

Complaint

IN THE MATTER OF
PRATT FOOD COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2964. Complaint, Nov. 2, 1936—Decision, Dec. 23, 1936*

Where a corporation engaged in the manufacture, sale and distribution of "Pratt's 'Split-Action' N-K Capsules" for poultry—

Falsely represented, in pamphlets, labels attached to containers of product, and in advertisements in newspapers and periodicals and otherwise, that said product, fed to fowls, would destroy all worms or parts thereof and tapeworm heads with which the fowls were infested, through such statements as " * * * worms your bird as thoroughly as though you gave each fowl two treatments," "Stop wasting money on treatments that get only a few * * *," and " * * * the best tapeworm destroyer";

With capacity and tendency to mislead and deceive purchasers of its product into the belief that the same, bought by them, would accomplish aforesaid results, and with effect of causing a substantial number of the purchasing public to buy its said product on account of the mistaken and erroneous belief thus induced, and of unfairly diverting thereby trade to it from many competitors who make and distribute products designed for similar uses without misrepresenting the capacities or effects thereof:

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

Mr. T. H. Kennedy 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 Pratt Food Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania with its principal place of business at 126 Walnut Street in the city of Philadelphia in said State. Respondent is now and for more than three years last past has been engaged in the compounding and manufacture for sale of the product designated by it

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"Pratt's 'Split-Action' N-K Capsules," and in the sale thereof in commerce between and among the various States of the United States and the District of Columbia, and causes and has caused said product when sold by it to be transported in interstate commerce from its place of business in the State of Pennsylvania and from other States of the United States to purchasers thereof located in various States of the United States other than the State of origin of the shipment and in the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent is now and has for more than three years last past been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture for sale, sale, and distribution of products in interstate commerce between and among the various States of the United States and the District of Columbia used for purposes similar to purposes for which respondent's "Pratt's 'Split-Action' N-K Capsules" are represented by respondent to be efficacious, and competitors in interstate commerce have truthfully represented and now truthfully represent the properties, capacities and effects of their said products.

PAR. 3. In the course and conduct of its said business as hereinabove described the respondent in soliciting the sale of and selling in interstate commerce "Pratt's 'Split-Action' N-K Capsules," in advertising said product by pamphlets, labels attached to the containers thereof, newspapers, periodicals, magazines, and otherwise, has made many extravagant, deceptive, misleading and false statements regarding the therapeutic value, efficacy, and effect of its said product among which is the following:

One "Split-Action" capsule worms your bird as thoroughly as though you gave each fowl two treatments * * * Stop wasting money on treatments that get only a few of the worms * * * Kamala is the best tapeworm destroyer.

PAR. 4. In truth and in fact respondent's representations as set forth in paragraph 3 hereof, and respondent's advertisements and representations in pamphlets, labels attached to containers of respondent's said product, newspapers, periodicals, magazines, and otherwise, are extravagant, false, misleading, and deceptive in the following respects:

The representations quoted in paragraph 3 are made in such a way that purchasers and prospective purchasers of respondent's product are led to believe that respondent's said product when fed to fowls will destroy all worms and all parts of worms, including tapeworm heads, with which the fowls may be infested, whereas respondent's

said product "Pratt's 'Split-Action' N-K Capsules" will not when fed to fowls destroy all worms or all parts of worms, including tape-worm heads, with which the fowls may be infested.

PAR. 5. Respondent's advertising and representations hereinabove described have had and still have a tendency and capacity to and do mislead and deceive the purchasing public regarding the therapeutic value, efficacy, and effect of "Pratt's 'Split-Action' N-K Capsules," and further, as a direct consequence of the deceptive acts and representations of respondent and mistaken beliefs induced by said acts, as herein set out, the purchasing public has purchased respondent's "Pratt's 'Split-Action' N-K Capsules" with the result that trade has been unfairly diverted to respondent from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties of their respective products and the results which may be expected to be obtained from the use thereof. As a result thereof substantial injury has been and now is 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. 6. The acts, practices and representations of the respondent hereinabove set forth have been and are all to the injury and prejudice of the public and to the competitors of the respondent in interstate commerce, and have constituted and now 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 November 2, 1936, issued, and on November 4, 1936, served its complaint in this proceeding upon respondent, Pratt Food Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all intervening procedure, which substitute

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answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel 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. For more than three years last past the respondent, Pratt Food Company, a corporation, has been organized and existing as a corporation under the laws of the State of Pennsylvania, and has maintained during all of said time, and now maintains, its principal place of business at 126 Walnut Street, in the city of Philadelphia, Pa.

PAR. 2. For more than three years last past the respondent has been engaged in the manufacture, sale, and distribution of a product sold by it under the trade name "Pratt's 'Split-Action' N-K Capsules." This product has been sold by the respondent to various firms, persons, associations, or corporations located not only in the State of Pennsylvania but in other States of the United States, and after sales have been consummated the respondent has shipped the purchased goods, or caused them to be shipped, from respondent's place of business in Philadelphia, Pa., or from other States, to purchasers thereof located in States other than the State of Pennsylvania or other than the State of origin of the shipment. The respondent has maintained a constant current of trade and commerce between and among various States of the United States and the District of Columbia in the sale and distribution of its said product during all of the time referred to herein.

PAR. 3. The respondent, during all of the time herein referred to, has represented that its product, "Pratt's 'Split-Action' N-K Capsules" is an efficient remedy for certain diseases of poultry, and has recommended that its said product be fed to poultry, and has represented that when it is so used results will be achieved, as hereinafter more fully set forth, which will be greatly beneficial to the purchasers of said product.

PAR. 4. There are other corporations, individuals, associations, and partnerships engaged in similar business to that of the respondent, to wit: the sale and distribution of products which will relieve poultry from worm infestation. Said other corporations, individuals, associations, and partnerships have been and are engaged in

commerce among and between the various States of the United States in said business. The respondent, during all of the aforesaid time, was, and still is, in competition in such commerce in the sale of the said "Pratt's 'Split-Action' N-K Capsules" with such other corporations, individuals, associations, and partnerships likewise engaged in the sale and distribution of products having an efficacy similar to that claimed by the respondent for "Pratt's 'Split-Action' N-K Capsules."

PAR. 5. In soliciting the sale of its product respondent has continuously, during all of the aforesaid time, represented by pamphlets, labels attached to containers of the product, advertisements inserted in newspapers, periodicals and magazines, and otherwise, as follows: "One 'Split-Action' Capsule worms your bird as thoroughly as though you gave each fowl two treatments"; "Stop wasting money on treatments that get only a few of the worms"; and "Kamala is the best tapeworm destroyer." These representations have been made through advertising mediums and otherwise, and have been caused by respondent to be circulated to customers and prospective customers residing in the various States.

PAR. 6. As a matter of fact, respondent's said product, "Pratt's 'Split-Action' N-K Capsules," when fed to fowls, will not destroy all worms or all parts of worms, including tapeworm heads, with which the fowls are infested.

PAR. 7. There is a preference among members of the purchasing public, located in various States of the United States, of a product that will, when fed to fowls, destroy all worms and all parts of worms, including tapeworm heads, with which the fowls may be infested, and the foregoing representations by the respondent describe a product that members of the public desire to purchase. The representations made by the respondent above referred to have the capacity and tendency to mislead and deceive the purchasers of its product into believing that when they purchase said product they will obtain a product that will, when fed to fowls, destroy all worms and all parts of worms, including tapeworm heads, with which the fowls may be infested.

PAR. 8. The representations of the respondent as aforesaid have had, and do have, the tendency and capacity and effect of causing a substantial number of the purchasing public to buy respondent's product on account of the mistaken and erroneous belief induced by respondent's representations.

PAR. 9. There are many of the competitors of respondent who manufacture and distribute products designed for similar usage to

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that sold and distributed by the respondent in various States of the United States who do not misrepresent the capacities or effects of their products.

Respondent's acts and practices are hereinabove set forth tend to, and do, unfairly divert trade to respondent from such competitors, to the substantial injury and prejudice of competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Pratt Food 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 and the answer filed herein on December 21, 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, Pratt Food Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of a product designated as "Pratt's 'Split-Action' N-K Capsules," or any product of substantially the same composition and ingredients or of substantially the same therapeutic effect sold under the name "Pratt's 'Split-Action' N-K Capsules" or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through statements such as

One "Split-Action" Capsule worms your bird as thoroughly as though you gave each fowl two treatments;

Stop wasting money on treatments that get only a few of the worms;

Kamala is the best tapeworm destroyer;

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or other statements of similar import and effect, or through any other device or in any other manner, that said product will destroy all worms and all parts of worms (including tapeworm heads) with which poultry may be infested.

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.

IN THE MATTER OF
**B. H. KRUEGER, INC., AND LIGHTFOOT SCHULTZ
COMPANY**

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

Docket 2515. Complaint, Aug. 14, 1935—Decision, Dec. 29, 1936

Where a corporation engaged in manufacturing, compounding, selling, and distributing a line of toiletries and cosmetics including perfumes, toilet water, face powder, lipstick, rouge, and similar products, to purchasers in the various States, and including a line of toiletries sold and distributed by an American concern in interstate commerce under trade name or brand "Drury Lane English Lavender"—

Caused its aforesaid products or line of toiletries to be labeled and branded with aforesaid words and words "Distributed by Worthall, Ltd., London, Montreal, New York", notwithstanding fact said American corporation thus referred to was not a limited corporation as commonly understood by the public, nor an English company, and had no operating branch or office in London, or Montreal, and products sold and distributed by it in interstate commerce were not made or compounded in London or imported from England or made from English materials, but were all made or compounded in the United States and principally of materials produced therein, and were in no sense products of English manufacture nor English in origin;

With effect of misleading and deceiving dealers and purchasing public into erroneous and mistaken belief that the said toilet preparations and supplies made, compounded and sold by it and marketed by said American distributor, were genuine English products and that its said distributor was an English company with offices in London and Montreal, and that its said products were of English origin and manufacture or were imported from England, and of inducing dealers and purchasing public, acting in such beliefs, to buy such imitation toilet preparations, and thereby unfairly divert trade to it from its competitors who do not thus, or otherwise, misrepresent the nature and kind of their products, and from competitors who actually do sell and distribute toilet products and cosmetics of English origin which, as genuine English toiletries long compounded, blended and made in England by English companies of English materials and imported and appropriately labeled and branded for sale and distribution in the United States, are bought by a substantial portion of the purchasing public in preference to imitations thereof not of English origin or manufacture; to injury of competition in commerce among the various States:

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

Before *Mr. John W. Addison* and *Mr. John W. Bennett*, trial examiners.

Mr. Allen C. Phelps for the Commission.

Mr. Milton Dammann, of New York City, for Lightfoot Schultz Co.