

IN THE MATTER OF
GUS MARTEL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2553. Complaint, Sept. 18, 1935—Decision, July 8, 1936

Where an individual engaged in the sale of correspondence courses of instruction in physical culture and development and health restoration and in training for boxing and fighting, and in the sale, as incident thereto, of books, pamphlets, and other articles, in competition with others similarly engaged; in advertising his courses in newspapers and periodicals and other publications of general circulation and in enrollment blanks, pamphlets, circular letters, and other printed matter—

- (a) Misrepresented his ability and qualifications for teaching the various arts included in said courses, through the making of such statements as that he was the "amateur lightweight, knockout champion of the world," and that he had shown one of two famous prize fighters, one of his secret copyright blows with which said individual had knocked out his opponent in their contest;

Facts being there was no such title, and the blow used by the victor in aforesaid contest was an ordinary one, not peculiar to any system, and one used by all fighters;

- (b) Misrepresented the effectiveness of his said courses and the ability of the ordinary subscriber thereto to assimilate the information contained therein and to benefit therefrom to the extent represented, through making such statements as that he imparted four secret copyright knockout blows which "work every time," etc., and enable anyone using them to "go right in and knock them all out," and that his so-called "double knockout, lightning shift" doubled the pupil's reach, speed, and punching power, with a knockout in either hand, and his course taught a pupil to stand on a handkerchief without being hit and to be "punch proof and fearless," and aforesaid knockout blows could be learned immediately, without fail, by either amateur or professional, so that he could "go right in," etc., without fail, and that pupil, if neither amateur nor professional, could accomplish such results after ten or fifteen days' practice or practice for a few minutes daily for a few weeks;

Facts being blows referred to were not secret but known to fighters generally, and did not work every time, etc., and were not and could not be copyrighted, though literature used in courses was, shift referred to, while making knockout possible, was used by others and the defenses and parries to blows in question were well understood by all informed fighters, acquisition of knowledge of how to stand on a handkerchief, etc., does not enable any but the very clever to accomplish first result claimed, though instruction could not make pupil punch proof, and results claimed were far in excess of any that could ordinarily be expected by purchasers, including length of time required to assimilate knowledge furnished and lead to accomplishment of any such results as represented, which likewise varied with different individuals; and

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(c) Falsely represented that price of instructions as to the "four" copyrighted secret, sure knockout punches was \$15 each or \$50 for the four; Facts being only a limited number of pupils had ever paid such amounts for instructions as to such four blows, the regular or usual price for which was \$1.98;

With capacity and tendency to mislead and deceive the public to its prejudice and injury, and into purchase of such various courses in erroneous belief that in buying same they would acquire a complete boxing and fighting course and knowledge of blows not known to other fighters generally, and would receive other benefits commensurate with such representations, and to cause an unfair diversion of trade to him from competitors who have truthfully described their courses of instruction and the benefits that may reasonably be expected to be obtained from a study thereof:

Held, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John W. Norwood*, trial examiner.

Mr. James T. Welch for the Commission.

Frank & Frank, of New York City, 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 Gus Martel, doing business under the trade name and style of Gus Martel, The Fighting Marvel of the Age, hereinafter designated as respondent, is now, and has been, 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 thereto would be in the public interest, hereby issues its complaint, stating the charges in that respect as follows:

PARAGRAPH 1. Respondent, Gus Martel, is an individual who is now, and has been for a period of more than five years, doing business under the trade name and style of Gus Martel, the Fighting Marvel of the Age, at 198 Broadway, New York, N. Y. Respondent is now, and has been, engaged in the business of offering for sale and selling courses of instruction, by correspondence, in the science and art of muscle development, physical culture, and physical health restoration, boxing and fighting training, and similar arts to persons hereinafter referred to as pupils, and in selling to such pupils severally, as incidental and accessory to the instruction in and to the learning, use and practice of such science and art, certain merchandise consisting of books, booklets, pamphlets, and other articles in commerce as herein set out.

PAR. 2. Said respondent, being engaged in the business as afore-said, when a prospective pupil enters into a contract with him enrolls

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said pupil, in consideration of the agreed charge or tuition paid or agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mails or otherwise, a complete course of written, mimeographed, or printed information and instruction in the particular course or courses of said instruction chosen by such pupil, and causes said courses of instructions, when sold, to be transported from his principal office and place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said above described courses of instruction, including such written, mimeographed, or printed books, booklets, or pamphlets as are incidental and accessory to such courses of instruction, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of offering for sale and selling courses of instruction by correspondence in the science and art of muscle development, physical culture, and physical health restoration, boxing and fighting training, and similar arts in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of his business as detailed in paragraphs 1 and 2 hereof, causes advertisements of his said courses of instruction to be inserted and made accessible to the public and prospective pupils in newspapers, magazines, periodicals, and other publications of general circulation in the United States, and in enrollment blanks, catalogs, pamphlets, letters, circulars, and other forms of written, mimeographed, or printed matter.

PAR. 5. Respondent, in his advertisements and business literature described in paragraph 4, causes to be set forth many false and misleading statements and representations as follows, to wit:

500 Knockouts All Within 3 rounds.

My secret copyrighted knockout blows.

They work every time.

I'll double your strength, reach and speed.

I will show you how to stand on a handkerchief without being hit.

I'll make you punchproof and fearless.

Have 33 Knockouts to my credit in 33 fights, all within 4 rounds.

Have 20 knockouts all within 59 seconds each.

And Gus has thousands of others.

Boxing—Fighting—Training—How to eat and gain strength at one-half the cost.

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My dear Prospective Champion:

Yes you can be a feared fighting machine, a man who packs real dynamite in either hand. And you can get this under my famous system. **YOU DON'T NEED WEEKS AND MONTHS OF LONG PRACTICE AND TRAINING.** You don't have to study a **LONG WINDED COURSE** in boxing that takes **YEARS** of training **TO LEARN.**

All you need are a few minutes a day for a few weeks. In these few minutes you study my **SYSTEM** and **THE FOUR SECRET KNOCKOUT PUNCHES.** These four copyrighted **SECRET-SURE KNOCKOUT PUNCHES** and all I charged my pupils was \$15.00 each, or \$50.00 for the four and will be sent you **FREE** with this new offer. * * * **KNOCKOUT RECORD HOLDER OF THE WORLD.** * * * and if you are an amateur or professional fighter you can go right in and knock them all out, the day after you get my punches, because my **SYSTEM** and **PUNCHES** are *immediately learned.* * * * These blows **NEVER FAIL** * * * if they don't do everything I claim, and if you are not an amateur or professional fighter and if you can't knock out any man after 10 or 15 days practice * * * then they will **COST YOU NOTHING.** * * * It's a **GUARANTEE!** * * * **THESE PHENOMINAL PUNCHES THAT ALWAYS WORK.**

My double **KNOCKOUT LIGHTENING SHIFT** that I am revealing to my pupils for the first time doubles your reach, speed and punching power with a knockout in either hand. * * * And after you are so trained **YOU WILL FIND IT IS SO EASY AND SIMPLE** that * * * **ONE AND ONLY ONE AND THIS ONE DOES IT ALL.** * * * you will get 100% results from the instructions sent you. * * * My service **COSTS YOU NOTHING.**

Here's what I will do; **SIGN AND MAIL TO ME THE ENCLOSED SLIP AND ATTACH THE SMALL SUM CALLED FOR THEREON,** Namely only \$1.98. This is **ALL YOU HAVE TO PAY!** * * * **AVOID BEING HIT BY ANY AND ALL LEADS KNOWN TO THE FIGHTING WORLD!** * * * this includes all the information and instructions that until now, my regular charge has been \$50.00 and more to obtain. * * * I am determined to put my system and secret punches within the reach of any boy who wants to learn and the price I ask simply helps to cover some of my expenses. * * * but teach you how to knock them out. * * *

GUS MARTEL UNDEFEATED AMATEUR LIGHTWEIGHT CHAMPION OF THE WORLD.

This is the uppercut I showed Carnera that Knocked out Sharkey.

HOW TO REDUCE OR GAIN WEIGHT AT THE DESIRED POUNDAGE WITHOUT EXPENSE OR LOSING STRENGTH.

In truth and in fact each and every one of the above detailed representations is grossly exaggerated, false, and misleading.

PAR. 6. The effect of the false and misleading representations and acts of the respondent, as set out in paragraph 5, is to mislead a substantial portion of the public, including prospective pupils and actual

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pupils, in the several States of the United States by inducing them to believe that all of said statements and representations are true and correct and that each of them, upon subscribing to and paying for respondent's course of instruction, including accessory booklets and pamphlets, will receive benefits therefrom substantially commensurate with the said representations.

PAR. 7. Each of the statements and representations made by the respondent as above set out in paragraph 5 has the capacity and tendency to mislead a substantial portion of the public and prospective pupils and to cause them to enroll as pupils and to pay or agree to pay the tuition or charges agreed upon on account of a mistaken and erroneous belief in the truth of said statements and representations.

PAR. 8. There are among respondent's competitors many who sell courses of instruction by correspondence in the science and art of muscle development, physical culture, and physical health restoration, boxing, and fighting training, and similar arts, and transport them, or cause them to be transported, to, into, and through other States of the United States to the purchasers thereof at their respective points of location and who do not make use of the same or similar representations and statements with respect to the benefits that will be received by the purchasers thereof and the alleged acts, practices, and representations of the respondent have a tendency and capacity to, and do divert a substantial volume of trade from the competitors of respondent engaged in similar businesses, with the result that substantial quantities of said courses of instruction, as described in paragraph 1, are sold to the consuming public on account of said beliefs induced by said false and misleading representations, and as a consequence thereof a substantial injury has been done to substantial competition in commerce among the several States of the United States and in the District of Columbia as herein detailed.

PAR. 9. The above and foregoing acts, practices, and representations of respondent have been, and are all to the prejudice of the public and respondent's competitors, 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."

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

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Federal Trade Commission, on September 18, 1935, issued and served its complaint in this proceeding upon the respondent, Gus Martel, doing business under the trade name and style of Gus Martel, the fighting marvel of the age, 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, testimony and evidence, in support of the allegations of said complaint, were introduced by James T. Welch, attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it and in defense of the allegations of the complaint by Gus Martel, the respondent; and said testimony and evidence were 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 and brief in support of the complaint; 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. Respondent, Gus Martel, is an individual who for a period of more than five years immediately prior to the issuance of the complaint was engaged in business under the trade name and style of Gus Martel, at 198 Broadway, New York City, in the State of New York. He is now engaged in business at New Fairfield, Conn. During all of this time, he has been engaged in the business of offering for sale and selling, by correspondence, courses of instruction in the science and art of muscle development, physical culture, and physical health restoration, and boxing and fighting training, to persons hereinafter referred to as pupils. As incidental and accessory to the courses of instruction in and to the learning, use, and practice of such science and art, the respondent sells to such pupils, severally, certain merchandise consisting of books, booklets, pamphlets, and other articles. When pupils purchase respondent's course of instruction, the respondent sells and ships his said printed instructions, books, and other accessory articles, from the States of New York and Connecticut, to said pupils located at points in almost all of the other States and Territories of the United States, in a continuous current of trade and commerce.

PAR. 2. Other individuals, firms, and corporations are engaged in the business of advertising, selling, and distributing courses of instruction in boxing, fighting, and physical culture, and in selling and

distributing books and pamphlets on these subjects. All of said courses of instruction and all of said books and pamphlets are similar to the courses of instruction and literature sold by the respondent. Such competitors sell and ship these courses of instruction, books, and literature from the States wherein the respective shipments originate to other States and Territories of the United States, and the respondent is engaged in substantial competition with said individuals, firms, and corporations in the sale and distribution of the courses of instruction and literature herein referred to.

PAR. 3. In the course and conduct of his business, the respondent advertises his courses of instruction and his literature used in teaching said courses of instruction by advertisements inserted in newspapers, magazines, periodicals, and other publications of general circulation, and in enrollment blanks, pamphlets, circular letters, and other forms of printed matter.

In said advertisements, the respondent makes numerous representations: (1) as to his own ability and qualifications for teaching the various arts included in said correspondence courses; (2) as to the effectiveness of said courses of instruction and the ability of the ordinary subscriber to said courses to assimilate the information contained therein and benefit therefrom to the extent represented; and (3) as to the price for which said courses are customarily sold, said price being much in excess of the price advertised to be the present price to prospective customers. Respondent represents that he holds the title of undefeated amateur lightweight knockout champion of the world. There is not now and has never been a generally recognized title of amateur lightweight, knockout champion of the world and it is, therefore, impossible for respondent to hold such title. Respondent also represents that in his courses of instruction, he imparts four secret copyrighted knockout blows that "work every time," "never fail," and enables anyone using them to "go right in and knock them all out." The various blows forming the four so-called secret knockout blows consist of a blow to the back and an uppercut, a blow to the jaw and side blows beneath the ear. Such blows are known to fighters generally and are not secret and are not in all cases knockout blows. These blows do not "work every time"—they do fail and they do not enable anyone acquiring a knowledge of them to "go right in and knock them all out." In no case can respondent's pupils expect the never failing results promised in respondent's advertising. These blows are not copyrighted and cannot be copyrighted. Respondent's illustrations and descriptions of these blows do appear to be covered by copyrights. Insofar as the literature used in the

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courses of instruction is concerned, it is copyrighted. Respondent also represents that his so-called "double knockout, lightning shift" doubles the pupil's reach, speed and punching power, with a knockout in either hand. The shift referred to consists of the rapid turning to right or left, as the occasion may require, on the balls of both feet in such a way as to shift the head or body slightly to the right or left, thus causing the opponent's blow to miss and leaving him in a defenseless position. One of the respondent's so-called secret knockout blows is then delivered to the opponent who has been frustrated by the shift. A knockout from one of these blows is possible but they are the same blows with which all informed fighters are familiar and against which defenses and parries are well understood. A combination of the shift and the delivery of one of the above described blows, though possessing advantageous features, cannot be counted on to insure results in all cases. The acquirement of a knowledge of this shift and method of following up with the blows above referred to would not in itself have the effect of doubling the pupil's reach, speed, or punch power. Other fighters have used the same shift as taught by the respondent.

Respondent further represents that his course teaches a pupil to stand on a handkerchief without being hit and to be "punch proof and fearless." The art of evading blows while standing on a handkerchief can be taught. No evidence was introduced indicating that respondent does not teach it, but the acquisition of the knowledge of such a process does not enable any but the very clever to accomplish the result. Respondent's system or course of instruction could not have the effect of making a pupil "punch proof." This has never been accomplished and cannot be. The most successful fighters in ring history have been and can be hit with punches by other fighters. Respondent also represents that the so-called secret copyrighted knockout blows can be learned immediately by either an amateur or professional fighter so that he can "go right in and knock them all out," without fail and that, if the pupil is not an amateur or professional fighter, he can accomplish these results after ten or fifteen days practice or practice for a few minutes a day for a few weeks. These representations are untrue and are far in excess of any results that could ordinarily be expected by persons purchasing respondent's courses of instruction and literature. The length of time required by individuals to assimilate the knowledge furnished and learn to accomplish the results claimed, in respondent's courses of instruction, varies with the individual and the four blows commonly used by advanced pupils of the art of boxing are not blows commonly used

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or understood by beginners in said art. Respondent also represented that one of his secret copyrighted blows is an uppercut which he showed Carnera and with which Carnera knocked out Sharkey. The blow that respondent showed Carnera was an uppercut. The knock-out blow used by Carnera in knocking out Sharkey was an ordinary uppercut not peculiar to any system and is one that is used by all fighters. Respondent has also represented that the price of instruction as to his four "copyrighted secret-sure knockout punches" was \$15.00 each or \$50.00 for the four. Only a limited number of pupils have ever paid the respondent \$50.00 for instruction as to these four blows. The regular or usual price charged by said respondent for instruction as to these four blows is \$1.98, which covers the entire cost thereof.

PAR. 4. Many of respondent's competitors distribute and sell, by correspondence, courses of instruction in the science and art of muscle development, physical culture, and physical health restoration, boxing and fighting training and similar arts, in commerce among and between the various States of the United States, who do not make use of the same or similar misrepresentations and statements for the purpose of inducing the purchase of their respective courses of instruction.

PAR. 5. The representations and statements made by the respondent in his advertising literature, and otherwise, have a capacity and tendency to mislead and deceive the public to its prejudice and injury and into the purchase of the various courses of instruction offered for sale by the respondent in the erroneous belief that in purchasing the respondent's courses of instruction, said pupils would acquire a complete boxing and fighting course and would acquire knowledge of blows not known to other fighters generally and would receive other benefits commensurate with the representations made by the respondent. The representations herein set out, and the pupils' reliance on the truthfulness thereof in purchasing courses of instruction from the respondent, serve to cause an unfair diversion of trade from competitors of the respondent who have truthfully described their courses of instruction and the benefits that may reasonably be expected to be obtained from a study thereof.

CONCLUSION

The aforesaid acts and practices of the respondent are each and all to the prejudice of the public, and to the competitors of the respondent and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved

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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 Federal Trade Commission upon the complaint of the Commission, the testimony and evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief in support of the complaint filed herein, 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, Gus Martel, his agents, representatives, servants and employees, in the offering for sale and sale of correspondence courses of instruction in the science and art of muscle development, physical culture and physical health restoration, and boxing and fighting training, in interstate commerce, cease and desist from:

Representing, directly or indirectly, through advertisements inserted in newspapers and magazines of general circulation or in booklets, pamphlets and other advertising literature, or in any other manner;

(1) that any price at which any course of instruction is offered for sale is a special or reduced price, or is lower than the price ordinarily and usually received therefor when such is not the fact;

(2) that Gus Martel is the "Amateur Lightweight Knockout Champion of the World";

(3) that respondent's course of instruction imparts information with reference to any secret or copyrighted blows, or that said blows, in connection with which instruction is given, are universally effective, work every time, never fail, and enable the user thereof to knock out all opponents;

(4) that any of the instructions with reference to blows or shifts imparted in respondent's courses will serve to double the user's reach, speed and power;

(5) that a study of respondent's course of instruction and a knowledge of the instruction contained in said courses will enable a pupil to stand on a handkerchief without being hit and enable said pupil to be punch proof in all cases;

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(6) that respondent taught to any fighter the blow with which said fighter knocked out any other fighter, when such is not the fact;

(7) that the respondent's course of instruction can be successfully learned by amateur or professional fighters immediately, with the result that all of said amateur or professional fighters can knock out all opponents without fail;

(8) that pupils who are not amateur or professional fighters, upon studying respondent's course of instruction, can knock out their opponents without fail after practice for a relatively short period of time.

It is further ordered, That respondent shall, within 60 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 has complied with the order herein set forth.

Syllabus

IN THE MATTER OF

OLD COLONEL DISTILLERY, INC., OLD COLONEL
DISTRIBUTING COMPANY AND JOSEPH SCHIFF

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

Docket 2678. Complaint, Jan. 4, 1936—Decision, July 8, 1936

Where two corporations and an individual, who owned, operated, and controlled the same, and exercised executive management thereof, engaged as rectifiers and wholesalers of liquors in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in selling same among the various States and in the District of Columbia, in substantial competition with, (a) others engaged in the manufacture by distillation of whiskies, etc., and in the sale thereof, and (b) with others similarly engaged in purchasing, rectifying, etc., spirituous beverages and in selling same as aforesaid—

Represented, through use of word "Distillery" in corporate name of said first concern, output of which was wholesaled by second, and on stationery and advertising and on labels attached to bottles of their said products, and in other ways, to their customers, and furnished latter with means of representing to such customers' vendee-retailers and to the ultimate consuming public as purchasers of their said products, that the whiskies, etc., thus containered and bottled were made by said first-named corporation through process of distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture of product was completed, as long definitely understood by wholesale and retail trade and ultimate purchasing public from said industry's use of word "Distillery";

Facts being said corporation was not a distiller or distillery and did not distill its said whiskies, etc., thus bottled, labeled, and sold, nor own, operate, or control any place or places where such beverages were made by process of distillation from mash, wort, or wash;

With effect of misleading and deceiving dealers and purchasing public into belief that such whiskies, etc., were made and distilled by said first corporation as aforesaid, and of inducing dealers and purchasing public, on part of a substantial portion of which there is a preference for buying spirituous liquors prepared and bottled by actual distillers thereof, to purchase same in such belief, and of thereby diverting trade to them from their competitors who do not, through their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation from mash, etc., of whiskies and other spirituous beverages, and with capacity and tendency so to mislead and deceive, etc.; to the substantial injury of substantial competition in commerce:

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

Mr. PGad B. Morehouse for the Commission.

Mr. Lawrence S. Grauman, of Louisville, Ky., for respondents.