

Complaint

DR. J. E. CANNADAY

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

Docket 2811. Complaint, May 19, 1936—Decision, June 29, 1936

Where an individual engaged in the sale of a medicinal preparation and treatment for relief and cure of eczema—

Represented, through advertisements in newspapers and periodicals of general circulation, that said preparation and treatment would effect a cure of said ailment in all cases and give permanent relief therefrom and heal same permanently, and would stop the itching attending same, and issued and distributed testimonials to effect that persons giving such testimonials had been suffering from said ailments and had been relieved or cured or completely restored to health by use of such said preparation and treatment, and represented that he had cured numerous persons in various States through use thereof;

Facts being that it would not accomplish such results in all cases, many of the persons thus testifying had not been cured or completely restored to health, and he was without personal knowledge as to the disease, ailment or disorder from which such persons were or had been actually suffering, and as to extent, if any, to which users had benefited or been cured by his said preparation and treatment;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and with result that a number of such public, by reason of such mistaken and erroneous beliefs thus induced, purchased a substantial amount thereof and trade was thus unfairly diverted to him from individuals and concerns likewise engaged in the sale of medicinal preparations and treatments for eczema, who truthfully advertised same; to the substantial injury of competition in commerce:

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.

Mr. George Foulkes for the Commission.

Mr. Clinton Robb, of Washington, D. C., 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 Dr. J. E. Cannaday, an individual, 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

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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, Dr. J. E. Cannaday, is an individual with his principal office and place of business located at 316 So. Ohio Ave. in the city of Sedalia, State of Missouri. Respondent is now, and for more than 20 years last past has been, engaged in the business of selling a medicinal preparation and treatment for the relief and cure of eczema, which respondent distributes to purchasers, many of whom reside in States other than the State of Missouri, and when orders are received therefor, they are filled by respondent by shipping said medicinal preparation and treatment to purchasers, from the said city of Sedalia, Mo., into and through other States of the United States and in the District of Columbia, and there is now, and has been during the time hereinbefore mentioned, a constant current of trade and commerce in said medicinal preparation and treatment so distributed and sold by respondent, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business, said respondent was and is in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of medicinal preparations and treatments for the relief or cure of eczema between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of said business, and for the purpose of inducing individuals to purchase said medicinal preparation and treatment, respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States in all of which advertisements respondent has represented that his medicinal preparation and treatment will either cure eczema, heal eczema permanently, or stop the itching attending the ailment of eczema. Among the representations made through such media are the following:

ECZEMA

Also called Tetters, Salt Rheum, Pruritis, Milk Crust, Water Poison, Weeping Skin, etc.

FREE TRIAL

Can be cured. Write me today and I will send you a free trial of my mild, soothing, guaranteed treatment that will prove it. Stops the itching and heals permanently. Send no money—just write me—a postal will do. Address

DR. CANNADAY, Eczema Specialist, 172 Park Sq., Sedalia, Mo.

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* * * FREE TRIAL

Get rid of it! Don't give up—Try a week's free test of a mild, soothing, guaranteed treatment, which for 30 years has been giving Eczema sufferers their "First Real Night's Rest." Write today—a postal will do.

Address DR. CANNADAY, Eczema Specialist, 527 Park Sq., Sedalia, Mo.

ECZEMA IS A SIGN

* * *

FREE TRIAL

Eczema is a danger sign of trouble inside, as we see in measles, small-pox, scarlet fever, etc. For best results it **SHOULD** be treated 3 ways at once; by the diet, by the blood, and lastly, treat the skin. Salves, "shots," lights, food tests, etc., are experimental. They don't remove the cause. Try a week's **FREE TRIAL** test, of the best outside treatment found in 30 years of experience, of treating this one disease. It is clean, mild, soothing, guaranteed. You, too, may find your "first real night's rest." Write today— a postal **WILL DO**.
Address

J. E. CANNADAY, M. D.—Eczema Specialist, 627 Park Square, Sedalia, Mo.

All of said statements, together with many similar statements appearing in respondent's advertising literature purport to be descriptive of the remedial and curative quality of respondent's product. In all of its advertising literature, respondent represents, through statements and representations herein set out and other statements of similar import and effect that, (1) his medicinal preparation and treatment will effect a cure of eczema in all cases; (2) his medicinal preparation and treatment will effect permanent relief from eczema in all cases; (3) his preparation and treatment will heal eczema permanently in all cases; and (4) his preparation and treatment will stop the itching attending the ailment of eczema in all cases.

PAR. 3. Respondent has further, in the course of conduct of his business, issued and distributed in interstate commerce, 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 eczema and had been relieved or cured or completely restored to health by the use of respondent's preparation and treatment, when in truth and in fact, many of said persons had not been cured or completely restored to health. Respondent has represented that he has cured numerous persons living in various States of the United States by the use of this preparation and treatment while in truth and in fact, respondent was and is without personal knowledge as to the disease, ailment, or disorder from which said persons were or had been

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actually suffering, and as to the extent, if any, to which said users have benefited or have been cured by the use of respondent's preparation and treatment.

PAR. 4. The representations made by respondent, with respect to the nature and effect of his medicinal preparation and treatment when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's preparation and treatment advertised and represented by him as a cure in all cases will not cure eczema in all cases; nor will said preparation and treatment give permanent relief from eczema in all cases; nor will said product, when applied and administered according to respondent's directions, heal eczema permanently in all cases. In truth and in fact respondent's preparation and treatment is not effective in certain cases of eczema and will not in many cases of eczema stop the itching attending said ailment.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by respondent in designating and describing the remedial and curative quality of his medicinal preparation and treatment, as hereinabove set forth, in his advertising in newspapers, magazines, booklets, pamphlets, testimonials, and other advertising literature, in offering for sale and selling his medicinal preparation and treatment was, and is, calculated to, and had, and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the advertisements and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public purchased a substantial volume of respondent's medicinal preparation and treatment with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations and treatments intended and sold for the purpose of treating eczema, and who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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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 May 19, 1936, issued, and on May 21, 1936, served its complaint in this proceeding upon the respondent, Dr. J. E. Cannaday, an individual, 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, respondent answered, admitting all the material allegations of the complaint to be true, and waiving all further and intervening procedure.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Since about 1916 the respondent, Dr. J. E. Cannaday, has been engaged, as an individual, in the business of selling a medicinal preparation and treatment for the relief and cure of eczema. Respondent's office and principal place of business is located at 316 South Ohio Ave., in the city of Sedalia, State of Missouri. Respondent distributes his medicinal preparation and treatment to purchasers, many of whom reside in States other than the State of Missouri, and when orders are received for the preparation and treatment, they are filled by respondent by shipping the preparation and treatment to purchasers from the city of Sedalia, Mo., into and through other States of the United States and in the District of Columbia, and there is now, and has been during the last 20 years, a constant current of trade and commerce in respondent's medicinal preparation and treatment so distributed and sold by respondent between and among the various States of the United States.

During all the time the respondent has been engaged in the foregoing business respondent has been, and is, in substantial competition with other individuals, firms, partnerships, and corporations engaged in similar business to that of respondent, to wit: the sale and distribution of medicinal preparations and treatments for the relief and cure of eczema, in interstate commerce.

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PAR. 2. In soliciting the sale of his preparation and treatment, respondent has inserted advertisements in newspapers and periodicals of general circulation, in which advertisements certain representations were made. Among the representations made through such media are the following:

ECZEMA

Also called Tetter, Salt Rheum, Pruritis, Milk Crust, Water Poison, Weeping Skin, etc.

FREE TRIAL

Can be cured. Write me today and I will send you a free trial of my mild, soothing, guaranteed treatment that will prove it. Stops the itching and heals permanently. Send no money—just write me—a postal will do.
Address

DR. CANNADAY, Eczema Specialist, 172 Park Sq., Sedalia, Mo.

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Address

J. E. CANNADAY, M. D.—Eczema Specialist, 627 Park Square, Sedalia, Mo.

The above statements, together with many other similar statements appearing in respondent's advertising literature, purport to be descriptive of the remedial and curative quality of respondent's product. In all of his advertising literature, respondent represents, through statements and representations herein set out, and through statements of similar import and effect, that (1) his medicinal preparation and treatment will effect a cure of eczema in all cases; (2) his medicinal preparation and treatment will effect permanent relief from eczema in all cases; (3) his preparation and treatment will heal

eczema permanently in all cases; and (4) his preparation and treatment will stop the itching attending the ailment of eczema in all cases.

PAR. 3. Respondent has further, in the course of conduct of his business, issued and distributed in interstate commerce, 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 eczema and had been relieved or cured or completely restored to health by the use of respondent's preparation and treatment, when in truth and in fact, many of said persons had not been cured or completely restored to health. Respondent has represented that he has cured numerous persons living in various States of the United States by the use of this preparation and treatment while in truth and in fact, respondent was and is without personal knowledge as to the disease, ailment, or disorder from which said persons were or had been actually suffering, and as to the extent, if any, to which said users have benefited or have been cured by the use of respondent's preparation and treatment.

PAR. 4. The representations made by respondent, with respect to the nature and effect of his medicinal preparation and treatment when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's preparation and treatment advertised and represented by him as a cure in all cases will not cure eczema in all cases; nor will said preparation and treatment give permanent relief from eczema in all cases; nor will said product, when applied and administered according to respondent's directions, heal eczema permanently in all cases. In truth and in fact respondent's preparation and treatment is not effective in certain cases of eczema and will not in many cases of eczema, stop the itching attending said ailment.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by respondent in designating and describing the remedial and curative quality of his medicinal preparation and treatment, as hereinabove set forth, in his advertising in newspapers, magazines, booklets, pamphlets, testimonials, and other advertising literature, in offering for sale and selling his medicinal preparation and treatment was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the advertisements and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public purchased a substantial volume of respondent's medicinal preparation and treatment with the result that trade

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has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations and treatments intended and sold for the purpose of treating eczema, and who truthfully advertise their preparations and treatments. As a result thereof, substantial injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and 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 by the Commission upon the complaint issued on May 19, 1936, and served on May 21, 1936, the answer of respondent filed on June 13, 1936, admitting all the material allegations to be true, and waiving further proceedings, 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 now ordered, That the time within which answer may be filed by said respondent be and the same is hereby extended from June 10, 1936, to June 13, 1936;

It is further ordered, That respondent, Dr. J. E. Cannaday, an individual, his agents, servants, representatives, and employees, in connection with the sale, or offering for sale, in interstate commerce of a medicinal preparation and treatment for the relief or cure of eczema, forthwith cease and desist from:

Representing, directly or by inference, through testimonials, contracts, advertisements, or through any other means whatever,

1. That his medicinal preparation and treatment will effect a cure of eczema in all cases;

2. That his medicinal preparation and treatment will effect permanent relief from eczema in all cases;

3. That his medicinal preparation and treatment will heal eczema permanently in all cases;

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4. That his medicinal preparation and treatment will stop the itching attending the ailment of eczema in all cases.

It is further ordered, That the respondent, Dr. J. E. Cannaday, shall within 30 days from the date of service upon him of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which he is complying and has complied with the order herein set forth.

IN THE MATTER OF
DENNISON BROTHERS, INC.

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

Docket 2676. Complaint, Feb. 14, 1936¹—Decision, June 30, 1936

Where a corporation engaged in the sale of groceries, drugs, sundries and toilet articles direct to the consumer, through personal solicitation and contact by its agents and representatives, and which donated more than ten per cent of its profits to an orphans' home under a contract calling for such a percentage, but procured by it solely to enable it to represent to potential customers and the public at large that a substantial percentage of the profits realized by it in the sale of its products were for the use and benefit of a charitable institution, and to secure and influence customers to purchase its merchandise, not superior to that vended by competitors at like prices, and to increase its volume of sales and secure patronage otherwise unobtainable—

- (a) Represented to members of the public, through its agents and solicitors, that it manufactured the merchandise offered by it, and circulated price lists and general advertising matter depicting a purported photographic simile of a large factory building, across facade of which appeared its name and words "Where Quality Originates", and represented in said advertising material that it sold its "products direct from factory to the consumer, thereby saving you the middleman's profit", facts being the building depicted was not owned, nor entirely occupied, by it, but only a portion of one of the several floors thereof, and commodities sold by it were actually made by others and purchased by it from those who made and vended same, in the common marts of trade, and notwithstanding preference of a substantial number of the purchasing public for dealing directly with manufacturer as effecting a pecuniary saving through eliminating from article's retail cost so-called middleman's profit, and as securing purchase of merchandise of a grade or quality superior to that of articles bought at a comparable price from retailer;
- (b) Designated as "Butt R Milk Soap" a commodity advertised and offered and distributed by it, facts being said product contained an infinitesimal amount of buttermilk, if any, and not enough to entitle it properly thus to designate or describe or represent the same, and notwithstanding preference of a substantial number of members of the purchasing public for purchase of soap of which buttermilk is a principal or substantial ingredient, as thus indicated; and
- (c) Sold and offered as "Russian Mineral Oil" a commodity thus labeled and identified, with intent and effect of causing a substantial number of members of the purchasing public to believe that said oil was "heavy oil", as commonly known to trade, and an oil of high viscosity, and represented on labels affixed to containers thereof that its contents complied "with U. S. P. Specifications No. 10 for liquid petroleum", facts being it was neither a heavy oil, nor of high viscosity, and did not comply or conform

¹ Amended.