

Complaint

IN THE MATTER OF

ZION HOLY SPIRITUAL MISSION, AND EUSTACE N.
FRENCH, DOING BUSINESS THROUGH ZION HOLY
SPIRITUAL MISSION AND UNDER TRADE NAME OF
ZION HOLY SPIRITUAL MISSION LABORATORIES

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

Docket 2963. Complaint, Oct. 31, 1936—Decision, Apr. 21, 1937

Where a corporation and an individual, who did business through it and under a trade name including corporate name of the other and word "Laboratories," engaged in sale of medicines under trade name "Bry-O-Lyn"—

Represented, in labels upon their said products and other advertising matter published and distributed in the various States, that they operated a laboratory or laboratories in which the medicines offered for sale and sold by them were manufactured, and that said medicines were made by them, facts being that they did not own any such laboratory or laboratories or any interest in any manufacturing establishment from which their products were obtained, but medicines offered and sold by them under the aforesaid trade name were made and compounded by pharmaceutical laboratories in which they had no interest whatsoever, and were sold to them in regular course of trade;

With tendency and capacity to deceive and mislead substantial portions of purchasing public into the erroneous belief that such representations were true, and with result that consuming public, as a direct consequence of such mistaken and erroneous beliefs, thus engendered, was persuaded to purchase a substantial volume of its said products, and trade was unfairly diverted to them from competitors engaged in selling commodities of the same kind and nature, and who truthfully advertise and represent the character, quality and source of their said products; 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.

Mr. Blaine G. Alston of Ellis & Westbrooks, of Chicago, Ill., 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 Zion Holy Spiritual Mission, an Illinois corporation, and Eustace N. French, an individual, doing business through the Zion Holy Spiritual Mission

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and under the trade name of Zion Holy Spiritual Mission Laboratories, Chicago, Ill., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Zion Holy Spiritual Mission, a corporation organized and existing by virtue of the laws of the State of Illinois, and Eustace N. French, an individual doing business through the Zion Holy Spiritual Mission and under the trade name of Zion Holy Mission Laboratories, and having a place of business at 3338 South State Street, Chicago, Ill., are now, and for several years last past have been, engaged in the sale and distribution of correspondence courses in spiritual development, magic and mysticism, success seals, good luck coins, talismen, books, and medicines, in commerce between and among the various States of the United States, and in the course of sale and distribution of the aforesaid articles cause the same to be transported into and through the various States of the United States.

PAR. 2. The respondents, in the sale and distribution of the aforesaid products, have been and are in competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution, in interstate commerce, of similar and like products and articles and of products and articles to be used for the same and similar purposes.

PAR. 3. In the course of sale of the aforesaid articles and products, the respondents cause statements and representations to be made in advertisements, pamphlets, circulars, and other printed matter, which said advertisements or printed matter are published or distributed in the various States of the United States, to the following effect, gist, or meaning:

1. That respondent, Eustace N. French, is an ordained minister of the Spiritualist church;

2. That respondent, Eustace N. French, is a graduate of a Theological Seminary of the Spiritualist Church;

3. That respondent, Eustace N. French, has received a degree or degrees from the Theological Seminary entitling him to use the titles "Doctor" or "Reverend Doctor," as a prefix to his name or signature, or to use the initials "B. D." or "D. D." after his name or signature;

4. That respondents maintain and operate a laboratory or laboratories in which the aforesaid products or articles are manufactured, produced, or developed;

5. That the respondents' correspondence courses will give complete instructions in Magical Spiritual Arts and Science and are complete courses in religious, educational, and spiritual development based on the Bible;

6. That respondents' courses will equip students to give readings, healings, blessings, and spiritual advice, and will enable its students to make and use spiritual lucky goods, such as holy oils, incense, talismen, seals, herbs, remedies, etc.;

7. That respondents will give legal protection to graduates in these courses to work in any State they desire and will make its students independent by giving them a life trade or business;

8. That students of respondents' courses will begin making money immediately upon beginning the course and will earn many times the price of the course before they have finished the same;

9. That respondents' correspondence courses will enable one to have good friends, make money, and be wise;

10. That respondents' "success seals" will enable one to obtain what he wants, to be successful in love and marriage, to win in all games, to conquer enemies, and to have power and influence over all things;

11. That respondents' "success seals" are products of the Orient;

12. That respondents' "success seals" are reproduced on genuine imported parchment paper made from the skin of lambs and are based on the 6th and 7th Books of Moses:

13. That respondents' "Book of Power" will unfold the mystic records of all the secrets of the ages and enable one to know the particular day and hour to do anything he desires, gain control of and bend the will of enemies, regain lost love, bring happiness to broken homes, regain youth and vigor, understand motives, of people around him and determine machinations of their minds, to choose words according to ancient holy methods of the Old Cuthian and Chaldean forms, to chant one's desires in the silent tongue so that one may be reached anywhere, to make people walk in their sleep and do one's bidding;

14. That respondents are the first to reveal the secrets of the "Book of Powers"; that the regular price of the said "Book of Power" is \$2.00, but that the special coupon accompanying said representation will entitle one to said book for an additional dollar;

15. That respondents' book "The Truth About Candles" discloses the secrets of the candle, other startling facts, and will make one master of his own destiny and make dreams come true; that the regular price of respondents' book "The Truth About Candles" is \$3.00, but that the special coupon accompanying said representation will entitle one to said book for an additional \$2.00;

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16. That knowledge gained from respondents' book "How to Make Your Dreams Come True" will make dreams come true and enable one to dream winning numbers, etc.; that the regular price of respondents' book "How to Make Your Dreams Come True" is \$2.00, but that the special coupon accompanying said representation will entitle one to said book for an additional dollar;

17. That respondents' publication "The Ten Lost Books of Moses" is the key to knowledge and will disclose "The Mystery of Sinai—Things Never Told Before" and is the Fountain of Wisdom and the Way to All Power;

18. That respondents' Bry-O-Lyn is an effective remedy for chronic constipation and indigestion and is a product of the laboratory or laboratories of respondents.

PAR. 4. All of the representations and statements made by the respondents in the manner indicated in paragraph 3 hereof are false and untrue and have no foundation in fact. Respondent Eustace N. French is not an ordained minister of the Spiritualist Church, is not a graduate of a Theological Seminary of said Church, and has received no degree or degrees from any Theological Seminary entitling him to use the titles hereinabove indicated. Respondents do not maintain or operate any laboratory in which any of their products are manufactured or produced. Respondents' various courses of instruction and books do not give complete instructions in magical spiritual arts, are not complete courses in educational, religious and spiritual development, and do not equip the purchasers thereof with the powers to accomplish the many results claimed from a purchase of said courses of instruction or books. Respondents' "Success Seals" will not accomplish the results claimed and are not products of the Orient. The knowledge gained from a study of the various books sold by the respondents will not enable the purchasers thereof to acquire the powers claimed and the regular price of said books is not as claimed by the respondents. The regular price of said books is, in truth and in fact, the price at which they are sold under the respondents' so-called "special sale price." Respondents' "Bry-O-Lyn" is not an effective remedy for chronic constipation and indigestion and is not made in laboratories of respondents, but is, in truth and in fact, made and compounded by pharmaceutical laboratories and sold to the respondents in the regular course of trade.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondents, as hereinabove set out, in their advertising in newspapers and otherwise, in offering for sale and in selling their several products was, and is calculated to, and

had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a direct consequence of the mistaken and erroneous beliefs induced, as aforesaid, the consuming public has purchased a substantial volume of respondents' several products with the result that trade has been unfairly diverted to the respondents from competitors engaged in selling products and articles of the same kind and nature in commerce, as hereinabove set out, and who truthfully advertise and represent the character and quality of their said products. As a result thereof, substantial injury has been, and is now being done by respondents to competition in commerce, as hereinabove set out.

PAR. 6. The aforementioned methods, acts and practices of respondents are all to the prejudice of the public and 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 October 31, 1936, issued and served its complaint in this proceeding upon respondents, Zion Holy Spiritual Mission and Eustace N. French, doing business through the Zion Holy Spiritual Mission and under the trade name, Zion Holy Spiritual Mission 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Blaine G. Alston, attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposi-

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tion thereto; 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Zion Holy Spiritual Mission, is a corporation organized and existing by virtue of the laws of the State of Illinois. The respondent, Eustace N. French, is an individual doing business through the Zion Holy Spiritual Mission and under the trade name of Zion Holy Spiritual Mission Laboratories. All of the aforesaid respondents have their principal place of business located at 3338 South State Street, Chicago, Ill., and are now and for several years last past have been engaged in the sale of medicines under the trade name, "BRY-O-LYN." The respondents cause their medicines when sold to be transported from their place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois.

PAR. 2. There are other individuals, firms, partnerships, and corporations engaged in the sale and distribution in commerce among and between the various States of the United States of similar and like medicines, or medicines to be used for the same and similar purposes, and with such individuals, firms, partnerships, and corporations the respondents have been and are in competition in such commerce.

PAR. 3. In the course of sale of the aforesaid products, the respondents cause statements and representations to be made upon labels placed on products and other advertising matter which are published and distributed in the various States of the United States to the effect that the respondents operate a laboratory or laboratories in which the medicines offered for sale and sold are manufactured, and that the medicines are manufactured by respondents.

PAR. 4. The respondents do not own, operate, or maintain a laboratory or laboratories in which the medicines are manufactured nor do they own any interest in any manufacturing establishment from which the products are obtained. The medicines offered for sale and sold by respondents under the trade name, "BRY-O-LYN", are made and compounded by pharmaceutical laboratories in which the respondents have no interest whatsoever and are sold to the respondents in the regular course of trade.

The representations and statements made by respondents to the effect and meaning of those set forth in paragraph 3 above are cal-

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culated to and 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 such mistaken and erroneous beliefs so induced, the consuming public is persuaded to purchase a substantial volume of respondents' products with the attendant result that trade is unfairly diverted to respondents from competitors engaged in selling commodities of the same kind and nature in commerce as hereinbefore set out, who truthfully advertise and represent the character, quality and source 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, Zion Holy Spiritual Mission and Eustace N. French, doing business under the trade name, Zion Holy Spiritual Mission 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, the answers of respondents, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, 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, Zion Holy Spiritual Mission, a corporation, and its officers, and Eustace N. French, doing business through the Zion Holy Spiritual Mission and under the trade name, Zion Holy Spiritual Mission Laboratories, or under any other trade name, their respective representatives, agents, and employees, in connection with the offering for sale, sale and distribution of their medicine products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

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Representing, through the use of the words "Laboratories" and "Manufacturers" or any other word or words of similar import and effect, alone or in conjunction with other words, or through any other means, device, or in any manner, that they compound, make, or manufacture said medicine products until and unless they actually own and operate or directly and absolutely control a laboratory or plant wherein such products are made.

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.

Syllabus

IN THE MATTER OF
OLSON RUG COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2976. Complaint, Nov. 9, 1936—Decision, Apr. 21, 1937

Where a corporation engaged in the manufacture, distribution, and sale of
rugs—

Represented and implied, through advertisements in periodicals of general
circulation, and through letters of solicitation, price lists, sample books,
pamphlets, folders, and other advertising literature, and through its cata-
logs and order blanks, that the rugs sold by it were made from the identical
materials sent in to it by each customer, together with other materials
furnished by it, such as new wool, through such statements, among others,
as “* * * you too will find it fascinating to send away a bundle of
your worn carpets, rugs, clothing, and other woollens and get back beautiful
deep piled rugs that will win the praise of your family and friends,”
“Strange but true, one may send old carpets, rugs, or clothing and have
them converted into new rugs of any color and design,” “By the magic
which turns your old wool into new rugs— * * *,” “* * * woven
from old wool which you collect and send in,” and “Please make the Olson
rugs as ordered below”;

Facts being that old materials sent in to it by customers are not segregated
and used in the manufacture of a rug to fill the specific order of the
particular customers, but are commingled with other materials sent in by
others and made into rugs to be carried in stock for sales to other pur-
chasers, and it fills orders sent in with old materials with rugs already
in stock and made from such materials previously sent in by other cus-
tomers, or with rugs woven to special order of customers from old materials
previously sent in by others, and does not make a practice of manufacturing
rugs sent to its respective purchasers from the specific materials sent in
by them;

With capacity and tendency to cause a portion of the purchasing public to
form the erroneous and mistaken impression and belief that when they sent
in old materials and ordered rugs from it said products would be made in
part from specific materials sent in, and to cause them to purchase its
said rugs on account of such belief, and with result that trade was thereby
diverted to it from competitors, including those who make, distribute, and
sell rugs made, in part at least, from specific materials sent in to them by
customers, and those who do not make the rugs sold to customers from such
materials sent in by the respective customers, but from other materials,
and who have not made use of any statements or representations calculated
to cause purchasers to form erroneous impression and belief that their
respective products are made from materials other than those from which
they are actually made; 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.