

IN THE MATTER OF

A. C. HYND CORPORATION

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

Docket 2781. Complaint, Apr. 23, 1936—Decision, July 23, 1936

Where a corporation, engaged in the manufacture of a germicide for eczema and other skin ailments, and in sale and distribution thereof to purchasers in various States—

Falsely represented through advertisements in periodicals and publications and other forms of printed matter, and by radio broadcast, that said preparation was a competent remedy for eczema, athlete's foot, and various other skin ailments, and that use thereof would prevent infections from hiding, and kill twenty-seven different kinds of disease germs, or destroy the responsible parasite causing skin eruptions and ailments, and instantly stop itching and soreness, and start rapid healing, and banish every trace of red or cracked skin, and make it healthfully clear and smooth again, through such statements as "The quick, safe way to end sore, raw, scaly skin of Eczema", "* * * instantly stops the maddening itch and terrible soreness—rapid healing starts and just a few days' faithful use banishes every trace of red, cracked skin, making it healthfully clear and smooth again", "Tests at a leading University proved KU-RILL kills 27 different kinds of germs," "Infections have no chance to hide from KU-RILL", "FOR ATHLETE'S FOOT * * * KU-RILL destroys the parasite which is the cause and quickly clears the sore, cracked skin", etc.;

With result that purchasers and prospective purchasers were induced to buy said alleged remedy in preference to similar medicated preparations and treatments for relief of eczema and other skin ailments, sold and offered by competitors who do not misrepresent the same and falsely claim that they have merits and capacity to achieve results, as claimed by it for its said product, and with effect of diverting to it trade from its competitors who do not misrepresent efficacy of their products; to the substantial injury of competition in commerce:

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.

Mr. Joseph C. Fehr for the Commission.

Mr. Harold L. Bodamer, of Buffalo, N. Y., 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 A. C. Hynd Corporation, a corporation, hereinafter referred to as respond-

ent, 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, A. C. Hynd Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business located at 320 Franklin Street, in the city of Buffalo, in the State of New York. Respondent for more than 1 year last past has been and still is engaged in the manufacture of a pharmaceutical preparation known as "Ku-Rill", made of a mixture of amyl acetate, formaldehyde, alcohol (denatured), color, sodium chlorid, aromol oil and pphenyl, and in offering said product for sale, and selling the same, in commerce between the State of New York and the several States of the United States and in the District of Columbia. When said product is sold, respondent transports or causes the same to be transported from its place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. There has been for more than 1 year last past and still is a constant current of trade and commerce in said product so manufactured by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now and for more than 1 year last past has been in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture of germicides and similar products and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR 2. In the course and conduct of its business, as aforesaid, the respondent, in soliciting the sale of and selling "Ku-Rill" and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than 1 year last past has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter, and by radio broadcasting and in other ways. In said ways and by said means respondent makes and has made to the general public many unfair, false, and misleading statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which are as follows:

For universal use. Destroying Poison Germs and Preventing Contagion.

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This wonderful Germicide is harmless, powerful, yet safe as a sanitary protection without an equal and is used as a safe, reliable, and speedy remedy for skin and tissue diseases in general.

Recommended and endorsed by leading physicians.

The quick, safe way to end sore, raw, scaly skin of Eczema.

No matter how long you've suffered with itching, burning, fiery Eczema and what treatments you've unsuccessfully tried—

One application of powerfully healing, soothing KU-RILL instantly stops the maddening itch and terrible soreness—rapid healing starts and just a few days' faithful use banishes every trace of red, cracked skin, making it healthfully clear and smooth again.

Tests at a leading University proved KU-RILL kills 27 different kinds of germs.

Few skin diseases can resist its great healing magic.

WANTED: Sufferers from Athlete's Foot, Eczema, Barber's Itch, Psoriasis, Pimples. We want every person who is suffering from these and other skin ailments to try a 50¢ bottle of KU-RILL, the powerful germicide that kills 27 different kinds of disease germs.

KU-RILL has been used for over 35 years by doctors in treating stubborn skin ailments—and its effectiveness has been tested at the University of Buffalo.

Infections have no chance to hide from KU-RILL.

FOR ATHLETE'S FOOT—Used full strength, this marvelous germicide will relieve quickly and surely the most stubborn case. Wash the affected parts with it twice a day. KU-RILL destroys the parasite which is the cause and quickly clears the sore, cracked skin. It excels all others for that feeling of hygienic cleanliness.

PAR. 3. The statements and representations set forth in paragraph 2 hereof have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the belief:

(1) That "Ku-Rill" is a competent remedy in the treatment of eczema, athlete's foot, and other skin ailments;

(2) That "Ku-Rill" kills twenty-seven different kinds of disease germs;

(3) That "Ku-Rill" destroys the parasite that causes skin eruptions and ailments;

(4) That "Ku-Rill" will instantly stop itching and soreness of the skin;

(5) That "Ku-Rill" starts rapid healing after use;

(6) That a few days after use "Ku-Rill" banishes every trace of red, cracked skin, making it healthfully clear and smooth again;

(7) That "Ku-Rill" is without an equal;

(8) That "Ku-Rill" is better than and excels all other similar products and products for the same and similar purposes;

(9) That "Ku-Rill" will prevent infections from hiding; whereas, in truth and in fact, "Ku-Rill" is not a competent remedy for

eczema, athlete's foot, psoriasis, pimples, and other skin ailments. "Ku-Rill" does not kill twenty-seven different kinds of disease germs, or destroy the parasite that causes skin eruptions and skin ailments, or instantly stop itching and soreness of the skin. Nor does "Ku-Rill" start rapid healing after use, or banish every trace of red, cracked skin and make it healthfully clear and smooth again. It is not true that "Ku-Rill" is without an equal and that it is better than and excels other germicides and products sold and used for the same and similar purposes. Nor does "Ku-Rill" prevent infections from hiding.

PAR. 4. There are among the competitors of the respondent in interstate commerce and have been for more than 1 year last past, manufacturers of germicides and similar products who truthfully advertise and represent the merits and the therapeutic value of their products. There are also among such competitors of the respondent, and have been for more than 1 year last past, manufacturers of germicides and similar products who do not advertise and otherwise represent that such products have the merits or the therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the beliefs described in paragraph 3 hereof and to purchase respondent's product in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce and as a consequence thereof substantial injury is done by respondent to substantial competition in interstate commerce.

Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 23rd day of April 1936, issued and served its complaint in this proceeding upon the respondent, A. C. Hynd Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of said respondent's answer thereto, the respondent, through its president, A.

C. Hynd, filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in which substituted answer the respondent stated that it waived hearing on the charges set forth in the complaint, that it admitted all of the material allegations of the complaint to be true and that it consented that the Commission may, without trial, without further evidence, and without any intervening procedure, make, enter, issue, and serve upon it, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondent, and the Commission having duly considered 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, A. C. Hynd Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business located at 320 Franklin Street, in the city of Buffalo, in the State of New York. Respondent for more than 1 year last past has been and still is engaged in the manufacture, among other things, of a germicide known as "Ku-Rill," which it sells and distributes to purchasers residing in States other than the State of New York, as a treatment for eczema and other skin ailments.

When said product is sold, respondent transports or causes the same to be transported from its place of business in the city of Buffalo, in the State of New York, to the purchasers thereof located in States of the United States other than the State of New York and the District of Columbia. There has been for more than 1 year last past and still is a constant current of trade and commerce in said product so manufactured and distributed by the respondent, between and among the various States of the United States and in the District of Columbia.

The respondent is now and for more than 1 year last past has been in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture, distribution, and sale of similar medicinal preparations and treatments for the relief of eczema and other skin ailments in interstate commerce.

PAR. 2. Respondent's said product, known as "Ku-Rill," is a mixture of amyl acetate, formaldehyde, alcohol (denatured), color, sodium

chlorid, aromol oil and pphenyl. The product is packed, shipped, distributed, and sold in six ounce bottles for use as a germicide. In marketing its product respondent uses the trade-mark "A. C. H."

PAR. 3. In soliciting the sale of and selling "Ku-Rill" and for the purpose of creating a demand upon the part of the consuming public for said product, respondent has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter. It has also, from time to time, advertised its product by radio broadcast. In said ways and by said means respondent has made to the general public many exaggerated, unfair, false, and misleading statements with reference to the alleged therapeutic value of its product and the effect of it upon the users thereof. Typical of the representations that have thus been made by the respondent concerning its product are the following:

For universal use. Destroying Poison Germs and Preventing Contagion.

This wonderful Germicide is harmless, powerful, yet safe as a sanitary protection without an equal and is used as a safe, reliable and speedy remedy for skin and tissue diseases in general.

Recommended and endorsed by leading physicians.

The quick, safe way to end sore, raw, scaly skin of Eczema.

No matter how long you've suffered with itching, burning, fiery Eczema and what treatments you've unsuccessfully tried—

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Tests at a leading University proved KU-RILL kills 27 different kinds of germs.

Few skin diseases can resist its great healing magic.

WANTED: Sufferers from Athlete's Foot, Eczema, Barber's Itch, Psoriasis, Pimples. We want every person who is suffering from these and other skin ailments to try a 50¢ bottle of KU-RILL, the powerful germicide that kills 27 different kinds of disease germs.

KU-RILL has been used for over 35 years by doctors in treating stubborn skin ailments—and its effectiveness has been tested at the University of Buffalo.

Infections have no chance to hide from KU-RILL.

FOR ATHLETE'S FOOT.—Used full strength, this marvelous germicide will relieve quickly and surely the most stubborn case. Wash the affected parts with it twice a day. KU-RILL destroys the parasite which is the cause and quickly clears the sore, cracked skin. It excels all others for that feeling of hygienic cleanliness.

PAR. 4. 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 and have the tendency and capacity to mislead and deceive

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purchasers and prospective purchasers of respondent's product into the erroneous belief that:

(1) "Ku-Rill" is a competent remedy in the treatment of eczema, athlete's foot, and other skin ailments;

(2) "Ku-Rill" kills twenty-seven different kinds of disease germs;

(3) "Ku-Rill" destroys the parasite that causes skin eruptions and ailments;

(4) "Ku-Rill" will instantly stop itching and soreness of the skin;

(5) "Ku-Rill" starts rapid healing after use;

(6) A few days after use "Ku-Rill" banishes every trace of red, cracked skin, making it healthfully clear and smooth again;

(7) "Ku-Rill" will prevent infections from hiding;

whereas, in truth and in fact, "Ku-Rill" is not a competent remedy for eczema, athlete's foot, psoriasis, pimples, and other skin ailments. The use of "Ku-Rill" does not and will not prevent infections from hiding nor will it kill 27 different kinds of disease germs or destroy the parasite that causes skin eruptions and ailments; nor does "Ku-Rill" instantly stop itching and soreness of the skin. "Ku-Rill" does not start rapid healing after use, and banish all trace of red, cracked skin making it healthfully clear and smooth again.

PAR. 5. There are among the competitors of the respondent, manufacturers and distributors of germicides and other similar medical preparations and treatments for skin ailments who do not misrepresent their products and who do not falsely claim that said products have the merits and capacity to achieve results such as the respondent herein claims for its product, as above described.

PAR. 6. As a result of the erroneous belief on the part of purchasers and prospective purchasers, as set forth in paragraph 4 hereof, the purchasers and prospective purchasers have been and are induced to buy respondent's alleged remedy in preference to similar medicated preparations and treatments for the relief of eczema and other skin ailments sold and offered for sale by its competitors as aforesaid. Thereby trade is diverted to respondent from its competitors who do not misrepresent the efficacy of such competitive products and thereby respondent does substantial injury to competition in interstate commerce.

CONCLUSION

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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer the draft of a proposed substituted answer annexed to the said motion, and the Commission having duly considered the said motion,

It is hereby ordered, That the said motion be, and the same is hereby granted; that the answer be, and the same is hereby withdrawn; and that the said proposed substituted answer be and the same is filed in lieu of the said answer hereby withdrawn.

The said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that it consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon said respondent an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the record and being now fully advised in the premises:

It is hereby further ordered, That the respondent, A. C. Hynd Corporation, a corporation, its officers, agents, servants, representatives and employees in the sale or offering for sale by it in interstate commerce and in the District of Columbia of its germicide known as "Ku-Rill" do forthwith cease and desist from:

Representing, directly or indirectly, through circulars, catalogs, labels, or any other form of printed matter or by radio broadcasting, or in any other manner:

- (1) That "Ku-Rill" is a competent remedy in the treatment of eczema, athlete's foot, and other skin ailments;
- (2) That "Ku-Rill" kills twenty-seven different kinds of disease germs;
- (3) That "Ku-Rill" destroys the parasite that causes skin eruptions and ailments;
- (4) That "Ku-Rill" will prevent infections from hiding;

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(5) That "Ku-Rill" will instantly stop itching and soreness of the skin;

(6) That "Ku-Rill" starts rapid healing after use;

(7) That a few days after use "Ku-Rill" banishes every trace of red, cracked skin, making it healthfully clear and smooth again; and from making any other representations of similar tenor or import.

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

Complaint

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

Docket 1789. Complaint, Apr. 28, 1930—Decision, July 24, 1936.¹

Where a corporation, engaged in the manufacture and sale of candies, including assortments composed of chocolate covered penny candies of uniform size, shape, and quality, together with a number of larger pieces, and, in some instances, other articles of merchandise, acquisition of which, as prizes, without further charge, was determined by ultimate purchaser's chance selection of one of a relatively few of said chocolate covered candies, enclosed concealed centers of which differed in color from those of the majority, and by purchase of last piece of said covered candies included therein—

Sold said assortments, in competition with others engaged in manufacture, sale and distribution of candies in commerce among the various States, together with explanatory display cards for retailers' use in advising prospective purchasers of the nature of said merchandising plan, to wholesalers and jobbers, with result that said wholesalers' and jobbers' retail dealer-vendees exposed said assortments for sale in connection with such explanatory cards and sold such candies to purchasing public in accordance with said plan, whereby purchaser of candies with the different centers and purchaser of last piece in assortment procured and received, free of charge, one of the larger pieces or articles of merchandise included therewith, and with effect of thereby supplying to and placing in the hands of others a means of conducting a lottery wherein such larger pieces or articles were distributed to the purchasing public wholly by lot or chance, in connection with its said sales plan, and of thus inducing many of the consuming public to purchase its said candies in preference to those of its competitors because of the chance of obtaining such larger pieces or other articles free of charge, and with tendency so to do, and in violation of public policy:

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

Mr. Henry C. Lank for the Commission.

COMPLAINT

Acting in the public interest, 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 charges that Luden's Inc., a corporation, hereinafter referred to as respondent, has been

¹ Order published as modified as of Nov. 4, 1936.

A prior cease and desist order in this matter made as of April 3, 1934 (See 18 F. T. C. 282), was vacated and set aside, etc., by order of the Commission on July 24, 1936.