

Complaint

23 F. T. C.

IN THE MATTER OF

CALAFO COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2508. Complaint, Aug. 6, 1935.—Decision, Aug. 28, 1936*

Where a corporation, engaged in offer and sale, through dealers and directly, of a powder, and of a liquid preparation as remedies for and treatment of asthma and hay fever, through internal application, and through burning the "Inhalettes" or cigarettes and inhalation of vapor or smoke therefrom, respectively; in advertising its said medical preparations through newspapers, radio broadcasts, pamphlets, circulars, and other printed matter enclosed therewith, and through form letters mailed direct to prospective customers—

- (a) Falsely represented and implied that use thereof would cause asthma and hay fever to disappear like magic, and that distressing symptoms thereof would disappear and user of said preparations regain health; and
- (b) Represented and implied that said preparations constituted a competent and effective remedy for treatment of said ailments and were safe for all users and superior to other treatments or remedies therefor;

With effect of misleading and deceiving many persons afflicted with one or both of said diseases into believing that such preparations possessed therapeutic efficacy claimed, and that such various representations were true and of causing such persons, because of said erroneous beliefs, to buy same, and of unfairly and substantially diverting thereby trade to it from competitors who do not misrepresent their products, and with tendency and capacity so to mislead and deceive; to the injury of said competitors and that of 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.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Edw. W. Thomerson for the Commission.

Canepa & Castruccio, of Los Angeles, 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Calaf Company, Incorporated, a corporation, hereinafter referred to as 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, Calafco Company, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of California, having and maintaining its office and principal place of business at 620 West Olympic Boulevard in the city of Los Angeles in the State of California.

PAR. 2. Respondent has been and is engaged in offering for sale and selling certain medical preparations, which it offers for sale and sells under the several names and designations of "Calafco Liquid", "Mentholated Asthmatic Powder", and "Calafco Mentholated Asthma Inhalettes", respectively. In some instances respondent refers to said last two designated products by the words "Calafco Powder" and "Calafco Inhalettes" respectively, or by other abbreviated titles or names.

Said preparations are put up in containers suitable for shipment to purchasers thereof, and for delivery to and use by consumers thereof. Said remedies are to be used by ultimate purchasers according to directions printed upon said several containers. Said Calafco Liquid is to be taken orally as an internal remedy. Said preparations have been and are being so offered for sale and sold as treatments or remedies for ailments or diseases which are usually known and referred to as asthma and hay fever.

Respondent offers for sale and sells said products to dealers in drugs and medicines for resale to the public and to persons seeking to purchase remedies for the treatment and cure of asthma or hay fever, or both. Respondent, when any of said preparations has been so sold, causes the same to be transported from said city of Los Angeles, in the State of California, into and through the several States of the United States and the District of Columbia to the several purchasers thereof at their respective places of business located in said several States and in the District of Columbia.

PAR. 3. In and throughout the several States of the United States and the District of Columbia, located at various places therein, are many persons who are afflicted with ailments and diseases commonly called and referred to as asthma and hay fever. Such persons have been, and are, seeking some preparation, treatment or remedy by which said ailments or diseases may be certainly, quickly, easily, safely, and permanently relieved and cured; and there is a great public demand for such preparation, treatment, or remedy.

There have been and are other persons, partnerships, associations, and corporations who have been and are engaged in offering for sale

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and selling in said commerce between and among the several States of the United States and the District of Columbia, the same, or like or otherwise competitive products, to wit: Preparations, systems, methods, treatments, or remedies for said ailments or diseases. Said other persons, partnerships, associations, and corporations have been and are so engaged in so offering for sale and selling their said products in said commerce in competition with respondent's said products. Respondent has been and is in substantial competition with them all in so offering for sale and selling its said products in said commerce as above alleged. Many other persons, partnerships, associations, and corporations, who are not now actually engaged in offering for sale or selling in said commerce the same, like or otherwise competitive products as preparations, systems, methods, treatments, or remedies for said ailments or diseases, may at any time seek to enter said trade or commerce in like competition with the respondent, and have the lawful right so to do, upon the basis of the use of fair methods of competition by all competitors in said trade or commerce, and unobstructed, impeded or otherwise injured by respondent's use of unfair methods of competition in connection with, or in aid of the sale of its said products.

PAR. 4. Respondent, in aid of so offering for sale and selling its said products in said commerce between and among the several States of the United States and the District of Columbia, has advertised, and does advertise, the same in newspapers, magazines, and periodicals of general circulation, by means of radio broadcasts, in pamphlets, printed testimonials, and other printed matter, and by and through the use of photographs and other pictures, and on labels attached to and in circulars enclosed in or with the boxes, bottles, or containers in which said products are packed or placed when so offered for sale and sold, and by other means. In, by, and through each and all of the advertising media, above enumerated, respondent has, expressly or by necessary implication, made, and makes, each and all of the statements and representations hereinafter set forth and alleged.

PAR. 5. Said products are composed of several ingredients, the formulae thereof being at times printed and published by respondent in said advertisements, or otherwise. Certain of said ingredients are powerful drugs the use of which, as directed in the printed directions which respondent causes to be printed upon said labels or other printed matter aforesaid, is liable to be harmful and injurious to the user thereof. Such ingredients may safely be used only under and pursuant to warnings, directions, and safeguards disclosing such

danger and providing for safe and effective limitations and conditions upon the use thereof.

Respondent does not disclose in its said advertisements, or otherwise, any of the facts above alleged in this paragraph of this complaint, but prints on said labels and other printed matter above referred to general directions for the use of said products by any and all purchasers or users thereof, with no intimation or indication that the same may not be freely used, without conditions, limitations, or other safeguard, by any and all such purchasers and users thereof.

PAR. 6. In, by and through its advertising media above alleged, respondent has made and makes, to the public, to sufferers from said ailments and diseases, and to prospective purchasers, statements and representations as to its said products in substance as follows, to wit:

ASTHMA AND HAY
FEVER DISAPPEAR
LIKE MAGIC!

New Money-Back Remedy Affords
Quick Relief

Calafo liquid relieves the distressing symptoms of Asthma and Hay Fever or money back. No questions—you are the judge. Calafo liquid, a different remedy, promises you relief. You breathe freely—sleep all night—regain health! The distressing symptoms disappear. Don't suffer longer—try Calafo liquid.

CALAFO

Reg. U. S. Pat. Office
Dr. Stemmerman's Formula
Prescribed by him in cases
of

Asthma and Hay Fever
Contains Alcohol 1½%

Opium 9/10 grains in each fluid ounce.
Arsenious Acid 1/10 grain to each 30
minims.

Directions on circular enclosed.

CALAFO COMPANY, Inc.
Los Angeles, California

Here is Important Information: No one should be hasty and impatient; no one should jump at the conclusion that Calafo Liquid will not be beneficial just because it does not, in every case, give good results "in a jiffy." Here are some facts that every sufferer from asthma or hay fever should remember: Two kinds of medicine are sometimes (but not in every case) required in the successful treatment of asthma and hay fever. One is Calafo Liquid, which acts through the general system via the blood and nerves, the other is Calafo Asthmatic Powder. No matter what means you try for the relief of asthma or hay fever, it is most important that Calafo Liquid be used regularly for at least several weeks. In many cases the Liquid is all the medicine that will be needed.

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A moment's thought should tell anyone that such stubborn and chronic diseases as asthma and hay fever cannot always be cleared away in a few days. William H. Stemmerman, M. D., the originator of Calafé formulas, stated that the use of Calafé Liquid should be persisted in for a few weeks, at least, to help clear the system of the asthmatic tendency or trait.

In truth and in fact by the use of any or all of, said products asthma and hay fever do not disappear like magic. Their distressing symptoms do not disappear. The user of said products does not regain health. One who uses said products pursuant to respondents said directions for their use is in danger of harmful results from the cumulative effects of the poisonous tendency of the constituent elements thereof. Said products as so constituted and under said directions are dangerous, and are unfit for careless and indiscriminate distribution to the public in general. Said products do not constitute a competent or effective treatment or remedy for the cure of asthma or hay fever, nor will their use clear the system of the user of an asthmatic tendency or trait.

In truth and in fact, the ailments or diseases known as asthma and hay fever are persistent and difficult of competent and effective treatment and cure. Competent and effective treatments and remedies must be compounded with skill and care and used under careful directions and safeguards, and it may not truthfully be said of them, or any of them, that by their use asthma or hay fever will be certainly, quickly, easily and permanently cured.

PAR. 7. Said statements and representations so made by respondent, and said directions for the use of its said remedies by purchasers or users thereof so given by respondent, have the tendency and capacity to mislead and deceive the public and prospective purchasers into the erroneous belief:

1. That all said statements and representations are true.
2. That it is safe for all users of said products to take and use the same as so directed.
3. That by the use of said products asthma and hay fever will certainly disappear like magic; their distressing symptoms will cease; and the user will regain his health.
4. That said products constitute a competent and effective treatment and remedy for the cure of asthma and hay fever.
5. That said products are superior to all other remedies being offered for sale or sold to the public for the treatment and cure of asthma and hay fever.

Said statements and representations so made by respondent have the tendency and capacity to induce the public and prospective purchasers, in and because of such erroneous belief, to purchase re-

spondent's said products in preference to, and to the exclusion of, any and all identical or like or otherwise competitive products, to wit: preparations, systems, methods, remedies, or other means of treatment so being offered for sale in said commerce by said competitors of respondent as hereinabove alleged; thereby diverting trade to respondent from its said competitors, to the substantial injury of such competitors, and to the deception and injury of the public.

PAR. 8. The above alleged acts and practices are all to the prejudice of the public and of respondent's competitor's and constitute unfair methods of competition 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 August 6, 1935, issued and served its complaint in this proceeding upon the respondent Calafó Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of the said complaint were introduced by Edw. W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, no testimony being offered in defense of the allegations of the complaint by the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto and the testimony and evidence, respondent having waived the filing of briefs and oral argument; and the Commission having duly considered the same, and being fully advised of 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 is a corporation organized and doing business by virtue of the laws of the State of California with its principal office and place of business at 620 West Olympic Blvd., in

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the city of Los Angeles, in the State of California, and is engaged in the business of offering for sale and selling certain medical preparations under the trade names "Calafio Liquid," "Calafio Asthmatic Powder" or "Calafio Mentholated Powder" and "Calafio Asthmatic Inhalettes" or "Calafio Inhalettes" for the treatment of, or as remedies for, the ailments or diseases which are usually known and referred to as asthma and hay fever.

Respondent markets its products through dealers in drugs and medicines for resale to the public and by sales direct to persons desiring to purchase remedies or treatments for asthma and hay fever. Respondent offers for sale and sells its medical preparations in interstate commerce and makes sales in many of the States of the United States other than the State of California, and when sales are made the respondent causes its products to be transported from its place of business in the city of Los Angeles in the State of California to the purchasers thereof.

The respondent is in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with individuals, firms, and other corporations, who are engaged in said commerce in the business of offering for sale and selling remedies, preparations and products similar to and for use for the same purposes as those for which the respondent advertises and sells its products.

PAR. 2. Respondent, in the course and conduct of its business, advertises its said medical preparations through newspapers in various cities in several States of the United States, by means of radio broadcasts, through pamphlets, circulars, and other printed matter inclosed with said preparations, and through form letters mailed direct to prospective customers.

The preparation "Calafio Liquid" is in liquid form and at the time of the issuance of the complaint herein contained $7\frac{2}{10}$ minims of alcohol, $\frac{9}{10}$ of a grain of opium, $13\frac{1}{3}$ grains of arsenious acid, 8 grains of belladonna and 80 grains of potassium iodine per fluid ounce. Subsequent to the issuance of the complaint herein, the respondent changed the formula for the preparation "Calafio Liquid" by eliminating all of the ingredients except potassium iodine and water. Under both formulae flavoring matter is added to make the preparation pleasant to the taste. The preparations "Calafio Asthmatic Powders" and "Calafio Asthmatic Inhalettes" are in powder form and contain 99.90 stramonium leaf, commonly known as jimson weed, and 0.10 menthol. The "powder" is to be used by burning in a dish and inhaling the vapor or smoke therefrom and the "inhalettes" are in the form of a cigarette and are to be smoked.

Subsequent to the issuance of the complaint herein respondent changed the name of the preparation in powder form from "Calafo Asthmatic Powder" to "Calafo Mentholated Powder" and from "Calafo Asthmatic Inhalettes" to "Calafo Inhalettes".

Hereinafter, in these findings, when reference is made to the preparations above described and sold by the respondent, Calafo Liquid is considered under both of the formulae used by the respondent unless otherwise indicated.

PAR. 3. In the course and conduct of its business, by the means and in the manner above set out, the respondent represents and implies that the use of its preparations will cause asthma and hay fever to disappear like magic, the distressing symptoms of asthma and hay fever to disappear, and the user of said preparations to regain health. Respondent represents and implies that said preparations are a competent and effective remedy for the treatment and cure of asthma and hay fever; that said preparations are safe for all users; and that said preparations are superior to other treatments or remedies for asthma and hay fever.

By the means and in the manner above stated, the respondent, among others of similar import and meaning, makes the following statements and representations concerning its said preparations:

"ASTHMA AND HAY FEVER DISAPPEAR LIKE MAGIC!

NEW MONEY-BACK REMEDY AFFORDS QUICK RELIEF

Calafo liquid relieves the distressing symptoms of Asthma and Hay Fever or money back. No questions—you are the judge. Calafo liquid, a different remedy, promises you relief. You breathe freely—sleep all night—regain health! The distressing symptoms disappear. Don't suffer longer—try Calafo liquid."

* * * * *

"Here is Important Information: No one should be hasty and impatient; no one should jump at the conclusion that Calafo Liquid will not be beneficial just because it does not, in every case, give good results 'in a jiffy'. Here are some facts that every sufferer from asthma or hay fever should remember: Two kinds of medicine are sometimes (but not in every case) required in the successful treatment of asthma and hay fever. One is Calafo Liquid, which acts through the general system via the blood and nerves, the other is Calafo Asthmatic Powder. No matter what means you try for the relief of asthma or hay fever, it is most important that Calafo Liquid be used regularly for at least several weeks. In many cases the Liquid is all the medicine that will be needed.

A moment's thought should tell anyone that such stubborn and chronic diseases as asthma and hay fever cannot always be cleared away in a few days. William H. Stemmerman, M. D., the originator of Calafo formulas, stated that the use of Calafo Liquid should be persisted in for a few weeks, at least, to help clear the system of the asthmatic tendency or trait."

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In truth and in fact said preparations do not and will not cause asthma and hay fever to disappear like magic, nor to disappear at all; they do not and will not cause the distressing symptoms of asthma and hay fever to disappear; and the user of said preparations will not regain health as a result of such use.

In truth and in fact said preparations do not possess the therapeutic efficacy represented by the respondent in the treatment and cure of asthma and hay fever, nor are said preparations safe for use by all persons afflicted with asthma and hay fever.

PAR. 4. The representations and implications of the respondent hereinabove set out are false and misleading and have the tendency and capacity to and do mislead and deceive many persons afflicted with asthma or hay fever or both. They lead such persons to believe that said preparations cause said ailments and the symptoms thereof to disappear; that the users of said preparations will regain health; that said preparations are a competent and effective remedy for the treatment and cure of asthma and hay fever and may safely be used by all persons suffering from said ailments; and that said preparations possess the therapeutic efficacy represented by the respondent in the treatment and cure of asthma and hay fever, and cause such persons, because of such erroneous belief, to purchase said preparations, thereby unfairly and substantially diverting trade to the respondent from its competitors in interstate commerce who do not misrepresent their products, to their injury 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 August 6, 1935, the answer of the respondent Calafio Company, Inc., a corporation, and testimony and evidence in support of the charges of said complaint, the respondent offering no testimony or evidence in opposition to said charges and having waived filing of briefs and oral argument, and the Commis-

sion having made its findings as to the facts and its conclusion that the respondent has violated 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 Calafo Company, Inc., a corporation, in connection with offering for sale and selling certain preparations for the treatment of the ailments commonly known as asthma and hay fever which it sells under the names "Calafo Liquid", "Calafo Asthmatic Powder", "Calafo Mentholated Powder", "Calafo Asthmatic Inhalettes" and "Calafo Inhalettes", or any liquid, powder or other preparation, under whatever name sold, composed of similar ingredients and possessing similar therapeutic properties to the preparations now known as and sold under the names above mentioned, in commerce between and among the several States of the United States and in the District of Columbia, forthwith cease and desist from, directly or indirectly, representing:

1. That said preparations will cause asthma or hay fever and the symptoms thereof to disappear;
2. That persons afflicted with asthma or hay fever will regain their health if they use said preparations;
3. That said preparations constitute a competent and effective remedy for the treatment and cure of asthma or hay fever;
4. That said preparations may safely be used by all persons afflicted with asthma or hay fever.

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

IN THE MATTER OF

RICHARD B. YANCEY AND MRS. E. Y. COUNCILL, TRADING AS INTERNATIONAL CHINA COMPANY AND AS BAKER POTTERY COMPANY

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

Docket 2625. Complaint, Nov. 12, 1935—Decision, Aug. 23, 1936

Where a firm engaged in sale of chinaware, earthenware, and other pottery of various kinds through traveling salesmen, whom they supplied with samples for use in soliciting orders from customers or prospective customers, who had no means of learning condition of merchandise until payment therefor had been made—

- (a) Falsely represented through former that their "odds and ends" assortment of 1,020 pieces, consisting, generally, of cups and saucers, plates of various sizes and styles, platters, bakers, etc., would not include more than three designs, patterns, and decorations, and would provide, in every instance, at least three complete sets of thirty-six pieces of uniform design, pattern, or decoration, and filled orders secured thereby, facts being it was impossible to assemble even one such set therefrom;
- (b) Filled orders with merchandise which was inferior to that represented by samples exhibited to customer, or by salesman's statements or representations, and which differed in quality, kind or design from that represented and with many items chipped, cracked, or broken upon receipt, notwithstanding salesman's representation that quality and marking of chinaware or earthenware would be as indicated by samples or pictures, and that such various products would be received by customer as represented, and intended failure of shipments to correspond with samples, and as a practice failed and refused to adjust claims resulting from such misrepresentations, acts, and practices which it acquiesced in and ratified, and from merchandise's failure to correspond to samples exhibited;
- (c) Represented, as above set forth, that said "odds and ends" assortments were not in fact "odds and ends," but composed of ware made up for chain stores with a few remaining sets offered as "deals" and given former designation only to effect reduction in freight rates, notwithstanding fact such assortments were in truth and in fact odds and ends, as known in trade, and not "left-overs" or "deals" thus offered;

With result that such misrepresentations and practices gave them an unfair advantage over competitors who offer and sell chinaware and pottery of all kinds and truthfully advertise, describe and represent the same and do not make use of such business methods, and of diverting business from concerns in active, substantial competition with them, to themselves; to the substantial injury of substantial 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.