

IN THE MATTER OF
HOGAN ADVERTISING COMPANY, TRADING AS THE
SENDOL COMPANY

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

Docket 2881. Complaint, July 24, 1936—Decision, May 14, 1937¹

Where a corporation engaged in the sale and distribution of a proprietary medicine designated and known as "Sendol" and as alleged remedy for colds, headaches, and pains; in advertising the same in newspapers, magazines, pamphlets, by radio, and through testimonials and otherwise—

- (a) Falsely represented that said product was a safe medicine to administer in all cases and was a safe remedy to give to children; and
- (b) Falsely represented that it was effective and reliable in all cases of muscular, rheumatic or neuralgic aches and pains, and afforded quick relief in all cases of headaches, colds, aches or pains, and was an efficacious remedy in cases of nervousness or nervous exhaustion;

With effect of misleading and deceiving substantial portion of purchasing public into the erroneous belief that said representations were true, and with result that consuming public, as a direct consequence of mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of its said product, and trade was unfairly diverted to it from those of its competitors engaged in sale and distribution of products prepared for and sold as remedies for colds, headaches, and muscular aches and pains, and who truthfully advertise and represent the therapeutic value, and the effects to be derived from the use 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. DeWitt T. Puckett for the Commission.

Mr. Terence M. O'Brien, of Kansas City, Mo., 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 Federal Trade Commission having reason to believe that the Hogan Advertising Company, a corporation, doing business under the firm name and style of the Sendol Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would

¹ Order published, as modified, as of May 29, 1937.

be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Hogan Advertising Company is a corporation, organized and existing under the laws of the State of Missouri, and trading and doing business under the firm name of the Sendol Company, with its office and principal place of business located at Room 129 Coates Building, 1008-1010 Walnut Street, in the city of Kansas City and State of Missouri. Respondent is now and for more than one year last past has been engaged in the sale and distribution, in constant course of trade and commerce between and among the various States of the United States and the District of Columbia, of a proprietary medicine, designated "Sendol," an alleged remedy for colds, headaches, and pains. In the course and conduct of its business respondent causes said medicine, when sold, to be transported from its place of business in the State of Missouri, into and through various other States of the United States to the purchasers thereof located in other States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now and for more than one year last past has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing and selling remedies and proprietary medicines in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, by means of statements and testimonials, published in magazine and newspaper advertisements, pamphlets, folders, labels, radio broadcasting, and otherwise, respondent falsely makes to the general public the following and many other similar and equivalent statements and representations with reference to the efficacy and therapeutic value of its said product and its effect upon the users thereof:

You will like the quick, pleasant action of Sendol and the effective way in which it starts to work to give quick relief from a simple cold, ache or pain . . . Sendol soothes tired, overworked, frayed nerves, and one or two tablets give relief in just a few minutes.

It dissolves almost instantly in the stomach and starts to work immediately to give relief from simple colds, as well as simple headaches, muscular rheumatic and neuralgic aches and pains.

Sendol dissolves almost instantly in the stomach—and the relief is immediate.

They are perfectly safe to take or to give—even to children.

They are safe—pleasant—effective—reliable.

In truth and in fact said statements and representations were and are false and misleading, in that said "Sendol" is not a safe medicine to give or to take in all cases, and is not a safe medicine to give to

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children; it is not effective and reliable in cases of muscular rheumatic or neuralgic aches and pains; it does not afford quick relief in all cases of headaches, colds, aches or pains and it is not an efficacious remedy in cases of nervousness or nervous exhaustion. Said preparation contains aspirin and digitalis and is therefore not safe to administer to all persons or to children.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, dealers and distributors of products similar in kind and purpose, who do not in any way misrepresent the efficacy or therapeutic value of their products.

PAR. 4. The above and foregoing representations as to the therapeutic value and effects of its product as set forth in paragraph 3 hereof in the course of its advertising, offering for sale and selling its product in commerce as aforesaid, have the capacity and tendency to and do mislead and deceive the purchasing public into the erroneous belief that said product is an effective remedy for the treatment or relief of headaches, colds, aches and pains and have the capacity and tendency to and do induce the said purchasing public, acting in such erroneous belief, to purchase respondent's product, thereby diverting trade to the respondent from those of its competitors who do not misrepresent the efficacy and therapeutic value of their products, and in this way respondent does substantial injury to competition in interstate commerce.

PAR. 5. The above acts and things done or caused to be done by the respondent corporation were and are each and all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 July 24, 1936, issued, and on July 27, 1936, served, its complaint in this proceeding upon respondent, Hogan Advertising Company, a corporation, trading as The Sendol Company, 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, the Commission, by order entered herein, granted respondent's motion for per-

mission 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, filing of briefs having been waived and no request having been made for oral argument, 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 respondent, Hogan Advertising Company, is a Missouri corporation, doing business under the firm name of The Sendol Company. Its place of business is at Room 129 Coates Building, 1008-1010 Walnut Street, Kansas City, Mo.

It is now and for more than one year last past has been, engaged in the sale and distribution of a proprietary medicine designated and known as "Sendol," an alleged remedy for colds, headaches, and pains. When orders are received for Sendol, respondent causes said product to be shipped and transported from its place of business in Kansas City, Mo., to the purchasers thereof located in various States of the United States other than the State of Missouri and in the District of Columbia.

At all times since respondent has been in said business there have been other corporations, and firms and individuals, likewise engaged in the sale and distribution of products prepared for and sold as remedies or treatments for colds, headaches, and pains, in commerce among and between the various States of the United States and in the District of Columbia. Respondent, in the sale and distribution of its product, is in competition with such other corporations, firms and individuals in such commerce.

PAR. 2. The respondent advertises its said product in newspapers, magazines, pamphlets, by radio, through testimonials, and otherwise.

Representative of its advertising claims are the following:

You will like the quick, pleasant action of Sendol and the effective way which it starts to work to give quick relief from a simple cold, ache or pain . . . Sendol soothes tired, overworked, frayed nerves, and one or two tablets give relief in just a few minutes.

It dissolves almost instantly in the stomach and starts to work immediately to give relief from simple colds, as well as simple headaches, muscular rheumatic and neuralgic aches and pains.

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Sendol dissolves almost instantly in the stomach—and the relief is immediate. They are perfectly safe to take or to give—even to children.

They are perfectly safe to take or to give—even to children.

The representations set forth above are untrue in that Sendol is not a safe medicine to administer in all cases and is not a safe remedy to give to children; it is not effective and reliable in cases of muscular rheumatic or neuralgic aches and pains; it does not afford quick relief in all cases of headaches, colds, aches or pains and it is not an efficacious remedy in cases of nervousness or nervous exhaustion.

PAR. 3. The false and misleading statements and misrepresentations made by respondent, in its said advertising, as to the therapeutic value and effects of its said product, have the capacity and tendency to mislead and deceive and have misled and deceived 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 by the false and misleading statements and representations above referred to, the consuming public has purchased a substantial volume of respondent's product and as a result thereof, trade has been unfairly diverted to the respondent from those of its competitors, likewise engaged in the business of selling and distributing products prepared for and sold as remedies for colds, headaches, and muscular aches and pains, who truthfully advertise and represent the therapeutic value of and the effects to be derived from the use of their said products. 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 in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent Hogan Advertising Company, trading as The Sendol 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 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 ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed

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herein on May 11, 1937, by respondent 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 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, Hogan Advertising Company, a corporation, doing business under the firm name and style of The Sendol Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of a product now known as "Sendol," or any product containing the same, or substantially the same, ingredients, sold under that name, or any other trade name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that said product:

1. Is a safe medicine to give or to take in all cases;
2. Is a safe medicine to give to children;
3. Is an effective and reliable remedy in cases of muscular, rheumatic or neuralgic aches and pains;
4. Affords quick relief in all cases of headaches, colds, aches or pains;
5. Is an effective remedy for nervousness or nervous exhaustion.

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 this order.

IN THE MATTER OF
**MAURICE WILLENS, DOING BUSINESS UNDER THE FIRM
 NAME AND STYLE OF MUSHROOM GROWERS OF
 AMERICA**

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

Docket 2952. Complaint, Oct. 20, 1936—Decision, May 15, 1937.

Where an individual engaged in promoting sale of mushroom spawn, in competition with others selling such products in interstate commerce, or with legitimate trade associations of growers, or with those who do not represent that such products may be grown in any idle space about the home or raised there in small quantities with tremendous financial returns, or make other representations as hereinafter set forth—

- (a) Represented, through trade name "Mushroom Growers of America," and featuring thereof in his correspondence, advertisements, and trade literature, and as signature to correspondence and circulars, together with signature by "Managing Director," and through use of such name on cards issued to persons making their initial purchase from him, certifying such person was entitled to the benefits of "our Growers Service Bureau at all times," and requesting such person, whenever a problem presented itself, "to communicate with us and we will give you the best possible advice," without charge, and through statement in correspondence, advertisements and trade literature to the effect that "Your M. G. A. membership card entitles you to the prompt and efficient advisory service of the M. G. A. Service Bureau entirely without cost to you," that business operated by him was a large and substantial organization or trade association of many persons, mutually cooperating with each other in the industry in growing and marketing mushrooms, and that it maintained a staff of expert personnel who might be consulted for advice as to technical questions arising in connection with said industry, facts being it was not such an organization, was not incorporated, had no board of directors or managing director, and was simply a firm name or style adopted by individual in question to induce members of public to patronize such individual under false impression that they were dealing with a bona fide trade organization or association, and neither said individual nor any of his employees were expert in growing mushrooms or competent to give technical advice concerning the same; and
- (b) Represented that mushrooms might easily be grown in any idle space in or about the home and without unpleasant odors, and that such growing was a simple and highly remunerative industry in which anyone might successfully engage for profit without previous experience or technical skill, and that there was a shortage on the market of mushrooms and amateurs might make a fortune or a substantial profit, through such statements, among others, as "Almost any vacant, idle space about your home can be quickly and inexpensively converted into an ideal Mushroom bed. * * *," "Just a few dollars will get you well on your way to success," "Almost any vacant space yields big money in mushroom growing," "* * * one of the SIMPLEST and most REMUNERATIVE of industries * * *," "* * *