

Complaint

IN THE MATTER OF
THE ELECTRIC APPLIANCE COMPANY

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

Docket 3008. Complaint, Dec. 4, 1936—Decision, Nov. 24, 1937

Where a corporation engaged in manufacture of electrical appliances, such as electric belts and insoles, and in sale thereof to purchasers in the various States and Canada, in competition with those engaged in sale of similar products for same and similar purposes, and who truthfully represent the same—

Represented in advertising matter circulated and distributed as aforesaid that its belts and insoles had therapeutic value in the treatment of nervous diseases, rheumatism, heart trouble, dyspepsia, and other diseases and ailments, including liver, kidneys, grippe, and similar trouble, and pains in chest and back and headaches, and that electric stimulation therefrom quickened liver and kidneys, and claimed thousands of testimonials from people who had been cured of rheumatism, cramps, foot, gout and other troubles, through use of said products, facts being said belts and insoles did not generate enough electricity to have any discernible effect on any part of the body they might contact, were not an adjunct to the cure of disease, and did not possess the curing qualities claimed in its advertising;

With capacity and tendency to deceive and mislead substantial portion of purchasing public into erroneous belief that such representations were true, and with result that consuming public, as a direct consequence of such mistaken and erroneous beliefs, thus engendered, was persuaded to purchase substantial volume of its products, trade was diverted unfairly to it from competitors engaged in sale of products of same kind and nature as above set out, and who truthfully advertise and represent the character and quality thereof, and means of deceiving such public was also placed in hands of agents, furnished by it, for distribution and circulation, with such advertising; to the substantial injury of consuming public and 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. W. W. Sheppard*, trial examiner.

Mr. T. H. Kennedy, *Mr. John Darsey* and *Mr. Clark Nichols* for the Commission.

Hannen & Hannen, of Burlington, Kans., for respondent.

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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, having reason to believe that The Electric Appliance Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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, The Electric Appliance Company of Burlington, Kansas, is a corporation existing and doing business under and by virtue of the laws of the State of Kansas, with its principal place of business in the city of Burlington in said State. It is now, and for several years last past has been engaged in the manufacture and sale of electrical appliances such as electric belts and electric insoles. The respondent causes its products, when sold, to be shipped from its place of business in the State of Kansas to purchasers thereof located in a State or States other than Kansas. In the course and conduct of its business, the respondent was at all times herein referred to in competition with corporations, partnerships, firms, and other individuals engaged in the sale of other electrical devices, such as infra-red ray lamps, sun-ray lamps, massage machines, vibrator belt apparatus, and heating pads manufactured and designed for the treatment of diseases and ailments such as the respondent designates its products to be a remedy and treatment for. The respondent is also in competition with other corporations, partnerships, firms, and individuals engaged in the manufacture and sale of other products and treatments intended for the same purposes as those for which the respondent represents its products to be a specific.

In the course and conduct of its business the respondent causes statements and representations with reference to its products to appear in advertisements carried in periodicals and newspapers having interstate circulation, and in pamphlets and circulars distributed in the various States of the United States to the following effect, gist, or meaning:

These belts are an important adjunct in the treatment of nervous diseases, rheumatism, heart trouble, dyspepsia, diseases of the liver, pains in the chest, headaches, kidney trouble, poor circulation, LaGrippe, female trouble, pains in the back. Electric stimulation quickens the liver and kidneys, the two prime organs of purification, to life and activity. Why demoralize the system with poisonous drugs when the Addison Electric Belt affords you benefits to be derived no other way? Full directions, easy to follow, go with each belt. Even those who consider themselves in good health find these beneficial in preventing disease. The power is strong * * * You can easily

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test it by putting the negative electrode between your eyes and touching your tongue to the other electrode. The treatment is pleasant.

We recommend Prof. Wingren's Voltaic Electric Insoles to those having cold, tired or sweaty feet or who have rheumatism and kindred ailments.

It is always important to keep the feet warm and the circulation normal in sickness from any cause. These insoles tend to keep the feet comfortable both winter and summer. Warm the feet and legs and revitalize the blood.

During the years these insoles have been made, thousands of testimonials have been received from people who have used them and who tell how they were relieved of rheumatism, cramps, cold and sweaty feet, or gout in all its forms by wearing Prof. Wingren's Voltaic Electric Insoles. If your feet hurt you, even though you do not suffer from any of the complaints above enumerated, you may find comfort and ease by wearing these insoles.

Prof. Wingren's Voltaic Electric Insoles for Rheumatism, Cramps, and Sweaty Feet.

Salesmen make from \$50 to \$100 a week selling respondent's products.

The statements, hereinabove detailed, together with other statements of similar import and effect, purport to be descriptive of respondent's products and their effectiveness in use and serve as representations on the part of the respondent that said electric belt is effective in the treatment of nervous diseases, rheumatism, heart trouble, dyspepsia, diseases of the liver, headaches, kidney trouble, LaGrippe, poor circulation, pains in the back, pains in the chest, female trouble; and that said electric insoles are effective in the treatment of rheumatism and kindred ailments, such as cramps, cold and sweaty feet and gout. Respondent's advertising also represents that salesmen for its products make from \$50 to \$100 a week selling respondent's products.

PAR. 2. In truth and in fact, the products so described and referred to are not such devices that the use thereof will produce the results claimed so as to justify the aforesaid statements and representations. The respondent's electric belt has no value in the treatment of the various diseases, conditions and ailments of the human body as claimed, such as nervous diseases, rheumatism, heart trouble, dyspepsia, diseases of the liver, headaches, kidney trouble, LaGrippe, poor circulation, pains in the back, pains in the chest and female trouble. The respondent's electric insoles have no value in the treatment of the various diseases, conditions and ailments of the human body as claimed, such as rheumatism, cramps, cold and sweaty feet and gout. No physiological function or pathological condition of the body will be changed in the slightest degree through the use of either or both of said products. Salesmen of respondent's products do not customarily and generally earn from \$50 to \$100 a week selling said products.

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PAR. 3. There are and were at all times hereinabove mentioned, persons, partnerships and corporations engaged in the manufacture and sale of devices and remedies for the treatment and relief of diseases and ailments hereinabove mentioned who truthfully represent the therapeutic effect of the said devices and remedies; and with such other persons, firms, and corporations, respondent has been and is in active substantial competition.

PAR. 4. The foregoing false and misleading representations of the respondent, as set out in paragraph 1 hereof, all have a capacity and tendency to mislead and deceive, and have misled and deceived, and do mislead and deceive purchasers and prospective purchasers into the belief that such representations are true and that respondent's products are beneficial in the treatment of the diseases, ailments, afflictions, and conditions referred to herein, and cause a substantial portion of such purchasers, because of such erroneous belief, to purchase respondent's products, thereby unfairly diverting trade to the respondent from its competitors who truthfully represent their products and the effectiveness of said products in use. As a result thereof, substantial injury has been, and is now being done by respondent to competition in commerce, as hereinabove set out.

PAR. 5. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices 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," the Federal Trade Commission, on December 4, 1936, issued and served its complaint in this proceeding upon respondent, The Electric Appliance Company, a corporation, charging it with the violation of Section 5 of the Federal Trade Commission Act, through the use of false and misleading representations in connection with the promotion of sale and sale of its electric belts and insoles.

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 Thomas H. Kennedy, attorney for the Commission, before W. W. Sheppard, examiner for the Commission, theretofore duly designated by it, and

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in opposition to the allegations of the complaint, by F. R. Hannen, 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, the answer thereto, the testimony and other evidence, and the brief of the counsel for the Commission, in support of the complaint, counsel for the respondent having waived the filing of brief and oral argument; 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Electric Appliance Company is a corporation existing and doing business under and by virtue of the laws of the State of Kansas, with its principal place of business in the city of Burlington, Kans. S. P. Crahan is the president of respondent company, and has been its active manager for many years. Respondent has, for a number of years prior to this complaint, been engaged in the manufacture and sale of electrical appliances, such as electric belts and electric insoles, known as Galvanic Electric Belts, Addison Electric Belts, Morse IXL Electric Belts, and Prof. Wingren's Voltaic Electric Insoles, respectively. When sales of respondent's products are made, respondent causes the same to be transported from its place of business in the city of Burlington, in the State of Kansas, to the purchasers thereof located in the various States of the United States of America, and Canada.

There are other corporations, partnerships, firms, and individuals engaged in the sale of similar products, to be used for the same and similar purposes, who truthfully represent their products and who cause the same, when sold, to be transported from their respective places of business to purchasers thereof located in various other States of the United States, and with such corporations, partnerships, firms, and individuals the respondent is in competition.

PAR. 2. In connection with the promotion of sale, and sale of its products as aforesaid, the respondent causes representations and statements to be made in advertising matter, which is circulated and distributed in the various States of the United States and Canada, claiming that its belts and insoles have therapeutic value in the treatment of nervous diseases, rheumatism, heart trouble, dyspepsia, diseases of the liver, pains in the chest, headaches, kidney trouble, poor circulation, LaGrippe, female trouble, pains in the back, and

that the electric stimulation from the belts and insoles quickens the liver and kidneys; also claiming thousands of testimonials from people who have been cured of rheumatism, cramps, cold and sweaty feet and gout in all its forms by use of its belts and insoles.

Neither the electric belts nor the electric insoles possess the curing qualities claimed in the respondent's advertising, and neither the electric belts nor the electric insoles generate enough electricity to have any discernible effect on any part of the human body they might contact, and are not an adjunct to the cure of disease.

PAR. 3. The representations and statements made by the respondent to the effect and meaning of those set forth in paragraph 2 supra are calculated to and have the tendency to deceive and mislead substantial portions of the purchasing public into the erroneous belief that such representations are true. As a direct consequence of such mistaken and erroneous beliefs so induced, the consuming public is persuaded to purchase a substantial volume of respondent's products, with the attendant result that trade is unfairly diverted to respondent from competitors engaged in selling products of the same kind and nature in commerce as hereinbefore set out, who truthfully advertise and represent the character and quality of their products. A means of deceiving the consuming public is also placed in the hands of agents of the respondent when it furnishes said agents with the advertising matter above described, to be distributed and circulated by them. Substantial injury is thereby done by respondent to the consuming public and to competition in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, The Electric Appliance Company, a corporation, 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, testimony and other evidence taken before W. W. Shepard, trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, and the brief filed herein on behalf of the Commission,

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the respondent and its attorney having waived the filing of a brief and oral argument for the respondent; and the Commission having made its findings of the facts and its conclusion that the 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, The Electric Appliance Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its Electric Belts and Voltaic Electric Insoles, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing:

That said Electric Belts and Electric Insoles have any therapeutic value in the treatment of any disease or ailment.

It is further ordered, That the respondent shall, within 60 days after the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
METAL WINDOW INSTITUTE, ET AL.

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

Docket 2978. Complaint, Nov. 11, 1936—Decision, Nov. 30, 1937

Where some eighteen corporations, comprising substantially all of the manufacturers and distributors of steel window products in the United States, engaged in sale of their said products to wholesalers, dealers and consumers located at various points throughout the United States, for use, principally, in construction of industrial, commercial, and municipal buildings, and sold generally through the submission of bids on a given project to the builders thereof by the sellers of such products, and with a substantial portion of their sales during the last several years to the United States and the several States and to municipalities or political subdivisions or agencies thereof, for use in construction of public buildings, and prior to and but for below-described practices in active substantial competition with one another, in making and seeking to make sales of their products in the several States and in the District of Columbia; acting through the trade association of which they were members, the executive secretary or "commissioner" of said association and the president thereof and four other members of its executive committee, in control of its practices, policies and activities, and of the association activities of aforesaid corporate manufacturer members, and in pursuance of understandings and agreements entered into by them, the result of which was to restrict, restrain, monopolize, and eliminate competition in sale of metal window products in trade and commerce among the several States and in the District of Columbia—

- (a) Agreed to use and did use gross or basic price book theretofore compiled by certain of said corporate manufacturers, and affording means of determining price or price formula for substantially all of the products of the industry in question through application of discounts shown therein or of formula therein given, and agreed to file and did file with aforesaid association schedule of each corporate manufacturer's discounts from prices established therein and at which it would sell and did sell its products, and not to deviate from prices thus established without first notifying, at specified period in advance of effective date of change, such other manufacturers, and that their said association could convey to all other members information contained in schedule of discounts thus filed;
- (b) Agreed to maintain and adhere to schedule of uniform discounts to be applied to prices determined from use of said gross or discount price book, and thereby established fixed, uniform minimum prices of products of said industry and agreed to and did fix uniform terms and conditions that were a part of all sales made, including, among others, mandatory erection, time for delivery and allowance for freight;
- (c) Agreed not to, and did not, sell products of industry for less than uniform minimum prices established through use of said uniform discounts without giving one another prior notice of such a sale, and to submit, and did