

Complaint

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IN THE MATTER OF

J. H. CASEY, TRADING AS J. H. CASEY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2665. Complaint, Dec. 19, 1935—Decision, Sept. 21, 1936*

Where an individual engaged in manufacture, sale and distribution of a certain medicine or remedy under designation "Casey's Compound"; in advertising same through pamphlets and other trade literature—

- (a) Represented that said product was a cure or competent treatment for rheumatism, arthritis, neuritis, and other related ailments, through such statements as "Why suffer from rheumatism, neuritis and arthritis", and had "brought lasting relief to hopeless sufferers when all other tried remedies had failed", and had "accomplished marvelous results in relieving certain forms of arthritis and various other forms of rheumatic ailments, lumbago, aches and pains", facts being it had little, if any, therapeutic value in treatment of ailments mentioned and was not a proper, suitable, and efficient remedy or treatment therefor, and had not, as claimed, accomplished any "marvelous" or other beneficial results;
 - (b) Falsely represented that said product rid the blood and system of toxic poisons and excess acidity and stimulated glands to normal functioning and improved the blood circulation and enabled stomach and other organs to function naturally, supplying them with nature's own tonic, etc., and that it was useful or beneficial in "treating bronchial asthma and eczema"; and
 - (c) Referred to said product on bottles and cartons in which shipped as an "alterative", notwithstanding the fact that it was not a medicine or treatment which gradually induces a change and restores healthy functions, etc.;
- With effect of misleading and deceiving public and particularly that portion thereof suffering from various diseases and ailments referred to, through creating erroneous impression and belief that by purchasing and using said product, they would be benefited or cured of such diseases, etc., and of inducing substantial portion of purchasing public, in such erroneous and mistaken beliefs, to buy substantial quantity of said preparation, and of unfairly diverting thereby trade to him from other individuals, concerns, etc., selling similar or like products and remedies, or those designed and intended for treatment of similar diseases, etc., but honestly and truthfully labeled and represented as to their efficiency in treatment thereof; to the substantial injury of competition in commerce:

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

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

Mr. John W. Hildrop for the Commission.

Mr. Frederick H. Drake, of Portland, Oreg., 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 J. H. Casey, an individual trading as J. H. Casey Company, has been or 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 to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, J. H. Casey, is an individual trading and doing business as J. H. Casey Company, with his principal place of business located at Portland, Oreg., and is engaged in the manufacture, sale, and distribution in interstate commerce of a certain product, medicine, or remedy known as "Casey's Compound", which he advertises in manner and form as hereinafter set out, as a cure, remedy, and treatment for rheumatism, arthritis, neuritis, and other related ailments, and which "Casey's Compound" when sold the respondent ships or causes to be shipped from his place of business in Portland, Oreg., to purchasers thereof located in States of the United States other than the State of Oregon. Respondent in the course and conduct of his said business was and is in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution in interstate commerce of products intended for similar uses.

PAR. 2. In the course and conduct of his said business, the said respondent, J. H. Casey, in soliciting the sale and selling of his said product, to wit, Casey's Compound, in interstate commerce, advertised same by means of pamphlets which he mailed and otherwise distributed in interstate commerce, in which his said product, Casey's Compound, was described, represented, advertised, and designated as follows, to wit: "Why suffer from rheumatism, neuritis, arthritis", and "Casey's Compound has brought lasting relief to hopeless sufferers when all other tried remedies had failed"; thereby implying and endeavoring to create the impression in the minds of those suffering from said diseases that his said product, Casey's Compound, was a good, proper, and efficient treatment or remedy for rheumatism, neuritis, and arthritis, and that it has brought and will bring relief to sufferers therefrom when all other remedies have failed, when in truth and in fact respondent's said product, Casey's Compound, has little if any therapeutic value in the treatment of rheumatism, neuritis, and arthritis and has not "brought lasting relief to hopeless sufferers when all other tried remedies had failed".

In advertising and representing its said product by means of the said pamphlets circulated in interstate commerce as aforesaid, the

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respondent made and makes the following statements and representations of and concerning his said product, Casey's Compound, as follows: "Rids the blood and system of toxic poisons, excess acidity, and stimulates the glands to normal functioning which then allows nature to build and keep up a healthy body"; "It (meaning his said product, Casey's Compound) improves the blood and its circulation, enabling the stomach, liver and kidneys to function naturally, supplying every internal organ with nature's own tonic"; "Not only stops an excess of uric acid from forming but aids in its removal"; and "Useful in treating bronchial asthma and eczema"; when in truth and in fact respondent's said product does not rid the blood and system of toxic poisons or excess acidity, nor does it stimulate the glands to normal functioning thereby allowing nature to build and keep up a healthy body, nor does it improve the blood and its circulation, thereby enabling the liver, kidneys, and stomach to function naturally, nor does it supply every internal organ with nature's own product, nor does it stop an excess of uric acid from forming, nor aid in its removal, and it is not useful nor has it much, if any, therapeutic value in the treatment of bronchial asthma and eczema.

In a certain other and later pamphlet which is distributed by respondent in interstate commerce, the following statements and representations are made of and concerning respondent's said product, to wit, Casey's Compound: "Casey's Compound has accomplished marvelous results in relieving certain forms of arthritis and various other rheumatic ailments, lumbago aches and pains", when in truth and in fact neither "marvelous" nor any other beneficial results have accrued to any person or persons afflicted with these ailments or diseases by the use of respondent's said product for arthritis, rheumatic ailments, lumbago aches and pains, and respondent's said product has little if any therapeutic value in the treatment thereof. The bottles and cartons in which said product was packed and shipped by respondent in interstate commerce, referred to said product as "Casey's Compound, An Alterative"; meaning thereby, in the use of the word "Alterative", a medicine or treatment which gradually induces a change and restores healthy functions without sensible evacuations, when in truth and in fact respondent's said product is not an alterative.

PAR. 3. The foregoing misrepresentations and exaggerations in advertisements published and distributed by respondent in manner and form as aforesaid in interstate commerce are calculated to and do have a tendency and capacity to and do mislead and deceive the public, and particularly that portion thereof which is suffering from the various diseases and ailments hereinbefore set out, by creating in the

minds of the public, and especially that portion of the public suffering with said diseases, the erroneous impression and belief that by purchasing and using respondent's said product, to wit, Casey's Compound, they will be benefitted or cured of said diseases and ailments; and also have the tendency and capacity to and do unfairly divert trade to respondent from other individuals, corporations, associations, and firms selling and distributing in interstate commerce similar or like products and remedies to that of respondent's Casey's Compound, but which are honestly and truthfully advertised and labelled by such competitors.

PAR. 4. The acts and things done as herein alleged by respondent are to the prejudice of the public and the competitors of respondent, 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 19th day of December 1935, issued and served its complaint in this proceeding upon the respondent, J. H. Casey, trading as J. H. Casey 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 said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hildrop, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Frederick H. Drake, attorney for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and brief in support of the complaint (respondent having filed no brief and having waived oral argument); and the Commission having duly considered the same, and being now 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, J. H. Casey, is an individual, trading and doing business as J. H. Casey Company, with his principal place of business located at Portland, Oreg. He is engaged in the manufacture, sale, and distribution, in interstate commerce, of a certain product, medicine or remedy known as "Casey's Compound", which he advertises, as hereinafter set out, as a cure, remedy, and treatment for rheumatism, arthritis, neuritis, and other related ailments. When orders are received for said "Casey's Compound", the respondent ships, or causes it to be shipped from his place of business in Portland, Oreg., to the respective purchasers thereof located in States of the United States other than the State of Oregon. Respondent, in the course and conduct of his said business was, and is, engaged in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale and distribution of products intended for similar use, in commerce among and between the various States of the United States.

PAR. 2. The respondent, J. H. Casey, is not a physician, has never studied medicine and does not know what constitutes a proper and suitable treatment or remedy for various ailments and diseases of the human body. He is, therefore, not competent to make a diagnosis and is not competent to prescribe for various ills and diseases, such as rheumatism, arthritis, neuritis, and other related ills.

PAR. 3. In the course and conduct of his business, the said respondent, J. H. Casey, in soliciting the sale of, and in selling his said product, to wit: "Casey's Compound," in interstate commerce, advertises same by means of pamphlets and other advertising literature which he mailed and still mails, and otherwise has distributed and still distributes in interstate commerce, in which he makes the following statements:

Why suffer from rheumatism, neuritis, and arthritis?

and:

Casey's Compound has brought lasting relief to hopeless sufferers when all other tried remedies had failed.

The purport, tenor, meaning, and implication of the foregoing words and phraseology in the said advertisements of the respondent are that the said product was, and is, a good, proper and efficient treatment or remedy for rheumatism, neuritis, and arthritis. In truth and in fact, respondent's said product "Casey's Compound" has little, if any, therapeutic value in the treatment of rheumatism, neuritis, and arthritis, and is not a proper, suitable, and efficient treatment or remedy for said diseases.

PAR. 4. In advertising and representing his said product "Casey's Compound" by means of the said pamphlets circulated in interstate commerce as aforesaid, the respondent, J. H. Casey, has made, and still is making, the following other statements and representations of and concerning his said product:

* * * rid the blood and system of toxic poisons, excess acidity, stimulate the glands to normal functioning which then allows nature to build and keep a healthy body. It (meaning his said product "Casey's Compound") improves the blood and its circulation, enabling the stomach, liver and kidneys to function normally, supplying every internal organ with nature's own tonic. Not only stops an excess of uric acid from forming, but aids in its removal. Useful in treating bronchial asthma and eczema.

The respondent has also made and continues to make the following representations concerning his said product, "Casey's Compound":

Useful in treating bronchial asthma and eczema.

The statements with reference to the efficacy of "Casey's Compound," as set out in this paragraph, serve as representations that the use of said product will rid the system of the user of toxic poison and excess acidity; that it will aid the user's glands to function naturally and enable nature to build up a healthy body; that its use will improve the blood and its circulation and thereby enable the stomach, liver and kidneys to function naturally; that said product supplies every internal organ of the human body with nature's own products; that it prevents an excess of uric acid from forming and aids in its removal; that it is useful and has therapeutic value in the treatment of bronchial asthma and eczema; and that it is a fit, suitable, proper, and efficient remedy or treatment for the maladies and diseases mentioned in this paragraph.

The use of said "Casey's Compound" does not rid the system of any toxic poison or excess acidity and its use does not aid glands to function naturally. The use of "Casey's Compound" does not improve the blood and its circulation so as to enable the stomach, liver, and kidneys to function naturally where said organs have not been previously functioning naturally. Said product does not supply any internal organ with nature's own product and it does not prevent an excess of uric acid or aid in the removal of said acid. It is not useful and it has no therapeutic value in the treatment of bronchial asthma and eczema and it is not a fit, suitable, proper, or efficient remedy or treatment for the various maladies or diseases listed herein.

PAR. 5. In the course and conduct of his said business, the respondent, J. H. Casey, in a certain other pamphlet which was, and is, distributed by respondent in interstate commerce, made and makes the

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following statements and representations of and concerning "Casey's Compound":

Casey's Compound has accomplished marvelous results in relieving certain forms of arthritis and various other rheumatic ailments, lumbago aches and pains.

In truth and in fact, neither "marvelous" nor any other beneficial results have accrued to any person or persons afflicted with various forms of arthritis, rheumatism or lumbago aches and pains through the use of "Casey's Compound" and said product is not a fit, suitable, proper or efficient remedy or treatment for said diseases or conditions.

PAR. 6. On the bottles and cartons in which said product of respondent was and is packed and shipped by respondent in interstate commerce, respondent heretofore has referred to and still refers to his said product "Casey's Compound" as "an alterative," meaning thereby that his said product is a medicine or treatment which gradually induces a change, and restores healthy functions without sensible evacuations, when in truth and in fact, respondent's said product "Casey's Compound" is not, nor has it ever been, an alterative.

PAR. 7. Respondent's said remedy, "Casey's Compound," is composed of the following ingredients:

Iodide of Potassium
Sarsaparilla
Oil of Wintergreen
Oil of Anise
Licorice
Sassafras and simple syrup

None of said ingredients, either used separately or in combination with each other, or all taken together as a combination, have the therapeutic value claimed and represented by the respondent in his advertising literature, as herein set out, and said ingredients, as above set out, do not constitute a fit, proper, or efficient treatment or remedy for any of the diseases or maladies of the human body claimed and represented by the respondent to be benefited or entirely relieved or cured through the use of "Casey's Compound."

PAR. 8. The foregoing misrepresentations and exaggerations, in advertisements published and distributed by respondent in manner and form as aforesaid, in distributing his product in interstate commerce, are calculated to, and do, have a tendency and capacity to, and do, mislead and deceive the public, and particularly that portion thereof which is suffering from the various diseases and ailments hereinbefore set out, by creating in their minds the erroneous impression and belief that by purchasing and using respondent's said product, "Casey's Compound," they will be benefited or cured of said diseases and ail-

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ments. A substantial portion of the purchasing public, acting on said erroneous and mistaken beliefs, induced by the representations of the respondent as aforesaid, have purchased a substantial quantity of respondent's product, "Casey's Compound." As a result thereof, trade has been unfairly diverted to the respondent from other individuals, corporations, associations, and firms selling and distributing, in commerce as hereinabove set out, similar or like products and remedies, or products and remedies designed and intended for the treatment of similar diseases, ailments, and conditions of the human body, but which are honestly and truthfully advertised, labeled, and represented as to their efficacy in the treatment of said diseases, ailments, and conditions. As a consequence thereof, substantial injury has been, and is now being, done by respondent to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondent, J. H. Casey, trading as J. H. Casey Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning 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 Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, brief in support of complaint filed herein (respondent not having filed brief in opposition to the complaint and having waived oral argument), and the Commission having made its findings as to the facts and its conclusion that the 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, J. H. Casey, as an individual, and trading as J. H. Casey Company, or trading under any other trade name, or otherwise, his representatives, agents, servants, and employees, in connection with the offering for sale, sale, and distribution of the product or remedy known as "Casey's Compound", or any product of substantially the same composition and ingredients

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sold under the name "Casey's Compound" or any other name, in interstate commerce, or in the District of Columbia, do cease and desist from representing through pamphlets, circulars, advertisements in newspapers, journals, magazines, or other publications or periodicals, radio broadcasts, or any other form of advertising, or in any other form or manner whatever:

(1) That said product is a cure, remedy or competent treatment for rheumatism, arthritis, neuritis, and other related ailments, or that said product has any therapeutic value in the treatment of said diseases and ailments;

(2) That said product has brought lasting relief to hopeless sufferers when all other tried remedies had failed;

(3) That said product rids the blood and system of toxic poison, excess acidity and stimulates the glands to normal functioning; that it improves the blood in its circulation and enables the stomach, liver, and kidneys to function naturally; that it supplies every internal organ with nature's own tonic; that it stops an excess of uric acid from forming and aids in its removal; and that it is useful or beneficial in treating bronchial asthma and eczema;

(4) That said product has accomplished marvelous results in relieving certain forms of arthritis and various other rheumatic ailments and lumbago aches and pains;

(5) That said product is an alterative;

(6) That persons suffering from any of the diseases, ailments and maladies, hereinabove numerated, will be benefited or afforded any relief by the use of said product as a remedy and treatment for said diseases, ailments and maladies.

It is further ordered, That the 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 this order.

Complaint

IN THE MATTER OF
FANNIE CHANOWITZ, TRADING AS ATLAS PRODUCTS
COMPANY

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

Docket 2668. Complaint, Dec. 23, 1935—Decision, Sept. 21, 1936

Where an individual engaged in sale through canvassing agents or salesmen of incandescent lamps, customarily demonstrated by them to prospective purchasers through comparing illumination thereof with that of lamps then in use by prospect and having same indicated wattage consumption—

- (a) Sold lamps, wattage consumption or measurement of which was greater than that indicated thereon, after allowing for four percent tolerance recognized in industry in legibly and durable marking, in accordance with established and universal custom among manufacturers and dealers, voltage and wattage on each and every incandescent lamp or bulb sold;

With result that prospective purchasers were thereby deceived and misled into believing that said individual's lamps were of same measurement or less, and produced more light, than lamps of competitors then in use by them, and to cause said customers to use such falsely labeled lamps and discard the truthfully labeled competitive products, and of thereby causing injury to competitors by diverting trade from them to said individual and causing purchasers to pay bigger light bills due to consumption by such falsely labeled lamps of more current than should have been consumed by them had their watt measurements been that labeled thereon; and

- (b) Sold her said lamps with such watt measurement stamped thereon in such a way that same was readily and easily rubbed off and became illegible; after ordinary handling, and it became impossible to determine, without test, what actual measurement of lamp was;

With result of destroying evidence which would have enabled said individual's competitors, in their endeavor to sell their products in competition with such falsely marked lamps, to convince customers or prospective customers of falsity of marking thereon:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. James I. Rooney for the Commission.

Mr. Herman B. J. Weckstein, of Newark, N. J., 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 Fannie