

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

with result that there was an unfair diversion of trade to them from their competitors; 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. William C. Reeves* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Nathan D. Shapiro and Brothers, of Brooklyn, N. Y., for respondents.

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 Robert Holmes, Inc., a corporation, and Albert Goodman, an individual, hereinafter referred to as respondents, have been and are now 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Robert Holmes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and the respondent, Albert Goodman, an individual is president of the respondent corporation, and manages and directs its policies and practices. The principal place of business of both of said respondents is located in the Fuller Building, in the city of Jersey City, in the State of New Jersey.

Said respondents are now, and have been for more than one year last past, engaged in the sale and distribution of home study psychology health courses calculated to enable subscribers and purchasers and prospective purchasers thereof to overcome bashfulness, nervousness, and similar and allied ailments. Respondents cause said courses of home study when sold, to be transported from their principal place of business in the State of New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been, at all times mentioned herein, a constant current of trade in commerce in said courses of home study and instruction, sold, and distributed by the said respondents, between and among the several States of the United States and in the District of Columbia.

In the course and conduct of said business, said respondents, Robert Holmes, Inc., a corporation, and Albert Goodman, an individual,

Complaint

24 F. T. C.

were and are in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the business of selling similar courses of instruction by correspondence through the mails in commerce among the several States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, the respondents, in soliciting the sale of and selling said courses of study and instruction and for the purpose of creating a demand upon the part of the purchasing public for said courses, now cause and for more than one year last past have caused advertisements to be issued, published and circulated to and among the general public of the United States in various periodicals, booklets, circulars, and in other forms of printed matter. In said ways and by said means, respondents make and have made to the general public many unfair, false, and misleading statements with reference to the alleged therapeutic value of said courses of home study and instructions and their alleged salutary effect upon the users thereof, a portion of which are as follows:

... 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. You are fighting yourself—your own sick nerves.

You need a knowledge of the action and abuses of nerves * * * such as my course of instruction fully covers.

Others conquer—Nervousness—Constipation—Indigestion—Sleeplessness—'Feeling Blue'—Sex Weakness—Irrregular Heart—Worry—Bashfulness—Fatigue—Pain—So Can You!

ARE YOU—NERVOUS?—WORRIED?—UNHAPPY?—"What's wrong with you? Do symptoms of Constipation, Indigestion, Dizzy Spells, Sweating and Sleeplessness keep you irritable, exhausted and gloomy? Are you Bashful? Despondent? There's Help for You! Medicine, tonics or Drugs probably will not relieve your weak, sick nerves. My wonderful book 'Watch Your Nerves' explains a new method that will help you regain lost vitality and healthy nerves. Send 25¢ for this amazing book. ROBERT HOLMES, 1311 Fuller Building, Jersey City, N. J.

... If I tell you that I can help you, I mean what I say; you may rely on it. And if you decide to take my course, you can make terms of payment to suit yourself. I give you a free Analysis. I risk my time and money. You risk NOTHING...

. . . After many years of intensive study and investigation, I have discovered a method which will induce sound and calm sleep in the most chronic case of insomnia. This method will help any one who is not kept awake by the sufferings of physical pain . . .

INSTRUCTION IS INDIVIDUAL—All this invaluable information is embodied in my course in Nerve and Health Culture. The instruction is not general and each case is given individual personal attention . . .

I have helped thousands of men and women to counteract and prevent extreme worry and mental depression. My course tends to bring about a normal condition of the nerves and to teach you the conservation of precious Nerve Power.

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and many others similar thereto, have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondents' said home study psychology health courses into the erroneous belief:

1. That constipation, indigestion, cold sweats, dizzy spells and bashfulness, or any of them, are always caused by nervous exhaustion;

2. That for 25 cents, or any other nominal amount, one may learn how to conquer bashfulness or nervousness or embarrassment, overcome his faults easily and enjoy life to the fullest;

3. That each such case is given individual personal attention by respondents;

4. That respondents' course of study and instruction will, if followed, immunize one against the contraction of colds;

5. That respondents' course is an effective or competent treatment for nervousness, constipation, indigestion, dizzy spells, sweating, sleeplessness, irregular heart, worry, bashfulness, fatigue, pain, sex weakness, or "feeling blue";

6. That the respondents' treatment is entirely different from any other method, or that it will absolutely bring very positive and permanent relief from the various physical ailments mentioned;

7. That lack of energy, indigestion, constipation, and kindred ailments "positively indicate" a deranged nervous system for which respondents' course would be an effective treatment;

8. That respondents' course will effectively eliminate poisons from the system;

whereas, in truth and in fact, respondents' courses of home study and instruction, when used, are not effective in the treatment of nervous-

Findings

24 F. T. C.

ness, constipation, indigestion, sleeplessness, irregular heart, worry, bashfulness, fatigue, sex weakness, pain or any other nervous, mental or physical disorders. They do not eliminate the cause of such ailments or relieve a user's weakened mental or physical condition due to nervousness, bashfulness, and worry, and other kindred ailments and troubles. The representations made by respondents with respect to the nature, value and effect of said courses of home study and instruction, when used, are grossly exaggerated, false, misleading and untrue, as said courses will not accomplish the results claimed for them.

PAR. 4. The use by respondents of the statements and representations set forth in paragraph 2 hereof, and others similar thereto, is unfair to other corporations, firms, partnerships, and individuals selling like and similar courses of home study and instruction who do not make the same or similar false and misleading statements and representations in the solicitation and the sale of their respective courses of home study and instruction.

By reason of the said false, misleading and deceptive statements, subscribers and purchasers and prospective purchasers of respondents' said home study psychology health courses are and have been induced and persuaded to purchase said courses thus offered by respondents. The methods thus used by respondents result in an unfair diversion of trade to respondents from their competitors. In consequence thereof, substantial injury has been done by respondents to competition in commerce between and among the various States of the United States.

PAR. 5. The aforesaid methods, acts and practices of the respondents are all to the prejudice of the public and of the respondents' competitors as hereinabove alleged. Said methods, acts, and practices 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 the 16th day of November 1936, issued and on the 18th day of November 1936, and on the 13th day of January 1937, respectively, served its complaint in this proceeding upon respondents, Robert Holmes, Inc., a corporation, and Albert

Goodman, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The Commission, by order entered herein, granted respondents' 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 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 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, Robert Holmes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. The respondent, Albert Goodman, an individual, is president of the respondent corporation, and manages and directs its policies and practices. Both respondents have their principal place of business located in the Fuller Building, Jersey City, N. J.

The respondents herein are now, and for more than one year last past have been, soliciting the sale and distribution of so-called home study psychology health courses. These courses of home study when sold, are transported by respondents from their principal place of business in the State of New Jersey to purchasers thereof located in other States of the United States, and in the District of Columbia. There is now, and there has been at all times mentioned herein, a constant current of trade in commerce in said so-called home study psychology health courses thus sold and distributed by the said respondents, between and among the several States of the United States, and in the District of Columbia.

In the course and conduct of said business, said respondents, were and are in substantial competition with other corporations, firms, partnerships, and individuals, likewise engaged in the business of selling psychology and health courses of instruction by correspondence through the United States mails in commerce between and among the several States of the United States, and in the District of Columbia.

Findings

24 F. T. C.

PAR 2. In the course and conduct of their business, as above set out, the respondents, in soliciting the sale of and selling said courses of home study and instruction and for the purpose of creating a demand upon the part of the purchasing public for said courses now cause, and for more than one year last past have caused, advertisements to be issued, published and circulated to and among the general public of the United States in various periodicals, booklets, circulars, and in other forms of printed matter. In said ways and by said means, respondents make and have made to the general public many statements with reference to the alleged therapeutic value of said courses of home study and instruction and their alleged salutary effect upon the users thereof. Typical of the representations, which the respondents have thus published and circulated in commerce throughout the United States and in the District of Columbia, are the following:

. . . 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. You are fighting yourself—your own sick nerves.

You need a knowledge of the action and abuses of nerves * * * such as my course of instruction fully covers.

Others conquer—Nervousness—Constipation—Indigestion—Sleeplessness—“Feeling Blue”—Sex Weakness—Irregular Heart—Worry—Bashfulness—Fatigue—Pain—So Can You!

ARE YOU—NERVOUS?—WORRIED?—UNHAPPY?—What's wrong with you? Do symptoms of Constipation, Indigestion, Dizzy Spells, Sweating and Sleeplessness keep you irritable, exhausted and gloomy? Are you Bashful? Despondent? There's Help for You! Medicine, tonics, or Drugs probably will not relieve your weak, sick nerves. My wonderful book “Watch Your Nerves” explains a new method that will help you regain lost vitality and healthy nerves. Send 25¢ for this amazing book. ROBERT HOLMES, 1311 Fuller Building, Jersey City, N. J.

. . . If I tell you that I can help you, I mean what I say; you may rely on it. And if you decide to take my course, you can make terms of payment to suit yourself. I give you a free Analysis. I risk my time and money. You risk NOTHING . . .

. . . After many years of intensive study and investigation, I have discovered a method which will induce sound and calm sleep in the most chronic

case of insomnia. This method will help any one who is kept awake by the suffering of physical pain . . .

INSTRUCTION IS INDIVIDUAL—All this invaluable information is embodied in my course in Nerve and Health Culture. The instruction is not general and each case is given individual personal attention . . .

I have helped thousands of men and women to counter-act and prevent extreme worry and mental depression. My course tends to bring about a normal condition of the nerves and to teach you the conservation of precious Nerve Power.

PAR. 3. In the manner above set out the respondents represent and imply that their course of home study and instruction are effective in the treatment of nervousness, constipation, indigestion, sleeplessness, irregular heart action, worry, bashfulness, fatigue, sex weakness, pain and other nervous, mental and physical disorders; that study of said courses will enable purchasers to eliminate the cause of the ailments mentioned and will relieve a purchaser's weakened mental or physical condition due to nervousness, bashfulness, worry or other kindred ailments or troubles.

Respondents' course of home study and instruction are not effective in the treatment of nervousness, constipation, indigestion, sleeplessness, irregular heart action, worry, bashfulness, fatigue, sex weakness, pain or any other nervous, mental or physical disorders. Neither do said courses enable purchasers to eliminate the cause of such ailments or relieve a purchaser's weakened mental or physical condition due to nervousness, bashfulness, and worry, and other kindred ailments and troubles. The representations made by respondents with respect to the nature, value and effect of said courses of home study and instruction, when used, are grossly exaggerated, false, misleading and untrue, as said courses will not accomplish the results claimed for them.

PAR. 4. The statements and representations used by the respondents have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondents' so-called home study psychology health courses into the erroneous belief that constipation, indigestion, cold sweats, dizzy spells and bashfulness, are always caused by nervous exhaustion; that for 25 cents, or some other nominal amount, one may learn how to conquer bashfulness or nervousness or embarrassment, overcome his faults easily and enjoy life to the fullest; that each purchaser's case is given individual personal attention by respondents; that respondents' course is an effective or

competent treatment for nervousness, constipation, indigestion, dizzy spells, sweating, sleeplessness, irregular heart, worry, bashfulness, fatigue, pain, sex weakness, or "feeling blue"; that the respondents' treatment is entirely different from any other method, and that it will absolutely bring positive and permanent relief from the various physical ailments mentioned; that "lack of energy," indigestion, constipation, and kindred ailments "positively indicate" a deranged nervous system for which respondents' course is an effective treatment; and that respondents' course will effectively eliminate poisons from the system.

PAR. 5. The use by respondents of the statements and representations set forth in paragraph 2 hereof, and others similar thereto, is unfair to other corporations, firms, partnerships, and individuals selling and distributing courses of home study and instruction in psychology and health who do not make the same or similar false and misleading statements and representations in the solicitation and the sale of their respective courses of home study and instruction.

PAR. 6. By reason of the said false, misleading, and deceptive statements, as above set out, a substantial number of the prospective purchasers of home study psychology health courses are and have been induced and persuaded to purchase said courses offered by respondents. The acts, practices, and methods used by respondents result in an unfair diversion of trade to respondents from their competitors. In consequence thereof, substantial injury has been done by respondents to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, Robert Holmes, Inc. and Albert Goodman, 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 complaint of the Commission and the answer filed herein, dated January 27, 1937, by respondents, admitting all the material allegations of the complaint to be true and waiving the tak-

712

Order

ing 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 respondents, Robert Holmes, Inc., a corporation; and Albert Goodman, an individual, their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of their home study psychology health courses in interstate commerce or in the District of Columbia do forthwith cease and desist from representing:

1. That constipation, indigestion, cold sweats, dizzy spells and bashfulness, or any of them, are always caused by nervous exhaustion;

2. That for 25 cents, or any other nominal amount, one may learn how to conquer bashfulness or nervousness or embarrassment, overcome his faults easily and enjoy life to the fullest;

3. That each such case is given individual personal attention by respondents;

4. That respondents' course is an effective or competent treatment for nervousness, constipation, indigestion, dizzy spells, sweating, sleeplessness, irregular heart, worry, bashfulness, fatigue, pain, sex weakness, or "feeling blue";

5. That the respondents' treatment is entirely different from any other method, or that it will absolutely bring very positive and permanent relief from the various physical ailments mentioned;

6. That "lack of energy", indigestion, constipation, and kindred ailments "positively indicate" a deranged nervous system for which respondents' course would be an effective treatment;

7. That respondents' course will effectively eliminate poisons from the system; and from making any other representations of similar tenor or import.

And it is hereby further ordered, That the said respondents shall within 60 days from the date of the service upon them of this order file with this Commission a report, in writing, setting forth the manner and form in which they have complied with this order.

IN THE MATTER OF
NATIONAL SILVER COMPANY

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

Docket 2111. Complaint, Sept. 29, 1933¹—Decision, Feb. 17, 1937

Where a corporation engaged in sale and distribution of knives and other cutlery and tableware to jobbers, wholesale and retail dealers in cutlery, chain stores, hardware stores, department stores, and house-furnishing stores, with branch sales offices in Chicago and Los Angeles; in competition with others who made and sold similar products and used word "stainless" only as a mark, brand, or stamp for or in advertising such products made of the chrome-iron alloy, stainless steel, and truthfully used words or terms "chromium plate" or "chromium plated" to indicate a carbon steel product plated with chromium, and did not employ such words as "stainpruf" as a stamp, brand, or mark for or in advertising such chromium-plated articles that were not in fact stainproof and corrosion resistant—

- (a) Stamped its aforesaid products, regardless of whether made from carbon steel or chromium alloy steel, with word "stainless," in utter disregard of well established trade custom among cutlery manufacturers, silversmiths, and trade generally, of using said word to designate cutlery made from chromium-alloyed steel, and failed to inform purchasers as to whether or not its said products were chromium plated or were in fact made of the said more costly solid stainless steel, as long understood by trade and ultimate purchasers from word "stainless" as meaning, as applied to knives, cutlery, and tableware, said high-grade type of chromium steel alloy with its high degree of resistance to oxidation and corrosion against most media, and as used by manufacturers and distributors in their catalogs and advertising material to designate only those products made of stainless steel as aforesaid;

With result that purchasers, in view of the almost identically similar appearance of the two kinds of products, purchased its chromium-plated knives and other flat tableware of inferior quality, as and for products, the metallic parts of which were made of solid alloyed or stainless steel and were not the cheaper carbon steel articles with utterly thin and inadequate chromium plating and notorious amenability to corrosive influence, and quality of rusting rapidly in presence of water, dampness, acids or similar agents;

- (b) Sold and distributed carbon steel, chromium-plated knives marked "stainpruf," made of carbon steel plated as above set forth, notwithstanding fact said products were extremely susceptible to corrosion and were not in fact stainless in any sense, and were further subject to corrosion by reason of tendency of plating to break through sharpening or other abrasive action, etc., and in its advertising of its said "stainpruf" products as guaranteed against staining by acids contained in vegetables, fruits, and

¹ Amended and supplemental.