

IN THE MATTER OF
GLENN LEACH, TRADING AS G. LEACH & COMPANY

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

Docket 2480. Complaint, June 29, 1935—Decision, June 23, 1936.

Where an individual engaged in the offer, sale, and distribution of earthenware kitchen utensils to members of the public in the various States through salesmen, representatives, and agents employed to sell his said product, and authorized and directed by him to canvass from house to house in various cities and towns and solicit prospective purchasers of such products, and exhibit samples thereof and distribute leaflets, pamphlets, etc., concerning the same and the various materials out of which made, and relative value of each to the user and, in connection with exhibition of such samples, and distribution and reading of such printed matter to make statements to such prospective purchasers concerning his products and the product of competitors to induce purchase of the former—

- (a) Defamed and disparaged through aforesaid means competitors' aluminum kitchen utensils by falsely representing that consumption of food prepared or kept therein would cause ulcers, cancers, cancerous growths, and other ailments and diseases, and that food so prepared, or kept therein was deleterious to user and that consumption of food prepared in his own utensils would not lead to dire conditions falsely attributed to consumption of food prepared in the other;

Facts being aluminum in contact with food causes no deleterious contamination, nor is there any scientific evidence that it causes or contributes to cancer, and said various statements were false;

With intent of inducing purchasing public to buy such earthenware, and refrain from purchasing such aluminum products, in belief that use of former would safeguard, and use of latter would injure, health of user and cause disease, and with effect of misleading and deceiving a substantial number thereof into the false belief that such various statements and representations were true and of inducing them to refrain from buying such aluminum ware and to purchase his said products and of substantially diverting trade to him from competitors who do not make such false representations;

- (b) Represented as aforesaid to customers or potential customers that the price at which his said products were offered was much lower than the retail price charged therefor and that they were being offered and sold at factory cost and only a few sales were to be made at such low price to introduce product in particular locality in which it was being offered;

Facts being price at which offered was its regular retail price at which sales were invariably made and so-called higher retail price was wholly fictitious and greatly in excess of that at which it had been or was intended to be sold in usual course of trade, and he never offered same at factory cost;

With intent of inducing purchasing public to buy such articles in the belief they were obtaining same at a financial saving and that, if they were not then purchased, regular price would later be asked, and with effect of misleading and deceiving a substantial number thereof into false belief that by buying at offered price they were securing greater value than they

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might have otherwise secured, and that by purchasing at particular time and place they were effecting a saving from the purported, usual, and customary prices, and of substantially diverting trade to him from competitors who do not make such false representations, and with capacity and tendency to mislead and deceive such public to their injury;

- (c) Falsely represented through printed matter used in connection with sale of its said products that he was the manufacturer thereof, with intent to induce customers and potential customers to buy same in belief that they were thereby saving profit received by middleman in accordance with common belief among members of purchasing public, and their preference thus to buy for such purpose, and with capacity and tendency to mislead and deceive a substantial number thereof and substantially divert trade to him from competitors who do not falsely represent themselves as the manufacturers of their products and from those who actually so manufacture the same;
- (d) Represented as aforesaid to prospective purchasers that his said product was fire resistant and would not break when placed directly in or over an open flame, facts being it was not thus resistant in all cases nor in any case until it had been gradually tempered before use, and was not in many cases thus unbreakable; with intent of inducing prospective purchasers to buy his said product in the belief that it would efficiently serve as a cooking utensil when used on any kind of stove and would wear longer and be more durable than the product of competitors, and with capacity and tendency to mislead and deceive, to their injury, a substantial number of such public into the false belief that by purchasing said product they would secure a product which would in all cases withstand heat and use over an open flame, and divert trade substantially to said individual from competitors who do not thus falsely represent their product:

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.

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

Mr. Allen C. Phelps for the Commission.

Mr. Thomas J. Collins, of Springfield, Mass., 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 Glenn Leach, 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. Respondent is an individual, trading under the firm name G. Leach & Co., with his principal place of business in

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the city of Pittsburgh, State of Pennsylvania. Respondent is now, and has been for the several years last past, engaged in offering for sale and selling, earthenware kitchen utensils to customers located in the several States of the United States and respondent causes said product when sold to be transported from the factory in the State of Ohio where it is manufactured into and across the several States of the United States for delivery to the said purchasers thereof located at various points in said several States of the United States other than the State of Ohio. Other persons and corporations, associations, and partnerships, who do not use the methods used by the respondent as hereinafter alleged, are engaged in offering for sale and selling kitchen utensils in said commerce among the several States of the United States. Many of said competitors manufacture and sell kitchen utensils made of aluminum. Respondent, in the course and conduct of his said business, as aforesaid, is in substantial competition with such other persons and corporations, associations, and partnerships so engaged in offering for sale and selling said products in said commerce.

PAR. 2. Respondent, in offering for sale and selling his said product in said commerce as aforesaid, employs salesmen or agents to canvass from house to house in various cities located in the several States of the United States to contact prospective purchasers of his said product; to exhibit samples of his said product to such prospective purchasers; to distribute among, or read to, said prospective purchasers leaflets, pamphlets, and circulars concerning the various materials out of which kitchen utensils are made and the relative value of each to the user thereof; and, in connection with the exhibiting of said samples and the distribution or reading of said printed matter, to make statements to such prospective purchasers concerning the product of respondent and the products of his competitors. All of which is done for the purpose of inducing said prospective purchasers to purchase the product of respondent.

Respondent, by the means and in the manner above alleged, has defamed and disparaged, and does defame and disparage, his competitors' products by falsely representing to purchasers and prospective purchasers of such products that the consumption of food prepared or kept in aluminum kitchen utensils will cause ulcers, cancers, cancerous growths, and various other ailments, afflictions, and diseases of mankind and, generally, that such food so prepared or kept in aluminum utensils is deleterious to the user thereof. Respondent represents that the consumption of food prepared in his product will not lead to the dire conditions he falsely attributes to the consumption of food prepared in kitchen utensils made of aluminum.

All users of kitchen utensils prefer utensils made of a ware in which food does not acquire the characteristics falsely attributed by the respondent to food prepared or left in aluminum ware utensils as above set forth.

PAR. 3. Respondent, by the means and in the manner alleged, falsely represents to prospective purchasers of his said product that the price at which it is offered is much lower than the regular retail price charged for such product and that only a few sales are to be made at such low price for the purpose of introducing the product in the particular locality and that thereafter such product may only be purchased from some local department store at a price approximately 100 percent greater than that at which such product is offered to such prospective purchasers. In truth and in fact the price at which such product is offered is the regular retail price for the product and the so-called retail price thereafter said to prevail is wholly fictitious and greatly in excess of the price at which such product is sold or was ever intended to be sold in the usual course of trade. In connection with the false representations as to the retail price of his product, respondent falsely represents, by designating G. Leach & Co. as the manufacturer of said product on the printed matter used in connection with the sale of said product and by the oral representations of his salesmen made to prospective purchasers, that he is the manufacturer of said product and that such special offer is possible because of the elimination of the profit that would ordinarily accrue to a distributor purchasing from a manufacturer and selling from house to house. In truth and in fact respondent is not the manufacturer of the product sold by him, but purchases the same from a factory owned and operated by one C. W. Lowry at Roseville, Ohio. Many users of kitchen utensils prefer to purchase direct from the manufacturer, thereby eliminating the profit of the distributor from the price charged such purchasers.

PAR. 4. Respondent, by the means and in the manner above alleged, falsely represents to prospective purchasers of his said product that it is fire resistant and that it will not break when placed directly in or over an open flame and that said product is fully guaranteed against such breakage and that any of his product that breaks by reason of exposure to fire will be replaced without cost to the purchaser. In truth and in fact said product is not fire resistant when placed in or over an open flame and respondent does not replace his product when broken because of exposure to fire without cost to the purchaser. In many instances respondent fictitiously claims that said product was not used as directed, and in some instances respondent makes replacements, but requires the purchaser to pay the postage necessary to transport the product supplied to replace the broken

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product. All purchasers of kitchen utensils prefer utensils made of a ware that is fire resistant and backed by the guarantee of the seller.

PAR. 5. The above alleged acts and practices of the respondent have the capacity and tendency to and do mislead and deceive prospective purchasers of kitchen utensils into the erroneous belief that the representations made are true and to cause a substantial number of such prospective purchasers to buy respondent's said product in lieu and instead of the products of his competitors, which such prospective purchasers would purchase but for such acts and practices of the respondent, thereby substantially diverting trade to the respondent from his competitors.

PAR. 6. The above alleged acts and practices of the respondent are all to the injury and prejudice of the public and of the competitors of respondent, and constitute unfair methods of competition within the intent and meaning of Section 5 of the 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."

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 the 29th day of June 1935 issued and served its complaint in this proceeding on the respondent, Glenn Leach, an individual trading as G. Leach & Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Allen C. Phelps, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Thomas J. Collins, attorney for the respondent; 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 answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission, having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is an individual trading under the firm name of G. Leach & Co., with his business headquarters and principal place of business in the city of Pittsburgh, State of Pennsylvania.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of offering for sale, selling and distributing earthenware kitchen utensils to members of the public located in various States of the United States, and respondent causes and has caused said products, when sold, to be transported from the factory in which the same are manufactured, located in the State of Ohio, into and across the several States of the United States for delivery to the said purchasers thereof located at various points in said several States of the United States other than the State of Ohio. Respondent admits in his answer and the evidence shows that he is and has been engaged in commerce between and among the several States of the United States.

PAR. 3. There are persons, other than respondent, and various corporations, associations, and partnerships engaged in offering for sale and selling kitchen utensils in said commerce between and among the several States of the United States, some of whom manufacture and sell kitchen utensils made of aluminum. Respondent, in the course and conduct of his said business, has been and is in substantial competition with such other persons and such corporations, associations, and partnerships so engaged in offering for sale and selling said products in said commerce.

PAR. 4. Respondent, in the course and conduct of his said business, has employed and does employ salesmen, representatives, and agents to sell his said product, who are and have been authorized and directed by respondent to canvass from house to house in various cities and towns located in the various States of the United States, to solicit prospective purchasers of his said product, to exhibit samples thereof, and to distribute among or read to said prospective purchasers leaflets, pamphlets, and circulars concerning his said product and the various materials out of which kitchen utensils are made and the relative value of each to the user thereof; and in connection with the exhibiting of said samples and the distribution or reading of said printed matter to make statements to such prospective purchasers concerning the product of respondent and the products of his competitors, all of which is done for the purpose of inducing said prospective purchasers to buy respondent's product.

PAR. 5. Respondent, by the use of the above means and through his salesmen, agents, and representatives, has defamed and dispar-

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aged aluminum kitchen utensils, being the products of some competitors, by falsely representing to purchasers and prospective purchasers of his product that the consumption of food prepared or kept in aluminum kitchen utensils will cause ulcers, cancers, cancerous growths and various other ailments, afflictions and diseases of mankind, and, generally, that such food so prepared or kept in aluminum utensils is deleterious to the user thereof. Respondent represents and has represented that the consumption of food prepared in his kitchen utensils will not lead to the dire conditions he has falsely attributed to the consumption of food prepared in kitchen utensils made of aluminum. Users of kitchen utensils prefer utensils made of a ware in which food does not acquire the characteristics falsely attributed by the respondent to food prepared or left in aluminum ware utensils, as set forth above.

Aluminum is the most abundant metallic element in nature and is found in all foods and ordinary drinking water. Aluminum in contact with foods causes no deleterious contamination. In the quantities in which aluminum is absorbed in food from being cooked in aluminum utensils and ingested into the human system by the consumption of such food, neither aluminum nor any of its compounds which may be formed are toxic in effect or deleterious to the health, nor do they cause cancer, cancerous growths, ulcers or any other disease or ailment. Aluminum in food combines with phosphorus present and the phosphorus in food exceeds the amount of aluminum a thousand times. A low phosphorus content in the blood of a person resulting from the presence of aluminum in food could never occur from the amount of aluminum absorbed in foods from being cooked in aluminum utensils. The interference with phosphorus is negligible as far as the amount of aluminum present in foods cooked in aluminum vessels is concerned. There is no scientific evidence that aluminum, as ingested into the human system in food, causes cancer or contributes to the cause of cancer or aggravates or increases the rate of growth of cancer. The amounts of aluminum found in foodstuffs under conditions most favorable for its accumulation there are inadequate to account for any of the irritations preceding cancer. Aluminum utensils are extensively used in hospitals in the preparation of foods for cancer and other patients. None of the known underlying causes of cancer have any relationship or connection with aluminum or its ingestion into the human system in food.

The purpose and intent of the respondent in causing to be made the false representations concerning aluminum ware, above set forth, was to induce members of the purchasing public to purchase respondent's earthenware utensils and refrain from purchasing aluminum utensils in the belief that the use of earthenware kitchen

utensils in cooking and storing food would safeguard the health of the user and that the use of aluminum utensils would injure the health of the user and cause disease.

PAR. 6. Respondent, by use of the means above stated, has falsely represented and does represent to customers or potential customers of his said product that the price at which the same is offered is much lower than the retail price regularly charged for such product, that it is being offered for sale and sold at factory cost, and that only a few sales are to be made at such low price for the purpose of introducing the product in the particular locality where same is being offered for sale.

The price at which such product was and is offered for sale was and is the regular and usual retail price for the same, and the price at which sales were invariably made, and the so-called higher retail price which it was represented was thereafter to be used was wholly fictitious and greatly in excess of the price at which said product had been sold or was ever intended to be sold in the usual course of trade. Respondent does not and has never offered for sale or sold any of his said product at factory cost.

The purpose and intent of the respondent in making and causing to be made the representations aforesaid was to induce members of the purchasing public to purchase the commodity so offered in the belief that they were obtaining such commodity at a financial saving and in the belief that if such commodity was not then purchased, the so-called regular price would later be asked.

PAR. 7. Respondent, by means of printed matter used in connection with the sale of his said product, has falsely represented to the public that he is the manufacturer of the same.

Respondent is not and never was the manufacturer of said kitchen utensils and the same were purchased by respondent from a factory formerly owned and operated by one C. W. Lowry, Roseville, Ohio.

There is a common belief among members of the purchasing public that in making purchases direct from the manufacturer of commodities a substantial financial saving is effected in that the profit of the middleman is thereby eliminated and the sums of money represented by the usual profit of such middleman are directly saved the purchaser or purchasers. There is a preference among a substantial number of the members of the purchasing public for purchasing commodities direct from the manufacturer of the same for the purpose of effecting such a financial saving.

The purpose and intent of respondent in so representing that he was the manufacturer of his product was to induce customers and potential customers to purchase said product in the belief that they were thereby saving the usual profit received by the middleman.

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PAR. 8. Respondent by the use of the means above set forth, has falsely represented to prospective purchasers of his said product that it was fire resistant and that it would not break when placed directly in or over an open flame.

Said product has not been fire resistant in all cases, and in no case unless and until said product has been gradually tempered before use. Said product has not, in many cases, been unbreakable over an open flame.

The purpose and intent of respondent in making such representations has been to induce prospective purchasers to buy said product in the belief that it would efficiently serve as a cooking utensil when used on any kind of a stove and that it would wear longer and be more durable than the products of competitors.

PAR. 9. The use by the respondent, in connection with the conduct of his business, as above stated, of oral representations and of pamphlets, circulars, and other means of advertising containing statements and representations that the use of aluminum cooking utensils is deleterious to health, is poisonous and promotes the growth of cancer, and other statements and representations of similar import, had the capacity and tendency to and did mislead and deceive a substantial number of the members of the purchasing public into the false belief that the statements and representations thereby made were true, and a substantial number of the members of the purchasing public, believing such statements and representations to be true, have refrained from buying aluminum ware and have been induced to purchase the product of respondent. Such practices have caused a substantial diversion of trade to respondent from his competitors who do not make such false representations.

PAR. 10. The false representations so made by the respondent to the effect that the price at which his product was offered for sale was much lower than the regular retail price, that said offered price was factory cost, and that only a few sales were to be made at such low price, had and has the capacity and tendency to and did and does mislead and deceive a substantial number of the members of the purchasing public into the false belief that by making the purchase of the product at the price offered they were securing a greater value than they might otherwise have secured and that by making the purchase at that particular time and place they were effecting a financial saving from the purported usual and customary price. Such practice had and has the capacity and tendency to mislead and deceive the purchasing public to their injury and has caused and now causes a substantial diversion of trade to respondent from his competitors who do not make such false representations.

PAR. 11. The false representation so made by the respondent to the effect that he was the manufacturer of the product sold by him has had the capacity and tendency to mislead and deceive a substantial number of the members of the purchasing public and to cause a substantial diversion of trade to respondent from his competitors who do not falsely represent that they are manufacturers of the products sold by them and to likewise cause a diversion of trade from competitors who actually manufacture the commodity or commodities vended by them.

PAR. 12. The false representation so made by respondent that his product was fire resistant and that it would not break when placed directly in or over an open flame has had the capacity and tendency to mislead and deceive a substantial number of the members of the purchasing public into the false belief that by purchasing respondent's product they would secure a kitchen utensil which would in all cases withstand heat and use over an open flame. Such practice has the tendency and capacity to mislead and deceive a substantial number of the members of the purchasing public to their injury and to cause a substantial diversion of trade to respondent from his competitors who do not falsely represent their product to be fire resistant and unbreakable over an open flame.

CONCLUSION

The aforesaid acts and practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, are unfair methods of competition in commerce and constitute a violation 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

This proceeding having been heard before the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, and in opposition thereto, briefs filed on behalf of the Federal Trade Commission and the respondent, and the Commission having made its findings as to the facts and conclusion that the respondent, Glenn Leach, an individual, trading as G. Leach & Co., has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An

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

It is now ordered, That the respondent, Glenn Leach, an individual, trading as G. Leach & Co., his agents, salesmen, representatives, and employees, in connection with the sale or offering for sale in interstate commerce of cooking utensils, cease and desist from:

(1) Representing or causing to be represented through advertising literature, oral statements or in any other manner, that the use of aluminum cooking utensils is deleterious to the health; or that the consumption of food prepared or kept in aluminum kitchen utensils causes or contributes to the causation of ulcers, cancers, cancerous growths, or any other disease or ailment, or that such food as a result of being prepared or kept in aluminum cooking utensils is injurious to the consumer thereof; and from making any other statements or representations of similar tenor or effect falsely disparaging or tending to falsely disparage the quality or value of such aluminum cooking utensils with respect to the effect the use of the same might have on the health of the user or users thereof.

(2) Representing that the usual, regular, and customary selling price of said cooking utensils is a special or advertising price or the factory cost of such utensils or that only a few sales are to be made at such special price, and from representing that a higher and fictitious or marked-up price of said cooking utensils is the customary, usual, or regular price.

(3) Representing that the respondent is the manufacturer of such cooking utensils.

(4) Representing that such cooking utensils are fire resistant in all cases, or that they will never break when placed directly in or over an open flame.

It is further ordered, That the respondent shall, within 90 days from and after the date of 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 and is complying with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
ABRAHAM PLATELL, DOING BUSINESS AS PLATELL
SHOE COMPANY

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

Docket 2505. Complaint, July 31, 1935—Decision, June 23, 1936

Where an individual, engaged in the sale of shoes at wholesale, and neither a doctor, nor with medical or other such degree—

- (a) Caused the words "Dr. Florence Scientific Shoe" to be imprinted across the sole of a certain brand sold by him, and on the sock lining of said shoes the words "Dr. Florence Scientific Arch Support," and packed and shipped the same in cartons upon which appeared said last-named words and "Reg. U. S. Pat. Off.," and used as an advertising medium a counter card upon which appeared "Sole agency for Dr. Florence Scientific Arch Support Shoes, Reg. U. S. Pat. Off.," and more recently used said various words with "Dr." changed to "Dr.,"

Facts being said shoes were designed by said individual and there was no doctor employed by him, nor in any way connected with his said business, and his said shoes marked as above and sold as "Dr." or "Doctor" shoes were not made in accordance with design or under the supervision of a doctor and did not contain special scientific or orthopedic features which were the result of medical advice or services, and were not designed or constructed to correct or alleviate any foot troubles or weakness;

With capacity and tendency to mislead many among the trade and consuming public into the belief that said shoes had been made or designed by doctors or others with special orthopedic knowledge or contained at least some feature or features not common to the ordinary line of footwear, and designed or intended to correct some foot ailment or weakness or at least afford some relief therefrom, and with effect of causing such public to purchase said shoes in such belief, and of unfairly diverting trade from and otherwise injuring competitors; and

- (b) Included in his correspondence and on his invoices, letterheads, or stationery, along with his name, the words "Manufacturing Wholesalers of Shoes", notwithstanding fact he neither owned, operated, nor controlled any factory or place at which his shoes, made for, and as specified by, him, were manufactured;

With capacity and tendency to divert trade to him from competitors; to the substantial injury of competition throughout the States:

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.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Morton Nesmith for the Commission.