

Complaint

IN THE MATTER OF
EUCATHOL COMPANY, INC.¹

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

Docket 3069. Complaint, Mar. 4, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture and sale of "Eucathol" compound or medicine for use in treatment of coughs, colds, scalds and other afflictions, and also for use as after-shaving cream, through rubbing or massaging same on skin or through inhalation of vapors thereof, in substantial competition with those engaged in sale or offer to general public of compounds, medicines, salves, and ointments used for purposes for which its said preparation was offered—

Falsely represented, in advertising its said product in newspapers and periodicals of general circulation, and through radio broadcasts, and in pamphlets and printed testimonials, and other printed matter, as set forth, through use of photographs, pictures, and legends, on cartons containing same, and in circulars enclosed therewith, and in other advertising media, that use of such "Eucathol" would prevent and cure, or was beneficial in treatment of "insect bites, sunburn, piles and hemorrhoids, asthma and hay-fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia";

With tendency and capacity to induce members of the public and prospective purchasers to form mistaken and erroneous beliefs that said statements and representations were true, and with result that such purchasing public, acting in such erroneous belief, was induced to buy and bought its said product, and thereby unfairly diverted trade to it from its competitors; to the injury of competition in commerce, and to 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.

Mr. E. J. Hornibrook for the Commission.

Stanard, Carey & Stanard, of Shawnee, Okla., 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 Eucathol Company, Inc., a corporation, 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 and states its charges in that respect as follows:

¹ See modified findings and order, as of Nov. 3, 1937, in this case, *infra*, at page 1290.

PARAGRAPH 1. Respondent, The Eucathol Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located in the city of Shawnee, in said State. Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of a compound for use in the treatment of coughs, colds, scalds, burns, sunburn, insect bites, hay fever, asthma, and other human afflictions. Said compound is also sold for use as an after shaving cream. Said compound is put up in containers and is to be applied by rubbing or massaging it onto the flesh, or by inhaling its vapors. Respondent has designated said compound as "Eucathol." Respondent sells said product to wholesale druggists who sell said product to retail druggists, and also direct to retail druggists. The retail druggists sell said product directly to the consumers thereof.

In the course and conduct of said business respondent ships, or causes to be shipped or transported, said product when so sold from the city of Shawnee in the State of Oklahoma to said wholesale and retail druggists, many of whom are located in points in various States other than the State of Oklahoma. There is now, and has been during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent 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 said business, respondent is now, and has been during all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling, or offering for sale, to the general public compounds, medicines, salves, and ointments and other remedies used for the purposes described in paragraph 1 hereof.

PAR. 3. In the course and conduct of the business as aforesaid, respondent, in soliciting the sale of and selling said product, has advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts, and in pamphlets, printed testimonials, and other printed matter. It has also made use of photographs, other pictures and legends on cartons containing said compound and in circulars inclosed in said cartons, and in other advertising media. In and through each and all of the advertising media above enumerated, respondent has made, and is making, expressly or by implication, the following representations:

That the use of Eucathol will prevent and cure, or is beneficial in the treatment of: insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia, and other ailments.

PAR. 4. The representations described and set forth in paragraph 3 above are false and misleading, in that the use of Eucathol will not prevent and cure, and is not beneficial in the treatment of, insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, skin disorders, scalds and burns, flu and pneumonia, or other ailments or afflictions of the human body for which it is recommended by the respondent.

PAR. 5. Said statements and representations set forth in paragraph 3 so made by respondent have, and have had, the tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and, acting in such erroneous belief, the said purchasing public has been induced to purchase, and has purchased, respondent's product, thereby unfairly diverting trade to respondent from its said competitors, to the injury of competition in commerce among and between the various States of the United States, and to the injury of the public.

PAR. 6. The above alleged acts and practices 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 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 the 4th day of March 1937, issued and served its complaint in this proceeding upon respondent, Eucathol Company, Inc., a 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 the complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and 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, briefs and oral arguments of counsel having been waived, 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. Respondent, the Eucathol Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located in the city of Shawnee, in said State.

Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of a compound, or medicine, for use in the treatment of coughs, colds, scalds, burns, sunburn, insect bites, hay fever, asthma, influenza and other human afflictions. Said compound is also sold for use as an after-shaving cream. Said compound is put up in containers and is to be applied by rubbing or massaging it on the flesh, or by inhaling its vapors. Respondent has designated the said compound as "Eucathol." Respondent sells said product to wholesale druggists who sell said product to retail druggists, and also direct to retail druggists. The retail druggists sell said product directly to the consumers thereof.

In the course and conduct of said business respondent ships, or causes to be shipped or transported, said product when so sold, from the city of Shawnee in the said State of Oklahoma to said wholesale and retail druggists, many of whom are located at points in various States other than the State of Oklahoma. There is now, and has been, during all the times herein mentioned, a constant current of trade in said product so sold by said respondent 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 said business, respondent is now and has been, during all of the times herein mentioned, engaged in substantial competition with various corporations, copartnerships, firms, and individuals, selling, or offering for sale, to the general public, compounds, medicines, salves, and ointments and other medicines used for the purposes described in paragraph 1 hereof.

PAR. 3. In the course and conduct of the business as aforesaid, respondent, in soliciting the sale and selling said product, has advertised the same in newspapers, magazines, periodicals of general circulation by means of radio broadcasts, and in pamphlets, printed testimonials and other printed matter, and in, by and through the use of photographs, other pictures and legends on cartons containing the said compound, and in circulars enclosed in said cartons, and in

other advertising media. In and through each and all of the advertising media above enumerated, respondent has made and is making, expressly or by implication, the following representations: That the use of Eucathol will prevent and cure, or is beneficial in the treatment of insect bites, sunburn, piles, hemorrhoids, asthma, and hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, influenza, pneumonia and other ailments.

PAR. 4. The statements and representations set forth in the preceding paragraph are false and misleading in that the use of Eucathol will not prevent and cure, nor is its use beneficial in the treatment of "insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia."

PAR. 5. Said statements and representations set forth in paragraph 3 herein, so made by respondent, have, and have had a tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true and, acting in such erroneous belief, the said purchasing public has been induced to purchase, and has purchased, respondent's said product, thereby unfairly diverting trade to respondent from its said competitors to the injury of competition in commerce among and between the various States of the United States and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Eucathol Company, Inc., a corporation, are 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 and the substitute answer filed herein on the first day of May 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

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Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Eucathol Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its product now known as "Eucathol" in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, expressly or by implication, in newspapers, magazines, periodicals, in radio broadcasts, in pamphlets, and in, by and through other advertising media, that the use of its said product "Eucathol," or any other product composed of substantially the same ingredients as the product now known as "Eucathol," will prevent or cure, or is beneficial in the treatment of insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, scalds, and burns, skin disorders, influenza and pneumonia.

It is further ordered, That 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.

Syllabus

IN THE MATTER OF

GEORGE C. MILLER & COMPANY, INC.

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

Docket 3106. Complaint, Apr. 15, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture and sale of candy, including assortments so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and consisting of a number of boxes or packages of candy of varying size, together with punch-board, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for five cents paid, one of said boxes or packages as a prize and without additional charge, or, except as hereinbelow set forth, nothing other than privilege of making a punch, depending upon number secured by chance, and purchaser of last punch in each section, and purchaser of last punch on board, similarly received specified box or package without additional charge—

Sold, to wholesalers and jobbers for display and resale to purchasing public by their retailer-vendees, in accordance with aforesaid plan, such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of said products, in accordance with such plan, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer and sell candy so packed and assembled, or otherwise arranged and packed for sale to the purchasing public, as to involve game of chance, refrain therefrom;

With capacity and tendency of inducing purchasers to buy its said products in preference to candy offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said scheme of chance, to divert to it trade and custom from its said competitors who do not use same or equivalent methods, exclude from such trade all competitors who are unwilling to and do not use such or an equivalent method as unlawful, lessen competition therein and tend to create a monopoly thereof in it and such other competitors as use same or equivalent method, deprive purchasing public of benefits of free competition in trade involved, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Mr. Henry C. Lank and Mr. P. C. Kolinski for the Commission.