

IN THE MATTER OF

GABRIEL S. DUSCH, SR., AND GABRIEL S. DUSCH, JR.,
TRADING AS GABRIEL'S LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3016. Complaint, Dec. 19, 1936—Decision, Jan. 13, 1938*

Where a firm engaged in preparation of its "Gabriel's Mange Formula," and in distribution and sale thereof to purchasers at various points in other States and in the District of Columbia, in substantial competition with others engaged in manufacture, distribution, and sale of mange cures or other products designed, intended, and sold for same purposes for which its aforesaid preparation was sold in commerce as above set forth, and including many who manufacture, compound, distribute, and sell various products designed, intended and sold to cure, relieve, or treat said ailment and allied diseases, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness in use; in advertising the same in different magazines circulating throughout the various States and aforesaid District—

Represented that its said product was an effective cure for all types of mange and would effect cures thereof overnight, through such statements as "Kills mange overnight or money back," "Kill mange mites and eggs overnight * * *," " * * * The mites which cause sarcoptic mange are killed almost instantly * * *," etc., facts being said formula or product had no effect or curative value whatever upon follicular mange, needed to be applied for weeks upon sarcoptic mange, provided in no instance overnight cure of either type of said disease, and claims and representations made by it as above indicated, with respect to nature and effect of its said preparation when used for purpose for which same was sold, were grossly exaggerated, misleading, and untrue;

With tendency and capacity to mislead substantial portion of purchasing public into erroneous belief that use of aforesaid product would accomplish results claimed, and with result that number of purchasing public, by virtue of such belief, bought substantial quantity of its said preparation, and trade was unfairly diverted to it from competitors engaged in manufacture and sale in interstate commerce of medicinal products designed for treatment of said disease and who do not falsely represent curative value thereof; to the injury of competition in commerce:

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

Mr. Alden S. Bradley and Mr. J. T. Welch 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 Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Gabriel S. Eusch, Sr., and Gabriel S. Eusch, Jr.,¹ individuals and co-partners, trading as Gabriel's Laboratories, hereinafter referred to as respondents, have been and are 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. Respondents, Gabriel S. Eusch, Sr., and Gabriel S. Eusch, Jr., maintain a copartnership, trading under the name of Gabriel Laboratories, and have their main office and place of business at 402 Main Street, Tell City, Ind. Respondents are now and have been for some years past engaged in the business of preparing, distributing, and selling in commerce, as herein set out, certain medicines designed, intended, and represented as mange cures and distemper cures by the respondents.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said medicines, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a constant current of trade and commerce in said products so prepared, distributed, and sold by the respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling mange cures and distemper preparations or other products designed, intended, and sold for the same purposes for which respondents' products are sold, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said medicines, respondents have caused advertisements to be printed and circulated in various magazines, to wit, "Dog World," "Dog News," "Field and Stream," "Outdoor Life," "Blood Lines Journal," "Red Ranger," "American Hound Journal," "Hounds & Hunting," "Hunting & Fishing," and "Outdoors." Each of such magazines have a circulation throughout the

¹ Respondents, joined and named in the complaint as Gabriel S. Eusch, Sr., and Gabriel S. Eusch, Jr., trading as Gabriel's Laboratories, answered as Gabriel S. Dusch, Sr., and Gabriel S. Dusch, Jr., trading as Gabriel's Laboratories, and were thus named and identified in the findings and order.

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various States of the United States and the District of Columbia.

In such advertisements the following statements were made:

**KILLS
MANGE
OVERNIGHT
or Your Money Back**

This positive guarantee on Gabriel's Mange Formula protects you in trying a remedy that has succeeded where all else has failed, in hundreds of obstinate cases. Used and endorsed by many of America's finest kennels. It is the product of scientific men who are nationally known as dog-owners and dog-breeders, with fifty years of actual experience. The mites which cause sarcoptic mange are killed almost instantly, yet the irritated skin is promptly soothed and healed. Equally effective for many other skin diseases of dogs, foxes and livestock. Money promptly refunded if it does not please and satisfy you in every way. Don't delay! Mange spreads rapidly. Simple home treatments won't heal it, and it won't "heal itself". Sent postpaid. 12-ounce Size, \$1; Kennel size, \$2.75 (Stamps or money order). Full information upon request, on our mange remedy or any other dog problem.

GABRIEL'S LABORATORIES, Desk 4, Tell City, Ind.

**SAVE ME from
DISTEMPER!**

If your dog could talk, he'd plead for "ON-THE-NOSE" whenever he suspected the slightest symptom of that dread disease. New. Positive. Quick Acting. Effective against DISTEMPER. Easily spread on the nose like salve, "ON-THE-NOSE" reaches every infected part without struggling or forcing. Fully Guaranteed. Get a tube today—at leading stores, pet shops, kennels, and veterinarians, or send postpaid for \$1.00.

TESTED SPECIALTIES CO.

Dept. DW-104
809 W. Madison Street
Chicago, Ill.

Ask for ON THE NOSE. Nothing else will do!

said statements and other statements of like character and nature, purport to be descriptive of respondents' products and their effectiveness in treating or curing mange. In all of their advertising literature, respondents represent, through statements and representations herein set out and other statements of similar import and effect, that "Gabriel's Mange Formula" is an effective cure for all types of mange and will effect cures of mange overnight, and that "On-the-Nose" is an effective cure for distemper.

PAR. 5. The representations made by the respondents with respect to the nature and effect of their product when used are grossly exaggerated, false, misleading and untrue. Two types of mange are recognized by the veterinarian, follicular and sarcoptic. In truth and in fact the use of the Gabriel Mange Cure upon a case of follicular

mange has no effect and no curative value whatever. Upon sarcoptic mange, it must be applied actively for a period of weeks. The "On-the-Nose" treatment for distemper has no curative value, has no effect against the spread of distemper and does not relieve distemper.

PAR. 6. There are among the respondents' competitors many who manufacture, compound, distribute, and sell various products designed, intended, and sold for the purpose of curing, relieving, or treating mange, distemper, and allied diseases, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing their products and the effectiveness of said products for curing, treating, or alleviating the diseases herein described, in offering for sale and selling their said products were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that said products will, in truth, accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended and sold for use, cure, relief and treatment of the diseases herein described, and who truthfully represent the effectiveness of their respective products. As a result thereof, injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' 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 December 19, 1936 issued and served its complaint in this proceeding upon said respondents, Gabriel S. Dusch, Sr. and Gabriel S. Dusch, Jr., individuals and copartners, trading as Gabriel's Laboratories, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 23, 1936, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Gabriel S. Dusch, Sr., heretofore known in the complaint as Gabriel S. Eusch, Sr., and Gabriel S. Dusch, Jr., heretofore known in the complaint as Gabriel S. Eusch, Jr., are individuals who maintain a copartnership, trading under the name of Gabriel's Laboratories, and have their main office and place of business at 402 Main Street, Tell City, Ind. Respondents are now, and have been for some years last past, engaged in the business of preparing, distributing, and selling, in commerce as herein set out, a certain preparation designated as "Gabriel's Mange Formula" which is represented by the respondents as a mange cure.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said preparation, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a course of trade in commerce in said preparation so prepared, distributed and sold by the respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling mange cures or other products designed, intended, and sold for the same purposes for which respondents' preparation is sold in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said preparation, respondents have caused advertisements to be printed and circulated in various magazines, to wit: "Dog World," "Dog News," "Field and Stream," "Outdoor Life," "Blood Lines Journal," "Red Ranger," "American Hound Journal," "Hounds & Hunting," "Hunting & Fishing," and "Outdoors." Each of such magazines has a circulation throughout the various States of the United States and the District of Columbia.

In such advertisements the following statements were made:

KILLS
MANGE
OVERNIGHT
or Your Money Back

This positive guarantee on Gabriel's Mange Formula protects you in trying a remedy that has succeeded where all else has failed, in hundreds of obstinate cases. Used and endorsed by many of America's finest kennels. It is the product of scientific men who are nationally known as dog-owners and dog-breeders, with fifty years of actual experience. The mites which cause sarcoptic mange are killed almost instantly, yet the irritated skin is promptly soothed and healed. Equally effective for many other skin diseases of dogs, foxes and livestock. Money promptly refunded if it does not please and satisfy you in every way. Don't delay! Mange spreads rapidly. Simple home treatments won't heal it, and it won't "Heal itself." Sent postpaid 12-ounce Size, \$1; Kennel size, \$2.75 (Stamps or money order). Full information upon request, on our mange remedy or any other dog problem.

GABRIEL'S LABORATORIES, Desk 4, Tell City, Ind.

Subsequent to April 1, 1935, respondents also used advertisements such as the following:

Kills mange overnight or money back.

Succeeds where other methods fail. Endorsed by largest kennels.

Large size \$1.00 postpaid. Gabriel's Laboratories, Desk 2, Tell City, Indiana.

Kill mange mites and eggs overnight * * *.

Overnight mange mites and their eggs are killed * * *.

Said statements and other statements of like character and nature, purport to be descriptive of respondents' preparation and its effectiveness in treating or curing mange. In all of their advertising literature, respondents represent, through statements and represen-

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tations herein set out and other statements of similar import and effect, that "Gabriel's Mange Formula" is an effective cure for all types of mange and will effect cures of mange overnight.

PAR. 5. The claims and representations made by the respondents as aforesaid with respect to the nature and effect of their preparation when used for the purpose for which the same is sold are grossly exaggerated, misleading and untrue. Of the two types of mange, follicular and sarcoptic, recognized by veterinarians, the so-called "Gabriel's Mange Formula" has no effect or curative value whatever upon that known as follicular mange. Upon sarcoptic mange the said remedy must be applied actively for weeks. In no instance is there an "overnight" cure of either type of said disease.

PAR. 6. There are among the respondents' competitors many who manufacture, compound, distribute, and sell various products designed, intended and sold for the purpose of curing, relieving, or treating mange and allied diseases, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each of the false and misleading statements and representations made by the respondents in describing their preparation and its effectiveness for curing the disease herein described had and now has a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that the use of said preparation will accomplish the results claimed. By virtue of such belief a number of the purchasing public have purchased a substantial quantity of respondents' preparation with the result that trade has been unfairly diverted to the respondents from competitors engaged in the business of manufacturing and selling in interstate commerce medicinal products designed for the treatment of said disease and who do not falsely represent the curative value of the same. As a result thereof, injury has been, and is now being, done to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Gabriel S. Dusch, Senior, and Gabriel S. Dusch, Junior, individuals and co-partners, trading as Gabriel's Laboratories, 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, and the agreed stipulation of facts entered into between the respondents herein, Gabriel S. Dusch, Senior, and Gabriel S. Dusch, Junior, individuals and copartners, trading as Gabriel's Laboratories, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said 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, Gabriel S. Dusch, Sr., and Gabriel S. Dusch, Jr., individually and trading under the name Gabriel's Laboratories, or under any other trade name, their representatives, servants, agents, and employees, in connection with the offering for sale, sale and distribution of a preparation designed for the treatment of mange now designated as "Gabriel's Mange Formula," or of said preparation or any other preparation containing similar ingredients and possessing similar properties whether sold under that name or under any other name, do cease and desist from:

1. Representing, in any manner, that said preparation is a cure or remedy for, or has any beneficial value in, the treatment of mange, except that type designated as sarcoptic mange;

2. Representing, through statements such as "Kills Mange Overnight" and "Kill Mange Mites and Eggs Overnight," or through any similar statements, or in any manner, that said preparation will cure sarcoptic mange overnight, or will cure sarcoptic mange without extended treatments;

3. Representing that all forms of mange can be cured by the use of said preparation.

It is further ordered, That the respondents shall, within 30 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
MIDLAND DISTILLERIES, INC.

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

Docket 2469. Complaint, June 28, 1935—Decision, Jan. 19, 1938

Where a corporation engaged, as rectifier of distilled spirits, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in purchasing all distilled spirits sold and used in its said products, and in compounding, from purchased alcohol and flavors, gin dealt in by it, and with two small experimental or test stills and one small discontinued still employed for vaporization in connection with manufacture of liqueur sold by it, and in substantial competition, as thus engaged in sale and distribution of its aforesaid product to wholesalers and distributors from coast to coast through traveling salesmen, with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in selling same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various spirituous liquors and similarly selling same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other spirituous liquors sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, and advertising, and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "distilleries" in its corporate name, printed on its stationery, catalogs, and advertising, and on the labels attached to bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller, and that the whiskies and other spirituous liquors contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not own, operate or control any place or places where spirituous liquors are made by process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "distilleries" used in connection with liquor industry and products thereof in the trade and by the ultimate purchasing public, and it had no permit to operate as distiller, nor distillers' bond, and never did so operate, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that it was a distiller and that the whiskies and other spirituous liquors sold by it were by it made or distilled from mash, wort, or wash,