

IN THE MATTER OF
JOE ANDERSON, TRADING AS THE A & O COMPANY

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

Docket 3121. Complaint, May 1, 1937—Decision, July 24, 1937

Where an individual engaged in compounding, distributing, and selling, in commerce, his "A & O" pharmaceutical preparation; in advertisements circulated among the general public in various forms of printed matter and by radio broadcasts and otherwise—

- (a) Represented that said product opened the head, let one breathe freely, healed irritated membranes, checked fever, etc., and relieved and cured the most stubborn cold when other treatments failed, and protected one from influenza, pneumonia, and serious lung trouble;
- (b) Represented that it gave instant, guaranteed, and effective relief and opened the bowels and cleared the digestive tract, and restored system to normal, and was quicker and safer than pills and salves, and that there was nothing else that acted as quickly and thoroughly; and
- (c) Represented that said product was a secret combination of ingredients which doctors prescribe for colds, and was based on a secret formula within his exclusive knowledge, making product entirely different from any other known preparation;

Facts being said statements and representations were exaggerated, preparation in question was not a sure, quick, and effective remedy and cure for colds and did not relieve the systemic causes thereof or give instant and thorough relief, check fever, etc., or protect patient from influenza, pneumonia, or other cold complications, was not unique, as claimed, in its action nor based on a secret formula sponsored by reliable physician, could not with safety be given to any and all children indiscriminately, was not entirely different from any other known preparation in view of substantially similar composition of many competing products, and representations in question as to nature, curative value, and effect of said preparation were exaggerated, misleading and deceptive;

With capacity and tendency to mislead a substantial portion of the purchasing public into the belief that all said representations were true, and into purchase of said product in such beliefs, and with result that a number of the consuming public, as a direct consequence of mistaken and erroneous beliefs thus induced, purchased substantial volume of his said product, and trade was thereby unfairly diverted to him from competitors likewise engaged in distribution and sale of like and similar pharmaceutical preparations, and who truthfully represent effectiveness of their said products and results to be obtained from use thereof; to the 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.

Mr. Joseph C. Fehr for the Commission.

Mr. Clinton Robb, of Washington, D. C., 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 Joe Anderson, an individual doing business under the trade name of The A & O Company, hereinafter referred to as respondent, 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 complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Joe Anderson, is an individual doing business under the trade name of The A & O Company, with his principal office and place of business located in the city of New Bern, State of North Carolina. Respondent, for more than one year last past, has been, and still is, engaged in the manufacture and sale of a pharmaceutical preparation known as "A & O" which he represents to be an adequate treatment for colds. In the course and conduct of his business respondent offers said product for sale and sells the same in commerce between the State of North Carolina and the several States of the United States, and in the District of Columbia.

When said product is sold, respondent transports same from his place of business in the State of North Carolina to the purchasers thereof located in States of the United States other than the State of North Carolina, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said product so manufactured and sold by respondent, between and among the various States of the United States, and in the District of Columbia. Respondent is now and for more than one year last past has been engaged in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the manufacture of like and similar products and in the sale thereof 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 his business, as aforesaid, the respondent, in soliciting the sale of and in selling his "A & O," and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than one year last past has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various forms of printed matter, by radio broadcasts, and in other ways. In said ways and by said means respondent makes and has made to the

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general public many unfair, false, and misleading statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which is as follows:

Opens bowels.

Quicker and safer than pills and salve.

Unconditionally guaranteed.

Gives quick guaranteed relief.

For instant relief take A & O.

Relieves the most stubborn colds when all other treatments fail.

Acts instantly and thoroughly.

Restores the system to normal order.

Reliable for adults and children.

A & O starts giving relief from the first dose.

Even the most stubborn colds respond to A & O.

For colds and coughs due to colds, there is absolutely nothing else that acts as quickly and thoroughly as A & O.

A & O soothes and heals irritated membranes, clears the nasal passages, opens the head, checks fever and clears the digestive tract.

Colds tear down the system, subject you to influenza, pneumonia and serious lung troubles.

The ORIGINAL liquid prescription for colds . . . and did you know that users say A and O is, by far, the most effective colds prescription yet discovered?

A and O is a secret combination of ingredients that doctors everywhere prescribe for colds.

This great colds prescription is compounded by a secret process and differs entirely from any other preparation for colds they've ever tried.

A and O is ONE colds prescription that "WORKS"!

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and many others similar thereto, serve, and have served, as representations on the part of respondent to purchasers and prospective purchasers as to the nature of the product and its effectiveness as a cure and remedy in use. Said representations are that "A & O" opens the head and lets one breathe freely; that it checks fever; that it opens the bowels; that it relieves bodily discomfort and restores the system to normal; that it gives instant, guaranteed or thorough relief; that it relieves and cures the most stubborn colds when other treatments fail; that it starts giving relief from the first dose; that it heals irritated membranes, clears the nasal passages, clears the digestive tract; that it is quicker and safer than pills and salve; that it protects one from influenza, pneumonia, or serious lung trouble; that it is a secret combination of ingredients which doctors prescribe for colds; that respondent has exclusive knowledge of a formula which is the basis of his product and that it is entirely different from any other known preparation.

In truth and in fact, respondent's said product is not a sure and quick remedy and cure for colds, nor does it relieve the systematic

causes of colds. It has no effect on the causatives of colds. It does not give instant and thorough relief nor does it check fever or open the head and bowels or protect the patient from influenza or pneumonia or other complications of a cold. It is not true that there is absolutely nothing else that acts as quickly and thoroughly as "A & O," nor is it true that a secret formula is the basis of said product sponsored by reliable physicians. Said preparation can not with safety be given to any and all children indiscriminately. It is not true that said "A & O" is entirely different from any other known preparation, as there are many competing products which contain essentially the same ingredients. In truth and in fact, the representations made by respondent as to the nature, curative value, and effect of his preparation, when used, are grossly exaggerated, false, misleading, and untrue, as said preparation will not accomplish the results claimed for it.

PAR. 4. There are among the competitors of the respondent in interstate commerce, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, sellers and distributors of like and similar products who do not advertise and otherwise represent that such products have the merit or therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs that respondent's representations set out in paragraph 3 hereof are true and into the purchase of respondent's product in such beliefs. Thereby trade is unfairly diverted to respondent from respondent's competitors, as hereinabove alleged, and as a consequence thereof substantial injury is done by respondent to competition in commerce as herein described.

PAR. 6. Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition 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,"

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the Federal Trade Commission, on the 1st day of May, A. D., 1937, issued and served its complaint in this proceeding upon respondent, Joe Anderson, an individual doing business under the trade name of The A & O Company, charging him 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 said respondent's answer thereto, a stipulation as to the facts was entered into by and between Clinton Robb, Esq., attorney for respondent, and W. T. Kelley, Chief Counsel for the Commission, by which it was agreed that, subject to the approval of the Commission, the statement of facts so agreed upon should be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto; and by which stipulation it was further agreed that the Commission might proceed upon said statement of facts to issue its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Said stipulation as to the facts has been duly filed in the office of the Commission, and approved by it. Thereafter, the proceeding came on for final hearing before the Commission in said complaint, the answer thereto, and the statement of facts as agreed upon in lieu of testimony, briefs and arguments have been waived, and the Commission, having duly considered the same and being 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. Respondent, Joe Anderson, trading and doing business under the trade name of The A & O Company, has his principal office and place of business located at New Bern, N. C. He has been for more than one year last past, and is now, engaged in the business of compounding, distributing and selling in commerce, as herein set out, a pharmaceutical preparation known as "A & O," which he represents to be an adequate treatment for colds. In the course and conduct of his business, respondent offers said product for sale, and sells the same, in commerce between the State of North Carolina and the several States of the United States, and in the District of Columbia.

When said product is sold, respondent transports it from his place of business in the State of North Carolina to the respective purchas-

ers thereof located at various points in the States of the United States other than the State of North Carolina, and in the District of Columbia. Respondent has at all times maintained a constant current of trade and commerce in said product so manufactured and sold by respondent between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for more than one year last past has been, engaged in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the manufacture of like and similar products, and in the sale thereof in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In directing the operation of his said business, and for the purpose of inducing the purchase of this product, respondent now causes, and for more than one year last past has caused, advertisements to be issued, published, and circulated to and among the general public of the United States in various forms of printed matter, by radio broadcasts, and in other ways. In said ways and by said means respondent makes, and has made, to the general public misleading and deceptive statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which is as follows:

Opens bowels.

Quicker and safer than pills and salve.

Unconditionally guaranteed.

Gives quick guaranteed relief.

For instant relief take A & O.

Relieves the most stubborn colds when all other treatments fail.

Acts instantly and thoroughly.

Restores the system to normal order.

Reliable for adults and children.

A & O starts giving relief from the first dose.

Even the most stubborn colds respond to A & O.

For colds and coughs due to colds, there is absolutely nothing else that acts as quickly and thoroughly as A & O.

A & O soothes and heals irritated membranes, clears the nasal passages, opens the head, checks fever and clears the digestive tract.

Colds tear down the system, subject you to influenza, pneumonia, and serious lung troubles.

In June, 1936, the respondent stipulated and agreed with the Federal Trade Commission to discontinue making and advertising the foregoing representations and statements, and other representations and statements equivalent thereto in form and substance. Among the statements and representations made by the respondent since June 12, 1936 have been the following:

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The original liquid prescription for colds * * * and did you know that users say A & O is, by far, the most effective colds prescription yet discovered?

A & O is a secret combination of ingredients that doctors everywhere prescribe for colds.

This great colds prescription is compounded by a secret process and differs entirely from any other preparation for colds they've ever tried.

A & O is ONE colds prescription that "WORKS"!

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and others similar thereto, serve, and have served, as representations on the part of respondent to purchasers and prospective purchasers as to the nature of his product and its effectiveness as a cure and remedy in use. Said representations are that "A & O" opens the head and lets one breathe freely; that it checks fever; that it opens the bowels; that it relieves bodily discomfort and restores the system to normal; that it gives instant, guaranteed or thorough relief; that it relieves and cures the most stubborn colds when other treatments fail; that it starts giving relief from the first dose; that it heals irritated membranes, clears the nasal passages, clears the digestive tract; that it is quicker and safer than pills and salves; that it protects one from influenza, pneumonia, or serious lung trouble, that it is a secret combination of ingredients which doctors prescribe for colds; that respondent has exclusive knowledge of a formula which is the basis of his product and that it is entirely different from any other known preparation.

PAR. 4. The said statements and representations made by the respondent, as herein set out in paragraph 2, are exaggerated and have the capacity and tendency to deceive and mislead purchasers and prospective purchasers of respondent's said product. In truth and in fact, respondent's said product is not a sure, quick and effective remedy and cure for colds, nor does it relieve the systemic causes of colds. It has no effect on the causatives of colds. It does not give instant and thorough relief nor does it check fever or open the head and bowels, or protect the patient from influenza or pneumonia or other complications of a cold. It is not true that there is absolutely nothing else that acts as quickly and thoroughly as "A & O," nor is it true that a secret formula is the basis of said product sponsored by reliable physicians. Said preparation cannot with safety be given to any and all children indiscriminately, nor is it true that said "A & O" is entirely different from any other known preparation, as there are many competing products which contain essentially the same ingredients. In truth and in fact, the representations made by respondent as to the nature, curative value, and the effect of his

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preparation, when used, are exaggerated, misleading, and deceptive, as said preparation will not accomplish the results claimed for it.

PAR. 5. There are, among the respondent's competitors in commerce, as herein described, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products, and who do not advertise and otherwise represent that such products have merit and therapeutic value which they do not have.

PAR. 6. Each and all of the misleading and deceptive statements and representations made by the respondent, as herein set out, in offering for sale and selling his said product, had and now have a capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and into the purchase of respondent's product in such beliefs. Further, as a direct consequence of the mistaken and erroneous beliefs thus induced by the acts and representations made by the respondent, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's product, with the result that trade has been and is unfairly diverted to respondent from competitors likewise engaged in the business of distributing and selling like and similar pharmaceutical preparations who truthfully represent the effectiveness of their products and the results to be obtained from their use. As a result, injury has been, and is now being done, by respondent to competition in commerce, as herein set out.

CONCLUSION

The aforesaid acts and practices of the respondent, Joe Anderson, an individual doing business under the trade name of The A & O 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 of the Commission, the answer of the respondent, and the agreed stipulation of facts entered into between Clinton Robb, Esq., attorney for respondent herein, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other inter-

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vening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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, Joe Anderson, an individual doing business under the trade name of The A & O Company, his representatives, agents, and employees, in connection with the advertising, offering for sale, and sale and distribution in interstate commerce, or in the District of Columbia, of a pharmaceutical preparation now known as "A & O," or of said preparation or of any similar preparation containing substantially the same ingredients, sold under the same, or under any other, name or names, cease and desist, directly or indirectly, from:

Representing in newspapers and magazines, and through circulars, catalogues, labels, or in any other form of printed matter, or by radio broadcasting, or in any other way or manner:

1. That said product opens the head, lets one breathe freely, heals irritated membranes, clears the nasal passage, checks fever, relieves and cures the most stubborn colds when other treatments fail, protects one from influenza, pneumonia, or serious lung trouble;

2. That said product gives instant, guaranteed, or effective relief, or starts giving relief from the first dose;

3. That said product opens the bowels, clears the digestive tract, restores the system to normal, and is quicker and safer than pills and salve;

4. That said product is a secret combination of ingredients which doctors prescribe for colds, and that it is based on a formula within the exclusive knowledge of respondent, making the product entirely different from any other known preparation;

and from making any other representation of similar tenor or import.

And it is hereby further ordered, That the said respondent shall, within 60 days from the date of the service upon him of this order, file with this Commission a report in writing, setting forth the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF
LECHLER LABORATORIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3115. Complaint, Apr. 26, 1937—Decision, July 27, 1937*

Where a corporation engaged in manufacture, sale and distribution of its "569 Instantaneous Hair Lightener," direct to consuming public, in substantial competition with those engaged in manufacture and distribution of like and similar products and sale thereof in commerce among the various States and in the District of Columbia, in advertising its said preparation through media of price lists, advertisements, and other printed matter, published and circulated through the United States mails to customers and prospective customers in the various States and in said District—

- (a) Represented that bleaching agent of said product was not similar to peroxide and that it performed its bleaching action without said substance, and that it did not require or contain the same, and was superior to products which did contain such substance; and
- (b) Represented that said product was beneficial to permanent waves and bleached hair, and was harmless to the hair, and that it was the only preparation that would lighten the scalp, and that through use thereof there would be no more dark roots;

Facts being product in question did require peroxide, bleaching action of said product was not chemically different from those containing such substance of like strength, it did not perform its bleaching action without said substance, was not more beneficial to permanent waves and bleached hair than other similar and like preparations, or not only preparation that would lighten scalp, was not harmless to hair of users in many cases, and would not prevent dark roots, and aforesaid various representations were unfair, false, and misleading;

With effect of misleading substantial portion of consuming public in the several States and in said District, by inducing them mistakenly and erroneously to believe that said preparation required no peroxide, and that other representations with respect thereto, as hereinabove set forth, were true, and with tendency and capacity so to mislead and deceive distributors and purchasing public, and with effect of inducing members thereof to buy its said product on account of such erroneous beliefs, and of thereby diverting trade to it from competitors who do not make use of same or similar representations, acts or practices; 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.

Mr. S. Brogdyne Teu II for the Commission.

Mr. Willis B. Rice, of New York City, for respondent.