

Syllabus

IN THE MATTER OF

L. W. GIBSON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2766. Complaint, Apr. 15, 1936—Decision Sept. 22, 1936*

Where an individual engaged in sale and distribution of formulae and specifications for purpose of producing various products, such as cosmetics, toothpaste, hair tonic, etc., in commerce between and among the various States—

- (a) Falsely represented that he was educated in science of chemistry and had had several decades of experience in its commercial application and had devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for manufacture of his products, and had expended large sums of money in purchase of modern money-making formulae and expended large sums annually in obtaining and perfecting same and had been employed as consultant chemist and advisor to manufacturing trade for several years;
- (b) Falsely represented that he had a staff of associates who were graduates of leading American colleges and universities and possessed degrees from high institutions of learning and had had a great deal of practice and successful experience in devising formulae and manufacturing products and commodities, and had been employed because of their sound and thorough knowledge of chemistry and because they had demonstrated their ability to manufacture products successfully and teach other manufacturers every phase of successful and profitable production;
- (c) Falsely represented that he had in his establishment various departments consisting of laboratories especially equipped with modern apparatus, and that he was equipped to make analyses or develop special formulae, conduct chemical research investigations, and determine methods of salvaging waste materials;
- (d) Falsely represented that he was prepared to offer assistance to customers in securing patents on chemical processes or other subjects and had succeeded in helping exaggerated numbers of customers to establish profitable businesses, and guaranteed that his customers would make profits of \$50, or other exaggerated sums, per week; and
- (e) Falsely represented that he would give free, with orders in certain amounts, various books and pamphlets, seemingly products of establishment or of his mind, and that he had received a degree in philosophy and chemistry entitling him to use abbreviation "Ph. D." or word "Chemist" after his name, and that address "4700-4 N. Racine Avenue" was street address of his place of business, and that various telephone numbers were those of his establishment;

Facts being addressed in question was that of hotel in which he lived in a single room, and numbers listed were those of said hotel, and he had not

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received any such degree, been educated in chemistry, etc., and various statements and representations hereinbefore set forth were false;

With tendency and capacity to mislead and deceive substantial portions of purchasing public into erroneous belief that said representations were true, and with result that consuming public purchased substantial volume of his commodity, and trade was unfairly diverted to him from competitors engaged in sale of commodities of same kind and nature, and who truthfully advertised and represented character, quality, and results to be obtained from use thereof; to their substantial injury:

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. John Darsey for the Commission.

Nash & Donnelly, of Washington, D. C., 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 L. W. Gibson, an individual, hereinafter referred to as respondent, has been and now is 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. Respondent L. W. Gibson, an individual having his place of business at 4700 North Racine Avenue, Chicago, Ill., is now and for several years last past has been engaged in the sale and distribution of formulae and specifications for the purpose of producing or manufacturing various products, such as cosmetics, toothpaste, hair tonics, cleaning and polishing compounds, soap, food products, adhesives, rat exterminators, etc., in commerce between and among the various States of the United States, and in the course of sale and distribution of the aforesaid commodities causes the same to be transported to the purchasers thereof from his place of business in the city of Chicago, State of Illinois, into and through the various States of the United States other than the State of Illinois.

PAR. 2. Respondent in the sale and distribution of the aforesaid commodities has been and is now in competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution in commerce as herein set out of similar and like commodities, or commodities to be used for the same and similar purposes.

PAR. 3. In the course of his offering for sale and sale of his commodities as aforesaid, the respondent has caused and causes statements and representations to be made in advertisements, pamphlets, circulars, catalogues, and other printed matter, and on envelopes, published or distributed in the various States of the United States, to the following effect, gist, or meaning:

- (a) That the respondent was educated in the science of chemistry;
- (b) That he has had several decades of experience in its commercial application;
- (c) That he has devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for the manufacture of his products;
- (d) That respondent has been employed as a consultant chemist and advisor to the manufacturing trade for several years;
- (e) That respondent has expended large sums of money in the purchase of modern money-making formulae, and that he expends large sums annually in obtaining and perfecting the same;
- (f) That respondent has a staff of associates and that said associates are graduates of leading American colleges and universities, possessing degrees from high institutions of learning, and that they have had a great deal of practice and successful experience in the formation of formulae and the manufacture of products and commodities;
- (g) That said assistants have been employed because of their sound and thorough knowledge of chemistry, and for the reason that they have demonstrated their ability to manufacture products successfully and to teach other manufacturers every phase of successful and profitable production.
- (h) That respondent has in his establishment various departments consisting of laboratories especially equipped with modern apparatus;
- (i) That respondent is equipped to make analytical analyses or to develop special formulae, to conduct chemical research investigations and to determine methods of salvaging waste materials;
- (j) That he is prepared to offer assistance to customers in securing patents on chemical processes or other subjects;
- (k) That respondent has succeeded in helping exaggerated numbers of customers to establish profitable businesses;
- (l) That he guarantees that his customers will make profits of \$50.00 or other exaggerated sums per week;
- (m) That respondent will give free with orders in certain amounts various books and pamphlets which are seemingly the products of the establishment or mind of respondent;

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(n) That respondent has received a degree in philosophy and chemistry entitling him to use the abbreviation Ph. D., or the word "Chemist" after his name;

(o) That the address "4700-4 N. Racine Avenue" is the street address of his place of business and that various telephone numbers are numbers of his establishment.

PAR. 4. All of the representations and statements made by the respondent in the manner indicated in paragraph 3 hereof are false and untrue and have no foundation in fact. The respondent is not educated in the science of chemistry and has not had long experience in its commercial application; he has not devoted years to collecting, studying, devising, and perfecting practical working formulae and processes for products; he has not been employed as a consultant chemist and advisor to the manufacturing trade for many years; he has not expended large sums of money in the purchase of modern money-making formulae and has not expended large sums annually in developing and perfecting the same; he has had no associates who have taken an active part in his business and who are graduates of leading American colleges or universities or who hold degrees from high institutions of learning, and who have had practical business experience; he has had no chemists associated with him, nor any departments equipped with modern apparatus; he is not equipped to make analytical analyses or to conduct research investigations for the formulation and standardization of commercial products; he has not helped an exaggerated number of customers to realize upward of \$50.00 per week in their businesses, and he has no means of knowing or learning how much such customers make, if anything; he does not give free with purchases pamphlets or books which have been prepared by him or his establishment, but rather sends to customers pamphlets or books which have been prepared by other associations or governmental agencies, and which are available to customers for nominal prices; 4700-4 N. Racine Avenue, Chicago, Ill., is not the address of any establishment or laboratory maintained by respondent but rather it is the address of a hotel in Chicago wherein respondent lives in a single room, and the telephone numbers listed are not the telephone numbers of the place of business of respondent, but are the telephone numbers of said hotel; respondent has not received any degree which would entitle him to use the abbreviation "Ph. D.", or "Chemist", in connection with his name; respondent is not prepared to offer assistance to customers in securing patents on chemical processes or any other subjects; he is not equipped to conduct investigations which would reveal methods of salvaging waste material; he does not maintain an establishment having various departments and

laboratories equipped with modern apparatus, but rather, his entire business is conducted from a single room in a hotel in Chicago which is not equipped with any modern apparatus, not even a test tube.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondent in the manner hereinabove set out, were and are calculated to and have had and now have the tendency and capacity to mislead and deceive substantial portions of the purchasing public into the erroneous belief that said representations are true. As a direct consequence of the mistaken and erroneous beliefs induced thereby, the consuming public has purchased a substantial volume of respondent's commodities, with the result that trade has been unfairly diverted to the respondent from competitors engaged in selling commodities of the same kind and nature in commerce as hereinabove set out, and who truthfully advertise and represent the character, quality, and results to be obtained from the use of their said commodities. As a result thereof, substantial injury has been and is being done by respondent to competitors in commerce, as hereinabove set forth.

PAR. 6. The above acts and practices of respondent are to the injury and prejudice of the public and to competitors of respondent in interstate commerce 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 April 15, 1936, issued and served its complaint in this proceeding upon respondent, L. W. Gibson, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 24, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly con-

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sidered 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, L. W. Gibson, for several years last past has been engaged in the sale and distribution of formulae and specifications for the purpose of producing or manufacturing various products, such as cosmetics, tooth paste, hair tonics, etc., in commerce between and among the various States of the United States. His principal place of business is located at 4700 North Racine Avenue, Chicago, Ill. In the course of sale and distribution of the aforesaid commodities he causes the same when sold to be transported from the State of Illinois to purchasers thereof located in the various States of the United States.

PAR. 2. He has been and is in competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution in commerce, as herein set out, of similar and like commodities, or commodities to be used for the same similar purposes.

PAR. 3. In the offering for sale and sale of his commodities as aforesaid, the respondent has caused and causes statements and representations to be made in advertisements, pamphlets, circulars, catalogues, and other printed matter, published or distributed in the various States of the United States, to the following effect, gist, or meaning:

- (a) That the respondent was educated in the science of chemistry;
- (b) That he has had several decades of experience in its commercial application;
- (c) That he has devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for the manufacture of his products;
- (d) That respondent has been employed as a consultant chemist and advisor to the manufacturing trade for several years;
- (e) That respondent has expended large sums of money in the purchase of modern money-making formulae, and that he expends large sums annually in obtaining and perfecting the same;
- (f) That respondent has a staff of associates and that said associates are graduates of leading American colleges and universities, possessing degrees from high institutions of learning, and that they have had a great deal of practice and successful experience in the formation of formulae and the manufacture of products and commodities;
- (g) That said assistants have been employed because of their sound and thorough knowledge of chemistry, and for the reason that they

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have demonstrated their ability to manufacture products successfully and to teach other manufacturers every phase of successful and profitable production;

(h) That respondent has in his establishment various departments consisting of laboratories especially equipped with modern apparatus;

(i) That respondent is equipped to make analytical analyses or to develop special formulae, to conduct chemical research investigations, and to determine methods of salvaging waste materials;

(j) That he is prepared to offer assistance to customers in securing patents on chemical processes or other subjects;

(k) That respondent has succeeded in helping exaggerated numbers of customers to establish profitable businesses;

(l) That he guarantees that his customers will make profits of \$50.00 or other exaggerated sums per week;

(m) That respondent will give free with orders in certain amounts various books and pamphlets which are seemingly the products of the establishment or mind of respondent;

(n) That respondent has received a degree in philosophy and chemistry entitling him to use the abbreviation Ph. D., or the word "Chemist," after his name;

(o) That the address "4700-4 N. Racine Avenue" is the street address of his place of business and that various telephone numbers are numbers of his establishment.

PAR. 4. The representations and statements made by the respondent as set forth in paragraph 3 *supra* are false and untrue and have no foundation in fact. The respondent is not educated in science and chemistry and has not had long experience in its commercial application; he has not devoted years to collecting, studying, devising, and perfecting practical working formulae and processes for products; he has not been employed as a consultant chemist and advisor to the manufacturing trade for many years; he has not expended large sums of money in the purchase of modern, money-making formulae and has not expended large sums annually in developing and perfecting the same; he has had no associates who have taken an active part in his business and who are graduates of leading American colleges or universities or who hold degrees from high institutions of learning, and who have had practical business experience; he has had no chemist associated with him, nor any departments equipped with modern apparatus; he is not equipped to make analytical analyses or to conduct research investigations for the formulation and standardization of commercial products; he has not helped a number of customers to realize upwards of \$50 a week in their business and he has no means of knowing or learning how much such customers make,

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if anything; he does not give free with purchases, pamphlets or books which have been prepared by him or his establishment; 4700 Racine Avenue, Chicago, Ill., is not the address of any establishment or laboratory maintained by respondent, but is the address of a hotel in Chicago wherein the respondent lives in a single room; the telephone numbers listed are not the telephone numbers of the place of business of respondent but are the telephone numbers of said hotel; respondent has not received any degree which would entitle him to use the abbreviation "Ph. D.," or "Chemist," in connection with his name; respondent is not prepared to offer assistance to customers in securing patents on chemical processes or any other subjects; he is not equipped to conduct investigations which would reveal methods of salvaging waste materials; he does not maintain an establishment having various departments and laboratories equipped with modern apparatus, but rather his entire business is conducted from a single room in a hotel in Chicago which is not equipped with any modern apparatus, not even a test tube.

PAR. 5. All of the statements and representations made by the respondent in the manner hereinabove set out are calculated to and have had and now have the tendency and capacity to mislead and deceive substantial portions of the purchasing public into the erroneous belief that said representations are true. As the consequence of the mistaken and erroneous beliefs induced, the consuming public has purchased a substantial volume of the respondent's commodity, with the result that trade has been unfairly diverted to the respondent from competitors engaged in selling commodities of the same kind and nature in commerce, as hereinabove set out, and who truthfully advertise and represent the character, the quality, and results to be obtained from the use of their said commodities. Substantial injury thereby has been and is being done by respondent to competitors in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, L. W. Gibson, 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 and the answer of

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respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an 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 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, L. W. Gibson, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its formulae and specifications for the purpose of producing or manufacturing various products in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

That the respondent is educated in the science of chemistry; that he has had several decades of experience in its commercial application; that he has devoted several years to collecting, studying, devising, and perfecting practical working formulae and processes for the manufacture of his products; that respondent has been employed as a consultant chemist and advisor to the manufacturing trade for several years; that respondent has expended large sums of money in the purchase of modern money-making formulae, and that he expends large sums annually in obtaining and perfecting the same; that respondent has a staff of associates and that said associates are graduates of leading American colleges and universities, possessing degrees from high institutions of learning, and that they have had a great deal of practice and successful experience in the formation of formulae and the manufacture of products and commodities; that said assistants have been employed because of their sound and thorough knowledge of chemistry, and for the reason that they have demonstrated their ability to manufacture products successfully and to teach other manufacturers every phase of successful and profitable production; that respondent has in his establishment various departments consisting of laboratories especially equipped with modern apparatus; that respondent is equipped to make analytical analyses or to develop special formulae, to conduct chemical research investigations, and to determine methods of salvaging waste materials; that he is prepared to offer assistance to customers in securing patents on chemical processes or other subjects; that respondent has succeeded in helping exaggerated numbers of customers to establish profitable

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businesses; that he guarantees that his customers will make profits of \$50.00 or other exaggerated sums per week; that respondent will give free with orders in certain amounts various books and pamphlets which are seemingly the products of the establishment or mind of respondent; that respondent has received a degree in philosophy and chemistry entitling him to use the abbreviation Ph. D., or the word "Chemist" after his name; that the address "4700-4 N. Racine Avenue" is the street address of his place of business and that various telephone numbers are numbers of his establishment, unless and until such are the facts.

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
GARTEN TABLE PAD COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2732. Complaint, Feb. 28, 1936—Decision, Sept. 25, 1936*

Where a corporation engaged in manufacture of two styles of table pads of similar size, shape, and general appearance, more costly of which had a bottom covering or back composed of genuine felt, or wool fibers or wool and cotton materials, matted together in layers, compressed and shrunk, and less costly of which had inferior cotton bottom covering or back of duvetyn, velourette, or velveteen, and in sale thereof to retail stores in District of Columbia and some thirty States for resale to purchasing and consuming public—

Labeled as “felted back” miniature pads or samples of latter style or quality, left by it for exhibition on retail stores’ counters and display stands as basis for orders to be taken by retailer and forwarded to it for filling from its factory, along with “genuine felt” label samples of former, more costly style;

With capacity and tendency to confuse, mislead, and deceive substantial number of purchasing public into belief that said “felted back” pads were backed with genuine felt and with effect of causing such purchasing public to buy substantial quantities thereof in such erroneous belief, and of unfairly diverting thereby trade to it from competitors, who do not in any way misrepresent material or materials from which their said pads are made; to their substantial injury and prejudice:

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

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

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 Garten Table Pad Company, Inc., 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 the 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, Garten Table Pad Company, Inc., is a corporation organized, existing, and doing business under and by