

Complaint

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IN THE MATTER OF
**E. G. ZELLERS AND M. W. ZELLERS, TRADING AS ZELLERS
LABORATORIES**

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

Docket 2835. Complaint, June 5, 1936—Decision, Apr. 6, 1937

Where a firm engaged in the sale and distribution of poultry medicines and remedies, including their "Zellers Kamala Nicotine Tabs," "Zellers Fowl Tone Formula No. 1," "Zellers Fowl Tone Formula No. 2," and "Carbo-Zel Tablets," in substantial competition with others engaged in the manufacture and sale of similar and like commodities used for the same or similar purposes—

Represented, in advertising their aforesaid four preparations, that said products, as the case might be, constituted effective remedies or treatments for round and tape worms and internal parasites in fowls, and an effective remedy and agency for the removal of all such parasites, and effective remedies and treatments for intestinal flu and various other conditions and ailments in turkeys and irritations caused by worms in fowls, and constituted perfect and ideal antiseptics for fowls, and would preclude infestation by worms, or were scientifically prepared successfully to combat the ravages of intestinal worms in fowls, and to counteract toxic poisons created by their presence, and constituted a worm preventive, facts being such representations and statements were false and misleading and said various preparations did not have the qualities or properties thus represented, and would not accomplish such results;

With tendency and capacity to deceive and mislead substantial portions of purchasing public into the erroneous belief that such representations were true, and with the result that consuming public, as a direct consequence of mistaken and erroneous beliefs thus engendered, purchased substantial volume of their commodities and trade was thereby unfairly diverted to them from competitors engaged in sale of products of same kind and nature, and who truthfully advertise and represent their character and quality and results to be obtained from use thereof; 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. W. W. Sheppard*, trial examiner.

Mr. John Darsey for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that E. G. Zellers and M. W. Zellers, copartners, doing business under the trade

name Zellers Laboratories, hereinafter referred to as respondents, have been and now are, 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. E. G. Zellers and M. W. Zellers, copartners, doing business under the trade name Zellers Laboratories, with their principal place of business at Orrton Avenue and Noble Street, Reading, Pa., are now and for several years last past have been engaged in the sale and distribution of poultry products, consisting of medicines and remedies for various diseases in fowls, in commerce between and among the various States of the United States and in the course of the sale and distribution of the aforesaid commodities cause the same to be transported to the purchasers thereof from their place of business in the city of Reading, State of Pennsylvania, into and through the various States of the United States other than the State of Pennsylvania.

PAR. 2. There are among the competitors of respondents, individuals, firms, partnerships, and corporations engaged in the manufacture and sale of similar and like commodities, or commodities to be used for the same and similar purposes, who offer for sale and sell their said products to purchasers located in the various States of the United States, and who cause their said products when sold to be transported to purchasers thereof located in the various States of the United States.

PAR. 3. There are, among the poultry products offered for sale and sold by respondents as aforesaid, products sold under the trade names "Zellers Kamala Nicotine Tabs," "Zellers Fowl Tone Formula No. 1," "Zellers Fowl Tone Formula No. 2," and "Carbo-Zel Tablets." In the course of the offering for sale and sale of the poultry medicines and remedies sold under the trade names designated supra in this paragraph, the respondents have caused and cause statements and representations to be made in advertisements, pamphlets, circulars, trade magazines, and other printed matter which is published or distributed in the various States of the United States to the following effect, gist, or meaning:

(a) "Zellers Kamala Nicotine Tabs" are an effective individual worm treatment for Round and Tape Worms in chickens, turkeys and other fowls; they are a powerful and effective agency for ridding your birds of worms; they do not dissolve until they reach the gizzard, where normal grinding action releases the medicine right at the seat of the worms; they produce results in less than six hours; medication is released at the very seat of the worm infestation, resulting in efficient ridding of the bird's body of intestinal parasites; unless the

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head of the Tape Worm is removed treatment will be of no avail; and the head of the worm must come out as it is the root of the Tape Worm.

(b) "Zellers Fowl Tone Formula No. 1" contains the elements essential to the proper development of future layers; it is a special tonic for building up disease resistance and aiding in the quick recovery from worm infestation; it and "Carbo-Zellers Tablets" are ideal antiseptics; they will prevent digestive disorders; they are effective treatments for intestinal flu, coccidiosis, diarrhea, cholera, typhoid, brooder pneumonia, blackhead in turkeys and irritation caused by worms.

(c) "Zellers Fowl Tone Formula No. 2" is especially recommended for flock treatment of worms, is scientifically prepared to combat the ravages of these small, microscopic worms, to counteract the toxic poisons they give off; it is an excellent tonic and worm preventive.

PAR. 4. All of the representations and statements made by the respondents in the manner indicated in paragraph 3 hereof are false and misleading. "Zellers Kamala Nicotine Tabs" is not an effective treatment for all worms in chickens and other fowls, and is not an effective remedy for tape worms and worms other than round worms; it will not remove the heads of tape worms, and is not an effective remedy for such purpose. "Zellers Fowl Tone Formula No. 1" and "Carbo-Zellers Tablets" are not effective remedies for coccidiosis and other poultry diseases designated in sub-section (b) of paragraph 3 supra, and will not produce the results represented by respondents as set forth in said paragraph. "Zellers Fowl Tone Formula No. 2" is not an effective flock treatment scientifically prepared to combat the ravages of small, microscopic worms and to counteract the toxic poison they give off; it is not a worm preventive and will not produce the results represented by respondents as described in sub-section (c) of paragraph 3 supra.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondents in the manner hereinabove set out, were, and are calculated to, and have had, and now have the tendency and capacity to mislead and deceive substantial portions of the purchasing public into the erroneous belief that said representations are true. As a direct consequence of the mistaken and erroneous beliefs induced thereby the consuming public has purchased a substantial volume of respondents' commodities, with the result that trade has been unfairly diverted to the respondents from competitors engaged in selling commodities of the same kind and nature in commerce as hereinabove set out, and who truthfully advertise and represent the character and quality, and the results to be obtained from the use of their said products. As a result thereof, a substantial injury has been and is being done by respondents to competition in commerce, as hereinabove set forth.

PAR. 6. The above acts and practices of respondents are to the injury and prejudice of the public and to competitors of respondents 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 5, 1936, issued, and on June 7, 1936, served, its complaint in this proceeding upon respondents, E. G. Zellers and M. W. Zellers, copartners, doing business under the trade name, Zellers Laboratories, charging them 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 respondents' answer, 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 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. The respondents, E. G. Zellers and M. W. Zellers, copartners, are doing business under the trade name of Zellers' Laboratories, having a principal place of business at Orrton Avenue and Noble Street, Reading, Pa. They are and for several years past have been engaged in the sale and distribution of poultry products consisting of medicines and remedies for various diseases in fowls. When sales are made, respondents cause said products to be transported from their place of business in the city of Reading, Pa., into and through various States of the United States to the purchasers thereof.

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PAR. 2. There are other individuals, firms, partnerships, and corporations engaged in the manufacture and sale of similar and like commodities which are used for the same and similar purposes, who offer for sale and sell their products to purchasers located in the various States of the United States, and who cause their products, when sold, to be transported to purchasers located in the various States of the United States. Respondents are engaged in substantial competition with such other individuals, firms, partnerships, and corporations in such commerce.

PAR. 3. Among the products offered for sale and sold by respondents as aforesaid, are products sold under the trade names "Zellers Kamala Nicotine Tabs," "Zellers Fowl Tone Formula No. 1," "Zellers Fowl Tone Formula No. 2," and "Carbo-Zel Tablets." In the course of the promotion and sale of their products under the trade names designated herein, the respondents cause statements and representations to be made in advertising matter which is distributed in the various States of the United States to the following effect, gist, or meaning:

(a) "Zellers Kamala Nicotine Tabs" are an effective individual worm treatment for round and tape worms in chickens, turkeys and other fowls; they are a powerful and effective agency for ridding birds of worms; they do not dissolve until they reach the gizzard, where normal grinding action releases the medicine right at the seat of the worms; they produce results in less than six hours; medication is released at the very seat of the worm infestation, resulting in efficient ridding of the bird's body of intestinal parasites; unless the head of the tape worm is removed treatment will be of no avail; and the head of the worm must come out, as it is the root of the tape worm.

(b) "Zellers Fowl Tone Formula No. 1" contains the elements essential to the proper development of future layers; it is a special tonic for building up disease resistance and aiding in the quick recovery from worm infestation; it and "Carbo-Zel Tablets" are ideal antiseptics; they will prevent digestive disorders; they are effective treatments for intestinal flu, coccidiosis, diarrhea, cholera, typhoid, brooder pneumonia, blackhead in turkeys and irritations caused by worms.

(c) "Zellers Fowl Tone Formula No. 2" is especially recommended for flock treatment of worms, is scientifically prepared to combat the ravages of these small microscopic worms, to counteract the toxic poisons they give off; it is an excellent tonic and worm preventive.

PAR. 4. Representations and statements to the aforesaid effect and meaning, as made by the respondents in the manner indicated in paragraph 3 hereof, are false and misleading. "Zellers Kamala Nicotine Tabs" is not an effective treatment for all worms in chickens and other fowls, and is not an effective remedy for tape and other worms; it will not remove the heads of tape worms and is not an effective remedy for such purpose. "Zellers Fowl Tone For-

mula No. 1" and "Carbo-Zel Tablets" are not effective remedies for coccidiosis and other poultry diseases designated in sub-section (b) of paragraph 3, supra, and will not produce the results represented by respondents as set forth in said paragraph. "Zellers Fowl Tone Formula No. 2" is not an effective flock treatment scientifically prepared to combat the ravages of small, microscopic worms and to counteract the toxic poisons they give off; it is not a worm preventive and will not produce the results represented by respondents as set forth in sub-section (c) of paragraph 3, supra.

PAR. 5. Representations and statements made by respondents to the effect and meaning of those set forth in paragraph 3, supra, are calculated to and do have the tendency and capacity to deceive and mislead substantial portions of the purchasing public into the erroneous belief that such representations are true. As a direct consequence of their mistaken and erroneous beliefs induced thereby, the consuming public has purchased a substantial volume of respondents' commodities, with the attendant result that trade has been unfairly diverted to the respondents from competitors engaged in selling commodities of the same kind and nature, in commerce, as hereinabove set out, and who truthfully advertise and represent the character and quality, and the results to be obtained from the use of their said products. Substantial injury is thereby done by respondents to competition in commerce, as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondents E. G. Zellers and M. W. Zellers, copartners doing business under the trade name, Zellers Laboratories, 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 on February 10, 1937, by 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

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entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914:

It is ordered, That the respondents, E. G. Zellers and M. W. Zellers, individually and as copartners doing business under the trade name Zellers Laboratories, or under any other name, their representatives, agents and employees, in connection with the offering for sale, sale, and distribution of their poultry products now designated as "Zellers Kamala Nicotine Tabs," "Zellers Fowl Tone Formula No. 1," "Carbo-Zel Tablets" and "Zellers Fowl Tone Formula No. 2," or any other products of substantially the same ingredients or having the same therapeutic effect, sold under those names or any other names, do forthwith cease and desist from directly or indirectly representing:

1. That "Zellers Kamala Nicotine Tabs" is an effective remedy or treatment for round worms, tape worms, or intestinal parasites in fowls; or that it is an effective remedy and agency for the removal of all intestinal parasites in fowls.

2. That "Zellers Fowl Tone Formula No. 1" and "Carbo-Zel Tablets" are effective remedies and treatments for intestinal flu, coccidiosis, diarrhea, cholera, typhoid, brooder pneumonia, blackhead in turkeys, and irritation caused by worms in fowls; that they are perfect and ideal antiseptics for fowls or that they will preclude worm infestation.

3. That "Zellers Fowl Tone Formula No. 2" is scientifically prepared to successfully combat the ravages of intestinal worms in fowls and that it will counteract toxic poisons created by their presence in fowls; or that it is a worm preventive.

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 request.

Syllabus

IN THE MATTER OF

FRANK MCKINNON, TRADING AS EASTERN ART COMPANY AND UNITED ART ASSOCIATION

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

Docket 2912. Complaint, Aug. 28, 1936—Decision, Apr. 8, 1937

Where an individual engaged, under two separate trade names, in the offer and sale of tinted or colored photographic enlargements of family and other photographs, and of frames therefor, through the medium of salesmen or agents, working in squads, groups, or teams, and whom it supplied with identification cards and with equipment including samples or specimens of its so-called "paintings," and with printed order or contract forms, and with sales talks and with certificates or coupons for salesmen's use in the lucky "draw" ruse employed by him, and who called upon the prospective customers and, in accordance with their instructions, falsely represented that said individual was conducting a contest for national advertisers, and that winning pictures in such contest, and particularly those of babies, would appear on Cream of Wheat, Ovaltine, Ralston, and other packages or containers, and that parents of child would obtain royalties for use of the picture and a grand prize, and that paintings to be entered in such contest might result in the offer of a movie contract to the customer, and who made further false and misleading representations to the effect that said individual was conducting an art school at which pictures made for customers would be exhibited, etc., and made other representations in enlisting interest of prospective customers over and in addition to those below set forth, and in direct substantial competition with others similarly engaged in sale between and among the various States of tinted or colored photographic enlargements and frames therefor, and with those engaged in the similar sale of genuine, free-hand, original, oil, and water color paintings, and including among said former competitors those who truthfully represent and honestly vend their products, and, among the latter, those who truthfully represent their genuine portraits as paintings—

- (a) Described said enlargements as "paintings" and as "fine oil paintings" and as "hand paintings," and as a work of art and not photographic enlargements, in soliciting sale thereof as above set forth, and as "portrait paintings" on the order or contract forms with said individual's trade name thereon, notwithstanding fact that so-called "paintings" were not portrait paintings, oil paintings, etc., or original paintings or works of art, but were merely cheap photographic enlargements of photographs which had been tinted or colored through use of pastel or crayon water color or other powdered pigments sprayed thereon with air brush and compressed air;
- (b) Represented to the prospective customer contacted by one of his said sales agents or representatives that a drawing contest would be held to decide a few lucky persons to receive free paintings in their homes, and that customer would be allowed two draws or trials, and informed the