstate commerce in a manner having the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that it had the exclusive right to make or sell the feature of its said batteries so referred to, when such was not the fact.

PAR. 4. The said trade-name of "Usalite Lok-Top" when applied to respondent's product as aforesaid, is false, misleading, and deceptive. Respondent's use thereof, as hereinabove set forth, was calculated to and had the capacity and tendency to mislead and deceive substantial parts of the purchasing public, and to cause them to purchase said "Usalite Lok-Top" flashlight and dry cell batteries in and because of the erroneous belief that said batteries had been patented.

PAR. 5. Respondent's representation that its flashlight and dry cell batteries under the trade-name "Usalite Lok-Top" had a "special patented Lok-Top", placed in the hands of dealers of said products the means or instrument by which to commit a fraud on the purchasing public, and such use of said trade-name was calculated to and has had the capacity and tendency to aid or enable dealers in said product to pass off and sell to the purchasing public flashlight and dry cell batteries under the trade-name "Usalite Lok-Top" batteries, and described in its circulars, labels, and other advertising literature, as having unit cells made with a "special patented Lok-Top", contrary to the fact.

PAR. 6. The above alleged false, misleading, and deceptive acts and practices of respondent, under the circumstances and conditions hereinabove set forth, have had the capacity, tendency and effect to unfairly divert trade from and otherwise injure the business of respondent's competitors, all to the prejudice and injury of the public, 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.

CONCLUSION

The practices of the said respondent under the conditions and circumstances stated in the foregoing findings are to the prejudice of the public and respondent's competitors, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act

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to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and testimony and evidence having been taken before Edward M. Averill, an examiner of the Commission, theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto (the filing and serving of the trial examiner's report, and the filing of briefs and oral arguments by counsel for both the Commission and the respondent having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated 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":

It is ordered, That the respondent, United States Electric Manufacturing Corporation, a corporation, its officers, agents, servants and employees, in connection with the sale or the offering for sale in interstate commerce of flashlight and dry cell batteries forthwith cease and desist—

From representing in circulars, on labels, in catalogs, in other advertising literature or in any other way that said flashlight and dry cell batteries have a "special patented Lok-Top", or that they are "patented", or from using any other word or words of similar tenor, import or substance, to describe or designate said flashlight and dry cell batteries as being "patented" or as having a "special patented Lok-Top."

And it is hereby further ordered, That the said respondent shall within 60 days from the day of the date of the service upon it of this order file with this Commission its report in writing, stating the manner and form in which it shall have complied with this order.

IN THE MATTER OF
HOME DRUG COMPANY

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

Docket 2164. Complaint, July 2, 1934¹—Decision, Feb. 11, 1936

Where a corporation engaged in the sale direct to the public of proprietary remedies represented as efficient therapeutic agents for self-medication; in advertising and describing its "Prescription No. 69" for gallstones, gallstone colic, liver, gall bladder and stomach disorders, in newspapers, through purported testimonial recommendations from prior users, sent to inquirers, and in circulars enclosed with product, and in circular, and circular follow up letters;

- (a) Falsely represented that said preparation would relieve or cure diseases or pathological conditions of the gall bladder or connected ducts and would cause gallstones to be dissolved and evacuated from the body, and thus avoid surgical operations for their removal, against asserted ineffectiveness and danger of which it warned, facts being more than 97% of such operations are successful;
- (b) Set forth as symptoms indicating presence of gallstones, attacks of mild indigestion and a number of other conditions, facts being the ordinary member of the public is not qualified to diagnose diseases or pathological conditions, and said various conditions set forth were symptoms of many different abdominal disorders and a competent physician would make no diagnosis and prescribe no remedy on the basis thereof; and
- (c) Represented said "Prescription No. 69" broadly as an effective medical treatment for liver and stomach disorders or troubles, facts being that, in the minds of lay people, a stomach disorder is any distress in the lower abdominal area and includes such diseases and conditions as impacted gallstones, gastric ulcer, and cancer of the stomach, tendency of which is progressive, in which latter conditions, as in the case of those described as "liver" or "stomach" trouble it would have no effect by way of relief or cure, but might lead to incurable conditions or premature death through delaying resort to competent and effective treatment;

With result of misleading and deceiving members of the public into believing aforesaid representations to be true and in reliance on such belief into purchase of said preparation in place of products of competitors sold for diseases or pathological conditions of the abdominal tract other than gallstones or the gall bladder, and into purchase thereof for removal of gallstones and for gall bladder disorder, and with capacity and tendency so to do, and to cause such members mistakenly to diagnose conditions with which they were afflicted and thus delay or fail to obtain competent surgical or medical care or treatment necessary, in the case of dangerous progressive diseases, to stay their course or remove their cause, to the great

¹ Amended.