

IN THE MATTER OF
ALLURA, INC.

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

Docket 2854. Complaint, June 26, 1936—Decision, June 8, 1937

Where a corporation engaged in sale and distribution of eye lotion, sold under trade name "Allura", and consisting essentially of honey and water with extracts of plant drugs and small amounts of ammonium and potassium salts, and, as thus engaged, in substantial competition with those engaged in sale and distribution of eye glasses and other products for relief of diseases or ailments of the eye, and in competition with many who sell and distribute eye lotions and eye glasses without falsely representing the properties, capacities, or effects of their products—

- (a) Represented, in radio broadcasts and in pamphlets and other advertising matter distributed among prospective purchasers, that said preparation would relieve poor or cloudy vision or headache resulting from eye strain, and that use thereof would take the place of wearing glasses and relieve astigmatism and general weakness of the eyes and overcome irritating and painful conditions thereof;
- (b) Represented, as aforesaid, that it was nature's aid to the eyes and had no equal in keeping them clear, bright, and full of life, and was not injurious; and
- (c) Represented, as aforesaid, that it was a cure for cataract and was a remedy for eye troubles, and would cure or be beneficial in treatment of all cases of granulated lids, bloodshot eyes, focal disorders, weeping lids, weak lachrymal glands, and muscular atrophies, or contractions;

Notwithstanding fact preparation contained nothing of medical value in treatment of any eye disease, only possible value thereof would be equivalent to that of ordinary normal salt solution, it was not harmless, might be injurious, would not take place of glasses, relieve astigmatism or general weakness of the eyes, and other representations as hereinabove set forth were false;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that its said preparation had properties, capacities or effects set forth as hereinabove indicated, and that buying public, as a result of erroneous belief induced by such false and misleading representations, bought substantial volume of its said product, and trade was unfairly diverted to it from its competitors who truthfully represent nature and character of their respective 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. Charles P. Vicini*, *Mr. John W. Norwood* and *Mr. Robert S. Hall*, trial examiners.

Mr. T. H. Kennedy, *Mr. P. C. Kolinski* and *Mr. J. T. Welch* for the Commission.

Mr. Darold D. DeCoe, of Sacramento, Calif., 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 Allura, Inc., 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 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. Respondent, Allura, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business at 626 I Street, Sacramento, Calif. Respondent is, and for more than three years last past, has been engaged in the manufacture of an eye lotion, and has been engaged in the sale of said preparation under the trade name of "Allura" between and among the various States of the United States and in the District of Columbia. During all of said time it has caused, and still causes, said product when sold by it, to be transported from its place of business in California, or other places within the United States, to purchasers thereof, some located in the State of California and others located in various States of the United States other than the State of origin of the shipment, and in the District of Columbia.

In the course and conduct of its said business respondent is now, and for more than three years last past has been, in constant competition with other corporations, persons, firms, and partnerships engaged in the sale of products having properties, capacities, or effects claimed for the said "Allura" by the respondent, as herein set forth, in commerce 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 described herein respondent for more than three years last past has, by means of radio broadcasts, pamphlets, advertising matter, testimonials, and otherwise, represented, and still represents, that its said product is harmless; will, when used, take the place of the wearing of glasses by the user; relieves astigmatism and general weakness of the eye; overcomes irritating and painful conditions of the eyes; has no equal in keeping eyes clear, bright, and full of life; is not injurious; will cure

cataract of the eye and is a remedy for any eye trouble; will relieve severe headaches from eye strain, poor and cloudy vision, or eye strain; is Nature's aid to the eyes; and respondent has recommended the use of "Allura" in cases of granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, muscular contractions, headaches from eye strain, and focal disorders.

Respondent has distributed radio texts or continuities and said pamphlets, advertising matter, and testimonials among its prospective customers and places the same in the hands of retailers and distributors in various States of the United States for use by them in advertising its said product.

Said representations have been and are made by respondent in such a way that purchasers and prospective purchasers of respondent's product are led to believe that respondent's product will cure or relieve any of the diseases or ailments above set forth.

In truth and in fact each and every said representation has been and is untrue or grossly exaggerated, and respondent's said product is not, nor has it ever been, harmless; a substitute for glasses; a relief for astigmatism and general weakness of the eyes; a cure for irritating and painful conditions of the eyes; without equal as an agent for keeping the eyes clear, bright, and full of life; free from injurious properties, capacities, or effects; a cure for cataract or a remedy for any eye trouble; an agent for relief of severe headaches from eye strain, poor and cloudy vision or eye strain; nor is it Nature's aid to the eyes. Said product is not a competent remedy for granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, muscular contractions, headaches from eye strain, and focal disorders.

There is a preference by a substantial number of retail dealers in products having properties, capacities, or effects claimed by respondent for its product, as hereinabove described, and by a substantial part of the purchasing public for products that have the properties, capacities, or effects claimed by respondent for its products, as hereinabove set forth.

The aforesaid representations by the respondent have had and still have a capacity and tendency to mislead and deceive, and have misled and deceived, and still mislead and deceive, retailers and the purchasing public into the erroneous belief that said product of respondent has all the properties, capacities, or effects claimed for it by the respondent, as aforesaid, and the use of said misrepresentations causes them to purchase respondent's product in such erroneous belief.

The aforesaid misrepresentations by the respondent have placed and still place in the hands of retailers of the product of respondent hereinabove described the means of deceiving and misleading the purchasing public.

PAR. 3. There are among the competitors of respondent manufacturers and distributors of products having properties, capacities, or effects similar to those claimed by the respondent for its product, who truthfully represent the properties, capacities, or effects of their said products; and there are also among the competitors of respondent manufacturers and distributors who do not misrepresent the properties, capacities, or effects of their said products.

By the representations made by the respondent, as set out hereinabove, trade has been, and still is, unfairly diverted to the respondent from such competitors, and thereby substantial injury has been done and is still being done by respondent to competitors in interstate commerce.

PAR 4. The above acts and things done by the respondent are all to the injury and prejudice of the public and competitors of respondent 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 26, 1936, issued and served its complaint in this proceeding upon respondent Allura, Inc., 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 Thomas H. Kennedy and Peter C. Kolinski, attorneys for the Commission before Charles P. Vicini, John W. Norwood and Robert S. Hall, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Darold D. DeCoe, 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 brief in sup-

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port of the complaint; 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, Allura, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, and has its principal place of business at Sacramento, Calif.

It is now, and for more than three years has been, engaged in the sale and distribution of an eye lotion under the trade name of "Allura." When orders are received for respondent's goods, it ships them from Sacramento, Calif., to purchasers thereof located at various points in the State of California and in other States in the United States. The respondent has at all times during the past several years maintained a constant current of trade and commerce among and between the various States of the United States and in the District of Columbia in the merchandise which it sells.

At all times during the last three years the respondent has been in substantial competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of eye glasses and other products for the relief of diseases or ailments of the eye in commerce between and among the several States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business, the respondent through statements in radio broadcasts, and in pamphlets and other advertising matter distributed among prospective purchasers, represented that its preparation "Allura" is harmless; not injurious; will, when used, take the place of the wearing of glasses by the user; relieve astigmatism and general weakness of the eyes; overcome irritating and painful conditions of the eyes, and that it has no equal in keeping eyes clear, bright and full of life; will cure cataract of the eye; is a remedy for any eye trouble; will relieve severe headaches from eye strain, poor and cloudy vision; is nature's aid to the eyes; and has recommended the use of its preparation "Allura" in cases of granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, muscular contractions, headaches from eye strain and focal disorders. Among and typical of the representations used in radio broadcasts, pamphlets and other advertising matter are the following:

Allura * * * dissolves the dust-laden film of mucous which makes eyes look dull and by its gentle astringent action removes bloodshot from the eyes.

Allura * * * is not injurious.

I have been using "Allura" for astigmatism and general weakness of the eyes and I have found the condition of my eyes greatly improved.

My son has used "Allura" for the past year with remarkable results. His vision was poor and he wore glasses. Prior to using your product his vision was faulty. For the past ten months he has read without glasses. We see continual improvement in his sight.

Many people report that after using "Allura" they have discarded their glasses permanently.

I have been using "Allura" just thirty days and it is not necessary for me to use my glasses now and each day I can notice my eyes becoming stronger.

PAR. 3. Respondent's product, "Allura," is not harmless, may be injurious, will not take the place of the wearing of glasses by the user, will not relieve astigmatism or general weakness of the eyes, nor will it overcome irritating or painful conditions of the eyes. It is not true that "Allura" has no equal in keeping the eyes clear, bright and full of life nor will it cure cataract of the eye. It is not a remedy for any eye trouble, nor will it relieve severe headaches from eye strain, poor and cloudy vision, nor is it nature's aid to the eyes. It will not relieve all cases of granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, muscular contractions, headaches from eye strain or focal disorders. Respondent's preparation "Allura" consists essentially of honey and water with extracts of plant drugs, together with small amounts of ammonium and potassium salts such as ammonium chloride, and potassium sulphate and is preserved with a salicylate. The preparation contains nothing of medical value in the treatment of any eye disease and the only possible value of it would be equivalent to that of ordinary normal salt solution.

PAR. 4. Many of respondent's competitors sell and distribute eye lotions and eye glasses in interstate commerce, who do not falsely represent the properties, capacities or effects of their products.

PAR. 5. Respondent's practice of representing its preparation "Allura," as possessing properties, capacities or effects as set forth in paragraph 2 hereof has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that its preparation "Allura," has the properties, capacities or effects set forth in paragraph 2 above. As a result of the erroneous belief induced by the false and misleading representations referred to above, the buying public has purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to

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the respondent from its competitors who truthfully represent the nature and character of their respective products. Thereby substantial injury has been, and is now being done by the 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, Allura, Inc., 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 Charles P. Vicini, John W. Norwood and Robert S. Hall, examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by the attorney for the Commission, 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 Allura, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of the preparation now known as, and sold under the name, "Allura" or any other preparation, under whatever name sold, composed of similar ingredients and possessing therapeutic properties similar to the preparation now known as, and sold under the name "Allura," in interstate commerce or in the District of Columbia, do forthwith cease and desist representing directly or by implication:

1. That the use of said preparation will take the place of the wearing of glasses, relieve astigmatism and general weakness of the eyes, and overcome irritating and painful conditions of the eyes;
2. That said preparation has no equal in keeping eyes clear, bright and full of life;
3. That said preparation is not injurious;

4. That said preparation is a cure for cataract of the eye or that it is a remedy for eye troubles;

5. That said preparation will relieve poor or cloudy vision or headache resulting from eye strain;

6. That said preparation is nature's aid to the eyes;

7. That said preparation will cure, or is beneficial in the treatment of, all cases of granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, or contractions, and focal disorders.

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
L. MUSIL DISTILLING COMPANY

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

Docket 2476. Complaint, June 28, 1935—Decision, June 9, 1937

Where a corporation engaged in the rectifying and bottling of whiskies, gins, and other spirituous beverages, in a rectifying plant and under a rectifier's permit, and in sale thereof to wholesalers and retailers in States other than State of origin of its shipments, and in District of Columbia, and in substantial competition with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in sale thereof in trade and commerce among the various States and in the District of Columbia, and with those similarly engaged in purchasing, rectifying, blending, and bottling such various beverages, and in similarly selling same, and including among said competitors those who, as manufacturers and distillers by original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distilling" in its corporate name, on its stationery, mailing cards, and invoices, and on the labels attached to the bottles in which it sold and shipped its said products, that it was a producer of distilled spirits from raw materials, and thus represented to its customers, and furnished same with a means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller and that the said whiskies and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, as above set forth, notwithstanding fact it did not thus distill said various beverages, thus bottled, labeled, sold, and transported by it, through process of original and continuous distillation as above set forth, and as long definitely understood from word "distilling" when used in connection with liquor industry and products thereof by trade and ultimate purchasing public, and did not own, operate or control any place or places where such beverages are made by process of distillation from mash, wort, or wash, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the belief that it was a distiller and that the whiskies and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and with capacity and tendency to induce dealers and purchasing public, acting in such beliefs, to buy the whiskies and other spirituous