

IN THE MATTER OF
W. H. BONIFIELD, TRADING AS CHICOPEE MEDICINE
COMPANY

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

Docket 2740. Complaint, Mar. 10, 1936—Decision, Aug. 5, 1937

Where an individual engaged in sale of so-called "Chicopee Native Indian Herbs" medicinal preparation, either direct to members of the purchasing public or through druggists for resale thereto, in substantial competition in interstate commerce with those engaged in sale and distribution, in commerce among the States and in the District of Columbia, of similar medicines or those intended for and adapted to treatment of various bodily ailments for which his said preparation was adapted or recommended—

- (a) Made use of printed coupons or circulars in offer and sale of his said product, and caused said medicine to be placed in cartons, upon which coupons and cartons there were depicted representation of generally accepted idea of an "Indian Medicine Man" preparing concoction over a fire with a wigwam as a background, along with various statements in regard thereto which, together with aforesaid name "Chicopee Native Indian Herbs," used to designate said medicine, represented that such product was composed of native Indian herbs;
- (b) Represented, through many statements on said coupons or circulars, that said medicine was a cure, remedy or competent and adequate treatment for diseases of the kidneys, liver, bowels, or stomach, and for constipation, biliousness, colds, pain in the neck, sick headache, rheumatism, similar complaints, and other ailments and conditions, and that it would give relief therein and would relieve any ailment or abnormal bodily condition, and that it would relieve "pain in the neck, shoulders, side, back, or hips in one day," and la grippe and colds, and certain other specified ailments in the same period of time;
- (c) Represented that it was a wonderful remedy of nature and was effective from the very first dose and did its work surely, safely, and quickly, and brought health and happiness, and was the oldest and most reliable medicine known which would improve health 100%, and that it was a medicine that nature grows and a general tonic, and that it relieved bilious or sick headache, in two hours, and heartburn and palpitation of the heart and other conditions at once; and
- (d) Caused to be printed on aforesaid coupons or circulars "YOUR FUTURE HOROSCOPE FREE! TEN PAGES! BUY A PACKAGE OF CHICOPEE TODAY. AND GET THIS VALUABLE HELP";

Facts being said horoscope was not the individual horoscope of the purchaser, but a mimeographed form printed and distributed in large quantities, medicine in question was not composed of native Indian herbs, nor a cure, remedy, or competent and adequate treatment for diseases of the kidneys, liver, etc., as above set forth, statements that such medicine would relieve such diseases and conditions as above were not warranted, and were inac-

curate and misleading, it was not a wonderful remedy of nature, and aforesaid statements and representations in other respects were misleading in that they were inaccurate, exaggerated or entirely erroneous;

With tendency and capacity to confuse, mislead and deceive members of the public into erroneous belief that its said medicine was composed of native Indian herbs, and was a cure, remedy, or competent and adequate treatment for aforesaid various diseases and conditions, and that it would relieve the same as above set forth, and that it was a wonderful remedy of nature, effective from the very first dose, and that the aforesaid various other statements and representations as to nature, working, history, and effects thereof were true, and that such horoscope was the individual one of the person to whom furnished, and to induce members of the public to purchase his said medicine because of erroneous beliefs thus engendered, and to divert trade to him from competitors engaged as above set forth in sale of medicines of same general kind, etc., and with effect of diverting business to him from competitors who do not misrepresent therapeutic value of medicines sold by them or other facts in addition to and in connection therewith, but truthfully and accurately state therapeutic effects thereof, as well as other facts and matters connected therewith; to their substantial injury and prejudice:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. Justin C. Burns, of Columbus, Ohio, 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 W. H. Bonifield, trading as Chicopee Medicine Company of Warren, Indiana 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:

PARAGRAPH 1. Respondent W. H. Bonifield is an individual doing business under the trade name and style of Chicopee Medicine Company with his principal office and place of business in Warren, Ind. Respondent is now and for several years last past has been engaged in the sale and distribution of a product called "Chicopee Native Indian Herbs" to members of the public, either directly to the purchasing public or indirectly through druggists. Said respondent in the course and conduct of his business ships or causes to be shipped or transported, his products, when sold by him from the State of

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Indiana or the State of origin of the shipment to the purchasers thereof located at points in various States of the United States other than in the State of Indiana or in the State of origin of the shipment. There is now and has been during all the times hereinbefore mentioned a constant current of trade in commerce in the product sold by the respondent between and among various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business respondent is now, and has been during all the times hereinabove mentioned, engaged in substantial competition with various other individuals, firms, and corporations selling or offering for sale medicines to members of the general public in the manner set out in paragraph 1 hereof in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, in soliciting the sale of and in selling the said "Chicopee Native Indian Herbs" respondent makes use of and has made use of certain printed coupons or circulars which respondent causes to be transported from his place of business in Indiana to points in various other States of the United States where said medicine is offered for sale and where said coupons or circulars are distributed to and among the purchasing public. Respondent causes said medicine to be placed in cartons in which it is displayed for sale and sold to the public. Said coupons or circulars and the said cartons have printed thereon for the sole purpose of conveying the idea that said product is composed of Native Indian Herbs a pictorial representation of the generally accepted idea of an "Indian Medicine Man" preparing a concoction over a fire with the background of a wigwam; in addition to various statements and representations as to the contents of said medicine and its therapeutic value or effect. Many of said representations and statements are misleading and deceptive in that they do not truthfully and accurately state all the contents of said medicine, nor do they truthfully and accurately state the therapeutic value thereof or greatly exaggerate the same. Among such statements and representations on said coupons or circulars are the following:

Chicopee Indian Herbs for kidneys, liver, bowels, stomach and run down condition—a real Indian tonic.

Relieves constipation, piles, billousness, La Grippe and colds in one day.

Relieves weakness and tired out feeling, bladder and kidney trouble.

Relieves pain in the neck, shoulders, side, back or hips in one day.

Relieves billious or sick headache in two hours; heartburn and palpitation of heart at once; sick stomach, belching, gas on stomach at once.

Relieves lumbago and rheumatism, giving relief from pain; all female complaint.

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Do you get up in the morning feeling worse than when you went to bed? Blue? Look on the dark side of everything? Worry about trifles? Tired? Lazy? Mouth taste bad? Take "Chicopee Indian Herbs" and see how quickly you will lose all those unpleasant symptoms.

This wonderful remedy of nature starts with the very first dose and does its work surely, safely and quickly.

THE MEDICINE THAT NATURE GROWS. Chicopee Native Indian Herbs is a medicine gathered from nature's fields, and is a combination of roots, herbs, barks, berries and flowers. They have brought health and happiness to thousands.

THE OLDEST AND MOST RELIABLE MEDICINE KNOWN. Will improve your health 100% in a few weeks time.

Among such statements and representations on said cartons containing the medicine are the following:

Acts as a * * * tonic. *

For Acid stomach, Biliousness * * *

* * * Rheumatic Pains and Aches.

In truth and in fact said medicine is not a remedy for the ailments set forth in the above quotations from respondent's coupons or circulars and cartons nor does its therapeutic value warrant statements or representations "that it will give relief in such ailments." "Chicopee Native Indian Herbs" is not a wonderful remedy of nature, "that starts with the very first dose and does its work surely, safely and quickly;" "Chicopee Native Indian Herbs" is more than a combination of roots, herbs, barks, berries, and flowers in that it also contains drugs; "Chicopee Native Indian Herbs" is not the oldest and most reliable medicine known; will not improve your health 100 percent in a few weeks' time. It is not "the medicine that nature grows"; and it has no value as a tonic. The herbs, barks, berries, and flowers in Chicopee Native Indian Herbs are not "Native Indian Herbs."

PAR. 4. In the course and conduct of his business and in the manner described in paragraph 3 hereof, respondent caused to be printed on said coupons and circulars referred to in paragraph 3 hereof, the following false and misleading representation:

YOUR FUTURE HOROSCOPE FREE! TEN PAGES! BUY A PACKAGE OF CHICOPEE TODAY. AND GET THIS VALUABLE HELP

In truth and in fact the "horoscope" offered by respondent is not the individual horoscope of the purchaser, but a mimeographed form that is printed and distributed in large quantities.

PAR. 5. The above and foregoing representations as to therapeutic value and effects of his medicine and as to the contents thereof, as set forth in paragraph 3 hereof, and the representations as to the "horoscope" offered to purchasers of said medicine, as set forth

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in paragraph 4 hereof, in the course of his advertising, offering for sale and selling his medicine in commerce as aforesaid, have the capacity and tendency to mislead and deceive, and have misled and deceived, a substantial portion of the purchasing public into the erroneous belief that said medicine has general curative properties in restoring health without regard to the particular ailment; that it is a remedy for the diseases and ailments set out in said statements and representations quoted in paragraph 3 or that its use will give relief in such cases; that said medicine is composed only of herbs, barks, flowers, and roots, and that said roots are "Native Indian"; that said "horoscope" offered by the respondent to purchasers of his medicine is the individual "horoscope" of the purchaser; and thereby induce the said purchasing public to purchase a substantial quantity of the product of the respondent in reliance upon such erroneous beliefs. Thereby trade is diverted to the respondent from other competitors who do not make such representations and thereby substantial injury is done by the respondent to substantial competition in commerce as aforesaid.

There are dealers and distributors of products similar in kind who sell and offer for sale their products and who do not in any way misrepresent the therapeutic value or curative properties of their product. There are dealers and distributors of products that are proper and have curative properties for the ailments set forth in paragraph 3 hereof, who do not in any way misrepresent their products.

PAR. 6. The above acts and things done or caused to be done by the respondent were and are each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of an Act 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 March 10, 1936, issued and served its complaint in this proceeding upon respondent, W. H. Bonifield, trading as Chicopee Medicine 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 respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving hearing on the charges set forth in said complaint, which substitute answer was duly filed in the office of the Commission. Prior to the filing of said substitute answer, said respondent had appeared at a hearing set for the taking of testimony and other evidence in said case, and had entered upon the record of such hearing his consent that the Commission, without further intervening procedure, might find the facts and issue its order to cease and desist based on the material allegations of the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the substitute answer and respondent's agreement entered of record, briefs and oral argument 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. H. Bonifield, is an individual doing business under the trade name and style of Chicopee Medicine Company, with his principal office and place of business in the town of Warren in the State of Indiana. Respondent was for several years prior to the issuance of the complaint herein engaged in the sale and distribution in commerce between and among the various States of the United States of a certain medicinal preparation known and described as "Chicopee Native Indian Herbs." Respondent's method of business was to sell said preparation either directly to members of the purchasing public or through druggists through whom it was sold to members of the public. Respondent, in the course and conduct of his said business, caused his said medicine, when sold by him, to be transported in commerce from his said place of business in Indiana, or the State of origin of the shipment thereof, to, into and through States of the United States other than Indiana, or other State of origin of shipment, to the purchasers thereof in such other States to whom it had been sold.

PAR. 2. During the time respondent conducted his said business, as aforesaid, other individuals, firms, and corporations in various States of the United States were engaged in the sale and distribution, in commerce between and among the various States of the United States

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and in the District of Columbia, of medicines of the same kind or similar to that sold by respondent, or intended for and adapted to the treatment of various bodily ailments for which respondent's said medicine is adapted, or for which it is recommended by respondent, as herein set out. Such other individuals, firms, and corporations have caused and do now cause their said medicines, when sold by them, to be transported from the various States of the United States where they are located, to, into and through States other than the State of origin of the shipment thereof to the purchasers of the same in such other States. Said respondent was, during the time of the conduct of his business, as aforesaid, in substantial competition in interstate commerce in the sale of his said medicine with such other individuals, firms, and corporations.

PAR. 3. In the course and conduct of his business, respondent, in soliciting the sale of and in selling the said "Chicopee Native Indian Herbs," made use of certain printed coupons or circulars which he caused to be transported from his place of business in Indiana to points in various other States of the United States where said medicine was offered for sale and where said coupons or circulars were distributed to and among the purchasing public. Respondent caused said medicine to be placed in cartons in which it was displayed for sale and sold to the public. Said coupons or circulars and the said cartons had printed thereon a pictorial representation of the generally accepted idea of an "Indian Medicine Man" preparing a concoction over a fire with a wigwam as a background, together with various statements and representations in regard thereto, all of which, together with the name used to designate said medicine, represented that said medicine was composed of native Indian herbs. Respondent also made many statements on said coupons or circulars which were misleading in that they did not accurately state the therapeutic effects of said medicine, but greatly exaggerated the same, or represented it as having therapeutic effects which it did not in fact have, or otherwise misrepresented the same. Among such statements on said coupons or circulars were the following:

Chicopee Indian Herbs for kidneys, liver, bowels, stomach and run down condition—a real Indian tonic.

Relieves constipation, piles, billousness, La Grippe and colds in one day.

Relieves weakness and tired out feeling, bladder and kidney trouble.

Relieves pain in the neck, shoulders, side, back or hips in one day.

Relieves bilious or sick headache in two hours; heartburn and palpitation of heart at once; sick stomach, belching, gas on stomach at once.

Relieves lumbago and rheumatism, giving relief from pain; all female complaint.

Do you get up in the morning feeling worse than when you went to bed? Blue? Look on the dark side of everything? Worry about trifles? Tired? Lazy? Mouth taste bad? * * * Take Chicopee Indian Herbs * * * and see how quickly you will lose all those unpleasant symptoms.

This wonderful remedy of nature starts with the very first dose and does its work surely, safely and quickly * * *

THE MEDICINE THAT NATURE GROWS. Chicopee Native Indian Herbs is a medicine gathered from nature's forests and fields, a combination of roots, herbs, barks, berries and flowers, * * *

They have brought health and happiness to thousands.

THE OLDEST AND MOST RELIABLE MEDICINE KNOWN. Will improve your health 100% in a few weeks' time.

Among such statements and representations on said cartons containing the medicine, were the following:

Acts as a * * * tonic

For Acid stomach, Biliousness * * * Rheumatic Pains and Aches.

In truth and in fact said medicine is not composed of native Indian herbs. It is not a cure, remedy or competent and adequate treatment for diseases of the kidneys, liver, bowels, and stomach or for run-down condition, constipation, piles, biliousness, la grippe, colds, weakness, tired-out feeling, bladder trouble, kidney trouble, pain in the neck, pain in the shoulders, pain in the side, pain in the back, pain in the hips, bilious headache, sick headache, palpitation of the heart, lumbago, rheumatism, or female complaints. General statements that said medicine will relieve such diseases and conditions, as above stated, are not warranted, and are inaccurate and misleading. Neither is it true or correct to say that said medicine is a wonderful remedy of nature; that it is effective from the very first dose, that it does its work surely, safely and quickly; that it is composed wholly of roots, herbs, barks, berries, and flowers; that it brings health and happiness; that it is the oldest and most reliable medicine known; that it will improve health 100%; that it is the medicine that nature grows; that it is a tonic in a general sense; or that it will cure, remedy or relieve any ailment at once or in any stated time. Such representations are misleading in that they are inaccurate, exaggerated or entirely erroneous.

PAR. 4. In the course and conduct of his business, as aforesaid, respondent caused to be printed on said coupons or circulars previously referred to, the following misleading representation:

YOUR FUTURE HOROSCOPE FREE! TEN PAGES! BUY A PACKAGE OF CHICOPEE TODAY. AND GET THIS VALUABLE HELP

In truth and in fact the "horoscope" offered by respondent was not the individual horoscope of the purchaser, but a mimeographed form that was printed and distributed in large quantities.

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PAR. 5. The representations of respondent, as aforesaid, have had the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said medicine is composed of native Indian herbs; that it is a cure, remedy or competent and adequate treatment for diseases of the kidneys, liver, bowels, and stomach, and also for run-down condition, constipation, piles, biliousness, la grippe, colds, weakness, tired-out feeling, bladder trouble, kidney trouble, pain in the neck, pain in shoulders, pain in the side, pain in the back, pain in the hips, bilious headache, sick headache, palpitation of the heart, lumbago, rheumatism, and female complaints; and that it will relieve such diseases and conditions as above stated; when, in truth and in fact, such are not the facts. Such representations further had the tendency and capacity to confuse, mislead and deceive members of the public into the belief that said medicine is a wonderful remedy of nature; that it is effective from the very first dose; that it does its work surely, safely and quickly; that it is composed wholly of roots, herbs, barks, berries and flowers; that it brings health and happiness; that it is the oldest and most reliable medicine known; that it will improve health 100%; that it is the medicine that nature grows; that it is a general tonic; that it will cure, remedy or relieve bodily ailments at once or in a specified time; and that the horoscope offered, as aforesaid, was the individual horoscope of the person to whom it was furnished; when, in truth and in fact, such were not and are not the facts. Said representations of respondent had the tendency and capacity to induce members of the public to purchase respondent's said medicine because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale, in interstate commerce, of medicines of the same general kind as that sold by respondent, as well as those so engaged in such sale of medicines adapted to and used for the treatment of the various ailments and conditions for which respondent's said medicine is adapted or for which he recommends his said medicine as aforesaid. There were and are, among the competitors of respondent, those who do not misrepresent the therapeutic properties and effects of the medicines sold by them or other facts and conditions in connection therewith, but who truthfully and accurately state the therapeutic effects of the same as well as other facts and matters connected therewith. Respondent's said acts and practices tended to and did in fact divert business to respondent from his said competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, W. H. Bonifield, trading as Chicopee Medicine 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 and the answer filed herein by the respondent, dated May 12, 1937, admitting all the material allegations of the complaint to be true and waiving hearing on the charges set forth in said complaint, and also on said respondent's consent, entered of record, that the Commission, without further intervening procedure, might find the facts and issue its order to cease and desist based on the material allegations of the complaint; 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, W. H. Bonifield, trading as Chicopee Medicine Company, or trading under any other trade name or under his own name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of "Chicopee Native Indian Herbs," or of a medicine of the same or substantially the same formula under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said medicine is composed of native Indian herbs, or that it is composed entirely of herbs or other vegetable products.
2. That it is a cure, remedy, or competent and adequate treatment for diseases of the kidneys, liver, bowels, or stomach; or for constipation, piles, biliousness, la grippe, colds, weakness, run-down condition, tired-out feeling, bladder trouble, kidney trouble, pain in the neck, pain in the shoulders, pain in the side, pain in the back, pain in the hips, bilious headache, sick headache, palpitation of the heart, lumbago, rheumatism; or for female complaints or diseases; or that it will give relief in said diseases and conditions

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above named; or that it will relieve any ailment or abnormal bodily condition in one day or in any definite time.

3. That it is a wonderful remedy of nature; or that it is effective from the very first dose; or that it does its work surely, safely, and quickly; or that it brings health and happiness; or that it is the oldest and most reliable medicine known; or that it will improve health 100 percent; or that it is a medicine that nature grows; or that it is a general tonic; or that it will relieve any ailment at once.

4. That printed horoscopes, made out in advance in large numbers, are the individual horoscopes of persons to whom they are sent.

It is further ordered, That the respondent shall, within 60 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.

Syllabus

IN THE MATTER OF
 RELIABLE TYPEWRITER AND ADDING MACHINE
 COMPANY

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

Docket 3110. Complaint, Apr. 23, 1937—Decision, Aug. 6, 1937

Where a corporation engaged in sale and distribution, to retailers and direct to consuming public, of its "VE-PO-AD," so-called vest-pocket type of adding machine, in substantial competition with others engaged in manufacture, sale, and distribution of like and similar products in commerce and in the District of Columbia; in advertising its said product through newspaper and magazine advertising and other trade literature—

- (a) Made such statements as "If there is a Ve-Po-Ad on every desk, no one ever need worry about using the big machine and Ve-Po-Ad is every bit as fast and as capable as any adding machine you ever saw," and "Store-keepers cannot always afford a large adding machine. Ve-Po-Ad will take its place," and "Does exactly the same work as that done by big, expensive machine," etc., facts being such representations were deceptive and misleading in that said machine would not do the work of making permanent records or giving sub-totals as would certain types of much more costly or substantially more costly machines, and its said product did not possess many of the features of the more expensive adding machines, such as permanent records, sub-totals, or release features for correction of errors, and would not, therefore, accomplish certain of the work done by the more costly products, and also was not, in respect to certain features such as permanent records, sub-totals and release features, the equal of such more costly machines in performance or any other characteristic;
 - (b) Misrepresented its business status through use of words "Manufactured by Reliable Typewriter and Adding Machine Company" upon its finished product, facts being it did not manufacture same, but said machine actually was made by others for it; and
 - (c) Misrepresented, in advertisements and sales literature, wholesale price of its said machine, which it, in fact, had sold in wholesale quantities for sum substantially less than usual purported wholesale price thereof;
- With effect of misleading customers and prospective customers into erroneous and mistaken belief that said product would take place of, or do same work as, large and expensive adding machine, and that it was the equal of products having such features as permanent records, sub-totals, and release features, and that it was the manufacturer thereof, and that its purported wholesale price was the actual and true price, and of inducing substantial numbers of retailers, as well as consumer-purchasers of said product, to buy the same on account of aforesaid erroneous and mistaken beliefs, and of unfairly diverting trade to it from competitors engaged in similar businesses, who do not misrepresent the character and nature of their respective products or their business status; to the substantial injury of competitors in commerce: