

Complaint

IN THE MATTER OF

GUS STEPHENS, TRADING AS TESTED SPECIALTIES
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3220. Complaint, Aug. 28, 1937—Decision, Apr. 21, 1938

Where an individual engaged in sale and distribution of product "ON-THE-NOSE" for dogs, cats, and other animals, in competition with others similarly engaged, and who do not misrepresent the efficacy of their products, nor their business status; in widely advertising same in periodicals of general circulation throughout the United States, and in printed folders, literature, circular letters and other advertising matter circulated among customers and prospective customers—

- (a) Represented that said product, name of which it featured, was an effective treatment or competent and adequate remedy or cure for distemper, coughs or colds, in dogs or other animals, and that it was effective in curing or preventing diseases or ailments from which they suffered, and constituted a vermifuge, facts being it was not effective in any respect for said last-named purpose or for other purposes for which offered, as above set forth, and was nothing more than a mild laxative which would not be effective even as such unless given in dose larger than prescribed; and
- (b) Set forth on letterheads used by it "Originators and manufacturers of 'ON-THE-NOSE'," facts being it did not maintain and never had maintained a laboratory or laboratories, either in Canada or the United States, where said preparation was made or compounded;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that said representations were true and that said preparation was efficacious as a remedy or cure, as hereinabove represented, and into purchase of a substantial quantity of his said product on account of such belief, thus induced, and with result that trade thereby was unfairly diverted to him from others engaged in sale and distribution of products for same purposes, for which, substantially, that of said individual was advertised and sold, and who truthfully advertise their respective products and efficacy thereof:

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

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

Mr. Floyd O. Collins 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 Gus

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Stephens, an individual, trading under the firm name and style of Tested Specialties Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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, Gus Stephens, is an individual trading under the firm name and style of Tested Specialties Company, with his offices and principal place of business located at 809 West Madison Street, Chicago, Ill. Respondent is now, and has been for several years last past engaged at said location in the selling and distributing of a medicine or alleged remedy for use in the treatment of sick or ailing dogs, cats, foxes, and all fur bearing animals. Said medicine or alleged remedy is sold under the trade name of "On-the-Nose." Said medicine or alleged remedy is put up in containers and is to be applied by rubbing on the noses or lips of said animals. Respondent sells said product to individuals, pet shops, drug stores, and other stores.

In the course and conduct of said business, respondent ships, or causes to be shipped or transported said product when so sold from said city of Chicago in the State of Illinois to said individuals, pet shops, drug stores, and other stores, many of whom are located in various States other than the State of Illinois. There is now, and has been during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondent is now, and has been during all of the times herein mentioned, engaged in substantial competition in said commerce with various corporations, firms, and individuals selling or offering for sale, to the general public compounds, medicines, and remedies used and sold for the same purposes as those of respondent's said product. Among the competitors of the respondent are many who do not make false and misleading representations in connection with the sale of their products.

PAR. 3. In the course and conduct of the business as aforesaid, respondent, in soliciting the sale of and selling said product, has advertised and now advertises the same in newspapers, magazines, and other periodicals of interstate circulation and in pamphlets, on stationery and in printed testimonials and other printed matter sent through the United States mails, and on the labels attached to the

containers of said product. In and through the advertising media above described, respondent has made and is making expressly or by implication the following representations:

That the use of "On-the-Nose" in the treatment of said animals is effective against distemper, is working miracles every day, saving thousands of dogs doomed by so-called incurable afflictions, cures coughs and colds, builds up resistance against infectious diseases, is a general conditioner and a preventative of diseases, is efficacious as a dewormer and that he maintains laboratories and factories where such medicine or alleged remedy is made in Canada and the United States.

PAR. 4. The representations described and set forth in paragraph 3 above are false and misleading, in that the use of "On-the-Nose" when used as a medicine or remedy for said animals has no therapeutic value or effect in cases of distemper, is not a tonic, powerful or otherwise, does not build resistance to disease, has not saved the lives of thousands or any number of dogs, is not a general conditioner and is not a preventative of disease in any of said animals, is not efficacious in the deworming of dogs or in the deworming of other animals, nor in the treatment of colds in dogs or other animals, and laboratories and factories for the purpose of preparing and manufacturing the product "On-the-Nose" are not maintained in the United States or Canada by respondent.

PAR. 5. Said statements and representations set forth in paragraph 3 so made by respondent have and have had, the tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and because of such erroneous belief, to purchase respondent's said product, thereby unfairly diverting substantial trade in said commerce to the respondent from his said competitors to their injury and to the injury of the public.

PAR. 6. The above alleged acts and practices are all to the prejudice of the public and respondent's 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 the Federal Trade Commission Act, the Federal Trade Commission, on August 28, 1937, issued and served its complaint in this proceeding upon respondent, Gus

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Stephens, trading under the firm name and style of Tested Specialties Company, 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 Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by Gus Stephens, respondent, before William R. 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, brief in support of the complaint, the respondent having waived filing of a brief and having not 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. Gus Stephens is an individual trading under the firm name and style of Tested Specialties Company, with his principal place of business located in the city of Chicago, State of Illinois.

The respondent has been engaged for several years in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of a product designated "On-the-Nose." Said product is sold and recommended by respondent as a treatment for dogs, cats, and other animals suffering from distemper, coughs, colds and various other diseases and ailments. Respondent causes said product when sold to be shipped from his place of business in Chicago, Ill., to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois. Respondent's annual sales of said preparations "On-the-Nose" amount to several thousand dollars. Respondent maintains and has for several years last past maintained a course of trade in commerce among and between the various States of the United States and the District of Columbia in said product "On-the-Nose."

PAR. 2. There are numerous other individuals, corporations, firms and partnerships engaged in selling and distributing in commerce among and between the various States of the United States and the District of Columbia other medicines and preparations which are sold

and recommended for dogs, cats and other animals suffering from distemper, coughs, colds and various other diseases and ailments, which individuals, corporations, firms and partnerships do not misrepresent the efficacy of the medicines and preparations sold by them, and do not misrepresent their business status. Respondent, Gus Stephens, is in active and substantial competition with these individuals, corporations, firms and partnerships in the sale and distribution of his product "On-the-Nose" in such commerce.

PAR. 3. For the purpose of inducing the purchase of the product, "On-the-Nose," respondent has widely advertised said product in advertisements inserted in magazines and other periodicals of general circulation throughout the United States. Respondent has also printed folders, literature, circular letters and other advertising matter and circulated same throughout the several States of the United States, to customers and prospective customers.

In all of the advertisements and advertising material hereinabove mentioned, the respondent has caused the trade name, Tested Specialties Company, and the name of the product, "On-the-Nose," to be prominently and conspicuously displayed with such statements as:

In treating DISTEMPER, "ON-THE-NOSE" has achieved almost miraculous results.

Before you take YOUR DOG to *any* show, administer "ON-THE-NOSE" as a precaution against Distemper or other contagious animal diseases.

A powerful tonic and conditioner. Builds resistance to disease. "ON-THE-NOSE" is working near miracles every day—saving thousands of dogs doomed by so-called "Incurable" afflictions.

Don't Take Chances WITH DISTEMPER—On-The-Nose is mildly purgative. It is a good vermifuge. Administer ON-THE-NOSE at the first sign of a cold, sniffles, listlessness, watery eyes, lost appetite and similar disorders.

"On-The-Nose" is recommended by veterinarians, kennelmen and dog fanciers everywhere as a quick-acting, valuable aid in fighting Distemper, as a general tonic, and as a conditioner for building up resistance against the more serious animal afflictions.

On the letterhead used by respondent the following statement appears:

Originators and manufacturers of "ON-THE-NOSE"

PAR. 4. The statements above set out together with many similar statements appearing in respondent's advertising and literature purport to be descriptive of the preparation "On-the-Nose." Through the use of these statements and other similar statements, respondent represents: (1) that said preparation is an effective treatment and competent and adequate remedy and cure for distemper in dogs and other animals; (2) that said preparation is an effective treatment and competent and adequate remedy and cure for dogs, cats and other

animals suffering with coughs and colds; (3) that said product is efficacious as a curative and preventive of diseases or ailments from which dogs and other animals suffer; (4) that said preparation is a vermifuge; (5) that respondent maintains laboratories where said preparation is manufactured or compounded.

PAR. 5. In truth and in fact said preparation is not an effective treatment or competent and adequate remedy or cure for dogs, cats or any other animal suffering from distemper, coughs, colds or any other ailment or disease. Said preparation is not efficacious either as a curative or preventive of diseases or ailments from which dogs and other animals suffer. Said preparation is not a vermifuge and is not effective in any respect when used as a dewormer. Said preparation contains 15 percent metallic mercury, 3 percent Benzoin, and 82 percent lard. Said preparation is nothing more than a mild laxative and would not be effective as a laxative unless given in a dose larger than prescribed by respondent. Respondent does not maintain and never has maintained a laboratory or laboratories either in Canada or the United States where said preparation is manufactured or compounded.

PAR. 6. The various statements and misrepresentations made by respondent in describing the preparation "On-the-Nose" and the effectiveness of said preparation when used had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true and that said preparation is efficacious as a remedy or cure for the ailments and diseases represented and into the purchase of a substantial quantity of respondent's product on account of such belief induced by the respondent's representations as above set out. As a result thereof, trade has been diverted unfairly to respondent from individuals, corporations, firms, and partnerships likewise engaged in the business of selling and distributing their products which are prepared, compounded and sold for substantially the same purpose for which respondent's product is advertised and sold and who truthfully advertise their respective products and the efficacy thereof when used.

CONCLUSION

The aforesaid acts and practices of respondent are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William R. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of the complaint (respondent having waived the filing of a brief and having not 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 the Federal Trade Commission Act.

It is ordered, That respondent, Gus Stephens, his representatives, agents, and employees in connection with the sale and offering for sale and distribution in interstate commerce or in the District of Columbia of a preparation or compound now designated "On-the-Nose," or any other preparation or compound composed of like or similar ingredients or possessing similar properties, whether sold under that name or under any other name, do forthwith cease and desist from representing directly or otherwise:

1. That said preparation is an effective treatment or competent and adequate remedy or cure for distemper in dogs or other animals;

2. That said preparation is an effective treatment or competent and adequate remedy or cure for coughs or colds in dogs or other animals;

3. That said preparation is efficacious either as a curative or preventative of diseases or ailments from which dogs or other animals suffer;

4. That said preparation is a vermifuge;

5. That respondent maintains a laboratory or laboratories either in Canada or the United States where said product is manufactured or compounded.

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

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IN THE MATTER OF
COLONIAL MILLS, INC.

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

Docket 3239. Complaint, Oct. 8, 1937—Decision, Apr. 22, 1938

Where a corporation engaged in manufacture of silk, rayon, and other fabrics, and in sale thereof to garment manufacturers and other customers in the various States and in the District of Columbia—

Supplied to garment manufacturers, in connection with sale and delivery of certain of its products, labels and tags containing legend "this garment is made of SATIN AMOROSA PURE DYE With Crown Rayon Yarn", and cloth labels carrying words "Amora Crepe Pure Dye of Celanese Yarn", and advertised its said products in newspapers and other periodicals having interstate circulation as "Satin Amorosa," notwithstanding fact products in question were not, as thus represented to such trade and public, composed of silk, product of the cocoon of the silk worm, but of materials other than silk;

With capacity and tendency to mislead and deceive substantial portion of purchasing public, through use of such words as "Satin," "Pure Dye," and "Crepe," long and still associated in public mind with fabric made, through various weaves, from cocoon of silk worm, commonly known and understood by public generally as silk, and, as such, long esteemed for preeminent qualities of silk products, i. e., those made from cocoon of silk worm as above set forth, and to cause purchase by them of aforesaid products as result of such erroneous belief, engendered as above set forth, and with result that trade was thus diverted unfairly to said corporation and its customers, from competitors and customers thereof who do not use such or similar misrepresentations in connection with sale of their respective products in commerce among the various States:

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

Mr. George W. Williams for the Commission.

Weil, Gotshal & Manges, of New York City, for respondent.

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 Colonial Mills, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, 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: