

IN THE MATTER OF
ROY C. GREENBERG AND SARAH J. ROSENHEIM, TRAD-
ING AS NEWAY MANUFACTURING COMPANY

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

Docket 2858. Complaint, June 30, 1936—Decision, Aug. 12, 1936

Where two individuals engaged in the manufacture, distribution, and sale of certain surgical latex bandages; in advertising the same in various periodicals of interstate circulation usually read by canvassers and sales agents, and by letters and circulars sent and distributed throughout the various States, to induce purchase of said products by persons suffering from certain ailments and afflictions and to induce persons to become their canvassers and sales agents—

- (a) Falsely represented that said bandage was porous and allowed the skin to breathe and the wound to heal much quicker, and that doctors and hospitals were aware that it offered the safest way on earth for them to treat patients, and that it held snugly while permitting healing air to reach the sore spot, and, while admitting air, kept out dirt and germs and offered the safest bandage known, and did not reopen the wound and resisted water;
- (b) Represented that it was no longer necessary to buy costly ankle braces, through use thereof as directed, nor to buy expensive devices for bunions or arch supports, through following directions given for such purposes, and that it was used to assist in slenderizing large and unsightly ankles; and
- (c) Represented that a salesman could start in a new business that would pay always increasing income, and "take up to \$72.00 first week";

Facts being said products were not porous in any degree unless stretched, in which event circulation was impaired, with likelihood of injury instead of benefit, nor were they, not stretched, porous, so as to permit ingress and egress of fluids, nor, in view of the usual internal causes of swollen ankles, did they, as an external bandage, possess curative value for such condition, nor, by reason of the openings required and their own non-adhesive quality, were they indicated for corns and bunions, and said various misrepresentations, as respects the effect of said products and earnings to be made from the sale thereof, were grossly exaggerated, false, and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations respecting the effectiveness of said product in the treatment of such ailments and malformations were true, and that results claimed by them would be obtained by the purchaser thereof upon use of said bandages, and with the result that a substantial number of the consuming public purchased a substantial volume of its products as a result thereof, and trade was unfairly diverted to them from competitors who truthfully advertise their respective products; to the substantial injury of competitors:

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. Wm. T. Chantland for the Commission.

Mr. Oscar Krakow, of Chicago, Ill., for respondents.

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 Roy C. Greenberg and Sarah J. Rosenheim, associated together under the name Neway Manufacturing Company, hereinafter referred to as "respondents," have been, and are 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. Respondents, Roy C. Greenberg and Sarah J. Rosenheim, associated together under the name Neway Manufacturing Company, personally and through said Neway Manufacturing Company, with office and principal place of business at 30 South Clinton Street, Chicago, Ill., are now and for some time have been engaged in the business of manufacturing, distributing, and selling in commerce as herein set out certain surgical latex bandages known as "Neway Latex Bandages."

PAR. 2. Said respondents being engaged in business as aforesaid, cause said bandages, when sold, to be transported from their office and place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondents now maintain a constant current of trade in commerce in said bandages, manufactured, distributed, and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling bandages, in commerce, among and between the various States of the United States and in the District of Columbia.

In the course and operation of their said business, and for the purpose of inducing the purchase of said bandages by persons suffering from certain bodily ailments and malformations and also to induce persons to become canvassers and sales agents for respondents, said respondents in their advertising in various magazines of interstate cir-

Complaint

23 F. T. C.

culatation usually read by canvassers and sales agents, and by letters and circulars sent and distributed throughout the various States of the United States other than the State from which they were sent, have made numerous false and misleading representations and statements about their said product, and the earnings to be made in selling it. Among the false and misleading representations and statements so made and distributed by respondents are the following:

(1) That the Neway bandage is porous allowing the skin to breathe and the wound to heal much quicker.

(2) That doctors and hospitals are aware that this bandage offers the safest way on earth for them to treat patients.

(3) That it is no longer necessary to buy costly ankle braces. Merely make a support of Neway Latex bandage in the wider width and it is comfortable, relieves the swelling and helps to heal.

(4) That there is no need to buy expensive devices for bunions, nor arch supports—this marvelous bandage helps to correct all foot ailments.

(5) That pads for corns and bunions can be made from it, and metatarsal or longitudinal arch supports, by using layers of Neway together, placed in the shoe.

(6) That it holds snugly and comfortably, yet at the same time "breathes," letting healing air reach the sore spot.

(7) That it is used to assist in slenderizing large, unsightly ankles.

(8) That it admits air but keeps out dirt and germs. It offers the safest bandage known. It does not reopen wound when removed.

(9) That Neway Latex resists water.

(10) That a salesman can start in a new business that will pay always increasing income, and "take up to \$72.00 first week."

PAR. 4. The representations made by respondents, as above set out, with respect to the effect when used of their said product, are grossly exaggerated, false, misleading, and untrue, as are their statements of the earnings to be made in selling the same.

The bandages are not porous in any degree unless stretched, and when so stretched in their application the effect is to impair the circulation with likely injury instead of benefit; neither are said bandages porous in the sense that they will permit ingress and egress of fluids. In addition thereto swollen ankles are generally caused by internal disorders either of the blood circulatory system or of the kidneys or liver, or more than one of such disease condititons. An external bandage possesses no curative value. Corns and bunions require pads with openings to relieve pressure and irritation so that no bandaging is of value and when the bandaging is non-adhesive

as respondents' is it will slip and move and irritate instead of giving relief. Likewise when bandages are tightly applied to reduce swelling they not only impair circulation but thereby cause increased swelling above the bandage.

PAR. 5. There are among respondents' competitors many who distribute and sell similar bandages who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondents as to the effectiveness of their said product in the treatment of bodily ailments and malformations, as hereinabove set out, in their advertising, in the course of distributing their product, were and are calculated to, and had, and now have 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, and that the results claimed by the respondents will be obtained by the purchasers thereof upon the use of said bandages. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondents, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' bandages with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling bandages intended for use in connection with the treatment of bodily ailments and malformations who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' 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."

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 30, 1936, issued and served its

Findings

23 F. T. C.

complaint in this proceeding upon respondents, Roy C. Greenberg and Sarah J. Rosenheim, trading as Neway Manufacturing Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, respondents, Roy C. Greenberg and Sarah J. Rosenheim, filed separate answers thereto wherein they state that Roy C. Greenberg is now the sole owner of Neway Manufacturing Company, and wherein and whereby they state that they desire to waive hearing on the charges set forth in the complaint, and not to contest the proceeding; that they admit all of the material allegations of the complaint to be true, and that without further evidence or other intervening procedure the Commission may make, issue and serve upon respondents findings of fact, and an order to cease and desist from the violations of law charged in 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. The respondents, Roy C. Greenberg, and Sarah J. Rosenheim trading as Neway Manufacturing Company, have been engaged, and respondent Roy C. Greenberg is now engaged, in the business of manufacturing, distributing, and selling in interstate commerce certain surgical latex bandages known as "Neway Latex Bandages", selling said bandages in many States of the United States. When sold, the respondents mailed or shipped their said merchandise from their place of business in Chicago, Ill., to purchasers located in the said State of Illinois and in various other States, and respondent Greenberg still continues to so sell and ship.

PAR. 2. For more than two years last past the respondents have been selling said merchandise in substantial competition with other business concerns selling similar merchandise at wholesale and retail in interstate commerce by circulars circulated throughout the United States, and by various other forms of advertising, and by personal solicitation of sales agents.

PAR. 3. Respondents, in the course and operation of their said business, and for the purpose of inducing the purchase of said bandages by persons suffering from certain bodily ailments and malformations and also to induce persons to become canvassers and sales agents for them, in their advertising in various magazines of interstate circulation usually read by canvassers and sales agents, and by letters

and circulars sent and distributed throughout the various States of the United States other than the State from which they were sent, have made numerous representations and statements about their said product and the earnings to be made in selling it. Among the representations and statements so made and distributed by respondents are the following:

(1) That the Neway bandage is porous allowing the skin to breathe and the wound to heal much quicker.

(2) That doctors and hospitals are aware that their bandage offers the safest way on earth for them to treat patients.

(3) That it is no longer necessary to buy costly ankle braces. Merely make a support of Neway Latex bandage in the wider width and it is comfortable, relieves the swelling and helps to heal.

(4) That there is no need to buy expensive devices for bunions, nor arch supports—this marvelous bandage helps to correct all foot ailments.

(5) That pads for corns and bunions can be made from it, and metatarsal or longitudinal arch supports, by using layers of Neway together, placed in the shoe.

(6) That it holds snugly and comfortably, yet at the same time “breathes”, letting healing air reach the sore spot.

(7) That it is used to assist in slenderizing large, unsightly ankles.

(8) That it admits air but keeps out dirt and germs. It offers the safest bandage known. It does not reopen wound when removed.

(9) That Neway Latex resists water.

(10) That a salesman can start in a new business that will pay always increasing income, and “take up to \$72.00 first week.”

PAR. 4. The bandages sold and distributed by respondents as aforesaid, are not porous in any degree unless stretched, and when so stretched in their application the effect is to impair the circulation with likely injury instead of benefit; neither are said bandages when not so stretched porous in the sense that they will permit ingress and egress of fluids. In addition thereto swollen ankles are generally caused by internal disorders either of the blood circulatory system or of the kidneys or liver, or more than one of such disease conditions. An external bandage possesses no curative value. Corns and bunions require pads with openings to relieve pressure and irritation so that no bandaging is of value and when bandaging is non-adhesive, as respondents' is, it will slip and move and irritate instead of giving relief. Likewise when bandages are tightly applied to reduce swelling they not only impair circulation but thereby cause increased swelling above the bandage.

Conclusion

23 F. T. C.

The representations made by respondents, as above set out in paragraph 3 of these findings with respect to the effect when used of said product, are grossly exaggerated, false, misleading, and untrue, as are the statements of the earnings to be made in selling the same.

PAR. 5. There have been and are among respondents' competitors many who distribute and sell similar bandages who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by respondents as to the effectiveness of their said product in the treatment of bodily ailments and malformations, as hereinabove set out, in their advertising in the course of distributing said product, were and are calculated to, and had, and now have 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, and that the results claimed by the respondents will be obtained by the purchasers thereof upon the use of said bandages. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and representations of respondents, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' bandages with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling bandages intended for use in connection with the treatment of bodily ailments and malformations who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. Respondent, Sarah J. Rosenheim is not now and has not been since prior to June 30, 1936, associated with the respondent Roy C. Greenberg in conducting said business and Roy C. Greenberg has been since prior to June 30, 1936, and now is the sole owner of the business conducted under the name Neway Manufacturing Company.

CONCLUSION

The aforesaid acts and practices of the respondents, under the conditions and circumstances set forth in the foregoing findings have been and are to the prejudice of the public and of respondents' 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."

260

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, filed herein on June 30, 1936, and the separate answers of the respondents Roy C. Greenberg and Sarah J. Rosenheim filed herein, in which answers they state that they desire to waive hearing on the charges set forth in the complaint, and not to contest the proceeding; that they admit all of the material allegations in the complaint to be true, and that without further evidence, or other intervening procedure, the Commission may make, enter, issue and serve its findings of fact and conclusion and order to cease and desist from the violations of law charged in the complaint and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents, Roy C. Greenberg, and Sarah J. Rosenheim, individually or as copartners trading as Neway Manufacturing Company, personally or through their representatives, agents, or employees, or by or through the use of Neway Manufacturing Company or of any other trade name or device, in connection with the sale and distribution in interstate commerce or in the District of Columbia of latex bandages, forthwith cease and desist from directly or indirectly representing:

(1) That the Neway bandage is porous allowing the skin to breathe and the wound to heal much quicker.

(2) That doctors and hospitals are aware that this bandage offers the safest way on earth for them to treat patients.

(3) That it is no longer necessary to buy costly ankle braces. Merely make a support of Neway Latex bandage in the wider width and it is comfortable, relieves the swelling and helps to heal.

(4) That there is no need to buy expensive devices for bunions, nor arch supports—this marvelous bandage helps to correct all foot ailments.

(5) That pads for corns and bunions can be made from it, and metatarsal or longitudinal arch supports, by using layers of Neway together, placed in the shoe.

(6) That it holds snugly and comfortably, yet at the same time "breathes," letting healing air reach the sore spot.

(7) That it is used to assist in slenderizing large, unsightly ankles.

(8) That it admits air but keeps out dirt and germs. It offers the safest bandage known. It does not reopen wound when removed.

Order

23 F. T. C.

(9) That Neway Latex resists water.

(10) That a salesman can start in a new business that will pay always increasing income, and "take up to \$72.00 first week."

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail, the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF
BRECHT CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2662. Complaint, Dec. 18, 1935—Decision, Aug. 15, 1936¹*

Where a corporation engaged in manufacture and sale of candy, including "break and take," and "draw" or "deal" assortments, in which, as the case might be, (1) chance selection of one of a number of individually wrapped penny pieces of uniform size and shape, enclosed yellow colored center of which differed from that of majority, entitled purchaser to receive, without charge, one of the larger pieces or bars of candy, included therewith, and in which purchaser of last penny piece, likewise received, without charge, the small package of candy similarly included; (2) particular legend secured by chance from push card included with assortment, entitled 5-cent purchaser, in accordance with card's explanatory statement and legend secured, to one, two, three, four, or five candy bars, and in which final purchaser received four of said bars in accordance with such advisory statement; and (3) chance selection of number, as disclosed by punch on 600-hole board included with assortment, entitled purchaser to bar or to box of candy, as case might be; and including also other similar assortments with other types of candy and punch boards with larger or smaller number of holes, as case might be, stocked and made up by it on request of customers—

Sold said various assortments, with cards or boards, as aforesaid to wholesalers, jobbers, and retailers, knowingly assembled and packed for resale without alteration, addition, or rearrangement to consuming, purchasing public by retailers which, as sellers of its said product, included, generally, in case of the concealed, colored center assortments, candy stores near schools and small grocery stores, and in case of punch board assortments, more often, though not exclusively, cigar stores, pool rooms, and places frequented by men, and stores of which retailers, in case of the small establishments, are frequently near schools and attract the trade of children, principal consumer-purchasers of the lottery or prize candy, and who, given choice, purchase same in preference to the "straight" goods because of lottery or gambling feature connected therewith and chance of becoming a winner;

With result that some competitors, dealing in "straight" goods candy only, and who, like many, regard sale and distribution of other as morally bad, and as encouraging gambling, and especially among children, and as injurious to the industry in merchandising, instead of candy, a chance or lottery, and as providing retail merchants with means of violating the laws of the States, and who refuse to sell candy so packed and assembled that it can be resold to public by lot or chance, and who can compete on even terms only by giving same or similar devices to retailers, were put to a disadvantage, some competitors began sale and distribution of candy to public

¹ Order, however, published as of Nov. 13, 1936.