

Complaint

26 F. T. C.

IN THE MATTER OF

VAN OGDEN, INC., AND FREDERICK T. GORDON

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

Docket 2851. Complaint, June 26, 1936—Decision, Mar. 18, 1938

Where a corporation, as engaged under direct management, supervision, direction, and control of an individual who was president, treasurer, and managing officer thereof, in sale and transportation of chemicals, extracts, and other food products through personal solicitation of prospective purchasers in various States by agents and other representatives—

- (a) Described two of its products, in advertising same through circulars and pamphlets distributed throughout the various States, as "Dr. Gordon's Solid Comfort Foot Soap" and "Dr. Gordon's Mustard Oil Cream," and made various other statements intended to create impression that commodities thus labeled and designated were made under direction or according to formula of registered physician, facts being such commodities were in fact named after aforesaid individual and president, etc., who was neither registered pharmacist nor physician;
- (b) Advertised certain products, including those designated as "Walnuts," "Maple," and "Rootbeer," as flavoring extracts, in circulars distributed in interstate commerce, notwithstanding fact such products were not compounds wherein flavoring, secured by extraction of juices from beans, berries, nuts, or fruits, is suspended in alcohol, as trade and public had been generally led to believe and understand for many years from word "extract" as applied to product offered as flavoring ingredient, but were imitation extracts composed of synthetic chemical substitutes and not of genuine ingredients;

With tendency and capacity to confuse and deceive purchasing public in regard to true nature and quality of its product and induce purchasers to buy same on account of mistaken belief that they were made in accordance with doctor's prescription and were true extracts, and with result that trade was thereby unfairly diverted to it from competitors engaged in sale in commerce of similar products, truthfully advertised and represented by them:

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

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

Mr. Alden S. Bradley and *Mr. Gerard A. Rault* for the Commission.

Mr. Charles J. Trainor, of Chicago, Ill., for respondents.

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 Van Ogden, Inc., a corporation, and Frederick T. Gordon, an individual, 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. Respondent, Van Ogden, Inc., is a corporation, existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago in such State. Frederick T. Gordon is an individual, the president and treasurer of the respondent corporation, and its managing officer, and is a resident of, and has his principal place of business in the city of Chicago, and State of Illinois. Respondent, Van Ogden, Inc., a corporation, is under the direct management, supervision, direction, and control of the respondent, Frederick T. Gordon, and is engaged in the manufacture, sale, and transportation of chemicals, extracts, and other food products. In the course and conduct of such business respondent, Van Ogden, Inc., sells, transports and causes to be transported the above named commodities into, and through the various States of the United States, other than the State of Illinois. Such sales are, and have been made to purchasers and users thereof located in various States of the United States, as aforesaid, through the medium of personal or individual solicitation of prospective users and purchasers in interviews had for that purpose by agents, salesmen, and representatives of the respondent corporation, and pursuant to orders procured thereby, shipments have been made as aforesaid. Respondent has thus maintained a constant current of trade and commerce into and through the various States of the United States in the commodities above listed.

PAR. 2. In the course and conduct of its business, the respondent, Van Ogden, Inc., under the supervision and direction of Frederick T. Gordon, as aforesaid, has been and now is, in substantial competition with other corporations, firms, persons, and copartnerships engaged in the sale and distribution of commodities of like nature, character, and design throughout the various States of the United States.

PAR. 3. Among such competitors is one styled as "Gemac Sales Corporation," a corporation existing under and by virtue of the laws of the State of Illinois and having its principal office and place of business in the city of Chicago and State of Illinois.

Complaint

26 F. T. C.

PAR. 4. Since the organization of the respondent, approximately 3 years heretofore, it has, acting by and through its president and treasurer, Frederick T. Gordon, and other agents, officers, and employees, both in their own individual capacity and official person endeavored to appropriate and has appropriated values created by said competitor, "Gemac Sales Corporation" by enticing and attempting to entice the employees of the same to violate their contractual relations with such competitor and to enter into the employ of the respondent, Van Ogden, Inc. The values of such competitor, so appropriated and attempted to be appropriated by the respondent, are—training, experience, and ability of such employees as salesmen in their particular field of competition.

PAR. 5. The enticing and the attempts to entice, as related in the paragraph last above, have been made throughout the various States of the United States by the above named respondents, and each of them, and their agents, servants, and employees.

PAR. 6. In enticing, and in attempting to entice in the manner above related, respondents, their agents, servants, and employees, have made various representations to the employees of Gemac Sales Corporation, that it, the respondent corporation, would provide an increased compensation, promotions in position, additional responsibility, and have made various and numerous statements and representations, unfairly disparaging the organization, the business policies, and the financial standing of the Gemac Sales Corporation, with the result that a large number of the most experienced and skilful employees of the Gemac Sales Corporation have been induced to quit the employ of such corporation, and enter the employ of the respondents.

In truth and in fact, the respondent did not and now does not provide increased compensation, promotions in position, additional responsibility, or other increments to employees as represented by it.

PAR. 7. In the course and conduct of the business of the respondent corporation, it has advertised in various periodicals, magazines, and newspapers having an interstate circulation, and has through the medium of circulars and pamphlets, distributed throughout the various States of the United States, represented and described one of its products under the trade name or brand of:

Dr. Gordon's Solid Comfort Foot Soap;

another as:

Dr. Gordon's Mustard Oil Cream;

another as:

Dr. Trask's New Treatment for Constipation.

and has made various other statements calculated and intended to create the impression that the commodities so labeled and designated were, and are, manufactured under the direction, or according to a formula of a registered physician.

In truth and in fact, the individual Gordon from whom the first two commodities above listed obtained their name and designation, is the respondent, Frederick T. Gordon, who is not a chemist, is not a registered pharmacist, and is not a physician.

PAR. 8. Also in the advertising matter above referred to, the respondents describe and represent certain of the products vended by the respondent corporation as "Flavoring Extracts," including such products as "Walnuto," "Mapleo," and "Root Beer."

Over a period of many years, the trade and the public generally have been led to and now do believe and consider an "extract" offered for sale as a flavoring ingredient to be a compound wherein the flavoring is secured by the extraction of juices from beans, berries, nuts, or fruits. Such juices are then suspended in alcohol, which is recognized as a most valuable and desirable vehicle that can be used for dissolving and preserving extracts of juice from beans, nuts, berries, or fruits.

In truth and in fact, the products advertised and represented by the respondent, as herein related, are not extracts within the common meaning and acceptance of the term but are imitations of the same.

PAR. 9. The acts and practices of the respondents are prejudicial and injurious to respondents' competitor, Gemac Sales Corporation, a corporation, in that such acts and practices effectually appropriate values of such competitor to the use and benefit of the respondents, enabling the respondents to maintain a large selling staff, and cause a substantial decrease in the personnel of the sales organization of said competitor, thereby causing a substantial diversion of trade from the said competitors to the respondents in interstate commerce.

PAR. 10. The acts and practices of the respondents, as aforesaid, likewise have the tendency and capacity to mislead and deceive a substantial number of the members of the purchasing public into the false beliefs that:

1. Certain commodities vended by the respondents were and are manufactured under the direction of, or according to a formula prepared by a registered physician, when in truth and in fact such commodities are not so prepared.

2. Certain products and commodities vended by the respondents variously labeled as "Flavoring Extracts," "Walnuto," "Mapleo," and "Root Beer," and others, are in fact extracts when, in truth and in fact, they are but imitations of such.

As a result of such belief, many purchasers have purchased commodities of respondent and as a result thereof there has been caused a substantial diversion of trade to respondent from competitors in interstate commerce who do not falsely represent that the commodities vended by them have been manufactured by them and who do not falsely represent commodities vended by them to be extracts when in truth and in fact they are not.

PAR. 11. There are among the competitors of the respondents, a substantial number who truthfully represent that certain commodities vended by such competitors were and are manufactured under the direction of, or according to a formula of a physician; that certain flavoring extracts represented by them to be extracts are, in truth and in fact, genuine extracts.

PAR. 12. There are likewise among the competitors of the respondents, those who do not through the use of false and misleading statements and representations concerning the organization, business policy, or financial standing of their competitors, entice and endeavor to entice, employees of such competitors with the calculated design of thereby appropriating to themselves values created by such competitors.

PAR. 13. The above acts and practices done, and caused to be done by the respondents, are and were, each and all, 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, 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 the 26th day of June 1936, issued, and on the 29th day of June 1936, served its complaint in this proceeding upon respondents, Van Ogden, Inc., and Frederick T. Gordon, 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 Alden S. Bradley, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Charles J. Trainor, attorney for

the respondent, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (respondent not having requested oral argument), 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, Van Ogden, Inc., is a corporation existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in such State. Frederick T. Gordon is an individual, the president and treasurer of the respondent corporation and its managing officer. He is a resident of and has his principal place of business in the city of Chicago, State of Illinois. Respondent, Van Ogden, Inc., is a corporation under the direct management, supervision, direction, and control of the respondent, Frederick T. Gordon, and is engaged in the sale and transportation of chemicals, extracts, and other food products. In the course and conduct of its said business, Van Ogden, Inc., sells, transports, and causes to be transported the above named commodities from the State of Illinois into the various States of the United States other than the State of Illinois, and in the District of Columbia. Such sales are, and have been, made to purchasers thereof located in the various States of the United States as aforesaid, through the medium of personal solicitation of prospective purchasers by agents, salesmen, and other representatives of the respondent corporation. Pursuant to orders procured thereby, shipments have been made, and are made, as aforesaid. Respondent has thus maintained a course of trade and commerce among and between the various States of the United States, and the District of Columbia.

PAR. 2. In the course and conduct of its business, the respondent, Van Ogden, Inc., under the supervision of Frederick T. Gordon, has been and is now in substantial competition with other corporations, firms, and copartnerships engaged in the sale and distribution of commodities of like nature, character, and design in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is charged in paragraphs 3, 4, 5, and 6 of the complaint with enticing away employees of a competitor corporation. However, this charge is not substantiated by a preponderance of the evidence and appears to be a private controversy, lacking in public interest.

PAR. 4. In the course and conduct of its business, respondent corporation has advertised through the medium of circulars and pamphlets distributed throughout the various States of the United States, describing two of its products under the trade names or brands of:

Dr. Gordon's Solid Comfort Foot Soap, and
Dr. Gordon's Mustard Oil Cream,

and has made various other statements intended to create the impression that the commodities so labeled and designed were, and are, manufactured under the direction or according to the formula of a registered physician. The two commodities above listed are in fact named after respondent, Frederick T. Gordon, who is not a registered pharmacist, nor a physician.

Respondent has also distributed circulars in interstate commerce advertising certain of its products as flavor extracts. Included under this head are such products as "Walnuto," "Mapleo," and "Rootbeer". Over a period of many years, the trade and the public generally have been led to and do now believe and consider an "extract" offered for sale as a flavoring ingredient to be a compound wherein a flavoring is secured by the extraction of juices from beans, berries, nuts, or fruit. Such juices are then suspended in alcohol which is recognized as the most desirable vehicle that can be used for dissolving and preserving extracts of juices from beans, nuts, berries, or fruits. The evidence shows that the product advertised and represented as extracts by respondent are not extracts within the common meaning and acceptance of the term, but are imitation extracts composed not of genuine ingredients, but of synthetic chemical substitutes.

PAR. 5. The acts and practices of respondents as herein described have had, and have, the tendency and capacity to confuse and deceive the purchasing public in regard to the true nature and quality of its products and to induce purchasers to buy such products on account of the mistaken belief that these products are made in accordance with a doctor's prescription, and are true extracts. Trade is thereby unfairly diverted to respondent from competitors engaged in the sale in commerce as herein defined of products similar to those sold and distributed by said respondent, which competitors truthfully advertise and represent their products.

CONCLUSION

The aforesaid acts and practices of the respondents, Van Ogden, Inc., and Frederick T. Gordon, are to the injury and 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 William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto; briefs having been filed by Alden S. Bradley, counsel for the Commission, and by Charles J. Trainor, counsel for respondent (counsel for respondent not having requested oral argument) and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondent, Van Ogden, Inc., its officers, representatives, agents, and employees, and respondent, Frederick T. Gordon, in connection with the offering for sale, sale, and distribution of their soaps, toilet articles, and food flavors in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Directly or indirectly using or causing to be used the word "Doctor" or the abbreviation "Dr." in connection or in conjunction with the name, or in any way as a trade name, brand, or designation for their products, or in any way which may have the capacity and tendency to confuse and mislead or deceive purchasers into the belief that said products are made in accordance with the prescription of a doctor, or under the supervision of a doctor, when such is not a fact.

2. Designating any food flavors as extracts unless and until the product is composed of genuine ingredients as distinguished from synthetic chemical substitutes and such ingredients are suspended in ethyl alcohol.

Order

26 F. T. C.

It is further ordered, That that part of the complaint dealing with the enticement of competitors' employees be dismissed for lack of public interest.

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.

Syllabus

IN THE MATTER OF

MIDWEST PUBLISHING COMPANY, AND WALTER H. GORHAM, INDIVIDUALLY, AND AS PRESIDENT OF MIDWEST PUBLISHING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2893. Complaint, Aug. 10, 1936—Decision, Mar. 18, 1938

Where a corporation and an individual, substantially sole owner thereof and responsible for its policies and activities, engaged in sale of its so-called "Modern American Encyclopedia," together with extension service therefor, through agents and representatives supplied with advertising folders, prospectuses, sample volumes, order blanks or contracts, sales talks, and other literature and paraphernalia for exhibition, distribution, and use in connection with sale or solicitation thereof; pursuant to a scheme to foist upon purchasing public at a profit said old and obsolete set of reference books, of little or no value as such, and consisting of reprints, poorly made on inferior paper from plates cast in 1891, and ownership of which plates changed hands from time to time, and then currently issued and sold under aforesaid deceptive and misleading title—

- (a) Represented verbally through said authorized agents, etc., and through advertisements, letters, etc., to prospective and actual purchasing public throughout United States, that their said "Modern American Encyclopedia" was in fact a new, modern, and up-to-date encyclopedia and reference work, and had been kept perpetually up-to-date and up to the minute, facts being, printed as aforesaid, with only few page or minor revisions between 1912 and 1922, and none in following decade, and only minor ones between 1932 and 1934, and none of substance since, it had not been for many years, and was not then, a modern or up-to-date reference work which in any reasonable degree met needs and requirements of purchasing and using public for reliable work of reference;
- (b) Set forth in broadside, issued as part of their advertising and in which was included expression "keep abreast of the times," list of 33 persons prominent in particular fields of learning or industry, and represented that each had contributed substantially to said alleged new and modern work, facts being none had made any contribution thereto or done anything in connection therewith to make it new and modern so as to enable purchaser to keep abreast of the times, and only contribution was a very slight one on the part of a few to the original work in 1891 and earlier revisions thereof, and some of persons so listed had been dead for a number of years;
- (c) Represented that in order to keep said "Modern American Encyclopedia" from becoming obsolete and getting out of date, they would furnish a 10-year, quarterly, loose-leaf, extension service to purchasers which made and kept information in set current, facts being that they discontinued such loose-leaf service within first 2 years of said 10-year period and issued and used in lieu thereof so-called Year Book, for which they usually demanded and received \$1 a year, and which they offered to purchasers, after expiration of said period, for \$7.50 a year, but which was of little or no authorita-