

Syllabus

IN THE MATTER OF

ROBERT C. HOFFMAN, TRADING AS YORK BAR BELL COMPANY, STRENGTH AND HEALTH PUBLISHING COMPANY, AND YORK ATHLETIC SUPPLY COMPANY

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

Docket 2542. Complaint, Mar. 17, 1936¹—Decision, July 10, 1937

Where an individual engaged, under several trade names, in manufacture, sale, and distribution of athletic goods, publication of a periodical devoted to development of health and strength, and sale of a course of physical training through the mail to customers throughout the United States, in substantial competition with other individuals, etc., engaged in sale and distribution in interstate commerce of athletic appliances and courses in physical training or culture, including among his said competitors those who sell such courses and apparatus and do not misrepresent their products and publish misleading and deceptive advertisements or in any manner unfairly disparage their competitors; in soliciting sale of and selling his said commodities as above described—

- (a) Set forth in advertisements two "Before and After" pictures of himself, together with statement that he had increased his weight from 210 to 250 pounds by use of York bar-bell exercises, and created thereby impression that decided development of his physique was due entirely to use of a system of training and use of bar-bells, facts being the "before" picture was taken just after a serious illness caused by an automobile accident and which had reduced his weight by about 40 pounds, and substantial part of gain in weight and development was due to his recovery therefrom, and "after" picture had been so retouched as to cause muscles to appear in stronger relief and give impression of greater strength than was apparent in the other;
- (b) Set forth in his "Strength and Health" periodical, picture of man of unusual muscular development, together with words "What would you give to have a body like this? * * * The wonderful strength athletes turned out by the famous York System of Physical Training are the amazement of the body building world today. They came as ordinary fellows but finished stars," with result that impression was created that phenomenal development disclosed was result of his said training course, notwithstanding fact picture was that of a foreign athlete who had never practiced said individual's system and flourished many years before individual in question entered upon business of physical training;
- (c) Set forth, in catalogs widely circulated among customers and prospective customers, and among depictions of athletes using aforesaid York bar-bells, "Before and After" pictures of one Joe Miller, depicting said individual as a boy and young man, and accompanied with words "The story of this pupil is an everyday occurrence among York bar-bell stu-

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- dents. It can be yours if you have the determination to get started," with result that reader and prospective customer was led to believe that said person's decided and unusual development was due exclusively to said individual's course of training, undisclosed facts being that first picture of said person was taken of him as an undeveloped boy of fourteen years, second was made after his reaching physical maturity, and he had trained for a number of years with other teachers, had taken other physical training courses, and was an athlete of some reputation when he commenced using course and apparatus of aforesaid individual;
- (d) Included in depiction of himself with his "War Medals," picture of the American Distinguished Service Cross, facts being that, while recommended therefore and recipient in fact of numerous decorations for bravery, and notwithstanding valiant service as a soldier in the United States Army during the World War, said particular decoration was not awarded, due to War Department's ruling that particular feat of gallantry concerned was not of such a nature as to entitle him thereto;
- (e) Published, in his said "Strength and Health," together with pictures of athletes, statements by one Roger Eells and others testifying to beneficial results achieved through training with his equipment, with result that reader was led to believe that depictions were those of persons about whom story was written, undisclosed facts being they were those of professional athletes in his employ with no connection with story about individuals named as aforesaid;
- (f) Set forth, in a catalog, a depiction of building owned by him with sign bearing trade name used in his said business across entire length thereof, facts being no such sign was on building when picture was taken and inscription in question was superimposed thereon when catalog was prepared for publication, with result that impression was created that entire building was occupied by said company or business, name of which thus appeared on sign, facts being building in question housed not only offices of said business, but also that of said individual's aforesaid periodical, and that of an oil burner enterprise owned by him, and small sign near entrance, containing names of all three companies, failed to appear in picture; and
- (g) Published false, defamatory, and unfairly disparaging articles in his said "Strength and Health," in a manner and form designed and well-calculated to injure and bring into disrepute generally competitors selling courses in physical training and purporting to be descriptive of method of training taught by those who, in developing physical strength of their pupils, depend entirely upon exercises involving resistance of one part of the body against another, both through articles written by himself under a pen name and articles by some of his employees, for the purpose of disparaging and maligning such competitors, including one who had been competitively awarded title of, and come to be widely known as "The World's Most Perfectly Developed Man," and who had developed and sold system of training employing no apparatus and called by him "Dynamic Tension," but in said articles referred to as "dynamic hoocy," and otherwise discredited as something evolved and sold as a matter of expedience and result of chance, etc., and through making false and misleading claim that no physical strength and development could be obtained without use of barbells, dumbbells or other apparatus, implied and repre-

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sented that systems of training taught by those competitors who do not advocate use thereof or other apparatus is of little or no value whatever; to the substantial injury of said competitor through diversion of trade from him to said individual, and in the cancellation by many pupils of their courses and demands that monies paid by them for tuition be refunded.

With effect of misleading and deceiving a substantial portion of purchasing public and consuming public into the erroneous belief that all said various results, as above set forth and indicated through use of "Before and After" pictures, etc., and through publication of false, defamatory, and unfairly disparaging articles about competitors, were true, and into purchase of his said products, training system and publication on account of such belief, and of unfairly diverting trade to him from competitors engaged in sale in interstate commerce of physical training courses and physical culture apparatus, and who truthfully represent their courses and merchandise; to the substantial injury of the purchasing public and 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. William L. Pencke for the Commission.

Mr. Herbert S. Ward, of Washington, D. C., for respondent.

AMENDED 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 Robert C. Hoffman, trading as York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply Company, has been and 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Robert C. Hoffman, is an individual trading under the respective names and styles of York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply Company, with his principal office and place of business located at York, in the State of Pennsylvania. He is now and for more than one year last past has been engaged in the manufacture of athletic goods and in the sale and distribution of same between and among various States of the United States and in the District of Columbia; in the publication of a periodical devoted to development of health and strength entitled, "Strength and Health," which

is circulated widely in interstate commerce; and in the sale of a series of lessons in physical culture, all of which are advertised in said periodical and elsewhere, and which lessons are distributed through the mails in interstate commerce. He causes said products, when sold, to be shipped from his place of business in the State of Pennsylvania to purchasers thereof located in a State or States of the United States other than the State of Pennsylvania, and in the District of Columbia. In the course and conduct of his business, the said respondent was, and is, at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution, in interstate commerce, of similar commodities.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his said commodities in interstate commerce, used the following methods and practices:

(a) Caused two portraits of himself to appear in advertisements and advertising matter, one of which was a photograph taken just after a serious illness which had reduced his weight by about forty pounds, and the other of a photograph taken some twenty weeks later, together with a statement that he had increased his weight from 210 to 250 pounds by the use of York bar-bell exercises; when in truth and in fact, a substantial part of the gain in weight was due to his recovery from illness;

(b) Caused the picture of the back of a man of unusual muscular development to appear in the periodical, "Strength and Health," accompanied by the words:

What would you give to have a body like this? * * * The wonderful strength athletes turned out by the famous York System of Physical Training are the amazement of the body building world today. They came as ordinary fellows but finished stars.

when in truth and in fact, the man whose back appears in the picture referred to is a European athlete whose picture has appeared in other publications, and whose muscular system was not developed by the York bar-bell system;

(c) In a catalogue widely circulated among customers and prospective customers, caused two portraits of one Joe Miller to appear among other portraits of athletes who use York bar-bells, one of such pictures representing Miller as a boy and the other as a young man, and accompanied by the words:

The story of this pupil is an everyday occurrence among York bar-bell students. It can be yours if you have the determination to get started.

when in truth and in fact, said Miller did not reach his development as a student of the York bar-bell system, but before taking it up had already made a championship record;

(d) In the same publication caused pictures of "Bob Hoffman's War Medals" to appear, conspicuous among which was a pictorial representation of the American Distinguished Service Cross; when in truth and in fact, the decoration referred to was never awarded to said Hoffman;

(e) In another advertisement, reference is made to the muscular development made by one Roger Eells, of Lisbon, Ohio, who, it was stated, "built himself from a sick man weighing 121 pounds to 162 pounds of powerful, shapely, muscular manhood. After he had failed with other systems he succeeded with York methods"; when in truth and in fact, neither of the two pictorial representations which accompanied such reading matter was a portrait of said Eells, although the language used and the combination of the portraits with the reading matter had the capacity and tendency to confuse, mislead, and deceive readers into the belief that said portraits were of said Eells;

(f) In the catalogue referred to, caused a pictorial representation of the building where his business is carried on to appear, having the words "York Bar Bell Co." in large and conspicuous letters across the top thereof; when in truth and in fact, said Hoffman does not occupy said building exclusively, but shares the same with another company, and the words "York Bar Bell Co." do not appear on the front as represented.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof, the respondent, in a manner and form designed and well calculated to injure and to bring into disrepute generally competitors selling courses in physical training in commerce, among and between the various States of the United States, has been widely publishing, through the medium of the magazine "Strength and Health," which is published by the respondent and which is circulated by him throughout the various States of the United States and the District of Columbia, false, defamatory, and misleading statements purporting to be descriptive of the method of training taught by those of his competitors who sell courses for physical training and who in developing the physical strength of their pupils depend entirely upon exercises involving the resistance of one part of the body against another part. The respondent publishes from time to time in said magazine "Strength and Health" articles written by himself and by some of his employees which said articles are written for the purpose of disparaging and maligning said competitors. By

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making the false and misleading claim that no physical strength and development can be attained without the use of bar bells, dumbbells or other apparatus, respondent thereby implies and represents that the systems of training taught by those competitors who do not advocate the use of such dumbbells, bar bells, and other apparatus is of little or no value whatever; when in truth and in fact those systems of training which depend entirely upon certain resistance exercises and tensions of muscles without the use of any apparatus do develop physical strength as effectively as the system taught by respondent which requires the use of appliances manufactured and sold by him.

PAR. 4. The aforesaid false and misleading representations and the said defamatory and disparaging statements made in said periodical "Strength and Health" and elsewhere, as above alleged have the tendency and capacity to mislead and deceive the public into the false and erroneous belief that said statements and implications are true and that the various athletes whose portraits appear therein have been developed to their present extraordinary physical condition by the sole and exclusive use of the York Bar Bell Company's products and methods. As a direct consequence of the false, misleading and disparaging statements, made by the respondent as hereinabove set forth, a substantial number of the public has purchased a substantial number of training courses from the respondent, and athletic equipment. Further, said false and misleading statements and disparaging implications have the tendency and capacity to divert trade unfairly from competitors of respondent in like businesses to the respondent, and otherwise to injure said competitors who do not engage in unfair methods of competition.

PAR. 5. The above acts and things done by respondent are all to the injury and prejudice of the public and accomplish substantial injury to substantial competitors of respondent in commerce, within the intent and 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 August 31, 1935 issued and served its complaint, and on March 17, 1936 issued and served its amended complaint in this proceeding upon respondent, Robert C. Hoffman, trading as York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply Company, charging him with the

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use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and amended complaint and the filing of respondent's answer to the complaint and answer to the amended complaint, testimony and other evidence in support of the allegations of said complaint and amended complaint were introduced by William L. Pencke, 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 and the amended complaint by Herbert S. Ward, 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 and amended complaint and the respective answers thereto, testimony and other evidence, briefs in support of the complaint and amended complaint, and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, 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

PARAGRAPHS 1. Respondent, Robert C. Hoffman, is an individual trading under the respective names and styles of York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply Company, with his principal office and place of business located at York in the State of Pennsylvania. He is now and for more than one year last past has been engaged in the manufacture of athletic goods and in the sale and distribution of the same in the various States of the United States and in the District of Columbia; in the publication of a periodical devoted to the development of health and strength entitled, "Strength and Health," which is circulated widely throughout the United States; and in the sale of a course of physical training, likewise sold and distributed through the mails to customers throughout the United States. Respondent causes his said athletic goods when sold to be shipped from his place of business in Pennsylvania to purchasers thereof located in States other than the State of Pennsylvania and in the District of Columbia. The respondent is in substantial competition with other individuals, firms, copartnerships, and corporations likewise engaged in the sale and distribution in interstate commerce of athletic appliances and courses in physical training or culture.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his said commodities as aforesaid, used the following methods and practices:

(a) Caused two portraits of himself to appear in advertisements, one of which was a photograph taken just after a serious illness which had reduced his weight by about forty pounds, and the other of a photograph taken some twenty weeks later, together with a statement that he had increased his weight from 210 to 250 pounds by the use of York bar-bell exercises;

(b) Caused the picture of the back of a man of unusual muscular development to appear in the periodical, "Strength and Health," accompanied by the words:

What would you give to have a body like this? * * * The wonderful strength athletes turned out by the famous York System of Physical Training are the amazement of the body building world today. They came as ordinary fellows but finished stars.

(c) In a catalogue widely circulated among customers and prospective customers, caused two portraits of one Joe Miller to appear among other portraits of athletes who use York bar-bells, one of such pictures representing Miller as a boy and the other as a young man, and accompanied by the words:

The story of this pupil is an everyday occurrence among York bar-bell students. It can be yours if you have the determination to get started.

(d) In the same publication caused pictures of "Bob Hoffman's War Medals" to appear, conspicuous among which is a pictorial representation of the American Distinguished Service Cross;

(e) In another advertisement, reference is made to the muscular development made by one Roger Eells of Lisbon, Ohio, who, it was stated, "built himself from a sick man weighing 121 pounds to 162 pounds of powerful, shapely, muscular manhood. After he had failed with other systems he succeeded with York methods";

(f) In the catalogue referred to, caused a pictorial representation of the building where his business is carried on to appear, having the words "York Bar Bell Co." in large and conspicuous letters across the top thereof.

PAR. 3. In the course and conduct of his business, the respondent, in a manner and form designed and well calculated to injure and to bring into disrepute generally competitors selling courses in physical training in commerce, among and between the various States of the United States, has been widely publishing, through the medium of said magazine, "Strength and Health," false, defam-

atory, and misleading statements purporting to be descriptive of the method of training taught by those of his competitors who sell courses for physical training and who in developing the physical strength of their pupils depend entirely upon exercises involving the resistance of one part of the body against another part. The respondent publishes from time to time in said magazine, "Strength and Health," articles written by himself and by some of his employees which said articles are written for the purpose of disparaging and maligning said competitors. By making the false and misleading claim that no physical strength and development can be attained without the use of bar bells, dumbbells or other apparatus, respondent thereby implies and represents that the systems of training taught by those competitors who do not advocate the use of such dumbbells, bar bells and other apparatus is of little or no value whatever.

PAR. 4. In the use of the "Before and After" pictures of himself the respondent creates the impression that the decided development of his physique is due entirely to the use of his system of training and the use of bar bells, when in fact a substantial part of the gain in weight and development was due to his recovery from an illness caused by an automobile accident. Moreover, the "After" picture alone was retouched in such a manner that the muscles appeared in stronger relief and gave the impression of greater strength than is apparent in the "Before" picture.

In using the picture of the back of a man of unusual development, and the descriptive text accompanying the picture, the impression is created that the phenomenal development of the back muscles is the result of respondent's training course. It was shown, however that the picture is one of a foreign athlete who never practiced respondent's system and who in fact flourished many years before the respondent entered upon the business of physical training.

Again, in using the "Before and After" pictures of one Joe Miller, the reader and prospective customer of respondent is led to believe that the decided and unusual development of Miller was due exclusively to respondent's course of training. No mention is made in the descriptive text of the facts that when the first picture of Joe Miller was taken he was an undeveloped boy of 14 years of age, and that the second picture was made when he had reached physical maturity; nor that Joe Miller had trained for a number of years with other teachers and had taken other physical training courses and was an athlete of some reputation at the time he commenced using respondent's course and apparatus.

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Conspicuous in the advertisement picturing the respondent with his "War Medals" there appears the picture of the American Distinguished Service Cross. Although the respondent rendered valiant service as a soldier in the United States army during the World War and did in fact receive numerous decorations for bravery, and although he was recommended for the Distinguished Service Cross, it was not awarded to him because the War Department ruled that the particular feat of gallantry performed by respondent was not of such a nature as to entitle him to the award of the Distinguished Service Cross; therefore the representation in the advertisement that he had in fact received said decoration was not in accordance with the facts.

The respondent published several advertisements in his said magazine, "Strength and Health," containing statements by one Roger Eells and other individuals testifying to the beneficial results achieved through training with respondent's equipment. These advertisements are accompanied by pictures of athletes, and the reader is led to believe that such pictures are of the persons about whom the story is written. In fact, the pictures are those of professional athletes who are in respondent's employ, yet the text fails to indicate that these pictures have no connection with the story about the individuals named in the advertisement.

One of the advertisements in respondent's catalog contains a picture of the building owned by respondent. Across the entire length of said building appears the sign "York Bar Bell Company." There was in fact no such sign on the building at the time the picture was taken. Said inscription was superimposed on the picture at the time the catalog was prepared for publication, and the impression is created that the entire building is occupied by the York Bar Bell Company alone, whereas the building housed not only the offices of the York Bar Bell Company and Strength and Health Publishing Company, but also of the York Oil Burner Company, another enterprise owned by respondent. A small sign near the entrance contains the names of all three companies; but it does not appear in the picture.

Under the pen name of Alan Carse, the respondent published an article in his magazine, "Strength and Health," entitled "The Old Athlete Tells a Secret." The writer relates the story of a meeting of a group of athletes in Atlantic City at which most of the greatest figures teaching physical training by mail were present. Among the speakers was one who is known for having won the title, "The World's Most Perfectly Developed Man" and who admitted that his system of training without any apparatus was largely the result

of chance; that he was advertising a course of training and was beginning to receive orders and money, while he was still casting about for novel and different apparatus to be used in said course; that senders of the orders complained to the Post Office or the Federal Trade Commission; that the strong man had to do something and sent the course without apparatus; that to his surprise he eliminated most of the complaints; that while his system helped most of his pupils on the principle that any exercise is better than none, no great strength, such as his own, could be developed without the use of weights. That ever since then, he has sold his course without apparatus; that, after all it is business, that he still gets five dollars for a few sheets of paper as a last offer after everything else has failed and "Every dollar counts."

In other articles written by respondent and by some of his employees, false, disparaging and defamatory statements are made, in that they refer to a competitor's system as "dynamic hooey," imply that no strength can be developed without the use of apparatus, that the use of dumbbells or bar bells is absolutely essential to the development of strength and that no athlete can attain great strength without the use of apparatus.

Among respondent's competitors is one Charles Atlas who has his principal place of business in New York City. Said Atlas likewise sells a course in physical training by mail in interstate commerce. He has developed a system of training in which he employs no apparatus whatever and which he has called "Dynamic Tension." Said system is based entirely upon the resistance of one part of the body against another part. The records show that he has employed and developed his said system since he was seventeen years of age and has attained his own great strength by the use of his own methods without relying upon apparatus. Some years ago there was awarded to him in a competitive meeting of athletes in New York City the title of "The World's Most Perfectly Developed Man," and he is widely known throughout the athletic world by that title.

By reason of the said false, defamatory, and disparaging magazine articles, said competitor has suffered substantial injury in that trade has been diverted from him to the respondent and in that many pupils canceled their courses and demanded moneys refunded which they had paid for tuition.

PAR. 5. There are among the competitors of respondent, as set forth herein, other individuals, firms, corporations, or partnerships who sell physical training courses and physical culture apparatus in interstate commerce who do not misrepresent their products and

who do not publish misleading and deceptive advertisements and who do not in any manner unfairly disparage their competitors.

PAR. 6. The acts and practices of respondent in using deceptive and misleading "Before and After" pictures; in using pictures of certain individuals calculated to deceive prospective purchasers of training courses into the belief that such individuals have attained their physical development through the use of respondent's courses when such is not the fact; in representing that respondent has been awarded the Distinguished Service Cross in connection with advertising his own prowess and accomplishments; in using pictures of professional athletes in connection with stories of pupils contained in advertisements of the respondent without indicating in any manner that said pictures are not the pictures of the individuals concerning whom the stories are written; in employing the picture of the building in which respondent does business and having across the top "York Bar Bell Company," when in fact such building is not exclusively for the athletic business; and in publishing false, defamatory, and unfairly disparaging articles about competitors, are all calculated to mislead and deceive and have and have had the capacity and tendency and effect of misleading and deceiving and have misled and deceived a substantial portion of the purchasing and consuming public into the erroneous belief that all of said representations are true and into the purchase of respondent's products, trading system and publication on account of such belief.

As a result thereof trade is unfairly diverted to the respondent from competitors engaged in the sale in interstate commerce of physical training courses and physical culture apparatus, who truthfully represent their courses and their merchandise. Further, as a result thereof substantial injury has been and is being done by respondent to the purchasing public and 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, Robert C. Hoffman, an individual doing business under the firm names and styles of York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply 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

This proceeding having been heard by the Federal Trade Commission upon the complaint and amended complaint of the Commission, the testimony and other evidence taken before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and amended complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission and by Herbert S. Ward, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent Robert C. Hoffman, trading as York Bar Bell Company, Strength and Health Publishing Company and York Athletic Supply Company, 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, Robert C. Hoffman, individually and trading and doing business as York Bar Bell Company, Strength and Health Publishing Company and York Athletic Supply Company, his representatives, agents and employees, in connection with the offering for sale, sale and distribution in interstate commerce and in the District of Columbia, of courses in physical culture, of appliances for use in connection with physical culture and of the magazine "Strength and Health" do cease and desist:

From falsely representing in advertisements, catalogs, magazine articles, or any written or printed matter, through the use of pictures, photographs, cuts, "before and after" pictures or fabricated photographs or through any other means or device, or in any other manner;

(a) That the physical improvement of any person or pupil was due to the use of respondent Robert C. Hoffman's course of training, when such improvement is due wholly or partly to other causes;

(b) That the individuals whose pictures are reproduced are the individuals described or referred to in the accompanying text when such is not a fact;

(c) That respondent Robert C. Hoffman's athletic enterprises occupy an entire building when such building is in fact partly occupied by an enterprise other than the athletic business;

(d) That respondent Robert C. Hoffman has been awarded military decorations unless such decorations have actually been awarded to him;

(e) That the system or courses of training offered and sold by competitors of respondent are ineffectual or that said competitors misrepresent the facts concerning their own personal achievements and

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physical development, thereby unfairly disparaging and defaming said competitors.

It is further ordered, That the respondent shall, within 30 days after service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF
THE COOLERATOR COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2770. Complaint, Apr. 16, 1936—Decision, July 10, 1937*

Where a corporation engaged in distribution and sale of non-mechanical or ice refrigerators for resale by retail dealer purchasers thereof, in advertising its said non-mechanical refrigerators through large numbers of booklets and through folders, circulars, and other advertising literature distributed to members of the purchasing public in the various States or furnished to its customers for distribution to such public, and also through advertisements in newspapers and periodicals of general circulation—

- (a) Represented that temperature of from 45 to 50 degrees is established or required standard necessary in all types of refrigerators for most satisfactory preservation of foods, and that in mechanical or electric refrigerators proper temperature for such preservation cannot be maintained without detrimentally disturbing natural composition of air and natural composition of food in the refrigerator, and that foods kept therein dehydrate to such an extent that their nutritive properties are impaired, whereas foods kept in the other do not, to any extent whatever, dehydrate, and that only with ice is it possible to produce proper temperature control of foods without disturbing natural composition of air or food;

Facts being, among others, there is no such established or required standard temperature necessary for satisfactory food preservation in all types of refrigerators, temperature range is not limited to that between 45 and 50 degrees, but food can properly be preserved at lower temperatures, maintained temperature of 50 degrees or lower is generally accepted by experts as adequate for proper preservation of perishable foods in edible condition for normal length of time in domestic refrigerators, proper temperatures for satisfactory preservation of usual foods in mechanical refrigerators for domestic use can generally be maintained without detrimentally disturbing natural composition thereof, foods stored therein for ordinary length of time do not dehydrate to such extent as to impair their nutritive properties, and while foods kept in non-mechanical refrigerators dehydrate to some extent, depending upon various factors, it is possible, through use of refrigerants other than ice, as well as ice, to produce proper food temperature control without disturbing natural composition of air or food in the refrigerator to any harmful extent, and representations hereinabove set forth were, as thus indicated, too general, lacking in specific limitation, misleading, and, in some instances, not true;

- (b) Represented that various gases used in electric refrigerators as part of refrigerant escape from coils in which contained, permeate food chamber, and have a deleterious effect on and taint foods contained in refrigerator, and that certain poisonous gases, such as sulphur dioxide and chlorine, are formed from decay of food stored in such refrigerators in such quantities that they have a harmful effect in tainting foods and reducing nutritive value thereof, whereas in non-mechanical refrigerators