

Syllabus

IN THE MATTER OF
JOHN H. MEYER, TRADING AS MED-DENTAL SYSTEMS
COMPANY

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

Docket 2798. Complaint, May 8, 1936—Decision, Oct. 19, 1936

Where a corporation engaged long and continuously in manufacture and sale of a professional accounting system, with desks, cabinets, books, and records specially designed for use by physicians and dentists, and which (1) included forms and charts in use for many years, (2) constituted result of a great amount of time, labor, research, and expenditure of money, (3) possessed features considered unique to such an extent that, observed in any professional accounting system, they were identified and considered as its own, and (4) had become well and favorably known by name to the purchasing trade and consuming public through wide advertising by it in medical and dental journals, and other like media; and thereafter a business, consisting, as originally organized of two partners, and eventually carried on by one of said individuals, and organized to manufacture, sell, and distribute accounting systems especially designed for physicians and dentists, and patterned as closely in every detail as possible on aforesaid well known system, with which one of said partners was familiar by virtue of prior employment with corporate proprietor thereof, hereinabove referred to—

Copied in every detail aforesaid system, including forms for operation thereof, sample equipment for use in selling same and materials generally, from samples and forms obtained by said former employee from system itself, and placed on the market, after so copying and patterning the other, a system of professional accounting for doctors and dentists, which was its exact copy, and copied said other company's sales promotional literature, and also the desks and cabinets which housed its system, as to size, shape, arrangement and general appearance, and offered and sold its said system in substantial competition with said corporation first named, to physicians and dentists in cities, towns, and communities throughout the United States;

With result of unfairly diverting trade from said corporation to it, and of securing for it an undue advantage over competitors by appropriating the result of said corporation's research, ingenuity, labor, and expenditures, and with capacity and tendency to mislead and deceive the purchasing public into erroneous belief that in buying its professional accounting system they were purchasing the well known McCaskey System, and of causing them to buy same on account of such erroneous belief, thus engendered; to the substantial injury of competition in commerce:

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

Complaint

23 F. T. C.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Albert R. Hoffman, of Cincinnati, Ohio, 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 John H. Meyer, trading as Med-Dental Systems Company, 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, John H. Meyer, is an individual trading under the name and style of Med-Dental Systems Company, with his principal office and place of business located at 1015 Schmidt Building, Cincinnati, Ohio, and is now, and has been for more than two years last past, engaged in the business of selling and distributing to members of the purchasing public in commerce, as herein set out, professional accounting systems.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said accounting systems, when sold by him, to be transported from his office and principal place of business in the State of Ohio and from points in the State of Indiana, to purchasers thereof located in the various States of the United States other than the States of Ohio and Indiana, and in the District of Columbia. There is now, and has been at all times since the respondent has been in business as aforesaid, a constant current of trade and commerce in said accounting systems so distributed and sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of his business, is now and has been at all times mentioned herein, engaged in substantial competition with other individuals and with corporations, firms, and partnerships engaged in commerce among the various States of the United States and in the District of Columbia in the sale and distribution of similar professional accounting systems.

PAR. 4. The McCaskey Register Company is a corporation organized, existing, and doing business under and by virtue of the State of Ohio, with its principal office and place of business located at Alli-

ance, in that State. It is now, and has been continuously since the year 1909 engaged in the manufacture of professional accounting systems, including desks, cabinets, books, and records specially designed for use by physicians and dentists as an accounting system, and in the sale and distribution of said products in commerce between and among the various States of the United States, and causes said professional accounting systems, forms, and records, when sold by it, to be transported from its office and principal place of business in the State of Ohio to purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. In the sale and distribution of said products, the said McCaskey Register Company is in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

The professional accounting system sold and distributed by the McCaskey Register Company is designed to carry the current or active accounts of the doctor or dentist, unpaid accounts, and includes forms for carrying information concerning the physical condition of each patient, together with the status of the patient's account, and a case history of such patient. In addition thereto, the said McCaskey Register Company has developed for use by the doctor or dentist certain other forms pertaining to the services rendered the patient by the doctor or dentist. The professional accounting system of the McCaskey Register Company has certain distinct features which are as follows:

"one writing", "three relationship", "visibility", "pocketbook", "monthly account book", "announcement" and "collection system".

All of these features are well and favorably known to the members of the medical and dental professions and are, by such members, considered unique parts of the "McCaskey System", to such an extent that when such features are observed in any professional accounting system they are identified and considered as features of the "McCaskey System" and that such system is a McCaskey professional accounting system.

The forms and charts used in accomplishing the purposes for which the "McCaskey System" is designed have been in use since the year 1909. The "McCaskey System" of professional accounting for doctors and dentists, which has been manufactured and sold as aforesaid since the year 1909, is the result of a great amount of time, labor research, and expenditure of money, and is a singularly unique system. During all of the time since the creation of the "McCaskey

Complaint

23 F. T. C.

System", it has been widely advertised by the McCaskey Register Company, both by description and illustrations in medical and dental journals, magazines, newspapers, and other like advertising media, to such an extent that it has become, and now is, well and favorably known to the trade and consuming public as the "McCaskey System".

PAR. 5. The business conducted under the name Med-Dental Systems Company was originally organized in the month of October 1934 as a copartnership composed of respondent, John H. Meyer, and one Victor T. Griswold. It was organized to manufacture, sell, and distribute accounting and bookkeeping systems especially designed for physicians and dentists. The partnership was dissolved in May 1935 since which date the company has been exclusively operated by respondent, John H. Meyer. The purpose of establishing Med-Dental Systems Company was to manufacture and sell in commerce, as aforesaid, a professional accounting system patterned as closely in every detail as possible from the well-known "McCaskey System". Victor T. Griswold, prior to the organization of the respondent company, was in the employ of the McCaskey Register Company. In the course of his employment with McCaskey Register Company, Griswold became familiar with the forms and system of McCaskey. After the formation of Med-Dental Systems Company, from samples and forms obtained by Griswold from the McCaskey Register Company's system, the Med-Dental System copied in every detail the "McCaskey System", including the forms for the operation of the system, sample equipment for use in selling the system and materials generally. After so copying and patterning the well known "McCaskey System", the respondent placed on the market and sold and still sells and distributes in commerce, as aforesaid, a system of professional accounting for doctors and dentists which is an exact copy of the well-known "McCaskey System". Moreover, the respondent likewise copied the sale promotional literature of the McCaskey Register Company. The desks and cabinets of the respondent, which house the system of accounting, have been copied in size, shape, arrangement and general appearance from the "McCaskey System", and are sold and distributed as herein set out.

Respondent offers to sell and sells his accounting system, hereinabove described, to physicians and dentists in cities, towns, and communities throughout the United States and comes in substantial competition with McCaskey Register Company in such offers and sales.

PAR. 6. The identity of design and plan of respondent's professional accounting system with the "McCaskey System" of the McCaskey Register Company has the capacity and tendency to unfairly divert, and has resulted in unfairly diverting, trade from the McCaskey

Register Company to the respondent, and the practices of respondent in constructing its accounting system of the same design and plan as that of the McCaskey Register Company has had the effect of securing, and does secure, for respondent an undue advantage over competitors by appropriating the results of the McCaskey Register Company's research, ingenuity, labor, and expenditures. The acts and practices of respondent, in appropriating to himself the identical features of the "McCaskey System" in the sale and distribution thereof, as aforesaid, have the capacity and tendency to confuse, mislead, and deceive the consuming public into the erroneous belief that when purchasing respondent's professional accounting system they are purchasing the well-known "McCaskey System", and to cause them to purchase said professional accounting system of respondent on account of such erroneous belief engendered. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The acts and practices of respondent, as above set forth, are all to the prejudice of the public and to 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."

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 8th day of May 1936, issued and served its complaint in this proceeding upon respondent, John H. Meyer, trading as Med-Dental Systems 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 (respondent did not file answer) testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before Robert S. Hall an examiner for the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Albert R. Hoffman, attorney for the respondent; and said testimony and other 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, testimony and other evidence, and

brief in support of the complaint (respondent did not file brief), the oral arguments of the counsel as aforesaid having been waived, 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. Respondent John H. Meyer, is an individual formerly trading under the name and style of Med-Dental Systems Company, with his principal office and place of business located at Cincinnati, Ohio. For several months prior to January 1, 1936, respondent was engaged in the business of selling and distributing to members of the purchasing public in commerce, as herein set out, professional accounting systems.

PAR. 2. The respondent, being engaged in business as aforesaid, caused said accounting systems, when sold by him, to be transported from his office and principal place of business in the State of Ohio and from points in the State of Indiana, to purchasers thereof located in the various States of the United States other than the States of Ohio and Indiana. During all the time respondent was engaged in business, as aforesaid, there was a constant current of trade and commerce in said accounting systems so distributed and sold by the respondent, between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of his business, was engaged in substantial competition with other individuals and with corporations, firms and partnerships engaged in commerce between and among the various States of the United States in the sale and distribution of similar professional accounting systems.

PAR. 4. The McCaskey Register Company is a corporation organized, existing and doing business under the laws of the State of Ohio, with its principal office and place of business located at Alliance, in said State. It is now, and has been continuously since the year 1909, engaged in the manufacture of professional accounting systems, including desks, cabinets, books, and records specially designed for use by physicians and dentists as an accounting system, and in the sale and distribution of said products in commerce between and among the various States of the United States, and causes said professional accounting systems, forms and records, when sold by it, to be transported from its office and principal place of business in the State of Ohio to purchasers thereof located in the various States

of the United States other than the State of Ohio. In the sale and distribution of said products, the said McCaskey Register Company is in substantial competition with other corporations and with individuals, firms and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products. The professional accounting system sold and distributed by McCaskey Register Company is designed to carry the current or active accounts of the doctor or dentist, unpaid accounts, and includes forms for carrying information concerning the physical condition of each patient, together with the status of the patient's account, and the case history of such patient. The professional accounting system of the McCaskey Register Company has certain distinct features, which are as follows:

"one writing", "three relationship", "visibility", "pocketbook",
"monthly account book", "Collection system".

All of these features are well and favorably known to members of the medical and dental professions and are, by such members, considered unique parts of the "McCaskey System", and to such an extent that when such features are observed in any professional accounting system they are identified and considered as features of the "McCaskey System".

The forms and charts used in accomplishing the purposes, for which the "McCaskey System" is designed, have been in use since the year 1909. The "McCaskey System" of professional accounting for doctors and dentists, which has been manufactured and sold as aforesaid since the year 1909, is the result of a great amount of time, labor, research, and expenditure of money, and is a unique system. Since the creation of the "McCaskey System" it has been widely advertised by the McCaskey Register Company, both by description and illustration in medical and dental journals, magazines, newspapers, and other like advertising media, and to such an extent that it has become, and now is, well and favorably known to the purchasing trade and consuming public as the "McCaskey System".

PAR. 5. The business conducted under the name Med-Dental Systems Company was originally, organized during the month of October 1934, as a copartnership composed of respondent, John H. Meyer, and one Victor T. Griswold. It was organized to manufacture, sell, and distribute accounting systems especially designed for physicians and dentists. The partnership was dissolved in May 1935, and from that date until on or about January 1, 1936, the business of Med-Dental Systems Company was exclusively operated by respondent, John H. Meyer. On or about January 1, 1936, the

respondent, John H. Meyer, sold his stock and trade, including desks, cabinets, and records, and since that date has not engaged in such business. The purpose of establishing Med-Dental Systems Company was to manufacture and sell in commerce, as aforesaid, a professional accounting system patterned as closely in every detail as possible from the well-known "McCaskey System". Victor T. Griswold, prior to the organization of the respondent company, was in the employ of the McCaskey Register Company, and in the course of said employment the said Griswold became familiar with the forms and system generally of the "McCaskey System" of the McCaskey Register Company. After the formation of Med-Dental Systems Company, from samples and forms obtained by Griswold from the McCaskey Register Company's system, the Med-Dental Systems Company, composed of the respondent and said Griswold, copied in every detail the "McCaskey System", including the forms for the operation of the system, sample equipment for use in selling the system and materials generally. After so copying and patterning the "McCaskey System" the respondent placed on the market and sold, until on or about January 1, 1936, in commerce, as aforesaid, a system of professional accounting for doctors and dentists, which was an exact copy of the well-known "McCaskey System". Moreover, the respondent likewise copied the sales promotional literature of the McCaskey Register Company. The desks and cabinets of the respondent, which house the system of accounting, were copied in size, shape, arrangement and general appearance from the "McCaskey System", and were sold and distributed as herein set out.

Respondent offered to sell and sold his accounting system to physicians and dentists in cities, towns and communities throughout the United States, and came in substantial competition with McCaskey Register Company in such offers and sales.

PAR. 6. The identity of design and plan of respondent's professional accounting system with the "McCaskey System" of the McCaskey Register Company had the capacity and tendency to unfairly divert, and did result in unfairly diverting trade from the McCaskey Register Company to the respondent. The practices of respondent in constructing its system of the same design and plan of the McCaskey Register Company had the effect of securing and did secure for respondent an undue advantage over his competitors by appropriating the results of the McCaskey Company's research, ingenuity, labor, and expenditures. The aforesaid acts of respondent had the capacity and tendency to mislead and deceive the purchasing public

617

Order

into the erroneous belief that when purchasing respondent's professional accounting system they were purchasing the well-known "Mc-Caskey System", and too caused them to purchase said accounting system of respondent on account of such erroneous belief engendered as set forth. As a result thereof, substantial injury was done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, John H. Meyer trading as Med-Dental Systems 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, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of the Commission filed herein (respondent having filed no brief and not having requested oral argument), 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, John H. Meyers trading as Med-Dental Systems Company, or trading under any other name, his agents, representatives, servants, and employees in connection with the offering for sale, sale, and distribution of professional accounting systems in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using blank forms, cards, indexes, sales kits or other materials so simulating in appearance, the blank forms, cards, indexes or other materials of McCaskey Register Company, or of any other competitor or competitors as to have, or which may have, the capacity or tendency to deceive the purchasing public into the belief that such blank

Order

23 F. T. C.

forms, cards, indexes, sales kits or other materials, or the accounting systems of which they are a part, are the blank forms, cards, indexes, sales kits or other materials or system of McCaskey Register Company or of said other competitor or competitors of respondent.

It is further ordered, That the respondent shall, within 30 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.

Syllabus

IN THE MATTER OF
QUALITY PRODUCTS 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 2347. Complaint, Sept. 10, 1936¹—Decision, Oct. 19, 1936

Where a corporation, engaged in the manufacture, distribution, and sale of a line of cosmetics, including sets of creams and cleansers designated by it as "Hormonique Glandular Skin Treatment," consisting of the "Hormonique Liquid Skin Cleanser," "Hormonique Finishing Cream," and "Unguent Hormonique"; in advertising said treatment in newspapers and periodicals of general circulation throughout the United States, and by means of advertising folders and literature circulated to its customers and prospective customers—

Falsely represented that such treatment would penetrate and nourish the skin, so that crows' feet and wrinkles would disappear, and that such penetration would give new vigor and elasticity to sagging muscles and eliminate old-looking chin and neck lines, thereby giving the face youthful contour, and that it would reactivate countless tiny glands underneath the skin's surface and banish blackheads, whiteheads, and enlarged pores, through such statements as: "When wrinkles, crows' feet, and sagging muscles appear, it is a sign that the glands are not functioning properly. * * * In order to effect a true correction of the condition, the Hormone Producing Gland must be stimulated back into action. It is with pride, therefore, that we announce that this truly amazing result has been accomplished by the new discovery—'Unguent Hormonique.' * * * Contains the essence of genuine gland secretions—Hormones, Dermine, and Vitamins * * * carefully selected for their ability to stimulate your own skin glands to supply the skin with the natural nourishment it needs to make it velvety smooth, etc. * * * The vital gland substances in this product are completely absorbed by the skin. These essentials awaken and reactivate those countless tiny glands underneath the skin surface," etc.;

The facts being that the said treatment would not penetrate the skin with the result that it would be nourished, crows' feet and wrinkles disappear, etc., reactivate Hormone producing glands, or reactivate countless tiny glands underneath the skin surface, etc., and said various representations made by it with respect to the nature and effect of its product when used were grossly exaggerated, false, misleading, and untrue;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and with the result that a number of the consuming public purchased a substantial volume of its said product, and trade was unfairly diverted to it from those likewise engaged in the sale of cosmetics who truthfully advertise their products; to the substantial injury of competition in commerce:

¹ Amended and supplemental.