

IN THE MATTER OF
C. J. O'CROWLEY, TRADING AS EXCEL PRODUCTS, AND
AS C. J. O'CROWLEY

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

Docket 3094. Complaint, Apr. 1, 1937—Decision, Jan. 25, 1938

Where an individual engaged in transportation, sale, and distribution of his "Excel" and "Excel Special" medicinal or pharmaceutical preparations, as competent and effective gland treatments, in substantial competition with others likewise engaged in sale and distribution or in manufacture, sale, and distribution in commerce among the various States, of medicinal or pharmaceutical preparations designed, distributed, and sold for use in connection with treatment of glandular disturbances and deficiencies, and who make use in compounding their respective products of varying amounts, or some, or all, of same ingredients contained in products of said individual and do not misrepresent quality, efficacy, or therapeutic value thereof; in advertising his said preparations in newspapers and periodicals of general circulation, and also in certain advertising literature circulated through the mails and otherwise to customers and prospective customers—

Represented that use thereof enabled one to be young again, and that they consisted of gland medicines and were gland stimulants and assisted glands of men and women, and constituted competent and effective aphrodisiacs and remedies or treatments for sexual deficiencies, and would bring about sexual rejuvenation, facts being formulas thereof had no such effects, glandular deficiencies may be due to any one of a number of debilitating diseases or psychic, and no prescription or specific medicine will be applicable in all cases, and it is impossible to prescribe for such conditions without thorough diagnosis as to cause by a competent physician, and claims and representations made by him as to qualities, nature, and effect of his said preparations were grossly exaggerated, false, and misleading;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said preparations enabled one to be young again, and consisted of gland medicines and constituted competent aphrodisiacs, and had the effects and qualities claimed therefor as above set forth and indicated, and with result that a number of said public, as a consequence of such mistaken and erroneous beliefs, purchased his said preparations and trade was thereby unfairly diverted to him from competitors likewise engaged in distribution and sale, or manufacture and sale, of various medicinal or pharmaceutical preparations containing some of same ingredients and used and prescribed by physicians for same purpose for which his said preparations were advertised and sold, and who do not misrepresent character, efficacy, or therapeutic value of their respective products:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. T. H. Kennedy 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that C. J. O'Crowley, an individual trading as Excel Products and also as C. J. O'Crowley, 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 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. Respondent, C. J. O'Crowley, is an individual trading as Excel Products and also as C. J. O'Crowley. The legal residence and address of the respondent is 4336 Sheridan Road, Chicago, Ill. Respondent is now, and has been for more than 3 years last past, engaged in the transportation, sale, and distribution in commerce among and between the various States of the United States of a medicinal preparation recommended as a gland treatment, and known as and designated "Excel Gland Tablets." The respondent causes said product, when sold, to be shipped and transported in interstate commerce from his place of business located in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State of Illinois. He now maintains, and has maintained at all times mentioned herein, a constant current of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. Respondent, in the course and conduct of his business as aforesaid, is now, and at all times herein referred to has been in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of other preparations prepared, compounded, advertised, and sold as gland treatments in commerce among and between the various States of the United States, and who in no way misrepresent the quality, efficacy, or therapeutic value of their product.

PAR. 3. Respondent, in the course and conduct of his business as aforesaid and for the purpose of inducing individuals to purchase said gland treatment, Excel Gland Tablets, has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, and has printed and circulated throughout the several States of the United States, through the United States mail and otherwise, to customers and

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prospective customers certain advertising literature in all of which respondent has caused his name and the name of the product to be prominently and conspicuously displayed, and in which the following statements are made:

Be young again.

Don't miss this—two gland medicines, each with imported ingredients.

Men and women, assist your glands with Excel Special.

If you want a "real article" try this and feel its stimulating effects.

Guaranteed relief on two or three treatments.

We recommend this medicine for use as a gland stimulant.

Men and women, assist your glands with "EXCEL" tablets. **IMPORTED INGREDIENTS** in this **GLAND MEDICINE**. If you want "**STIMULATING EFFECTS**" just try "**EXCEL**".

PAR. 4. All of said statements as above set out, together with many other similar statements appearing in respondent's advertising and literature, purport to be descriptive of respondent's product, Excel Gland Tablets. In all of the respondent's advertising matter and literature, the respondent represents, through the statements herein set out, and through other statements of like import and effect, that the use of Excel Gland Tablets enables one to be young again; that Excel Gland Tablets consist of gland medicines; that said product is a gland stimulant and assists the glands of either men or women; that said product constitutes a competent aphrodisiac; and that the results from the use of said product are sure.

PAR. 5. The claims and representations made by the respondent with respect to the therapeutic value and efficacy of the product Excel Gland Tablets are grossly exaggerated, false and misleading. In truth and in fact, respondent's product, Excel Gland Tablets, will not enable one to be young in the manner in which the respondent represents or in any manner whatever. The product Excel Gland Tablets does not contain gland medicines. The said product is not a gland stimulant, nor will it assist the glands of either men or women. The said product is not a competent aphrodisiac. The product is not in any sense a gland treatment, and is not a competent treatment for natural debility or for debility caused in any manner.

PAR. 6. Each and all of the false and misleading statements and misrepresentations made by the respondent in designating and describing the product Excel Gland Tablets and its efficacy and therapeutic value as hereinabove set out, in offering for sale and selling said product, were and are calculated to, and had, and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence

of said mistaken and erroneous beliefs induced by the acts and representations of respondent as hereinabove set out, a number of the purchasing public have purchased respondent's product with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in manufacturing, compounding, selling, and distributing gland treatments and who do not misrepresent the quality, efficacy, or therapeutic value of their respective products. As a result of the unfair acts and false and misleading representations of the respondent, injury has been, and is now being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been, and are all to the prejudice and injury to the public and respondent's competitors, and have been and are unfair methods of competition in commerce 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 April 1, 1937, issued and served its complaint in this proceeding upon respondent C. J. O'Crowley, an individual, trading as Excel Products, and as C. J. O'Crowley, 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 Joe L. Evins and James McKeag, attorneys for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it; 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, testimony and other evidence, and brief in support of the complaint; 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 C. J. O'Crowley is an individual trading under his own name and also under the name Excel Products. His place of business has been variously located at 4308 Sheridan Road and 4336 Sheridan Road, both addresses being located in the city of Chicago, State of Illinois. For the last four years respondent has been engaged in the transportation, sale, and distribution of medicinal or pharmaceutical preparations designated as "Excel" and "Excel Special." These products are recommended by respondent as competent and effective gland treatments. At the date the hearings were held, on September 11, 1937, respondent was still engaged in the sale and distribution of his said products. When the respondent receives orders for said preparations, he ships them from his aforesaid place of business in the State of Illinois to the purchasers thereof located at various points in States of the United States other than the State of Illinois. Usually such shipments are made by parcel-post. For the past 4 years respondent has maintained a course of trade in said medicinal or pharmaceutical preparations, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, respondent has been, and is now, in competition with other individuals, and with firms, partnerships, and corporations, likewise engaged in the sale and distribution, or in the manufacture, sale, and distribution, of medicinal or pharmaceutical preparations designed, distributed, and sold, for use in connection with the treatment of glandular disturbances or deficiencies, in commerce among and between the various States of the United States. In compounding their respective products, said competitors make use of varying amounts or some or all of the same ingredients contained in respondent's products and do not misrepresent the quality, efficacy, or therapeutic value, of their respective products.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of the preparations which he distributes and sells, the respondent has made use of advertisements inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States such as, Startling Detective, Hunter Trader Trapper, Illustrated Mechanics, and Screen Fun. In furtherance of the sale of said preparations, the respondent has also circulated throughout the several States of the United States, through the United States mail and otherwise, to customers and prospective customers, certain advertising literature. In the advertisements and advertising literature, above referred to, the respondent has caused his name, together with the names of his preparations, to wit: "Excel" and "Excel

Special" to be prominently and conspicuously displayed together with such statements as the following:

Be Young Again.

Don't miss this—two gland medicines, each with imported ingredients.

Men and women, assist your glands with Excel Special.

If you want a "real article" try this and feel its stimulating effects.

Guaranteed relief on two or three treatments.

We recommend this medicine for use as a gland stimulant.

Men and women, assist your glands with "EXCEL" tablets. IMPORTED INGREDIENTS in this GLAND MEDICINE. If you want "STIMULATING EFFECTS" just try "EXCEL."

PAR. 4. The aforesaid statements, together with other similar statements appearing in respondent's advertisements and advertising literature which are not set out herein, purport to be descriptive of respondent's preparations. Through such advertising matter and literature, the respondent represents that the use of said preparations enables one to be young again, that said preparations consist of gland medicines, that said preparations are a gland stimulant and assist the glands of either men or women, that said preparations constitute a competent aphrodisiac, and that the results of the use of said products are sure. While the preparations are loosely referred to by the respondent as gland medicines in general and indefinite terms, members of the purchasing public reading the aforesaid advertisements would form the mistaken and erroneous impression and belief that such preparations bring about sexual rejuvenation and are intended to overcome sexual deficiencies and allied conditions in men or women.

PAR. 5. Respondent's preparation designated as "Excel" is made up under a formula consisting of:

$\frac{1}{24}$ Gr. Yohimbine HCl

$\frac{1}{8}$ Gr. Lecithin

$\frac{1}{4}$ Gr. Po. Ext. Cascara

$\frac{1}{8}$ Gr. Po. Ext. Nux Vomica

The preparation designated as "Excel Special" consists of:

$\frac{1}{2}$ Gr. Yohimbine HCl

$\frac{1}{4}$ Gr. Lecithin

$\frac{1}{16}$ Gr. Po. Ext. Cascara

$\frac{1}{16}$ Gr. Po. Ext. Nux Vomica

$\frac{1}{2}$ Gr. Po. Yeast

From the expert testimony adduced at the hearings, it is found that the ingredients of respondent's preparations are present in such small quantities as to be considered homeopathic doses and thereby totally ineffective. It is further found that neither of said prepara-

tions constitutes a competent and effective gland stimulant. Yohimbine was at one time frequently prescribed in doses of one to three grains as a sexual rejuvenator, but present-day medical opinion is that said drug is absolutely ineffective and has no medicinal value whatever. Cascara is laxative in its properties. Nux Vomica is claimed to have a tonic effect upon the circulatory system and is often prescribed as a tonic in combination with iron for loss of appetite. Its active principal is strychnine. Lecithin is one of the active organic compounds found in the brain and is infrequently prescribed. It is not known to possess any therapeutic value. From the medical testimony, it is found that neither of the formulas above set out assists or stimulates the glands of either men or women or has any effect thereon. Neither of the aforesaid formulas constitutes a competent or effective aphrodisiac. Impotency or glandular deficiencies may be due to any one of a number of debilitating diseases such as syphilis, tuberculosis, diabetes, or severe grades of anemia. Such conditions may also be psychic, resulting from mental shock or trauma. No prescription or specific medicine will be applicable in all cases, and it is impossible to prescribe for such conditions without a thorough diagnosis as to the cause thereof by a competent physician.

The claims and representations made by the respondent to the effect that said preparations consist of gland medicines, are competent and effective gland treatments, and constitute competent treatments for glandular debilities, are grossly exaggerated, false, and misleading.

PAR. 6. The false and misleading statements and representations made by the respondent in advertising and describing his preparations designated as "Excel" and "Excel Special" have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said preparations do enable one to be young again, that said preparations consist of gland medicines, that said preparations are gland stimulants and assist the glands of either men or women, that said preparations constitute competent aphrodisiacs, and that said preparations bring about sexual rejuvenation and are competent and effective treatment for sexual deficiencies. As a consequence of such mistaken and erroneous beliefs, a number of the purchasing public have purchased respondent's preparations with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in distributing and selling, or manufacturing and selling, various medicinal or pharmaceutical preparations containing some of the same ingredients as respondent's preparations and used

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and prescribed by physicians for the same purpose for which respondent's preparations are advertised and sold, who do not misrepresent the character, efficacy, or therapeutic value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, C. J. O'Crowley, an individual, trading as Excel Products, and as C. J. O'Crowley, 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 testimony and evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, and brief in support of the complaint filed herein, 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 C. J. O'Crowley individually and trading under the names Excel Products and C. J. O'Crowley, or under any other names, his agents, representatives, and employees, in connection with the sale of medicinal or pharmaceutical preparations now designated as "Excel" and "Excel Special," or any other preparations containing the same or substantially the same ingredients and possessing the same properties, sold under those names or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

1. That the use of said preparations enables one to be young again;
2. That said preparations consist of gland medicines;
3. That said preparations are gland stimulants or assist the glands of either men or women;
4. That said preparations constitute competent and effective aphrodisiacs;

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5. That said preparations constitute competent and effective remedies or treatments for sexual deficiencies, or will bring about sexual rejuvenation.

It is further ordered, That the respondent shall, within 30 days from the date of service upon him of a copy of this order, file with the Commission a report in writing, setting forth the manner and form in which he has complied with the order herein set forth.

Syllabus

IN THE MATTER OF
CONSOLIDATED CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2969. Complaint, Nov. 6, 1936—Decision, Jan. 27, 1938*

Where a corporation engaged in manufacture and sale of candy, including various packages or assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of (1) number of penny pieces of candy of uniform size and shape, together with number of larger pieces, to be given as prizes to purchasers of relatively few of said pieces, enclosed centers of which were pink, and together with two articles of merchandise, to be given as prizes, respectively, to purchaser procuring by chance yellow center penny piece and purchaser of last of said penny pieces in assortment; (2) number of small pieces of candy, together with number of larger pieces or bars, and push cards, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received for penny paid one of said smaller, or one of said larger, pieces of candy, in accordance with number pushed by chance from aforesaid card, and purchaser of last push or sale was similarly entitled to one of said larger pieces; and (3) number of bars of candy, together with number of boxes of candy and push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received for 5 cents paid one of said bars or boxes of candy, in accordance with number pushed by chance, and purchaser of last piece was entitled to one of said boxes—

Sold to wholesalers and retailers for display and resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its said product in accordance with said sales plan, involving game of chance or sale of a chance to procure large pieces or other articles, contrary to public policy long recognized by the common law and criminal statutes, and contrary to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, so as to involve game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, so packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors, as aforesaid, who do not use any such method, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein, and tend to create monopoly thereof in it and such other distributors as do, deprive purchasing public of benefit of free competition