

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.

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AMENDED AND SUPPLEMENTAL COMPLAINT¹

Whereas, the Federal Trade Commission did, to wit, on October 21, 1936, issue its amended and supplemental complaint herein charging and alleging that California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company was guilty of unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the 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; and

Whereas it now appears that Glenn B. Willis, an individual, is trading under the name and style of Alvita Products Company; and

Whereas this Commission having reason to believe that California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, are and have been 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:

Now, therefore, acting in the public interest, pursuant to the provisions of the act of September 26, 1914, aforesaid, the Federal Trade Commission charges that California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, California Alfalfa Products Company, trading under the name and style of Alvita Products Company, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located in the city of Pasadena within the State of California. The respondent, Glenn B. Willis, is an individual trading under the name and style of Alvita Products Company with his principal office and place of business located in the city of Pasadena within the State of California. Said respondents are now and for more than two years last past have been engaged in the sale of vari-

¹ Extended quotation of representations, allegedly made by respondents in their advertisements with respect to their product, in Par. 3, may also be found in the findings, *infra*, at page 460, and is accordingly omitted from the complaint as published here in the interest of brevity.

ous food products under the trade name of "Alvita," among which is "Alvita Tea," and in which said products alfalfa is the principal ingredient. Said respondents claim that their food product "Alvita Tea" has healthful and therapeutic value and effect. Said respondents are also engaged in the distribution of their said food product "Alvita Tea" in commerce between and among the various States of the United States. Said respondents cause said "Alvita Tea," when sold, to be transported to purchasers thereof located in the State of California and in various States of the United States other than the State of California. There is now and has been for a long time, to wit, more than two years last past, a constant current of trade and commerce by respondents in said food product "Alvita Tea" between and among the various States of the United States.

In the course and conduct of their said business, said respondents are now and for a long time, to wit, more than two years last past, have been in substantial competition in commerce between and among the various States of the United States with sundry other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of other food products which it is claimed have healthful and therapeutic value and effect.

PAR. 2. The preparation "Alvita Tea" is manufactured for the said respondents and respondents' activities in connection therewith are restricted to packaging the said product "Alvita Tea" at their own plant and then distributing said product to retailers located in the various States of the United States.

PAR. 3. Said respondents, in the course and conduct of their said business, as hereinbefore set out in paragraphs 1 and 2, have been and now are engaged in extensive advertisements of their said food product "Alvita Tea" as a means of furthering and aiding in the interstate sale and distribution of said food product, and as media of such advertising they have been and now are using various magazines of interstate circulation. Said respondents also issue booklets and circulars describing their said food product "Alvita Tea" and the various alleged benefits to be derived from the use of the said "Alvita Tea."

Among the statements which said respondents have used and are now using in their advertisements in magazines and in their booklets and circulars distributed by them, are the following:¹

¹ Extended quotation of respondents' representations, as alleged, in advertisements, etc., calculated to create the false and erroneous belief that their said preparation is a reliable and valuable food product composed of ingredients of great therapeutic value, etc., and which follows at this point, is also set forth in the findings, *infra*, at page 460, and is accordingly omitted from the complaint as published in the interest of brevity.

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Said statements and representations used by said respondents in their said advertisements as hereinabove set out, and many other statements and representations of like import and tenor, which are not set out herein but have been used and are now being used by said respondents, have had and do now have the tendency to, and have and do now create upon the public the false impression and erroneous belief that "Alvita Tea" is a reliable and valuable food product composed of ingredients of great therapeutic value, the use of which will build up vitality, aid digestion, cause the user to become strong and robust, and will result in great healthful and therapeutic value and effect, whereas in truth and in fact it is not a reliable and valuable food product, composed of ingredients of great therapeutic value, and the use of it will not build up vitality, aid digestion, cause the user to become strong and robust and will not result in great healthful and therapeutic value and effect.

PAR. 4. The use by the said respondents, California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, of the foregoing false, deceptive, and misleading representations has had and does now have the capacity and tendency to and does mislead and deceive the public into the erroneous and untrue belief that "Alvita Tea" is in truth and in fact a valuable health food and that by using the same, healthful and therapeutic value and effect will be obtained. Acting in such erroneous belief, the consuming public, and especially that portion of the public which purchases health foods, have been induced and are now induced to purchase "Alvita Tea" in preference to other health foods offered for sale by manufacturers, retail dealers and distributors. As a result of such false, deceptive, and misleading representations on the part of said respondents, trade is unfairly diverted to respondents from such manufacturers, retail dealers, or distributors of other health foods who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

PAR. 5. Said false, deceptive, and misleading representations of said respondents contained in their advertisements have resulted in injury to respondents' competitors and to retail dealers and in prejudice to the buying public and constitutes 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 November 9, 1936, issued and on November 30, 1936, served its amended and supplemental complaint in this proceeding upon the respondent, California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and upon the respondent Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint an answer was duly filed by said respondents in the office of the Commission on December 11, 1936, which said answer admitted all the material allegations of the complaint to be true and waived the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the said 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. The respondent California Alfalfa Products Company, trading under the name and style of Alvita Products Company, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located in the city of Pasadena, within the State of California. The respondent Glenn B. Willis is an individual trading under the name and style of Alvita Products Company, with his principal office and place of business located in the city of Pasadena, within the State of California. Said respondents are now and for more than two years last past have been engaged in the sale of various food products under the trade name of "Alvita," among which is "Alvita Tea," and in which said products alfalfa is the principal ingredient. Said respondents claim that their food product "Alvita Tea" has healthful and therapeutic value and effect. Said respondents are also engaged in the distribution of their said food product "Alvita Tea" in commerce between and among the various States of the United States. Said respondents cause said "Alvita

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Tea," when sold, to be transported to the purchasers thereof located in the State of California and in various States of the United States other than the State of California. There is now and has been for a long time, to wit, more than two years last past, a constant current of trade and commerce by respondents in said food product "Alvita Tea" between and among the various States of the United States.

In the course and conduct of their said business, said respondents are now and for a long time, to wit, more than two years last past, have been in substantial competition in commerce between and among the various states of the United States with sundry other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of other food products which have healthful and therapeutic value and effect.

PAR. 2. The preparation "Alvita Tea" is manufactured for the said respondents and respondents' activities in connection therewith are restricted to packaging the said product "Alvita Tea" at their own plant and then distributing said product to retailers located in the various States of the United States.

PAR. 3. Said respondents, in the course and conduct of their said business, as hereinbefore set out in paragraphs 1 and 2, have been and are now engaged in extensive advertisements of their said food product "Alvita Tea" as a means of furthering and aiding in the interstate sale and distribution of said food product, and as a media of such advertising they have been and now are using various magazines of interstate circulation. Said respondents also issue booklets and circulars describing their said food product "Alvita Tea" and the various alleged benefits to be derived from the use of said "Alvita Tea."

Among the statements which said respondents have used and are now using in their advertisements in magazines and in their booklets and circulars distributed by them, are the following:

IS: Nutritional Deficiencies the cause of your ill Health?

If so, why deprive yourself of needed benefits?

Thousands of satisfied customers have learned the secret how to Re-vitalize Nature's way with "Alvita Tea". You, too, may have the privilege.

We got some alfalfa and ground it into flour and made some bread, using whole wheat and white flour with the alfalfa. One woman, a popular screen actress of the city, came back next day for another loaf of the bread, saying it was good for her constipation. Dickinson also made a fine candy using the extract of the alfalfa for the flavoring and it seemed to make the candy different, that is more easy to digest.

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I gave a quantity of the tea to a boarding house lady to try on her unsuspecting boarders. They drank it without comment, noticing no difference in the taste of the new tea from the old, but in a few days the boarders began to eat. My, how the appetites began to increase. * * *

My attorney friend, Arthur Helliwell, was advised by five doctors in a consultation over his case, to quit his practice and retire to his farm. He might live a year they said. I gave him the tea and the third night he continued his practice in the city.

In St. Paul I met a young newspaper man. He volunteered to have his wife, an expectant mother, use the tea to see what effect it would have on the unborn child. For four months, the mother drank copiously of the tea. A baby was born and it was a wonder child. Its bones were strong, with a large frame, and there was a perfectly normal delivery on the part of the mother. As long as the baby nursed, the mother continued to drink the tea and she had a great abundance of rich milk upon which the child thrived without the usual troublesome times of nursing babies.

There are also several alkaline salts in this alfalfa ash, which, when combined, make a wonderful neutralizant for any condition of the body. They are necessary for growth and are prescribed for many ailments of mankind.

The alfalfa plant also contains a large percentage of the Enzymes or digestive ferments which aid digestion. These ferments join forces with the Vitamins so as to greatly aid in the assimilation of foods and increase the vitality of both man and beast.

The soil, climate and different cuttings bring out a variety of flavors and difference in food and medicinal values.

Nature intends that men, women and children should be strong, robust and enjoy life. Consequently Nature provides in abundance all the elements needed in Natural Foods.

Alvita Tea, comparatively speaking, stands at the head of the Vegetable List in Mineral and Vitamin Potency.

This "Alvita" book has been prepared so that you may know to what extent we have developed the therapeutic value of the Alfalfa Plant.

Already thousands of satisfied customers have learned the secret of insuring proper alkaline nutrition to help build Vitality.

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Protein is the only material that can build living cells of the body and as cells wear out, they can be restored only by protein.

Comparative Protein Table Alfalfa With Some of our Other Foods

	<i>Protein</i>
Alfalfa.....	19.90
Milk.....	3.30
Whole Wheat.....	13.80
Beef.....	16.50
Eggs.....	13.10
Corn Meal.....	9.20

With a strong alkaline reserve you have one of the best Body Builders.

A Few Alkaline Forming Foods

Alvita Tea.....	130.42
Beans, Dried.....	18.00
Carrots.....	10.82

and others.

Said statements and representations used by said respondents in their said advertisements as hereinabove set out, and many other statements and representations of like import and tenor, which are not set out herein but have been used and are now being used by said respondents, have had and do now have the tendency to, and have and do now create upon a portion of the public the false impression and erroneous belief that "Alvita Tea" is a reliable and valuable food product composed of ingredients of great therapeutic value, the use of which will build up vitality, aid digestion, cause the user to become strong and robust, and will result in great healthful and therapeutic value and effect. In truth and in fact said product is not a reliable and valuable food product, composed of ingredients of great therapeutic value. The use of said product, "Alvita Tea," will not build up vitality, aid digestion, or cause the user to become strong and robust and will not result in great healthful and therapeutic value and effect. Alfalfa, the principal ingredient of said product, has no beneficial therapeutic value or effect.

PAR. 4. The use by the said respondents, California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, of the foregoing false, deceptive and misleading representations has had and does now have the capacity and tendency to and does mislead and deceive the public into the erroneous belief that "Alvita Tea"

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is in truth and in fact a valuable health food and that by using the same, healthful and therapeutic value and effect will be obtained. Acting in such erroneous belief, the consuming public, and especially that portion of the public which purchases health foods, have been induced and are now induced to purchase "Alvita Tea" in preference to other health foods offered for sale by manufacturers, retail dealers and distributors. As a result of such false, deceptive and misleading representations on the part of said respondents, trade is unfairly diverted to respondents from such manufacturers, retail dealers or distributors of other health foods who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and of the respondent Glenn B. Willis, an individual trading under the name and style of Alvita Products, are to the prejudice of the public and of respondents' 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 amended and supplemental complaint of the Commission and the answer filed herein on December 11, 1936, by the respondents 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 respondents have 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 California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, its officers, representatives, agents and employees, and the respondent Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the product called "Alvita Tea," or of any other

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product of substantially the same ingredients, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That respondents' said product is a reliable and valuable food product composed of ingredients of great therapeutic value;
2. That the use of respondents' said product will build up vitality;
3. That the use of respondents' said product will aid digestion;
4. That the use of respondents' said product will cause the user to become strong and robust;
5. That the use of respondents' said product will result in great healthful and therapeutic value and effect;
6. That the respondents' said product will supply nutritional deficiencies;
7. That thousands of customers have learned the secret how to revitalize Nature's way with the respondents' said product;
8. That the use of respondents' said product will increase the appetite;
9. That the respondents' said product stands at the head of the vegetable list in mineral and vitamin potency;
10. That the use of respondents' said product will supply the proper alkaline nutrition to help build up vitality;
11. That respondents' said product forms a competent and satisfactory cure or remedy or has beneficial therapeutic effects in the treatment of any ills, diseases, maladies, or conditions of the human body; and
12. From making any other similar representations of like import or effect unless and until said representations are true in fact.

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

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IN THE MATTER OF
NEET, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2716. Complaint, Feb. 7, 1936—Decision, Jan. 19, 1937*

Where a corporation engaged in manufacture, distribution, and sale of a depilatory known as "Neet", in widely advertising its said product in newspapers and periodicals of general circulation and in display cards, advertising folders, and literature printed and circulated by it throughout the several States to customers and prospective customers—

- (a) Represented that by careful laboratory control its alkalescence had been so regulated that it never approached causticity, facts being that, while not generally caustic when applied according to its directions, to those portions of the body recommended for treatment with said product for removal of superfluous hair, there are a number of persons whose skin is more susceptible to irritation than that of others and in case of whom it might have caustic effect, as it might also, not applied as directed;
- (b) Represented that use of said product discouraged growth of hair and delayed its appearance for a material length of time, and that hair was much slower in returning and regrowing than when shaved, facts being hair regrowing after use thereof is no slower in returning, etc., than after shaving, allowance made for action of preparation in removing hair farther below surface of skin than razor, and consequent greater delay in reappearance;
- (c) Represented that shaving stimulates hair growth, and that hair returning or regrowing after use of its said product is softer and less than that returning or regrowing after shaving, facts being former is no softer or less coarse than latter, though regrowth with rounded end and less coarse feeling may result from dissolving process thereof;
- (d) Represented that its said product gave results unlike other methods of hair removal, and that it was not an ordinary hair remover, and ended enlarged pores which shaving tended to cause, and would permanently eradicate hair, facts being shaving does not cause such enlarged pores, nor does use of its said product end same, and aforesaid various representations were false; and
- (e) Falsely represented that its said product was used by surgeons to remove hair before operating;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into the erroneous belief that all said representations were true, and into purchase of a substantial volume of its said product on account of such beliefs, and with result that trade was diverted to it from those engaged in manufacturing, distributing, and selling depilatories or other products designed, intended and sold for purpose of removing superfluous hair, and who truthfully advertised same and effectiveness thereof; 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.