

Complaint

IN THE MATTER OF

C. G. HYRE, TRADING AS THE PEPSOTALIS COMPANY

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

Docket 2977. Complaint, Nov. 10, 1936—Decision, Dec. 19, 1936

Where an individual engaged in the compounding of a medicinal preparation called "Pepsotalis," and in the sale thereof to the drug trade—

Represented, on the containers thereof and in radio broadcasts, that his said preparation was an intestinal antiseptic and very helpful in cases of indigestion, acidity, and stomach disorders in general, and afforded quick relief in such cases, and had brought relief to countless numbers suffering from stomach trouble, and read and caused to be read purported letters from users thereof in which they were represented as stating that it had cured them or given them permanent relief from different forms of such trouble, notwithstanding fact it was nothing more than an antacid, whose only therapeutic effect was to decrease, temporarily, gastric hyperacidity;

With capacity and tendency to mislead and deceive purchasers into the erroneous and mistaken belief that said product was a competent intestinal antiseptic, and adequate and satisfactory remedy or treatment for indigestion and stomach troubles, and into the purchase thereof by reason of such belief, and with result that trade was unfairly diverted to him from those competitors who do not misrepresent the quality and character or effectiveness of their respective products; to the 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.

Mr. Robt. N. McMillen 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 C. G. Hyre, 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, C. G. Hyre is now, and has been for more than one year last past, doing business under the name and style of the Pepsotalis Company, with his principal place of business at Morgantown, W. Va. He is and has been engaged in the business of compounding and selling to the drug trade a medicinal preparation called Pepsotalis. Pursuant to such sales, and as a part thereof, respondent

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ships and has shipped said preparation from his place of business aforesaid through and into various States of the United States to the purchasers thereof.

PAR. 2. On the container in which such medicinal preparation is packed by respondent it is represented that it is an intestinal anti-septic and that it will be found very helpful in cases of indigestion, gas, acidity, belching, heart burn, sour stomach, and stomach disorders in general; that it is a quick relief for indigestion.

For the purpose and with the effect of creating consumer demand for his said preparation and induce the wholesalers and retailers of drugs and remedies to purchase the same for resale to the public, respondent has, in radio broadcasts over various stations, during the year 1936, represented and caused to be represented, in substance, that his said medicinal preparation gives relief in cases of stomach trouble in any form; that it has brought relief to countless numbers suffering from stomach trouble. That during such radio broadcasts he has read and caused to be read what purported to be letters from users of said medicinal preparation, in which they were represented to state that Pepsotalis had cured them, or had given them permanent relief, from different forms of stomach trouble.

PAR. 3. In truth and in fact respondent's said medicinal preparation is nothing more than an antacid and its only therapeutic effect can be and is to decrease temporarily gastric hyperacidity. It is not and cannot be of benefit in any other form of stomach ailment. It is not of benefit in cases of indigestion and is not a corrective in cases of stomach trouble except as an antacid as above alleged.

PAR. 4. There are, and have been at all times hereinabove mentioned, in the United States other persons, partnerships, and corporations engaged in the sale to the drug trade and public of remedies for various stomach ailments and, pursuant to such sales and as a part thereof, in shipping the same to purchasers thereof in States other than the States of the origin of such shipments. With such persons, partnerships, and corporations respondent is and has been in active, substantial competition, and respondent's said misrepresentations have had and have the capacity, tendency, and effect of diverting business to respondent from such competitors, to the substantial injury of said competitors and to the prejudice of the public interest.

PAR. 5. The said misrepresentations made by respondent in the sale of his medicinal preparation, as aforesaid, constitute unfair methods of competition in commerce within the intent and meaning of the 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 10th day of November 1936, issued and served its complaint in this proceeding upon respondent, C. G. Hyre, trading as The Pepsotalis Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 5, 1936, the respondent filed his answer in which answer he admitted all the material allegations of the complaint to be true and stated that he 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 him 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 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, C. G. Hyre is now, and for more than one year last past has been, doing business under the name and style of The Pepsotalis Company, with his principal place of business at Morgantown, W. Va. He is, and has been, engaged in the business of compounding and selling to the drug trade for resale a medicinal preparation called "Pepsotalis." Pursuant to such sales, and as a part thereof, he ships and has shipped said preparation from his place of business at Morgantown to the purchasers thereof located in various States of the United States.

PAR. 2. During all the time respondent has offered for sale and sold his said medicinal preparation there have been in the United States other persons, partnerships, and corporations engaged in the sale, to the drug trade and to the public, of remedies for various stomach ailments, and who, pursuant to such sales and as a part thereof, have shipped the same to purchasers thereof located in various States of the United States other than the States of the origin of such shipments. With these persons, partnerships, and corporations respondent has been and is in active and substantial competition.

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PAR. 3. The container in which such medicinal preparation is packed by respondent carries the representation that it is an intestinal antiseptic and that it will be found very helpful in cases of indigestion, gas, acidity, belching, heartburn, sour stomach, and stomach disorders in general, and that it is a quick relief for indigestion.

PAR. 4. For the purpose and with the effect of creating consumer demand for his said preparation and of inducing wholesalers and retailers of drugs and remedies to purchase his said preparation for resale to the public, respondent has, during the year 1936, represented and caused to be represented in radio broadcasts over various broadcasting stations that his said medicinal preparation gives relief in cases of stomach trouble in any form; and that it has brought relief to countless numbers suffering from stomach trouble. As a part of such radio broadcasts he had read and caused to be read, from time to time, what purported to be letters from users of said medicinal preparation in which they were represented to state that "Pepsotalis" had cured them or had given them permanent relief from different forms of stomach trouble.

PAR. 5. Respondent's medicinal preparation is nothing more than an antacid whose only therapeutic effect is to decrease, temporarily, gastric hyperacidity. It cannot be a corrective to any extent except to reduce, temporarily, gastric hyperacidity.

PAR. 6. The acts and practices of the respondent in falsely representing that said product "Pepsotalis" is a competent intestinal antiseptic and that it constitutes an adequate treatment in cases of indigestion and stomach disorders in general have had, and now have, the capacity and tendency to mislead and deceive the purchasers into the erroneous and mistaken belief that said product is a competent intestinal antiseptic and is an adequate and satisfactory remedy or treatment for indigestion and stomach disorders, and into the purchase of respondent's said product on account of such belief. As a result thereof, trade has been unfairly diverted to the respondent from those competitors who do not misrepresent the quality and character or effectiveness of their respective products. In consequence thereof, injury has been done by the respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, C. G. Hyre, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the

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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 filed herein on December 5, 1936, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, C. G. Hyre, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a medicinal preparation designated by respondent as "Pepsotalis," or any other product of substantially the same composition and ingredients, or having the same therapeutic properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, either in the form of assertions by himself or by repeating the words or statements, or what purport to be the words or statements, of others:

1. That said preparation is an intestinal antiseptic;
2. That said product constitutes a relief for indigestion;
3. That the use of said product will be beneficial in cases of stomach disorders in general;
4. That said product will bring relief or has brought relief to sufferers from stomach trouble;
5. That said product possesses any therapeutic qualities which beneficially affect any maladies or conditions of the human body except a temporary reduction of gastric hyperacidity.

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

IN THE MATTER OF

D. GOLDENBERG, INC., AND FRANK RABINOWITZ, TRADING AS NOVELTY SWEETS COMPANY.¹

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

Docket 2808. Complaint, May 16, 1936—Decision, Dec. 21, 1936

Where an individual engaged in purchase of various types of candies and in assembling thereof into assortments which involved a lottery or chance feature when sold and distributed to ultimate consumers, and which consisted of a number of penny pieces of chocolate-covered candy of uniform size and shape, some of the enclosed concealed centers of which had colors differing from color of the majority thereof, and chance selection of which entitled recipient to certain larger pieces of candy and other articles of merchandise included therewith—

Sold said assortments to wholesalers, jobbers, and retailers, together with explanatory display cards for retailers' use, so assembled and packed that they might be and were displayed and sold by retail dealers to the consuming and purchasing public as hereinbefore described, and with knowledge and intent that, without alteration, addition or rearrangement, they might thus be resold to public by lot or chance by such retail dealers, and through use of such a lottery or gaming device, in violation of public policy:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Alfred M. Roth and *Mr. Isaac Ash*, of Philadelphia, Pa., for D. Goldenberg, Inc.

Mr. Lester L. Dolfman, of Philadelphia, Pa., for Frank Rabinowitz.

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 D. Goldenberg, Inc., a corporation, and Frank Rabinowitz, an individual, trading as Novelty Sweets Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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:

¹ Dismissed as to D. Goldenberg, Inc.