

Complaint

IN THE MATTER OF
A. O. LEONARD, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2855. Complaint, June 27, 1936—Decision, Jan. 15, 1937*

Where a corporation engaged in manufacture, sale, and distribution of a product sold by it under trade name "Leonard Ear Oil" or "Leonard's Ear Oil"—Represented, through pamphlets, booklets, labels, statements on safety match box containers, and otherwise, that its said product was an ear oil and possessed such therapeutic properties as to relieve deafness, facts being it did not, used as directed or otherwise, accomplish such result and was not an ear oil;

With capacity and tendency to mislead and deceive purchasers of its products into the belief that in buying same they would obtain such oil and a product that possessed such therapeutic value as to relieve deafness, 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 induced by its representation, and of unfairly diverting trade to it from many competitors engaged in manufacture and distribution of products designed for similar usage, and who do not misrepresent the capacities or effects thereof; to the substantial injury and prejudice 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.

Before *Mr. William C. Reeves*, trial examiner.

Mr. T. H. Kennedy for the Commission.

Rogers, Ramsay & Hoge, of New York City, 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 A. O. Leonard, Inc., a corporation, 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 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, A. O. Leonard, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, and at all times herein referred to has maintained and now maintains its principal place of business at 70 Fifth Avenue, New York, N. Y. Respondent is, and for more than two years last past has been.

Complaint

24 F. T. C.

engaged in the manufacture of a preparation composed of an emulsion of mineral oil, soft soap, glycerine, and eucalyptol, and has been engaged in the sale of said preparation under the trade name of "Leonard Ear Oil" between and among the various States of the United States and in the District of Columbia. During all of said time it has caused, and still causes, said product, when sold by it, to be transported from its place of business in New York, or other places within the United States, to purchasers thereof, some located in the State of New York and others located in the various States of the United States other than the State of origin of the shipment, and in the District of Columbia. In the course and conduct of its said business respondent is now, and for more than two years last past has been, in constant competition with other corporations, persons, firms, and partnerships engaged in the sale of products having properties, capacities, or effects claimed for the said "Leonard Ear Oil" by the respondent, as herein set forth, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, described herein, respondent for more than two years last past has, by means of advertisements, testimonials, pamphlets, booklets, labels, statements on safety matchbox containers, and otherwise, represented, and still represents, that its said product is an ear oil and that its said product has such therapeutic properties as to relieve deafness.

Respondent has distributed said advertising matter, testimonials, pamphlets, booklets, labels, and statements on safety matchbox containers among its prospective customers and placed the same in the hands of its agents and distributors in various States of the United States for use by them in advertising its said product.

Said representations have been and are made by respondent in such a way that purchasers and prospective purchasers of respondent's product are led to believe that respondent's product is an ear oil and possesses such therapeutic properties as to relieve deafness.

In truth and in fact said representations have been and are untrue, and respondent's said product is not, nor has it ever been an ear oil, nor does respondent's said product have, nor has it ever had such therapeutic properties as to relieve deafness.

There is a preference by a substantial number of retail dealers in products having properties, capacities, and effects claimed by respondent for its product, as hereinabove described, and by a substantial part of the purchasing public for products that have the properties, capacities, or effects claimed by respondent for its product, as hereinabove set forth.

The aforesaid representations of respondent have had, and still have, a capacity and tendency to mislead and deceive, and have misled and deceived, and still mislead and deceive, retailers and the purchasing public into the erroneous belief that said product of respondent has all the properties, capacities, or effects claimed for it by the respondent, as aforesaid, and the use of said misrepresentations by the respondent causes them to purchase respondent's product in such erroneous belief. The aforesaid misrepresentations by the respondent have placed, and still place, in the hands of retailers of the product of respondent hereinabove described, the means of deceiving and misleading the purchasing public.

PAR. 3. There are among the competitors of respondent manufacturers and distributors of products having properties, capacities, or effects similar to those claimed by the respondent for its product, who truthfully represent the properties, capacities, or effects of their said products; and there are also among the competitors of respondent manufacturers and distributors who do not misrepresent the properties, capacities, or effects of their said products.

By the representations made by the respondent, as set out hereinabove, trade has been, and still is, unfairly diverted to the respondent from such competitors, and thereby substantial injury has been done and still is being done by respondent to competitors in interstate commerce.

PAR. 4. The above acts and things done by the respondent are all to the injury and prejudice of the public and 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 June 27, 1936, issued and on July 1, 1936 served its complaint in this proceeding upon the respondent A. O. Leonard, Inc., 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 mate-

Findings

24 F. T. C.

rial allegations of the complaint to be true and waiving the taking of further evidence and all intervening procedure, which substitute 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 two years last past the respondent, A. O. Leonard, Inc., a corporation, has been organized and existing as a corporation under the laws of the State of New York, and has maintained during all of said time, and now maintains, its principal place of business at 70 Fifth Avenue, New York, N. Y.

PAR. 2. For more than two years last past the respondent has been engaged in the manufacture, sale, and distribution of a product sold by it under the trade name "Leonard Ear Oil," or "Leonard's Ear Oil." This product has been sold by the respondent to various firms, persons, associations, or corporations located not only in the State of New York, but in other States of 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 New York, or from other States, to purchasers thereof located in States other than the State of New York, 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 in 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, "Leonard Ear Oil," or "Leonard's Ear Oil," is an ear oil and possesses such therapeutic properties as to relieve deafness.

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 deafness. 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 "Leonard Ear Oil," or "Leonard's Ear Oil" 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 "Leonard Ear Oil," or "Leonard's Ear Oil."

PAR. 5. In soliciting the sale of its product respondent has continuously, during all of the aforesaid time, represented by pamphlets, booklets, labels, statements on safety-match box containers and otherwise, that its product is an ear oil and that said product possesses such therapeutic properties as to relieve deafness. 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, "Leonard Ear Oil," or "Leonard's Ear Oil" when used as directed by the respondent or in any other manner does not relieve deafness, nor is said product an ear oil.

PAR. 7. There is a preference among members of the purchasing public, located in various States of the United States for an ear oil and for a product that possesses such therapeutic properties as to relieve deafness 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 an ear oil and a product that possesses such therapeutic properties as to relieve deafness.

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 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 as 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.

Order

24 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondent, A. O. Leonard, Inc., 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 January 11, 1937, 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 A. O. Leonard, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a product designated as "Leonard Ear Oil," or "Leonard's Ear Oil" or any product of substantially the same composition and ingredients as that now sold by the respondent under the name of "Leonard Ear Oil," or "Leonard's Ear Oil" or under any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that said product is an ear oil or that said product has such therapeutic properties as to relieve deafness or from making representations of similar import and effect.

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.

Syllabus

IN THE MATTER OF

CALIFORNIA ALFALFA PRODUCTS COMPANY, TRADING
AS ALVITA PRODUCTS COMPANY, AND GLENN B.
WILLIS, TRADING AS ALVITA PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2067. Complaint, Nov. 9, 1936¹—Decision, Jan. 19, 1937*

Where a corporation and an individual engaged in sale of various food products in which alfalfa was principal ingredient and which was sold under trade name "Alvita," and included among which was product described as "Alvita Tea"—

Represented, in extensive advertisements of their said last-named product, in various periodicals of interstate circulation, that said tea would supply possible nutritional deficiencies of the user and that it stood at the head of the vegetable list in mineral and vitamin potency, and that use thereof would supply proper alkaline nutrition to help build up vitality, and that thousands of satisfied customers had learned the secret how to revitalize nature's way with "Alvita Tea," which built up vitality and aided digestion and appetite and made the user strong and robust, and that it constituted a reliable and valuable food product composed of ingredients of great therapeutic value, use of which would accomplish results above indicated, and result in great healthful and therapeutic value and effect, the facts being principal ingredient thereof had no beneficial therapeutic value or effect, and use of the product would not accomplish the various results claimed therefor, as above indicated;

With effect of misleading and deceiving public into erroneous belief that said tea was, in truth and in fact, a valuable health food and that through use thereof healthful and therapeutic value and effect would be obtained, and of inducing the consuming public, acting in such erroneous belief, and especially that portion thereof which purchases health foods, to buy said tea in preference to other health products offered by manufacturers, retailers, and distributors, and of unfairly diverting thereby trade to such corporation and individual from such manufacturers, retailers, or distributors who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. E. J. Hornibrook, *Mr. Everett F. Haycraft* and *Mr. Reuben J. Martin* for the Commission.

¹ Second amended and supplemental complaint.