

Complaint

23 F. T. C.

IN THE MATTER OF
RICHARD R. SOBERANES, TRADING AS TARZANA
MINERAL WATER COMPANY

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

Docket 2804. Complaint, May 15, 1936—Decision, Aug. 25, 1936

Where an individual engaged in sale and distribution of a purported mineral water—

- (a) Represented in radio broadcasts and in circulars, leaflets, and booklets that said water would prevent and cure or was beneficial in treatment of many diseases and afflictions and conditions which might be present in the body, including rheumatism, neuritis, arthritis, high blood pressure, and many others; and
- (b) Represented and implied, through radio broadcasts and by circulars, etc., as aforesaid, that diet of average American citizen was "sadly" deficient in important mineral elements, including sodium, calcium, and magnesium, and that such deficiency could be supplied through drinking said water;

Facts being said water would neither prevent nor cure said ailments and conditions, and was not beneficial in treatment of any, diet referred to was not thus deficient, and such a deficiency would not be supplied through using said water, which acted on body in no different manner than any pure, potable water, and contained no elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any such water;

With effect of misleading and deceiving a substantial portion of prospective purchasers desirous of buying or obtaining a remedy or treatment to prevent and cure, or be beneficial in treatment of such ailments and conditions, and who believed their diet deficient as aforesaid, and wished to supply from other than usual sources of diet elements thus thought deficient, and of causing many prospective purchasers to believe such false representations and implications to be true, and a substantial portion of such purchasers, by reason thereof, to buy said water, and of diverting thereby trade to him from competitors dealing in mineral water and other products used and useful for same purposes for which his said water was advertised and recommended by him; to the substantial injury of such competitors in commerce, and to the injury of the public:

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. Edw. W. Thomerson for the Commission.

Mr. Clinton F. Seccombe, of Hollywood, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Richard R. Soberanes, trading as Tarzana Mineral Water Company, hereinafter referred to as the respondent, 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 Richard R. Soberanes is an individual trading under the name and style of Tarzana Mineral Water Company, with his main office and place of business at 1485 North Vine Street in the city of Hollywood, State of California, and with a branch office and place of business at Tarzana, Calif.

The respondent is now, and has been for several years last past, engaged in the sale and distribution of a purported mineral water for human consumption, and causes said water, when sold, to be transported from his said places of business in the State of California into and across the several States of the United States to the purchasers thereof located at various points in the said several States other than in the State of California.

In the course and conduct of his business as aforesaid, the respondent has been and is in substantial competition in commerce between and among the several States of the United States with corporations, associations, partnerships, and other individuals, who truthfully advertise their products, engaged in said commerce in the sale and distribution of mineral water and other products used and useful for the same purposes for which the respondent advertises and recommends his said water.

PAR. 2. Respondent, in the course and conduct of his business as aforesaid, advertises his said water by radio broadcasts, during which statements and representations are made concerning the mineral elements in, and the curative qualities of, said water, and by circulating and distributing among prospective purchasers of said water circulars, leaflets, and booklets wherein similar statements are made concerning said water. In said radio broadcasts and in said circulars, leaflets, and booklets, respondent falsely represents and implies that said water will prevent and cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said radio broadcasts and in said circulars, leaflets, and booklets as diseases, ailments, afflictions, and conditions which his said water will prevent and cure, or is beneficial in the

Complaint

23 F. T. C.

treatment of, are the following: Rheumatism, neuritis, arthritis; liver, kidney, and bladder ailments and troubles; gas, gastritis, indigestion, and heartburn; faulty elimination, constipation, and auto intoxication; stomach ulcers, ailments and troubles; high blood pressure and hardening of the arteries; diabetes; piles; asthma; eczema; colds; anemia; sick headaches; gravel stones; nervousness; acidosis; and bad teeth.

In truth and in fact, the use of respondent's said water will not prevent and cure, nor is it beneficial in the treatment of, all, or any of, the diseases, ailments, afflictions, and conditions above set out.

PAR. 3. Respondent, in the course and conduct of his business as aforesaid, through said radio broadcasts and by circulars, leaflets, and booklets, falsely represents and implies that the diet of the average American citizen is "sadly" deficient in important mineral elements—such as sodium, calcium, and magnesium—and that this deficiency can be supplied through the drinking of respondent's said water.

In truth and in fact, the diet of the average American citizen is not "sadly" deficient in important mineral elements—such as sodium, calcium, and magnesium—and if it were deficient in these minerals, this deficiency would not be supplied by using respondent's said water, for it does not act on the human body in any different manner than does any pure, potable water, nor does it contain any elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any pure, potable water.

PAR. 4. Many prospective purchasers of respondent's said water located in the said several States of the United States desire to purchase or obtain a remedy or treatment that will prevent and cure, or is beneficial in the treatment of, the diseases, ailments, afflictions, and conditions about which the respondent has made and does make the representations and implications as hereinabove alleged, and many of such prospective purchasers believe that their diet is deficient in important mineral elements—such as sodium, calcium, and magnesium—and desire to supply, from sources other than their regular diet, the mineral elements thought to be deficient.

PAR. 5. The acts, practices, and methods of the respondent, as hereinabove alleged, have had and do have the tendency and capacity to and do mislead and deceive a substantial portion of said prospective purchasers, and have caused and do cause such prospective purchasers erroneously to believe that the said false representations and implications made by the respondent are true and that respondent's said water will prevent and cure, or is beneficial in the treatment of, said diseases, ailments, afflictions, and conditions and that it will supply important mineral elements thought by many to be

deficient in their diet, and cause a substantial portion of such prospective purchasers, because of such erroneous belief, to purchase respondent's said water, thereby diverting trade to the respondent from his competitors who do not use the acts, practices, and methods used by the respondent, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 6. The acts, practices, and methods of the respondent, as hereinabove alleged, are all to the prejudice of the public and the respondent's said 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 May 15, 1936, issued and served its complaint in this proceeding upon respondent Richard R. Soberanes, trading as Tarzana Mineral Water Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint the respondent filed his answer herein. In said answer he admits all of the material allegations of the complaint to be true and states that he does not wish to contest the proceeding. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Richard R. Soberanes is an individual trading under the name and style of Tarzana Mineral Water Company, with his main office and place of business at 1485 North Vine Street, in the city of Hollywood, State of California, and with a branch office and place of business at Tarzana, Calif.

The respondent is now, and has been for several years last past, engaged in the sale and distribution of a purported mineral water, under the trade name of Tarzana Mineral Water, for human consumption, and causes said water, when sold, to be transported from

Findings

23 F. T. C.

his said place of business in the State of California into and across the several States of the United States to the purchasers thereof located at various points in the said several States other than in the State of California.

The respondent has been and is in substantial competition in interstate commerce with corporations, associations, partnerships, and other individuals, engaged in the sale and distribution of mineral water and other products used and useful for the same purposes for which the respondent advertises and recommends his said water. Among the competitors of the respondent in said commerce are many who truthfully represent their products.

PAR. 2. Respondent advertises his said water by radio broadcasts, during which statements and representations are made concerning the mineral elements in, and the curative qualities of, said water, and by circulating and distributing among prospective purchasers of said water circulars, leaflets, and booklets wherein similar statements are made concerning said water. In said radio broadcasts and in said circulars, leaflets, and booklets, respondent represents and implies that said water will prevent and cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said radio broadcasts and in said circulars, leaflets, and booklets as diseases, ailments, afflictions, and conditions which his said water will prevent and cure, or is beneficial in the treatment of, are the following: Rheumatism, neuritis, arthritis; liver, kidney, and bladder ailments and troubles; gas, gastritis, indigestion, and heartburn; faulty elimination, constipation, and auto intoxication; stomach ulcers, ailments, and troubles; high blood pressure and hardening of the arteries; diabetes; piles; asthma; eczema; colds; anemia; sick headaches; gravel stones; nervousness; acidosis; and bad teeth.

In truth and in fact, the use of respondent's said water will not prevent and cure, nor is it beneficial in the treatment of, all or any of, the diseases, ailments, afflictions, and conditions above set out.

PAR. 3. Respondent, in the course and conduct of his business as aforesaid, through said radio broadcasts and by circulars, leaflets, and booklets, represents and implies that the diet of the average American citizen is "sadly" deficient in important mineral elements—such as sodium, calcium, and magnesium—and that this deficiency can be supplied through the drinking of respondent's said water.

In truth and in fact, the diet of the average American citizen is not "sadly" deficient in important mineral elements—such as sodium,

310

Order

calcium, and magnesium—and if it were deficient in these minerals, this deficiency would not be supplied by using respondent's said water, for it does not act on the human body in any different manner than does any pure, potable water, nor does it contain any elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any pure, potable water.

PAR. 4. Many prospective purchasers of respondent's said water located in the said several States of the United States desire to purchase or obtain a remedy or treatment that will prevent and cure, or is beneficial in the treatment of, the diseases, ailments, afflictions, and conditions about which the respondent has made and does make the representations and implications as hereinabove set out, and many of such prospective purchasers believe that their diet is deficient in important mineral elements—such as sodium, calcium, and magnesium—and desire to supply, from sources other than their regular diet, the mineral elements thought to be deficient.

PAR. 5. The acts and practices of the respondent, as above set out, have had and do have the tendency and capacity to and do mislead and deceive a substantial portion of said prospective purchasers, and have caused and do cause many prospective purchasers erroneously to believe that the said false representations and implications made by the respondent are true and that respondent's said water will prevent and cure, or is beneficial in the treatment of, said diseases, ailments, afflictions, and conditions and that it will supply important mineral elements thought by many to be deficient in their diet, and cause a substantial portion of such prospective purchasers, because of such erroneous belief, to purchase respondent's said water, thereby diverting trade to the respondent from his competitors who truthfully represent their products, to the substantial injury of said competitors in said commerce and to the injury of the public.

CONCLUSION

The aforesaid acts and 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 filed herein on May 15, 1936, and the answer of the re-

Order

23 F. T. C.

spondent, Richard R. Soberanes, trading as Tarzana Mineral Water Company, filed on August 12, 1936, in which answer the respondent admits all the material allegations of the complaint to be true, and waives all further proceedings 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 Richard R. Soberanes, in connection with the offering for sale and sale of mineral water, now known and sold as Tarzana Mineral Water, in commerce between and among the several States of the United States and in the District of Columbia, cease and desist from representing, directly or indirectly, that:

(1) Said water will prevent and cure, or is beneficial in the treatment of, the following diseases, ailments, afflictions, and conditions: rheumatism, neuritis, arthritis; liver, kidney, and bladder ailments and troubles; gas, gastritis, indigestion, and heartburn; faulty elimination, constipation, and auto intoxication; stomach ulcers, ailments, and troubles; high blood pressure and hardening of the arteries; diabetes; piles; asthma; eczema; colds; anemia; sick headaches; gravel stones; nervousness; acidosis; and bad teeth;

(2) The diet of the average American citizen is deficient in minerals—such as sodium, calcium and magnesium;

(3) The drinking of said water will supply the body with minerals where there is mineral deficiency in the diet;

(4) Said water contains mineral elements or medicinal properties in sufficient quantities to render it different from, or of any greater benefit than, any pure, potable water;

(5) Said water acts on the human body in any different manner than does any pure, potable water.

It is further ordered, That the respondent shall, within 60 days after the service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
AMERICAN TAP BUSH COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2384. Complaint, May 9, 1935—Decision, Aug. 27, 1936*

Where a corporation dealing in the widely and favorably known "Peerless", formerly patented system for tapping beer kegs, and in selling such system or assembly, parts of which were of nickel-plated brass, insofar as they could possibly contact beverage, in competition with less costly "De-Luxe" tap, which, but for nickel-plated zinc "T" portion, was duplicate thereof, through salesmen who solicited jobbers and wholesalers of beer dispensing equipment, and breweries, in direct and substantial competition with those of said competitor throughout the United States—

Placed in said salesmen's hands report of results of test made, at its instance, of said competitor's nickel-plated zinc taps, with respect to effect thereof in souring and spoiling the beverage and absorption of zinc, to effect that such acidity was noticeably accelerated where, as in said tap, zinc base die cast metal came in contact therewith, and that such metal had a decided, harmful effect thereon, and instructed said salesmen to use such report in explaining to customers and prospective customers effect of said competitive product;

Facts being neither tap was directly in the beverage, nor did beer flow directly through any part thereof, and only direct contact therewith was temporary and immediately after insertion of rod in a completely filled keg, and action by laboratory in removing protective nickel-plated coating from inner portion of tap and exposing said zinc base metal directly to beer used in test made same neither fair nor accurate as respects effect of use of said competitive product in dispensing the beverage, and report based thereon was untrue and inaccurate insofar as concerned conditions found in the actual dispensing of beer by it;

With result that said salesmen orally falsely represented to many customers and prospective customers of such competitor that said test was made under conditions fairly representative of actual, normal use, and said tap was harmful and dangerous to use in dispensing the beverage, due to increasing acidity thereof to such extent and causing deposit therein in such quantity as to render same injurious to customer's health and not fit for human consumption, and that such increase in acidity and such deposit could be avoided through use of "Peerless", and a substantial portion of purchasers and prospective purchasers of said competitive product believed such false representations, statements and report to be true, and result of fair and accurate test, and many thereof, by reason of such erroneous belief, ceased or declined to purchase nickel-plated zinc taps of type made by said competitor and purchased, instead, taps sold and distributed by it, to the substantial injury of competitors and to injury of public: