

Syllabus

IN THE MATTER OF
DOLLAR CRYSTAL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2919.—Complaint, Sept. 8, 1936—Decision, Feb. 16, 1937*

Where a corporation engaged in the offer and sale of mineral water crystals under such trade names as "Genuine Texas Mineral Crystals"—

Represented, through radio broadcasts and otherwise, that drinking water in which said product had been dissolved would relieve headaches, nervousness, irritability, and fatigue, and that such crystals would remove poisonous waste matter that had accumulated in the system and the cause of disease and of most human ailments, and inability to eat certain foods, and that they contained essential minerals necessary for good health, and would impart pep and energy and accomplish various beneficial results, and were not a medicine or habit-forming drug, and that dissolving thereof in drinking water produced solution identical with the mineral water as it came from the springs, and made use of so-called testimonial letters in its said advertising;

Facts being such letters were used by it without any investigation or knowledge as to whether statements therein were in fact true or as to whether writers thereof were sufficiently informed in proper diagnosis as to be able accurately to state facts of use of such product, sole constituent of which, practically, was the saline laxative and purgative Glauber's Salts, and only therapeutic effect of which was relief of temporary constipation, many of symptoms and ailments for which it represented its said product as a relief or cure arise from causes which said salts, or hydrated sodium sulphate, will not cure or relieve, but will positively aggravate, principal active constituent of such crystals was in fact a medicine, and habit-forming, and solution of crystals in drinking water does not result in product identical with the original mineral water, due to the removal and discarding of certain constituents in process of producing the crystals in question;

With effect of misleading and deceiving purchasers and prospective purchasers into the erroneous belief that such representations were true and into purchase of its said products in such belief, and of thereby unfairly diverting trade to it from competitors engaged in producing and selling saline purgatives and in shipping same in commerce among the various States, and who truthfully advertise and represent the therapeutic value of their products, and competitors who make and sell remedies for the relief of the ailments involved as above set forth and indicated, and who truthfully represent said remedies' therapeutic effect; 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.

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

Mr. John Darsey for the Commission.

Crofoot, Fraser, Connolly & Stryker, of Omaha, Nebr., for respondent.

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Complaint

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 the Dollar Crystal 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 the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the State of Nebraska, with its principal place of business in Redick Tower Building, Omaha, Nebr. It is now and has been engaged in offering for sale, and selling, a product designated by it as "Genuine Texas Mineral Crystals," "Genuine Texas Crystals," "Real Texas Mineral Water Crystals," and "Texas Mineral Water Crystals."

To a substantial extent sales of said product have been made by respondent to persons, partnerships and corporations located in States other than Nebraska, pursuant to which sales, and as a part thereof, shipment is and has been made by it from the State of Nebraska, and from points in Texas, through and into other States of the Union to said purchasers.

PAR. 2. In connection with offering for sale and selling said product in interstate commerce, and as an inducement for the purchase of said product, respondent is and has been making, and is causing and has caused to be made, the following representations, by means of radio broadcast and otherwise, of and concerning its said product:

1. (a) That the drinking of water in which said product has been dissolved will relieve headache, nervousness, irritability, and fatigue;

(b) That it will remove the cause of disease;

(c) That it will remove poisonous waste matter that has accumulated in the system;

(d) That it has relieved thousands of cases of ailments that are caused by a sluggish system;

(e) That it will remove the cause of most of the human ailments;

(f) That in its use thousands have found lasting relief from such ailments as rheumatism, arthritis, neuritis, indigestion, constipation, nervousness, sick headaches, and swollen joints, and many other common ailments which may be caused by a sluggish system or faulty elimination;

(g) That it will remove inability to eat certain foods;

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- (h) That it will neutralize acid conditions that cause 95% of suffering;
 - (i) That it contains the essential minerals from the earth that the body demands in order for it to enjoy good health;
 - (j) That it cleanses the system and strengthens the natural functions in resisting disease;
 - (k) That it will impart pep and energy;
 - (l) That the minerals contained therein are blended in just the right way to cleanse, purify and wash away the poisons and impurities that cause so many of our aches and pains, and that it contains natural minerals that supply a balance to the diet.
2. (a) That "Genuine Texas Mineral Water Crystals" are not a medicine;
- (b) That they are not a habit forming drug;
- (c) That by dissolving the crystals in drinking water there is produced a solution identical in results with the mineral water as it comes from the mineral springs.

PAR. 3. In truth and in fact, practically the sole constituent of respondent's crystals is hydrated sodium sulphate, or Glauber's Salts. This drug is a saline laxative and purgative and its only therapeutic effect is the relief of temporary constipation; many of the symptoms and ailments for which respondent represents its product to be a relief or cure, arise from causes which hydrated sodium sulphate or respondent's crystals, will not cure or relieve, but which it will positively aggravate; and for none of the ailments or symptoms mentioned in paragraph 2 hereof is it effective in producing a lasting relief or cure; nor will it produce results as represented by respondent. The principal active constituent of the crystals is in fact a medicine and is habit forming, in that its continued use will produce the condition known as laxative habit. The solution of the crystals in drinking water does not produce a solution identical with the original mineral water from which the minerals are derived, but in the process of producing the crystals some relatively insoluble constituents, and some very soluble constituents and some constituents present in a small proportion are removed and discarded.

Some of the crystals which respondent designates and sells as "Genuine Texas Mineral Water Crystals," are derived from mineral water produced at or near Mineral Wells, Tex., and other crystals, so designated and sold, are from water produced at or near Marlin, Tex., although the mineral waters from said localities differ substantially in their constituents.

PAR. 4. In advertising its said product by radio broadcast and otherwise, respondent has used and is using letters, commonly known as testimonials, of and concerning its product written by users thereof, containing statements of actual effects from the use of such product, without any investigation or knowledge on the part of respondent as to whether the statements in said letters contained are in fact true

or as to whether the writers of the letters were sufficiently informed as to be able to truthfully make such statements.

PAR. 5. There are and were at all times hereinabove mentioned, persons, partnerships, and corporations engaged in the business of producing and selling saline purgatives and pursuant to such sales shipping the same in commerce among the States, who truthfully advertise and represent the therapeutic qualities of their products; and other persons, partnerships and corporations who make and sell in interstate commerce, remedies for the relief of the ailments hereinabove mentioned who truthfully represent the therapeutic effect of said remedies; and with such other persons, firms, and corporations, respondent has been and is in active, substantial competition.

PAR. 6. Respondent's false and misleading representations of and concerning its said product, as hereinabove set forth, have the capacity and tendency to mislead and deceive, and have misled and deceived, and do mislead and deceive purchasers and prospective purchasers into the belief that such representations are true and to purchase respondent's product in such erroneous belief. Thereby the aforesaid false and misleading representations have diverted business from its aforesaid competitors to itself, to the substantial injury of substantial competition in interstate commerce.

PAR. 7. The acts and practices of respondent, as aforesaid, are to the prejudice of the public interest, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 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 September 8, 1936 issued, and on September 10, 1936, served, its complaint in this proceeding upon respondent, Dollar Crystal Company, 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 other intervening procedure, which sub-

stitute 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

PARAGRAPHS 1. The respondent, Dollar Crystal Company, is a Nebraska corporation with its principal place of business in Redick Tower Building, Omaha, Nebr. It has been and is now engaged in offering for sale and selling mineral water crystals under the trade names "Genuine Texas Mineral Crystals," "Genuine Texas Crystals," "Real Texas Mineral Water Crystals," and "Texas Mineral Water Crystals." The respondent sells its products to customers located in the various States of the United States other than Nebraska and causes its products when sold, to be shipped from the State of Nebraska into and through the various States of the United States to said purchasers, maintaining a constant current of trade in its said products in such commerce.

PAR. 2. In connection with offering for sale and selling its products in interstate commerce, and as an inducement for the purchase of said products, the respondent has made and makes, and has caused and causes to be made, representations by means of radio broadcasts and otherwise, of and concerning its products, to the following effect, gist, or meaning:

1. (a) That the drinking of water in which said products have been dissolved will relieve headache, nervousness, irritability and fatigue;

(b) That they will remove the cause of disease;

(c) That they will remove poisonous waste matter that has accumulated in the system;

(d) That they have relieved thousands of cases of ailments that are caused by a sluggish system;

(e) That they will remove the cause of most of the human ailments;

(f) That in their use thousands have found lasting relief from such ailments as rheumatism, arthritis, neuritis, indigestion, constipation, nervousness, sick headaches, and swollen joints, and many other common ailments which may be caused by a sluggish system or faulty elimination;

(g) That they will remove inability to eat certain foods;

(h) That they will neutralize acid conditions that cause 95% of suffering;

(i) That they contain the essential minerals from the earth that the body demands in order for it to enjoy good health;

(j) That they cleanse the system and strengthen the natural functions in resisting disease;

(k) That they will impart pep and energy;

(l) That the minerals contained therein are blended in just the right way to cleanse, purify and wash away the poisons and impurities that cause so many of our aches and pains, and that they contain natural minerals that supply a balance to the diet.

2. (a) That "Genuine Texas Mineral Water Crystals" are not a medicine;

(b) That they are not habit forming drugs;

(c) That by dissolving the crystals in drinking water there is produced a solution identical in results with the mineral water as it comes from the mineral springs.

PAR. 3. Practically the sole constituent of respondent's crystals is hydrated sodium sulphate, or Glauber's Salts. This drug is a saline laxative and purgative and its only therapeutic effect is the relief of temporary constipation. Many of the symptoms and ailments for which respondent represents its products to be a relief or cure, arise from causes which hydrated sodium sulphate will not cure or relieve, but which it will positively aggravate. Respondent's products are not effective in producing a lasting relief or cure for any of the ailments or symptoms mentioned in paragraph 2 hereof, and they will not produce results as represented by respondent. The principal active constituent of the crystals is in fact a medicine and is habit forming, in that its continued use will produce a condition known as laxative habit. The solution of the crystals in drinking water does not produce a solution identical with the original mineral water from which the minerals are derived, but in the process of producing the crystals some relatively insoluble constituents, and some very soluble constituents and some constituents present in a small proportion are removed and discarded.

PAR. 4. In advertising its said products by radio broadcasts and otherwise, respondent has used and is using letters, commonly known as testimonials, of and concerning its products written by purported users thereof, containing statements of actual effects from the use of such products, without any investigation or knowledge on the part of respondent as to whether the statements in said letters are in fact true or as to whether the writers of the letters were sufficiently informed in the proper diagnosis of ailments and conditions of the hu-

man body as to be able to accurately state the effect of the use of such products.

PAR. 5. There are persons, partnerships, and corporations engaged in the business of producing and selling saline purgatives and, pursuant to such sales, shipping the same in commerce among the various States, who truthfully advertise and represent the therapeutic qualities of their products; and other persons, partnerships, and corporations who make and sell in commerce, as herein set out, remedies for the relief of the ailments hereinabove mentioned who truthfully represent the therapeutic effect of said remedies. With all of such other persons, firms, and corporations, respondent has been, and is, in active and substantial competition in such commerce.

PAR. 6. Respondent's false and misleading representations of and concerning its said products, as hereinabove set forth, have the capacity and tendency to mislead and deceive, and have mislead and deceived, and do mislead and deceive purchasers and prospective purchasers into the erroneous belief that such representations are true and into the purchase of respondent's products in such erroneous belief. Trade is thereby unfairly diverted from respondent's afore-said competitors to respondent to the substantial injury of competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent Dollar Crystal 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 15, 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, Dollar Crystal Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its water crystal products in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing through the medium of radio continuity, advertising matter, testimonial letters or in any manner:

(a) That the aforesaid products have any therapeutic value in the treatment of any disease or ailment other than as a laxative or purgative;

(b) That they are not a habit forming drug;

(c) That the dissolution of the products in drinking water will produce a solution identical with the mineral water from which they are obtained as it comes from the mineral springs.

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
ROBERT HOLMES, INC., AND ALBERT GOODMAN

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

Docket 2893. Complaint, Nov. 16, 1936—Decision, Feb. 16, 1937

Where a corporation and an individual, its president and manager and director of its policies and practices, engaged in sale and distribution of so-called home study psychology health courses, in substantial competition with others likewise engaged in sale of such courses of instruction by correspondence; in advertising the same in various periodicals, booklets, circulars, and other forms of printed matter—

Represented that constipation, indigestion, cold sweats, dizzy spells, and bashfulness are always caused by nervous exhaustion, and that "lack of energy" and aforesaid ailments or conditions "positively indicate" a deranged nervous system, for which their said course would be an effective treatment, and that it was an effective and competent treatment for nervousness and aforesaid ailments or conditions and for sleeplessness, irregular heart, worry, fatigue, sex weakness and other conditions specified, and would effectively eliminate poisons from the system, and was entirely different from any other method and would absolutely bring positive and permanent relief from various ailments noted, and that each case was given individual personal attention by them, and that for the sum of twenty-five cents one might learn how to conquer bashfulness, nervousness, or embarrassment, overcome his faults easily, and enjoy life to the fullest, through such statements as " * * * every form of self-consciousness comes from * * * derangement of the Nervous System," "Do not try to fight self-consciousness alone and unaided. It is a losing battle," etc., "You need a knowledge of the action and abuses of nerves * * * such as my course of instruction fully covers," "ARE YOU—NERVOUS?—WORRIED?—UNHAPPY? * * * My wonderful book 'Watch Your Nerves' explains a new method that will help you regain lost vitality and healthy nerves. Send 25¢ * * *," "INSTRUCTION IS INDIVIDUAL * * * each case is given individual personal attention," etc.;

Facts being their said courses were not effective in treatment of the various ailments and conditions for which thus offered, and did not enable purchasers to eliminate the causes thereof, and their said representations with respect to the nature, value and effect of their said courses of home study and instruction were grossly exaggerated, false, misleading, and untrue;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of their so-called home study psychology health courses in aforesaid respects, and with the result that a substantial number of prospective purchasers of such courses were induced and persuaded to buy the same through such statements and representations, which were false, misleading, and deceptive and unfair to others selling and distributing similar courses without making the same or similar false and misleading statements or representations in solicitation and sale of their respective courses, and