

Complaint

IN THE MATTER OF
FOOD DISPLAY MACHINE CORPORATION

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

Docket 2726. Complaint, Feb. 19, 1936—Decision, May 1, 1937

Where a corporation engaged in the sale and distribution of potato chip machines; in advertising same in various periodicals, pamphlets, form letters, and other advertising media of interstate circulation—

- (a) Represented and held out, as possible or maximum earnings for any fixed period, amounts in excess of those actually earned during such period by operators of its machines under normal conditions in due course of business, through use of such statements or expressions as "up to" or "as much as," or others of similar import and effect, such as "Make as much as \$23.00 a day on the capacity of one machine selling wholesale only," "Work at home. Make up to \$117.00 a week";
- (b) Represented or held out, as usual or customary earnings or profits to be derived from the operation of its machines, sums or amounts in excess of the average, usual and customary sums or amounts actually thus earned under normal conditions in due course of business, through such statements as "Every time you invest \$11.48 in raw materials, you get back \$35.00 in cash on the spot * * *," with \$23.50 thereof "net profit for you," and, theretofore, such statements as "There is no way to tell whether you'll make \$5,000 or \$15,000 the first year"; and
- (c) Represented that its said machines had a retail value or sales price greater than that for which they were usually and customarily sold in due course of business;

With effect of misleading a substantial portion of purchasing public into erroneous belief that said representations were true, and with result that such public, as a consequence of the mistaken and erroneous beliefs induced by such false and misleading statements and representations, bought a substantial volume of its products, and trade was unfairly diverted to it from competitors engaged in sale and distribution of such machines, or in manufacture, sale, and distribution thereof, and who truthfully represent possible and actual earnings of operators of their said machines; 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. DeWitt T. Puckett for the Commission.

Bussian & DeBolt, of Chicago, Ill., for respondent.

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

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Federal Trade Commission, having reason to believe that Food Display Machine Corporation, a corporation, hereinafter referred to as respondent, has been and now is 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 respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 500 North Dearborn Street, Chicago, Ill. It is now, and for more than one year last past has been, engaged in advertising and selling potato chip machines between and among the various States of the United States and the District of Columbia, and now causes, and for more than one year last past has caused, such potato chip machines, when sold by it, to be shipped from its place of business in Chicago, Ill., to the purchasers thereof, some located, in the State of Illinois and others located in various other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade in commerce in potato chip machines sold by the respondent between and among the various States of the United States and in the District of Columbia.

Respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with persons, firms, and partnerships engaged in the sale of potato chip machines between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, in soliciting the sale of and selling its potato chip machines, respondent now represents, and for more than one year last past has represented, in and by its advertisements, published in various periodicals of interstate circulation, form letters, pamphlets, and other forms of advertising media, as follows:

Make as much as \$23.00 a day on capacity of one machine selling wholesale only;

Work at home. Make up to \$117.00 a week;

\$23.50 a day actually possible;

Profits of \$100.00, \$200.00, \$300.00 and more weekly possible with this marvelous new automatic potato chip machine;

A new kitchen industry which husbands and wives (or either) can develop in their spare time * * * profits up to \$30.40 a day;

There is no way to tell whether you'll make \$5,000 or \$15,000 the first year;

It is possible for a live wire to make a net profit of \$1,000 to \$1,500 a month;

CHICAGO COMPANY MAKES 50,000 LBS. PER WEEK!

OF THE three big companies supplying part of the Chicago market with Potato Chips, consider the business that is being done by only one. They have 40 men and girls working. They make and sell 50,000 pounds of Potato Chips a week—50,000 pounds. Think what that means. Profits on Potato Chips run up as high as 20¢ per pound. If you sold only 500 lbs. a week, you would make \$100.00 on this small business. Yet here is one company that sells 50,000 pounds. Ask yourself whether this is a chance to make big money and make it quick;

Every time you invest \$11.48 in raw materials, you get back \$35.00 in cash on the spot. \$23.50 of it is net profit for you;

There are at least 38 outlets in your community that, with this low priced machine I have just perfected, you can furnish with genuine Vita-Seald, mineralized potato chips wholesale;

A complete mineral food content of 9 vital health-giving minerals;

The old-fashioned, greasy, devitalized potato chips—difficult to digest and worthless as a mineral food;

All of the valuable minerals found in a raw potato have been retained in these chips by the Vita-Seald process of cooking;

Vita-Seald potato chips retain these nine previous minerals. This mineral invention of mine seized the public's imagination and gives my Vita-Seald operators a tremendously important selling point.

People may buy their first bag just as they would any other. One taste and they know they have bitten into something unusual. The taste is so different, such a temptation to eat more. They then read the story. They discover that the reason for the spicy, tangy, crunchy, crispness is the mineral richness of the Vita-Seald chip;

You receive \$222.40 worth of actual value yet you pay only \$186.53.

Said statements, together with other statements not herein set out, are intended as, and serve as representations as to the income and profit that may reasonably be expected to accrue to the purchaser of the equipment upon the purchase and use thereof.

In truth and in fact the actual or probable earnings or profits of operators of respondent's potato chip machines are, on the average, much less than the amounts set forth above. The statements set forth above relative to the mineral content, taste, and food value of potato chips manufactured by respondent's machines and in accordance with its process, are grossly exaggerated and unwarranted by the facts. The representation that "there are at least 38 outlets in your community that, with this low priced machine I have just perfected, you can furnish with genuine Vita-Seald, mineralized potato chips wholesale", is untrue.

PAR. 3. The use by respondent of the representations set out in paragraph 2 hereof have had and do have the capacity and tendency to mislead and deceive and do mislead and deceive a substantial portion of the purchasing public into the belief that such representations are true and to purchase a substantial quantity of such potato

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chip machines from respondent in such erroneous belief. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of potato chip machines who do not misrepresent the probable or average earnings of the operators of such machines, or the number of wholesale outlets for their product, who likewise advertise, sell and distribute potato chip machines, among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors; thereby substantial injury is being, and has been, done by respondent to substantial competition in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. The above alleged acts and practices of respondent are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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 February 19, 1936, issued and served its complaint in this proceeding upon respondent, Food Display Machine Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, 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 John A. Bussian, attorney for the respondent; 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 opposition thereto, request for oral argument not having been made, 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:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Food Display Machine Corporation, is an Illinois Corporation. Its principal office and place of business is at 325 West Huron Street, Chicago, Ill.

It is now, and since 1924, has been, engaged in the sale and distribution of potato chip machines. Said machine is a complete unit consisting of a slicer, cooking vat, and centrifuge for drying or rid-ding the chips of the cooking oil. When orders are received for respondent's said machines, it causes them to be shipped and trans-ported from Chicago, Ill., to the purchasers thereof located at vari-ous points in States of the United States other than the State of Illinois, and in foreign countries. The respondent has, during the past several years, maintained a constant current of trade in said machines, in commerce, among and between the various States of the United States. Respondent's dollar volume of business, for the first half of the year 1936, was approximately \$20,000.

At all times during the last several years, the respondent has been in substantial competition with other corporations, and with individ-uals and partnerships, engaged in the sale and distribution, or in the manufacture, sale and distribution, of potato chip machines or potato chip machine equipment, in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 2. In connection with the sale of its potato chip machines, respondent advertises its products in various periodicals, pamphlets, form letters, and other advertising media of interstate circulation. Representations of its said advertising claims are the following:

Make as much as \$23.00 a day on the capacity of one machine selling whole-sale only.

Work at home. Make up to \$117.00 a week.

Every time you invest \$11.48 in raw materials, you get back \$35.00 in cash on the spot. \$23.50 of it is net profit for you.

Respondent formerly made the following statements in its adver-tising literature:

Profits of \$100.00, \$200.00, \$300.00 and more weekly possible with this mar-velous new automatic potato chip machine.

A new kitchen industry which husbands and wives (or either) can develop in their spare time * * * profits up to \$30.40 a day.

There is no way to tell whether you'll make \$3,000 or \$15,000 the first year.

It is possible for a live wire to make a net profit of \$1,000 to \$1,500 a month.

You receive \$222.40 worth of actual value yet you pay only \$186.53.

No operator of the respondent's said potato chip machines ever earned any of the amounts specified in the advertising claims set forth above, and there is no evidence that any operator has ever made any

net profit by operation of said machines. In fact, respondent furnished no evidence to substantiate its advertising claims. Nicholas Macron, of Cleveland, Ohio, purchased one of respondent's machines, after having read its advertising claims, and operated said machine according to instructions furnished by respondent, at intervals, over a period of several weeks, but he never made any net profit whatever by said operations.

PAR. 3. Many of respondents' competitors who sell and distribute, or manufacture, sell and distribute, potato chip machines or potato chip machine equipment, in interstate commerce, do not in any way misrepresent the actual or possible earnings of the operators of their machines.

PAR. 4. The use by respondent of the representations set forth herein, in its advertising literature, has had and now has the capacity and tendency to mislead and deceive and has misled a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a consequence of the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the purchasing public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of selling and distributing potato chip machines, or in the manufacture, sale, and distribution of potato chip machines or equipment, who truthfully represent the possible and actual earnings of the operators of their machines. As a result thereof substantial injury has been and is now being done by respondent to competition, in commerce, among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Food Display Machine Corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Robert S. Hall,

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Order

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, no request for oral argument having been made, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Food Display Machine Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of potato chip machines in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, or holding out, as possible or maximum earnings for any fixed period through the use of such statements or expressions as "up to" or "as much as," or any other statements or expressions of similar import and effect, or through any other means or device or in any manner, any amount in excess of amounts actually earned during said fixed period by operators of respondent's machines under normal conditions in due course of business;

2. Representing, or holding out, as usual or customary earnings or profits to be derived from the operation of its machines, any sum or amount in excess of the average usual and customary sums or amounts actually so earned under normal conditions in due course of business.

3. Representing that respondent's machines have a retail value or sales price greater than the price for which they are usually and customarily sold in due course of business.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order.

IN THE MATTER OF
C. C. MILLER ET AL., TRADING AS SUNLIFE CHLORO-
PHYLLIAN LABORATORIES, LTD.

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

Docket 2753. Complaint, Mar. 31, 1936—Decision, May 1, 1937

Where partners engaged in advertising, selling, and distributing a preparation for external application, known and designated as "Sunlife Chlorophyllian Oil"; in advertising same in circulars, published and distributed throughout the United States, and in radio broadcasts and other forms of advertising media—

(a) Represented that said preparation would cure and was a competent and effective treatment for the relief of nervous irritation, muscular rheumatism, lumbago, gouty conditions, swollen and painful joints, cramped limbs, swollen and aching feet, coughs and colds, sleeplessness, "growing" pains, sprains, cuts, bruises, burns, and arthritis; and

(b) Represented, as aforesaid and through use of word "Sunlife" in their said trade name, that said product contained beneficial elements of the natural rays of the sun, and that use thereof would bring beneficial effects of sunshine to the users, through statements or representations that active element in preparation in question was chlorophyll, and that said substance was literally stored-up sunshine captured by science and brought to the user, and that users of said preparation would receive same beneficial effects as would be received from exposure to the natural rays of the sun;

Facts being function of pigment chlorophyll, found in plant life, is limited to such life and has no true effect on or therapeutic value to the human body and, applied to the skin, is not absorbed, preparation in question is not a competent or adequate treatment for various ailments and conditions above set forth, and does not relieve so-called "growing" pains in children or other conditions in question, and use thereof does not bring sunshine to affected parts of the body nor give the user the beneficial effects of sunshine;

With tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken belief that aforesaid preparation or oil contained natural sunshine, and that users thereof would receive benefits flowing from the use of natural sunshine, and that it was a competent and adequate treatment for muscular rheumatism, lumbago, gouty conditions, and the other afflictions and ailments set forth, and that users thereof would receive same beneficial effects as those received from exposure to natural sunshine, and of thereby, and through use of word "Sunlife" in trade name featured as above set forth, inducing members of buying public to purchase said preparation for use because of the erroneous beliefs thus engendered, and of unfairly diverting trade to them from competitors engaged in the sale and distribution of similar preparations in commerce among and between the various States, without in any wise misrepresenting the therapeutic value of their said respective products; to the substantial injury of competition in commerce;