

Complaint

22 F. T. C.

IN THE MATTER OF
BUNO COMPANY, INC.

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

Docket 2831. Complaint, June 3, 1936—Decision, July 6, 1936

Where a corporation engaged in the sale of a medicinal preparation and treatment for the relief or cure of scalp and skin ailments under designation "Buno"—

Falsely represented in radio broadcasts and in newspaper and periodical and other advertising matter circulated through the United States, that said preparation, in all cases, would keep the skin clear and healthy, and give instant relief from sunburn, mosquito, and other insect bites, and that it constituted an effective remedy for dandruff, eczema, perspiration, itching, athlete's foot, falling hair, and psoriasis, and also for pimples and all skin eruptions of whatever nature;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into erroneous belief that all said representations were true, and with result that a number of the consuming public purchased a substantial volume of its said preparation and trade was diverted unfairly from others similarly engaged who truthfully advertise their preparations and treatments; 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.

Stradley, Ronon, Stevens & Denby, of Philadelphia, Pa., 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 Buno Co., Inc., a corporation hereinafter referred to as respondent, has been and is now 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, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Buno Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 507 Green Street, in the city of Philadelphia and State of Pennsylvania. Respondent is now and for more than 1 year last past has been

engaged in the business of selling a medicinal preparation and treatment for the relief or cure of scalp and skin ailments, designated by respondent as "BUNO," which respondent distributes to purchasers, many of whom reside in States other than the State of Pennsylvania, and when orders are received therefor they are filled by respondent by shipping said medicinal preparation to purchasers, from the said city of Philadelphia, Pa., into and through other States of the United States and the District of Columbia, and there is now, and has been during the time hereinabove mentioned, a constant current of trade and commerce in said medicinal preparation or treatment so sold and distributed by respondent, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business said respondent was and is in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of medicinal preparations and treatments for the relief or cure of scalp and skin ailments, 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 statements, claims, and representations to be made over radio broadcasts and in newspapers, magazines, periodicals, circulars, and various other advertising media, which respondent circulates throughout the United States, in all of which statements, claims, and representations respondent has represented that his medicinal preparation and treatment will cure or effectively relieve certain scalp and skin ailments.

Among the representations made through such media are the following:

BUNO is an excellent medicated face lotion that will keep the skin clear and healthy;

Gives instant relief from sunburn, mosquito and other insect bites;

BUNO hair medicine for the hair and scalp. For dry dandruff—For eczema—For perspiration and itching of the body.

FOR "ATHLETE'S FOOT" Buno will provide instant relief and will cure the soreness in the feet.

BUNO can be used for psoriasis. It will relieve the itching and remove the scabs from any part of the body.

If your hair falls out, we guarantee that BUNO will stop it, providing you give your hair the proper treatment.

So many men and women are troubled and annoyed with dandruff or the loss of hair. May I suggest Buno—BUNO Skin and Scalp Medicine, the greatest discovery of the day. After five or six appli-

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cations of this medicated product you will notice a market improvement. Your hair will take on a new gloss, have some sheen, and you will be spared the embarrassment of a white collar or frock from dandruff.

Buno Skin and Scalp Medicine is most beneficial for severe cases of eczema * * *.

PAR. 3. All of said statements, together with many similar statements appearing in respondent's advertising literature and circulars, purport to be descriptive of the remedial or curative quality of respondent's product. In all of its radio broadcasts, advertising, literature, and circulars, respondent represents, through the statements and representations herein set out, and other statements of similar import and effect,

- (1) BUNO will keep the skin clear and healthy in all cases;
- (2) BUNO will give instant relief from sunburn, mosquito and other insect bites in all cases;
- (3) BUNO is an effective remedy in all cases for,
 - a. Dandruff,
 - b. Eczema,
 - c. Perspiration,
 - d. Itching of the body,
 - e. Athlete's foot,
 - f. Falling Hair,
 - g. Psoriasis,
 - h. All skin eruptions from whatever cause,
 - i. Pimples.

PAR. 4. The representations made by respondent with respect to the nature and effect of its medicinal preparation and treatment when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's preparation and treatment will not keep the skin clear and healthy in all cases, nor will it give instant relief from sunburn, mosquito, and other insect bites. In truth and in fact, respondent's medicinal preparation and treatment is not an effective remedy, in all cases for dandruff, eczema, perspiration, itching of the body, athlete's foot, falling hair, and psoriasis; nor is said medicinal preparation and treatment an effective remedy in all cases for pimples and all skin eruptions of whatever nature.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by the respondent in designating the remedial or curative quality of its medicinal preparation and treatment termed "BUNO" as hereinabove set forth, over radio broadcasts and by its advertising in newspapers, magazines, booklets, pamphlets, and other advertising literature, in offering for sale and selling its

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 such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondent as hereinabove detailed, a number of the consuming public purchases a substantial volume of respondent's medicinal preparation and treatment, with the result that trade has been unfairly diverted from other corporations, individuals, partnerships, and firms likewise engaged in the sale of medicinal preparations and treatments for the scalp and skin and other ailments, 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 of respondent's competitors as aforesaid, and have been, and are, unfair methods of competition in commerce 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."

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 June 3, 1936, issued, and on June 5, 1936, served its complaint in this proceeding upon the respondent, Buno Company, Inc., 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 the 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 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.

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. For more than one year last past the respondent, Buno Company, Inc., a corporation, has been engaged in the business of selling a medicinal preparation and treatment for the relief or cure of scalp and skin ailments, which preparation respondent designated as "BUNO." Respondent's office and principal place of business is located at 507 Green Street, in the city of Philadelphia and State of Pennsylvania. Respondent distributes its medicinal preparation and treatment to purchasers, many of whom reside in States other than the State of Pennsylvania, 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 State of Pennsylvania 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 hereinabove mentioned 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 respondent has been engaged in the foregoing business respondent has been, and is, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in similar business to that of respondent, to wit: the sale and distribution of medicinal preparations and treatments for the relief or cure of scalp and skin ailments in interstate commerce.

PAR. 2. For the purpose of inducing individuals to purchase its medicinal preparation and treatment respondent has caused statements, claims, and representations to be made over radio broadcasts and in newspapers, magazines, periodicals, circulars, and various other advertising media, which respondent circulates throughout the United States, in all of which statements, claims, and representations respondent has represented that his medicinal preparation and treatment will cure or effectively relieve certain scalp and skin ailments. Among the representations made through such media are the following:

BUNO is an excellent medicated face lotion that will keep the skin clear and healthy;

Gives instant relief from sunburn, mosquito and other insect bites;

BUNO hair medicine for the hair and scalp. For dry dandruff—For eczema—For perspiration and itching of the body.

FOR 'ATHLETE'S FOOT' Buno will provide instant relief and will cure the soreness in the feet.

BUNO can be used for psoriasis. It will relieve the itching and remove the scabs from any part of the body.

Findings

If your hair falls out, we guarantee that BUNO will stop it, providing you give your hair the proper treatment.

So many men and women are troubled and annoyed with dandruff or the loss of hair. May I suggest Buno—BUNO Skin and Scalp Medicine, the greatest discovery of the day. After five or six applications of this medicated product you will notice a marked improvement. Your hair will take on a new gloss, have more sheen, and you will be spared the embarrassment of a white collar or frock from dandruff.

Buno Skin and Scalp Medicine is most beneficial for severe cases of eczema * * *.

PAR. 3. All of said statements, together with many similar statements appearing in respondent's advertising literature and circulars, purport to be descriptive of the remedial or curative quality of respondent's product. In all of its radio broadcasts, advertising literature, and circulars respondent represents, through the statements and representations herein set out, and other statements of similar import and effect, that:

- (1) BUNO will keep the skin clear and healthy in all cases.
- (2) BUNO will give instant relief from sunburn, mosquito, and other insect bites, in all cases.
- (3) BUNO is an effective remedy in all cases for
 - a. Dandruff,
 - b. Eczema,
 - c. Perspiration,
 - d. Itching of the body,
 - e. Athlete's foot,
 - f. Falling hair,
 - g. Psoriasis.
 - h. All skin eruptions, from whatever cause,
 - i. Pimples.

PAR. 4. The representations made by respondent with respect to the nature and effect of its medicinal preparation and treatment when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's preparation and treatment will not keep the skin clear and healthy in all cases, nor will it give instant relief from sunburn, mosquito and other insect bites, in all cases. In truth and in fact, respondent's medicinal preparation and treatment is not an effective remedy in all cases for dandruff, eczema, perspiration, itching of the body, athlete's foot, falling hair, and psoriasis; nor is said medicinal preparation and treatment an effective remedy in all cases for pimples and all skin eruptions of whatever nature.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by the respondent in designating the re-

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medial or curative quality of its medicinal preparation and treatment termed "BUNO," as hereinabove set forth, over radio broadcasts and by its advertising in newspapers, magazines, booklets, pamphlets, and other advertising literature, in offering for sale and selling its 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 such mistaken and erroneous beliefs induced by the advertising and misrepresentations of respondent, as hereinabove detailed, a number of the consuming public purchases a substantial volume of respondent's medicinal preparation and treatment, with the result that trade has been unfairly diverted from other corporations, individuals, partnerships, and firms likewise engaged in the sale of medicinal preparations and treatments for the scalp and skin and other ailments, 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 June 3, 1936, and served on June 5, 1936, the answer of respondent filed on July 1, 1936, admitting all the material allegations of the complaint to be true, and waiving further procedure, 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 respondent, Buno Company, Inc., a corporation, its agents, servants, representatives and employees, in con-

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nection with the sale or offering for sale in interstate commerce of a medicinal preparation and treatment for the relief or cure of scalp and skin ailments and designated by it as "BUNO", forthwith cease and desist from representing, directly or indirectly, through testimonials, contracts, advertisements, or through any other means, whatever, that respondent's said medicinal preparation, in all cases:

Will keep the skin clear and healthy; give instant relief from sunburn, mosquito and other insect bites; is an effective treatment or cure for dandruff, eczema, perspiration, itching of the body, athlete's foot, falling hair, psoriasis, all skin eruptions of whatever cause; or is an effective treatment or cure for pimples; and making any other representations of like or similar import.

It is further ordered, That the respondent, Buno Company, Inc., a corporation, shall within 30 days from the date of service upon it of a copy of this order file with the Commission a report in writing, setting forth the manner and form in which it has complied with the order herein set forth.

IN THE MATTER OF
FINISHING PRODUCTS COMPANY, INC.

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

Docket 2430. Complaint, June 7, 1935—Decision, July 7, 1936

Where a corporation engaged in the manufacture of stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products and in the sale and distribution thereof to various wood finishing and furniture manufacturing concerns throughout the East and Middle Western States—

Gave and offered to give, through its president and vice-president and traveling salesmen, and for several years, gratuities in the form of money to superintendents and finishing foremen of customers and prospective customers, upon whose recommendations its customers and other users relied in the purchase of such products, and who were able to manipulate the same so that where products of equal quality and grade were competitively offered, and even an unequal product, one favored by them could be made to appear superior, without such employers being able to detect or discover such manipulation and without their knowledge, to induce such employee superintendents and foremen to purchase such lacquers, etc., in preference to or to the exclusion of lacquers, etc., made and sold by competitors, and to insure continued use of its said products and to induce such superintendents, etc., not to recommend purchase of those of competitors, or as rewards for having so induced their respective employers to purchase its lacquers, etc., and to cause them so to manipulate such lacquers, etc., that same would be made to appear superior to those of competitors; in pursuance of a policy directed to ethical sale of its products through the regular channels if possible, but, if not, to insuring continued sales through such secret payments;

With result that purchasers of lacquers, stains, fillers, and other furniture finishing products were induced to buy its products instead of those of competitors, who were prevented from competing successfully with it and were caused to suffer loss of business of those purchasers and prospective purchasers of lacquers, etc., whose employees had thus secretly received such monies from it, and trade was diverted to it from them, and with capacity and tendency so to induce, etc.; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices, under the conditions and circumstances set forth, constituted unfair methods of competition.

Before *Mr. W. W. Sheppard* and *Mr. Charles F. Diggs*, trial examiners.

Mr. John L. Hornor for the Commission.

Jones, Hammond, Buschmann & Gardner, of Indianapolis, Ind., 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