

Syllabus

IN THE MATTER OF
BERNARD M. WOLF, TRADING AS KODICON PRODUCTS
COMPANY

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

Docket 2910. Complaint, Aug. 26, 1936—Decision, Sept. 14, 1937

Where an individual engaged in distribution and sale, in interstate commerce, of "Kodicon" medicinal preparation for relief, or asserted relief, of arthritic and rheumatic pains, etc., in substantial competition with those likewise similarly engaged in distribution and sale of medicinal preparations and treatments similar to it for same ailments for which said individual represented it as an effective remedy, in advertising his said "Kodicon" in newspapers and pamphlets of general circulation through the United States, and through various circulars, advertising folders, and literature distributed to customers and prospective customers, and through testimonial reproduction of purported purchaser thereof, and through leaflets, as case might be—

Represented that said "Kodicon" constituted an effective and reliable remedy or treatment for arthritis, neuritis, neuralgia, and gout, and for rheumatism, rheumatic fever, and other rheumatic ailments, and was a competent treatment for prevention of head colds and would stop pain, facts being product in question, principle ingredient of which was aspirin, recognized analgesic for temporary relief of minor forms of pain, was not a remedy or competent or effective treatment for said various ailments, and would not prevent head colds nor stop pain, and representations made by said individual with respect thereto were grossly exaggerated, false, misleading and untrue;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into the erroneous belief that all of said representations were true, and with result that a number of the consuming public, by reason of such mistaken and erroneous belief thus engendered, purchased substantial volume of his said product, and trade was unfairly diverted to him from those likewise engaged in sale of similar preparations and treatments for same ailments for which said individual represented said "Kodicon" as an effective remedy, and who truthfully advertise their products; to the substantial injury of competition in commerce;

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

Before *Mr. Edward M. Averill* and *Mr. Robert S. Hall*, trial examiners.

Mr. George Foulkes for the Commission.

Mr. Harold Singer of *Jacobs & Jacobs*, of Boston, Mass., for respondent.

Complaint

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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 Bernard M. Wolf, trading as Kodicon Products 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, Bernard M. Wolf, is an individual trading as Kodicon Products Company, with his principal office and place of business located at 5 Bromfield Street, Boston, Mass. Respondent is now and has been for sometime engaged in the business of distributing and selling in commerce, as herein set out, a medicinal preparation which respondent designates as "Kodicon."

PAR. 2. Said respondent being engaged in business as aforesaid caused said preparation, when sold, to be transported from his office and place of business in the State of Massachusetts to purchasers thereof located at various points in States of the United States other than the State from which such shipments were made. Respondent now maintains a constant current of trade in commerce in said preparation, distributed and sold by him between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now and has been in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing, and selling medicinal preparations and treatments similar to that of "Kodicon," and preparations and treatments for the same ailments for which respondent represents "Kodicon" to be an effective remedy, in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of his business and for the purpose of inducing individuals to purchase "Kodicon" respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and has caused to be prepared and printed circulars, advertising folders, and literature which are circulated and distributed to customers and prospective customers located in the various States of the United States.

Certain advertising matter used by respondent is herein set out as illustrative of the claims respondent makes concerning the curative and remedial qualities of "Kodicon," but is not all inclusive. Such advertisements are as follows:

KODICON—For relief of pains incident to Arthritis, Rheumatism, Neuritis, Neuralgia, Gout, Nervousness, loss of sleep. The relief of pain and discomfort in simple headaches; relief for muscular aches and pains.

RHEUMATISM—KODICON for safe internal remedy. For relief of pain in arthritis, rheumatism, neuralgia, neuritis, loss of sleep, and nervousness. Stops the pains, radiates relief—makes life worth living. * * * Kodicon your pains away. * * *

Rheumatic Fever * * * Subacute Rheumatism * * * Chronic Rheumatism * * * Muscular Rheumatism * * * Rheumatoid Arthritis * * * Arthritis * * * Gout * * * Kodicon has brought great relief to sufferers from these ills.

* * * the prevention and relief of head colds.

In all of its advertising literature, respondent represents, through statements and representations as herein set out, and through statements of similar import and effect, that,

1. Kodicon is a competent treatment for the prevention of head colds.

2. Kodicon is an effective treatment for rheumatism, arthritis, neuritis, neuralgia, loss of sleep, rheumatic fever, nervousness, and gout.

3. Kodicon will "stop" pain.

PAR. 4. The representations made by respondent with respect to the effect of his product when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact "Kodicon" is not a competent treatment for the prevention of head colds, nor will said treatment prevent head colds. Kodicon is not an effective treatment for rheumatism arthritis, neuralgia, neuritis, loss of sleep, rheumatic fever, nervousness, and gout, and in such cases will do no more than afford temporary relief from pain. Kodicon will not "stop" pain.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent, as hereinabove set forth, in his advertising in newspapers, magazines, pamphlets, and other advertising literature in offering for sale, and selling his product, had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of this mistaken and erroneous belief, induced by advertisements and misrepresentations of respondent, as hereinabove enumerated, a number of the consuming public purchased a substan-

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tial volume of respondent's product with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations similar to "Kodicon," and preparations and treatments for the same ailments for which respondent represents "Kodicon" to be an effective remedy, and who truthfully advertise their products. As a result thereof, substantial injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on August 26, 1936, issued and served its complaint in this proceeding upon respondent, Bernard M. Wolf, trading as Kodicon Products 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission before Edward M. Averill and Robert S. Hall, Examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Harold Singer, 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 answer thereto, testimony and other evidence, and brief in support of the allegations of the complaint, respondent having filed no brief and having not requested oral argument; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding

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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, Bernard M. Wolf, is an individual trading as Kodicon Products Company, with his principal office and place of business located at 5 Bromfield Street, Boston, Mass.

The respondent, Bernard M. Wolf, doing business as aforesaid, is now, and has been since the month of September 1934, engaged in the business of distributing and selling in interstate commerce a medicinal preparation which respondent designates as "Kodicon."

PAR. 2. The respondent being engaged in business as aforesaid, caused the medicinal preparation "Kodicon," when sold to be transported from his office and place of business in the State of Massachusetts to purchasers thereof located at various points in States of the United States other than the State from which such shipments were made.

Respondent has since the month of September 1934, maintained, and now maintains, a constant current of trade and commerce in said product "Kodicon" distributed and sold by him between and among the various States of the United States.

PAR. 3. During the conduct of his business, respondent has been, and is now, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing and selling medicinal preparations and treatments similar to that of "Kodicon," and preparations and treatments for the same ailments for which respondent represents "Kodicon" to be an effective remedy, in commerce among and between the various States of the United States.

Respondent, in an effort to create a market for his product and to cause the purchasing public to buy "Kodicon," caused advertisements to be inserted in newspapers and pamphlets of general circulation throughout the United States.

Respondent also caused to be prepared and printed various circulars, advertising folders and literature concerning his product "Kodicon" and circulated and distributed, and now circulates and distributes to customers and prospective customers said circulars and folders.

In said advertisements referred to above, respondent made the following representations concerning the product "Kodicon,"

Kodicon for relief of pains incident to arthritis, rheumatism, neuritis, neuralgia, gout, nervousness and loss of sleep * * *

The following testimonial of a reputed purchaser of "Kodicon" appeared in the Boston Daily Record, a newspaper with general interstate circulation, April 9, 1936:

"Had suffered for over 12 years. Had X-rays of my limbs. Have taken other medicines with no avail. Took KODICON. That was the answer to my prayers. I took it faithfully and my pains are gone." Take KODICON—The amazing remedy for arthritis, rheumatism, neuritis, neuralgia, gout. Price \$1.00.

On a leaflet or small advertising circular, which respondent uses in advertising "Kodicon," the following heading appears:

WHY KODICON IS SO EFFECTIVE.

Immediately under the foregoing heading, respondent enumerates the following ailments and gives a definition of each ailment:

Rheumatism; rheumatic fever; sub-acute rheumatism; chronic rheumatism; muscular rheumatism; rheumatoid arthritis; arthritis; gout; neuralgia; and neuritis.

Following the foregoing list of ailments and their definitions, the respondent sets forth the following statement:

Kodicon has brought great relief to sufferers from these ills.

In all of his advertising literature, respondent represents through statements and representations as herein set out, and through statements of similar import and effect, that

1. "Kodicon" is a competent treatment for the prevention of head colds;
2. "Kodicon" is an effective treatment for rheumatism, arthritis, neuritis, neuralgia, loss of sleep, rheumatic fever, nervousness and gout;
3. "Kodicon" will Stop pain.

PAR. 4. Respondent's product "Kodicon" consists of acetyl salicylate, 5 grains, and colchicin 1/250ths of a grain.

Acetyl salicylate is commonly known as aspirin and is recognized by the medical profession as an analgesic for the temporary relief of minor forms of pain.

Colchicin is also an analgesic, and is prescribed by many of the medical profession for the relief of pains associated with some ailments. The amount of colchicin in "Kodicon", however, is so negligible as to render it impotent as an analgesic for the various ailments set forth in respondent's advertising statements. Medical testimony was given to the effect that in some instances "Kodicon" might act as an analgesic in relieving mild or superficial pains.

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The representations made by respondent with respect to the effect of his product, when used, are grossly exaggerated, false, misleading, and untrue.

In truth and in fact, "Kodicon" is not a remedy, or a competent or effective treatment for arthritis, rheumatism, neuritis, neuralgia, gout, rheumatic fever, sub-acute rheumatism, chronic rheumatism, muscular rheumatism, or rheumatoid arthritis. In truth and in fact "Kodicon" will not prevent head colds, nor will it "stop" pain.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent, as hereinabove set forth in his advertising in newspapers, pamphlets, and other advertising literature in offering for sale, and selling his product, had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true.

As a direct result of this mistaken and erroneous belief induced by advertisements and misrepresentations of respondent, as hereinabove enumerated a number of the consuming public purchased a substantial volume of respondent's product with a result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations similar to "Kodicon," and preparations and treatments for the same ailments for which respondent represents "Kodicon" to be an effective remedy, and who truthfully advertise their products.

As a result thereof, substantial injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States, and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, Bernard M. Wolf, trading as Kodicon Products 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 respondent

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ent, testimony and other evidence taken before Edward M. Averill and Robert S. Hall, examiners of the Commission theretofore duly designated by it in support of the allegations of the complaint and in opposition thereto, and brief in support of the complaint, respondent having filed no brief and having not requested oral argument, 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, Bernard M. Wolf, individually, and trading as Kodicon Products Company or under any other trade name, his representatives, agents, and employees in connection with the offering for sale, sale and distribution of a medicinal product now known as "Kodicon," or any product containing the same, or substantially the same, ingredients sold under that name or under any name, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing that said product:

1. Is an effective and reliable remedy or treatment for arthritis, neuritis, neuralgia, or gout;
2. Is a competent treatment for the prevention of head colds;
3. Will "stop" pain;
4. Is an effective and reliable remedy or treatment for rheumatism, rheumatic fever, sub-acute rheumatism, chronic rheumatism, or muscular rheumatism, or any other rheumatic ailment.

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.

Syllabus

IN THE MATTER OF

BERENICE COHN, TRADING AS BERGO LABORATORIES

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

Docket 2744. Complaint, Mar. 14, 1936—Decision, Sept. 17, 1937

Where an individual engaged in sale of "Nu-Nail," toilet preparation composed of American red vegetable dye, pure castor oil, and oil of sweet orange scent, and bottled and labeled by her for sale through department stores, drug jobbers, and beauty supply jobbers in half-ounce and four-ounce bottles, after purchase from manufacturer thereof in fifty gallon drums, and, as thus engaged, in substantial competition with others engaged in interstate sale of toilet preparations for use on the nails, in extensively advertising said preparation on a national scale through newspapers in various cities throughout the United States, through various periodicals of national circulation, through pamphlets, circulars, and folders, and through counter displays and newspaper advertising copy, etc., furnished to distributors and retail dealers in said preparation—

- (a) Represented that said preparation was a nail food and effective conditioner and nail rejuvenator, use of which would bring new life and vitality to the nails and keep the cuticle strong and healthy, and would eliminate brittleness, breaking, etc., ridging, white spots, and ingrown toe nails, and prevent nail biting; and
- (b) Represented, through use of word "laboratory" as a part of her trade name, that she conducted, operated, or maintained a laboratory for the purpose of manufacturing, testing, or experimenting with her said preparation;

Facts being defective nails and ordinary nails containing imperfections are due to systemic factor, application of said preparation to exterior of nail will not cause any radical change in physiology thereof, and will not eliminate breakage, etc., nor have other effects attributed to it as above set forth, but can only soften the epidermis and oil and polish the nail, and preparation in question is not a nail food nor an effective conditioner, and individual in question maintained no laboratories for manufacture of said product or for testing or experimenting therewith;

With capacity and tendency to mislead purchasing public into erroneous and untrue belief that said preparation will affect the nails as represented in such advertisements, and into purchase thereof on account of such erroneous belief, and to divert trade unfairly to her from competitors selling similar products in commerce who do not misrepresent the same:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. Henry Haves, of Los Angeles, Calif., for respondent.