

IN THE MATTER OF

JEAN G. SUBIN, ISRAEL SUBIN, AND JOHN N. KINDERMAN, INDIVIDUALLY, AND TRADING AS AMERICAN REMEDY COMPANY

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

Docket 3013. Complaint, Dec. 10, 1936—Decision, Apr. 28, 1937

Where three individuals engaged in the distribution and sale of the acetyl salicylic acid product known as aspirin, in substantial competition with others engaged in distribution and sale of such products in commerce among the various States and in the District of Columbia, and including many who do not in any manner misrepresent their said products, either as to quality or efficacy in treatment and cure of ailments and conditions of the body; in advertising the same—

(a) Represented that their said product was the purest acetyl salicylic acid, commonly known as aspirin, obtainable in America, and that it was registered in the Patent Office, through designation thereof as "American Purest Aspirin," and through statement "Registered U. S. Patent Office"; and

(b) Represented that it was a competent and effective treatment and cure for colds and aches and pains of whatever nature;

Facts being it was not thus registered, and had not been, as believed by many by virtue of such supposed registration, tested and approved, and was not, by reason thereof, superior to similar products offered by competitors, and was no better than or different from product of many of its competitors, and was not a competent and effective treatment and cure for all colds, aches, and pains, in that it had no effect on causative factors of such conditions in the body;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and implications were true and that products of competitors were inferior to and less effective than that of said individuals, and with result that a substantial number of the purchasing and consuming public, as a result of such erroneous beliefs thus engendered, bought their said product and thereby diverted trade to them from their competitors who truthfully advertise their products; to their injury and that of the public:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Herman Lipman Cohen, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Jean G. Subin, Israel Subin, and John N. Kinderman, individually and trading as American Remedy Company, 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. Respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, individually and trading as American Remedy Company, a fictitious trade name registered under the requirements of an act of the General Assembly of Pennsylvania, are engaged in business with their principal office and place of business located at 131 Market Street and 301 Green Street, Philadelphia, Pa. Respondents are now, and have been for sometime in the past, engaged in the business of distributing and selling in commerce, as herein set out, a certain acetyl salicylic acid product designated by them as "American Purest Aspirin."

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said aspirin when sold, to be transported from their principal place of business in the State of Pennsylvania to purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondents now maintain, and have maintained at all times, a constant current of trade and commerce in said aspirin so distributed and sold by them, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other corporations, firms, and individuals likewise engaged in the business of distributing and selling acetyl salicylic acid products such as aspirin, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of said business, and for the purpose of inducing individuals, firms, and corporations to purchase said "American Purest Aspirin," respondents have caused the said product to be advertised in various ways and by various means through which representations as to said product are circulated throughout the various States of the United States. In all of said advertisements, respondents have caused the name of said product,

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to wit, "American Purest Aspirin" to be prominently and conspicuously displayed, together with the following statements:

5 Grain Tablets

American

Purest

Aspirin

Registered U. S. Patent Office

For Colds, Aches and Pains

Guaranteed Genuine

American Purest Aspirin,

American Remedy Co.

Philadelphia, Pa.

For Relief of distress and discomfort due to simple headaches, head colds, simple neuralgia, muscular aches and pains. For a gargle 2 tablets to $\frac{1}{2}$ glass of warm water—gargle every two or three hours. Directions: 1 or 2 tablets with a glass of water.

AMERICAN REMEDY CO.

Phila., Pa.

Distributors.

The use of the word "Registered" in large and conspicuous lettering directly underneath the word "Aspirin" on the container in which the product is sold and in other advertising, has a capacity and tendency to lead the public into the erroneous belief that the product of the respondents has been registered in some way with the United States Patent office, and into the erroneous belief that by virtue of such registration the product itself is a superior brand of aspirin. Likewise the use of the word "Purest" is a conspicuous lettering directly underneath the word "American" and preceding the Word "Aspirin" has a tendency to lead the public into the erroneous belief that the product of the respondents is the purest aspirin obtainable in America. The statement "For colds, aches and pains" used in said advertising and labeling as aforesaid, has a tendency to mislead and deceive the public into the erroneous belief that the product is a remedy and cure for all aches and pains when in truth and in fact, there are aches and pains not resulting from colds, from which no benefit would be derived by an individual through the taking of the respondent's product.

PAR. 5. The representations made by respondents with respect to the nature and effect of their aspirin when used as above set forth are grossly exaggerated, false, misleading and untrue. Said product

is not fully effective for the treatment of pains and cold and it has no effect on the causative factors of such conditions of the human body. Its use does not always bring prompt relief to those suffering from the conditions named, viz, colds, aches and pains. The representation of the respondents with reference to the word "Registered" is false, misleading, and untrue, as the product has never been registered in the U. S. Patent Office, and the further representations that the product is America's Purest Aspirin is likewise false and misleading and untrue, as the product is not the purest aspirin obtainable in America.

PAR. 6. There are among respondents' competitors many who manufacture, distribute and sell aspirin who, in no way, misrepresent that their aspirin is the purest aspirin obtainable on the American market when it is not; that their product has been registered in the United States Patent Office, when it has not or that their respective aspirin has a quality and character or an effectiveness in use for the treatment of various conditions of the human body which it does not have. They do not make unlimited claims for the administering of their product for the relief of all types of colds, aches, and pains in the human body and do not falsely disparage the aspirin products of their respective competitors.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating and describing their product and the effectiveness of their product, as hereinabove set out, in offering for sale and selling "American Purest Aspirin" as a registered product, and as "America's Purest Aspirin" 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 all of said representations are true, and into the further erroneous belief that aspirin products of its competitors are inferior to, and less effective than "American Purest Aspirin." Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and misrepresentations of the respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of respondents' "American Purest Aspirin" with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in the business of distributing and selling aspirin who truthfully advertise and represent their products and the effectiveness of said products in use. As a result thereof, injury has been, and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition 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 the 10th day of December 1936, issued and subsequently served its complaint in this proceeding upon the respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, individually and trading as American Remedy Company, 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 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 substitute answer, 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. That respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, are individuals trading as American Remedy Company. Respondents have their office and principal place of business at 301 Green Street, Philadelphia. Respondents are now, and for more than one year last past have been, engaged in the business of distributing and selling in commerce, a certain acetyl salicylic acid product, commonly known as aspirin, designated by them as "American Purest Aspirin."

PAR. 2. Said respondents cause said product, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located at various points in other States of the

United States and in the District of Columbia. Respondents now maintain, and have maintained at all times mentioned herein, a constant current of trade and commerce in said product so distributed and sold by them, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with corporations, firms, and individuals likewise engaged in the business of distributing and selling acetyl salicylic acid products such as aspirin, in commerce among and between the various States of the United States and in the District of Columbia.

There are, among the competitors of respondents, many who sell and distribute acetyl salicylic acid, commonly known as aspirin, in said commerce, who do not in any manner misrepresent their said products either as to the quality thereof or as to the efficacy thereof in the treatment and cure of ailments and conditions that exist in the human body.

PAR. 4. In the course and conduct of their business in said commerce, and for the purpose of inducing the purchase of their products, the respondents cause advertisements containing representations and implications in regard to said product and its efficacy in the treatment and cure of certain ailments and conditions to be circulated in the various States of the United States and in the District of Columbia. In all such advertisements the respondents make the following statements:

5 Grain Tablets

American

Purest

Aspirin

Registered U. S. Patent Office

For Colds, Aches and Pains

Guaranteed Genuine

American Purest Aspirin,

American Remedy Co.

Philadelphia, Pa.

For Relief of distress and discomfort due to simple headaches, head colds, simple neuralgia, muscular aches and pains. For a gargle 2 tablets to $\frac{1}{2}$ glass of warm water—gargle every two or three hours. Directions: 1 or 2 tablets with a glass of water.

AMERICAN REMEDY CO.

Phila., Pa.

Distributors.

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By the means and in the manner above stated, the respondents represent and imply that their said product has been and is registered with the United States Patent Office; that it is the purest acetyl salicylic acid, commonly known as aspirin, obtainable in America; and that it is a competent and effective treatment and cure for colds, and aches and pains of whatever nature.

PAR. 5. Respondents' said product is not registered in the United States Patent Office; it is not the purest acetyl salicylic acid obtainable in America, and is no better than or different from the product of many of its competitors; it is not a competent and effective treatment and cure for all colds, aches and pains, in that it has no effect on the causative factors of such conditions in the human body.

Many prospective purchasers of respondents' product believe that the registration of such a product with the United States Patent Office indicates that such a product has been tested and approved and is superior to similar products offered for sale and sold by competitors, and many prospective purchasers believe that the product of the respondents is the purest type of that product sold on the American market, and that such product is a competent and effective treatment and cure for all colds, aches, and pains.

PAR. 6. The above and foregoing representations and implications, so made and used by the respondents in connection with the sale and distribution of their said product in such commerce, as hereinabove set out, have had and do have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and implications are true, and into the erroneous belief that the products of the competitors of the respondent are inferior to and are less effective than the product of the respondents. As a result of such erroneous beliefs, so engendered, a substantial number of the purchasing and consuming public purchase the respondents' said product, thereby diverting trade to the respondents from their said competitors, who truthfully advertise their products, to the injury of such competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, individually and trading as American Remedy 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 the Act of Congress, approved September 26, 1914, entitled "An Act to

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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 the 26th day of April 1937, by the respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of that certain acetyl salicylic acid product, commonly known as aspirin, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That said product is registered in the Patent Office of the United States of America.

2. That said product is the purest aspirin in America and superior to other products composed of similar ingredients.

3. That said product is a cure for colds.

4. That said product is a competent and effective treatment or palliative for all aches and pains.

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 it has complied with this order.

IN THE MATTER OF
MILLINERY QUALITY GUILD, INC., ET AL.

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

Docket 2812. Complaint, May 21, 1936—Decision, April 29, 1937

Where a company, held out as a membership corporation and used as a corporate instrumentality by the fourteen "member" concerns and the ten "affiliate" concerns, which the former associated with them in their purpose and plan of preventing and eliminating, as far as possible, piracy of design and style in women's hats; and said "member" and "affiliate" concerns, engaged in the designing and manufacturing of women's hats at their respective factories in New York and California, and in selling their said products to retailers located in the several States, and in substantial competition with one another, but for the understandings and agreements below set out, and included among the recognized leaders in the field of women's hats as respects style and design, and with their said products, in great demand by the purchasing public throughout the United States, normally required, to an extent, at least by high-grade retail dealers in such products in New York and elsewhere in the United States, in order to offer a full line thereof; in pursuance of their aforesaid plan and purpose and the agreement of said "affiliate" concerns to work in unison and cooperation with said corporate instrumentality or "Guild" and its said "members" in making effective the rulings of the former as respects style piracy, and their agreement to make no sales to and show no merchandise to any retail store which had failed to sign the Guild's agreement or so-called "Declaration of Cooperation"—

- (a) Solicited and secured, through a regular series of circular letters and follow-up literature designed to induce and coerce retailers, and advising them that the Guild membership comprised practically every creative firm in the industry in question, and that only a store subscribing could inspect or purchase their hats, such agreements or so-called "Declarations of Cooperation" from some 1000 high-grade retail dealers in women's hats in the various States, under which agreements or declarations the dealer undertook and agreed (1) not to purchase from manufacturers hats which were copies of designs originated and made by them, or alleged to be such copies, as established through Guild's registration bureau and the committee provided for, and (2) to stamp their orders for hats with a statement that such orders were placed upon the seller's warranty that the styles of such products being purchased were not copies of styles originated by them, and that purchaser reserved right to return any merchandise which was not as warranted, and agreed with one another to make it a condition precedent to the sale of their products to retailers that they must be signatories to and agree to be bound by and act in accordance with aforesaid declarations, and announced that they would refuse, and did refuse, to sell their products to retail dealers of stylish millinery who had failed or refused to sign or to cooperate in said declaration and plan and agreement for elimination of style piracy, and brought about return of hats under