

IN THE MATTER OF
ANTHONY J. HILDRETH AND JOSEPH FISCHLER, TRADING AS SANITAS FUNDOSHI COMPANY

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

Docket 2797. Complaint, May 5, 1936—Decision, Dec. 28, 1937

Where a firm engaged, as "Sanitas Fundoshi Company," in selling and distributing combination loin cloth and suspensory to purchasers in other States, in substantial competition with those engaged in sale and distribution of undergarments and other articles designed for the same general uses and purposes; in advertising their said product in various periodicals of nation-wide circulation and in folders mailed to customers and prospective customers in the various States—

Represented that the same was a builder and restorer of health and was scientifically designed to preserve, and would preserve, the strength, vigor, vitality and nervous energy of the wearer and relieve him of fatigue, through such statements, among others, as " * * * of specially treated hand-woven Oriental fabric * * * Conserves vitality," etc., " * * * new, scientific article of clothing, for men * * * American adaptation of a garment centuries old in the Orient," etc., " * * * every thread * * * has been treated by a secret, scientific and sanitary process," etc., " * * * preserves strength and vigor to a marked degree," etc., "HEALTH BUILDER—HEALTH RESTORER," facts being cloth was not specially treated, etc., or unlike other cloths on the market with respect to its functions and properties, other similar articles had same functional characteristics, said article would not restore or correct anatomical conditions, was not a builder or restorer of health, or constructed to fill particular requirements, developed as result of scientific investigation, or scientifically designed to preserve the strength, vigor, etc., of the wearer, and was incapable of so doing, and belonged to a class not required by normal persons; With capacity and tendency to mislead and deceive members of purchasing public into erroneous belief that their said product, thus advertised, offered and sold, would build health and restore lost health, and that it was scientifically designed to and would accomplish the various results claimed therefor, and to induce members of buying public to purchase said article because of such erroneous beliefs thus engendered, and to unfairly divert trade to them from competitors engaged in sale of garments with such features or other articles designed for same general usage and purposes; 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. W. W. Sheppard*, trial examiners.

Mr. Astor Hogg for the Commission.

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 Anthony J. Hildreth and Joseph Fischler, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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. Respondents, Anthony J. Hildreth and Joseph Fischler are copartners trading under the name and style of Sanitas Fundoshi Company, with their office and principal place of business located at 7508 Linwood Avenue, Cleveland, Ohio, and are now and have been for more than one year last past engaged in the business of manufacturing from cloth made in and imported from Japan a combination loin cloth and suspensory for the use of men, and in the sale and distribution thereof to members of the purchasing public as herein set out.

PAR. 2. The respondents, being engaged in business, as aforesaid, cause said loin cloth and suspensory, when sold by them, to be transported from their office and principal place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio, and in the District of Columbia. There is now, and has been at all times since the respondents have been in business as aforesaid, a constant current of trade and commerce in said loin cloth and suspensory so distributed and sold by the respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business, are now, and have been at all times mentioned herein, engaged in substantial competition with other partnerships and with corporations, firms, and individuals engaged in commerce among the various States of the United States and in the District of Columbia in the sale and distribution of similar products.

PAR. 4. In the course and conduct of their business, as hereinabove set out, respondents, Anthony J. Hildreth and Joseph Fischler, trading as Sanitas Fundoshi Company, in offering for sale and selling their said products in interstate commerce, cause advertisements thereof to be inserted in various periodicals having a wide circulation

Complaint

26 F. T. C.

in the various States of the United States, and also in advertising folders mailed by respondents to customers and prospective customers in the various States of the United States. In such advertisements and advertising matter, the following statements and representations have been and are made:

A one-piece garment of specially treated hand-woven Oriental fabric * * *. Conserves vitality. Absorbs body moisture * * *.

Absorbs moisture like a blotter. Simple Sanitary Scientific * * *. The SANITAS FUNDOSHI is a new, scientific article of clothing for men * * *. The SANITAS FUNDOSHI is the American adaptation of a garment centuries old in the Orient. It is made from a specially hand-woven fabric, every thread of which has been treated by a secret, scientific and sanitary process which imparts wonderfully soft, absorbent and resilient qualities * * *. It * * * allows free circulation and instantly absorbs perspiration and other body moisture * * *. It preserves strength and vigor to a marked degree. It is a boon to men who are much on their feet. To those inclined to weakness or debility, the Sanitas Fundoshi will prove a definite preserver of vitality and nervous energy. It has been worn in the Orient for centuries. Japanese soldiers, noted for their physical endurance, always wear the FUNDOSHI—not only because it is clean and healthful, but because it conserves energy and relieves fatigue.

The following appears on the outside of the containers in which said product is packed and sold:

HEALTH BUILDER—HEALTH RESTORER.

All of said statements, together with many similar statements appearing in respondents' advertising literature, purport to be descriptive of respondents' product. In all of their advertising literature, respondents represent through statements and representations herein set out and other statements of similar import and effect that:

1. Their product is a builder of health and a restorer of health;
2. Their product is a scientific article of clothing for men and was scientifically designed to preserve and had the properties of preserving and did preserve the strength, vigor, vitality, and nervous energy of the wearer and relieved the fatigue of the wearer;
3. Their product contained greater absorbent qualities than other similar products.

In truth and in fact, the product so described and referred to was not, and is not, a health builder or a health restorer, nor is it a scientific article of clothing for men; it was not scientifically designed to preserve, nor has it properties of preserving, and it does not preserve the strength, vigor, vitality or nervous energy of the wearer and it does not relieve the fatigue of the wearer; it contains no greater absorbent or resilient qualities than other similar garments made of cloth.

PAR. 5. Representations of respondents, as hereinabove set out, and other similar representations, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the false and erroneous belief that respondents' said product will build health and restore lost health; that the product is a scientific article of clothing and is scientifically designed to preserve and does preserve the strength, vigor, vitality and nervous energy of the wearer and relieves fatigue; that it contains greater absorbent qualities than other similar products. The said representations of the respondents have had, and do have, the capacity and tendency to induce members of the public to buy and use said product because of the erroneous beliefs engendered as above set out. Further, said representations have the capacity and tendency to unfairly divert trade from competitors of respondent engaged in the sale, in interstate commerce, of similar products, which said competitors truthfully and rightfully advertise and represent their said products, and in no wise misrepresent the properties, functions, uses or effects of their said competing products. As the result thereof, substantial injury has been and is now being done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The acts and practices of respondents are to the injury and prejudice of the public and to the competitors of respondent in interstate 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 May 5, 1936, issued and served its complaint in this proceeding upon respondents Anthony J. Hildreth and Joseph Fischler, individuals trading as Sanitas Fundoshi Company, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before Edward M. Averill and W. W. Sheppard, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Joseph Fischler,

Findings

26 F. T. C.

one of the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto; 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. Respondents, Anthony J. Hildreth and Joseph Fischler are individuals trading and doing business under the name of Sanitas Fundoshi Company with their office and principal place of business located at 7508 Linwood Avenue, Cleveland, Ohio. For several years last past they have been engaged in advertising, selling, and distributing a combination loin cloth and suspensory. Respondents sell and distribute said article in commerce between and among the various States of the United States and in the District of Columbia. They cause said article when sold to be shipped from their place of business in the State of Ohio to the purchasers thereof located in the various States of the United States other than the State of Ohio. In the conduct of their business they are, and at all times herein mentioned have been, in substantial competition with other partnerships and with persons, firms and corporations engaged in the business of selling and distributing undergarments with suspensory features, and suspensories and other article designed for the same general uses and purposes in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, in offering for sale and selling their said product in interstate commerce, respondents have represented in various periodicals having a nation-wide circulation and in advertising folders mailed by respondents to their customers and prospective customers in the various States of the United States that their product is a builder of health and a restorer of health; that their product is a scientific article of clothing for men and is scientifically designed to preserve and has such properties as to preserve the strength, vigor, vitality, and nervous energy of the wearer and relieve the fatigue of the wearer. Among the representations and claims made by respondents are:

A one-piece garment of specially treated hand-woven Oriental fabric * * *
Conserves vitality, absorbs body moisture * * *

Absorbs moisture like a blotter. Simple Sanitary Scientific * * * The SANITAS FUNDOSHI is a new, scientific article of clothing, for men * * * The SANITAS FUNDOSHI is the American adaptation of a garment centuries old in the Orient. It is made from a specially hand-woven fabric, every thread of which has been treated by a secret, scientific and sanitary process which imparts wonderfully soft, absorbent and resilient qualities * * * It * * * allows free circulation and instantly absorbs perspiration and other body moisture * * * It preserves strength and vigor to a marked degree. It is a boon to men who are much on their feet. To those inclined to weakness or debility, the SANITAS FUNDOSHI will prove a definite preserver of vitality and nervous energy. It has been worn in the Orient for centuries. Japanese soldiers, noted for their physical endurance, always wear the FUNDOSHI—not only because it is clean and healthful, but because it conserves energy and relieves fatigue.

HEALTH BUILDER—HEALTH RESTORER

PAR. 3. The article advertised and sold by respondents is hand-loomed and made from cotton cloth on sewing machines. The edge of the cloth is woven so as to prevent the garment from raveling. Attached to the cloth is a tape, referred to by respondents as a belt, that is used by the wearer in fastening the garment to the body. The garment is wrapped about the body, and the loose end is pulled up through the tape or belt. In that way it acts as a support for the genital organs. The garment can also be used as an undergarment as well as a suspensory.

PAR. 4. The Commission finds that the cloth from which the garment is made is not specially treated with any secret chemical properties and is not unlike other cloths on the market with respect to its functions and properties. There are other athletic supporters that have the same supporting characteristics as respondents' article. The article will not restore or correct anatomical conditions of the human body and such article when worn is not a builder of health or a restorer of health. The article involved is not constructed to fill particular requirements that have been developed as the result of scientific investigations. The article is not scientifically designed to preserve the strength, vigor, vitality, or nervous energy of the wearer, nor to relieve the fatigue of the wearer. Normal persons do not generally have any need for or benefit from the use of suspensories except when engaged in some strenuous sport or when specifically prescribed by a physician to relieve some particular physical ailment. The article is incapable of and it does not preserve the strength, vigor, vitality, or nervous energy of the wearer and it does not relieve the fatigue of the wearer.

PAR. 5. The representations made by respondents, as hereinbefore set out, have the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous belief that respond-

Order

26 F. T. C.

ents' product so advertised, offered for sale and sold, will build health and restore lost health; that the product is scientifically designed to, and does, preserve the strength, vigor, vitality, and nervous energy of the wearer and that by the use of said article the wearer will be relieved of fatigue. Said representations of respondents have the capacity and tendency to induce members of the buying public into buying said article because of such erroneous beliefs engendered as above set forth, and to unfairly divert trade to respondents from competitors engaged in the sale of undergarments with suspensory features, and in the sale of suspensories and other articles designed for the same general uses and purposes in commerce among and between the various States of the United States. Thereby, substantial injury has been done, and is being done, to competition in commerce as herein set out.

CONCLUSION

The aforesaid acts and practices of the respondents, Anthony J. Hildreth and Joseph Fischler, individuals, trading as Sanitas Fundoshi Company, are to the prejudice of the public and of respondents' 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 respondents, testimony and other evidence taken before Edward W. Averill and W. W. Sheppard, examiners of the Federal Trade Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents Anthony J. Hildreth and Joseph Fischler, individuals, trading as Sanitas Fundoshi Company, their representatives, agents, servants and employees in connection with the offering for sale, sale and distribution of a combination loin cloth and suspensory in interstate commerce or the District of Columbia, do forthwith cease and desist from:

1. Representing in any manner, directly or indirectly, that said product is a builder of health or a restorer of health.

2. Representing in any manner, that the product is scientifically designed to preserve, or that when worn, it will preserve the strength, vigor, vitality, or nervous energy of the wearer or that it will relieve the fatigue of the wearer.

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

IN THE MATTER OF
RALEIGH CANDY COMPANY

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

Docket 2707. Complaint, Jan. 31, 1936—Decision, Dec. 29, 1937

Where a corporation engaged in manufacture and sale of packages or assortments of candy, so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, or so-called "draw" or "deal" assortments, sale and distribution of which type candy, affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who constitute substantial number of purchasers and consumers of such type of candy, and particularly where prize is such as to them is attractive, and appearance of which "draw" or "deal" assortments in the markets of many manufacturers selling their "straight" merchandise only, in competition with the other, has been followed by marked decrease in sales of such "straight" goods, due to gambling or lottery feature connected with so-called "draw" or "deal" candy—

Sold, to wholesalers and jobbers, their aforesaid lottery assortments, including, among others, those composed of—

(a) Large candy doll, together with push card, for sale and distribution to purchasing public under a plan by which person paid for chance amount ranging from 1¢ to 15¢, in accordance with disc selected and number disclosed, and secured, or failed to secure, such doll and anything other than privilege of selection for money paid, in accordance with success of particular purchaser in selecting feminine name corresponding to that concealed under card's large disc;

(b) Number of one-pound boxes of assorted candies and other articles of merchandise, with push card, for sale and distribution to purchasing public under plan, in accordance with which purchaser received, for 5¢ paid, one of said boxes, in accordance with success or failure in securing certain specified numbers, and purchaser found to have obtained, after sale of all chances, number corresponding to that under large seal, received, without further charge, aforesaid other article of merchandise included with such assortment, value of which, as of the one-pound boxes, exceeded 5¢ paid, and under which purchasers not thus qualifying received nothing for their money other than privilege of making such chance selection; and of

(c) Number of boxes of candy, together with punch board, for sale and distribution to purchasing public under plan in accordance with which person received, for penny paid, one of such boxes, in accordance with success or failure in selecting one of certain specified numbers, and purchasers of last punches in each of the sections into which said board was divided received one of such boxes likewise, value of which was in excess of the penny paid, and purchasers failing to make one of aforesaid selections received nothing for their money other than privilege of making punch;