

Syllabus

IN THE MATTER OF
AMERICAN HEALTH SOCIETY, INC., AND MEDICAL BOOK
DISTRIBUTORS, INC.

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

Docket 2761. Complaint, Apr. 10, 1936—Decision, June 15, 1938

Where two corporations respectively engaged in the publication and sale and sale and distribution of a two-volume set of books entitled "Health Knowledge"—

- (a) Represented, through such statements as "The New, Revised Edition of 1934," on the title page thereof, that said books were modern and new, or recently revised, notwithstanding fact that no substantial revision of the original text, as issued in 1919, had ever been made, either in the 1931 reprint or the 1934 new edition, and the books were not new, up-to-date medical works, but were antiquated and recommended many treatments not now recognized or accepted by the medical profession as being the proper and customary treatment for the particular illnesses or diseases for which recommended, and many of the modern diagnoses and treatments of the various diseases and illnesses mentioned in said publication were omitted;
- (b) Represented that said books were written by outstanding and eminent medical authorities, through statement, on the title page of all copies of each of the various editions, that the editor in chief, whose name was followed by the title "M. D.," was assisted by a corps of competent physicians and surgeons from the leading hospitals, colleges, and universities of the United States and foreign countries, and through including in each edition, among other statements, a list of alleged eminent medical authorities who, allegedly, had contributed to the work, notwithstanding fact that none of said authors contributed in any way toward the writing of the work, though, in various instances, books written by them were consulted, and many of such authorities listed as having been consulted had been dead for a number of years, and, in several instances, authorities thus referred to were never connected with the institution mentioned in such connection by said work; and
- (c) Represented, through use of the corporate name "American Health Society," on the part of said distributor corporation on the identifying cards supplied to its salesmen, along with the statement that the salesman was from such society and authorized to "call on your home and give a health talk," and through trade literature of one sort and another supplied them, and referring to and describing said "Health Knowledge," that the said salesmen were connected with a health society or public or private health authorities, or that the publishers and distributors of such books were endorsed by and affiliated with public health authorities;

With capacity and tendency to mislead and deceive members of the purchasing public and induce them to purchase sets of said "Health Knowledge" in the erroneous belief that it was a modern, up-to-date set of books written by outstanding physicians for use in the home diagnosis and treatment of ailments and diseases, and that the publishers and distributors thereof were

Complaint

27 F. T. C.

endorsed by and affiliated with public health authorities, and to divert unfairly trade to them from competitors selling, without misrepresenting, similar products in commerce among the various States:

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. Reuben J. Martin for the Commission.

Mr. James E. Duross, of New York City, 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 American Health Society, Inc. and Medical Book Distributors, Inc. have been and are 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, American Health Society, Inc., is a corporation organized and existing under and by virtue of the laws of the said State of New York, having been chartered in 1932, with its principal office and place of business located at 1476 Broadway, in the city of New York, within the State of New York. Said respondent is now and for more than 1 year last past has been engaged in the sale of medical books, including a two-volume set known as "Health Knowledge," and the distribution thereof between and among the various States of the United States. It causes said books known as "Health Knowledge," when sold by it, to be transported to the purchasers thereof located in the State of New York and various other States of the United States. There is now and has been for a long time, to wit, more than 1 year, last past, a constant current of trade and commerce by respondent in said set of books known as "Health Knowledge" between and among the various States of the United States.

In the course and conduct of its said business said respondent is now and for a long time, to wit, more than 1 year last past, has been in substantial competition in commerce between and among the various States of the United States with various other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of medical books.

PAR. 2. Said respondent, Medical Book Distributors, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 1476 Broadway, in the city of New York, within the State of New York. Said respondent, Medical Book Distributors, Inc., is now and for more than 1 year last past, has been engaged in the publication and the interstate sale and distribution of medical books among which is a two-volume set known as "Health Knowledge." It causes said medical books, including the two-volume set known as "Health Knowledge," when sold by it, to be transported to the purchasers thereof located in the State of New York and in various other States of the United States. There is now and has been for more than 1 year last past, a constant current of trade and commerce by said respondent, Medical Book Distributors, Inc., in said two-volume set of medical books known as "Health Knowledge" between and among the various States of the United States.

In the course and conduct of its said business said respondent, Medical Book Distributors, Inc., for more than 1 year last past, has been in substantial competition in commerce between and among the various States of the United States with various other corporations, partnerships, firms, and individuals engaged in the publication and interstate sale and distribution of other medical books.

PAR. 3. The medical books known as "Health Knowledge," published and sold by the respondent Medical Book Distributors, Inc., and sold and distributed by the respondent, American Health Society, Inc., comprise a two-volume set of books, containing various plates and charts, suggesting and recommending methods for home diagnosis and home treatment of various diseases and illnesses. Said "Health Knowledge" is known and described as "New Revised Edition, 1934" and lists a large number of alleged contributors thereto. The said two-volume set of medical books known as "Health Knowledge" was copyrighted in 1919.

PAR. 4. Said respondent, Medical Book Distributors, Inc., in the course and conduct of its said business, as hereinbefore set out in paragraph 2, sells its said two-volume set of medical books known as "Health Knowledge" to various persons, firms, and corporations located throughout the various States of the United States, and including said respondent American Health Society, Inc. Said respondent, Medical Book Distributors, Inc., causes its said two-volume set of medical books known as "Health Knowledge," when sold by it, to be transported to the purchasers thereof located throughout the various States of the United States.

Complaint

27 F. T. C.

PAR. 5. Said respondent, American Health Society, Inc., in the course and conduct of its said business, as hereinbefore set out in paragraph 1, has maintained and now maintains crew managers and salesmen who are located in the various cities of the several States of the United States. Said respondent, American Health Society, Inc., causes its said salesmen, in making their calls to present a card which states that the salesman is from the American Health Society and is authorized to call "in your home and give a health talk." Said respondent, American Health Society, Inc., in the course and conduct of its said business does not engage in newspaper advertising except in rare instances, but furnishes its crew managers and its salesmen with various literature, including a prospectus which shows representative pages from "Health Knowledge" and various pamphlets, folders, and letters describing said "Health Knowledge." In the regular course and conduct of its said business the crew managers and salesmen of said respondent, American Health Society, Inc., call at various homes located in the residential sections of the various cities of the several states of the United States and interview prospective purchasers, who are usually women. Sales are made on contracts calling for a small down payment with the balance in monthly installments, said installments to be mailed in to the office of said respondent, American Health Society, Inc., located in the city of New York.

PAR. 6. Said two-volume sets of medical books, known as "Health Knowledge," published and sold by said respondent, Medical Book Distributors, Inc., and sold and distributed by said respondent, American Health Society, Inc., as hereinabove set forth in paragraphs 1 and 2, have and do now contain various false, deceptive, and misleading statements. Among the said statements which were and are now contained in said two-volume set of medical books known as "Health Knowledge" is the statement contained in the said books that it is the "New Revised Edition, 1934," whereas in truth and in fact said "Health Knowledge" is not a new and up to date medical work, and in truth and in fact most of the modern diagnoses and treatments of the various diseases mentioned in said "Health Knowledge" are omitted and the treatments recommended in said "Health Knowledge" are old treatments now abandoned by the medical profession. Said work "Health Knowledge" contains, among other false, deceptive and misleading statements, a list of alleged "eminent medical authors" who were allegedly contributors to said work, and names institutions with which it is alleged said contributors are affiliated, whereas in truth and in fact said con-

tributors did not submit their own works for inclusion in "Health Knowledge," but said works were read over and edited by a staff of physicians and in that manner were included in "Health Knowledge." Said statements, giving the names and medical affiliations of said contributors, are false, deceptive, and misleading because in truth and in fact in many instances the medical institutions, societies and hospitals do not, in truth and in fact, exist, and in most of the instances the contributors named either are not now or never have been connected with the institution with which they are alleged in "Health Knowledge" to be affiliated. Although the statement is contained in "Health Knowledge" that it is the "New Revised Edition, 1934," in truth and in fact a number of the alleged contributors thereto have been dead for many years.

Said respondents, in said two-volume set of medical books known as "Health Knowledge," published, sold and distributed by said respondents, have created and are now creating upon the public the impression that "Health Knowledge" is a modern work for home use in the diagnosis and treatment of disease, that it was written by eminent and outstanding physicians and that said authors are connected with the leading medical institutions of the world, whereas in truth and in fact said "Health Knowledge" is not a modern book for home use in diagnosis and treatment of disease, but is an antiquated and outmoded work containing treatments which are not now recognized by the medical profession as efficient, it was not written by its alleged authors, and its alleged authors have neither been nor are they now affiliated with said medical institutions and numerous of the alleged medical institutions in truth and in fact have no existence.

PAR. 7. The use by said respondents, American Health Society, Inc. and Medical Book Distributors, Inc., of the foregoing false, deceptive, and misleading representations contained in said two-volume set of medical books known as "Health Knowledge," and the use by respondent, American Health Society, Inc., of cards representing that its salesmen were authorized by the American Health Society to call "in your home and give a health talk," as hereinabove alleged in paragraph 5 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that "Health Knowledge" is in truth and in fact a modern and efficient book written by outstanding physicians for use in the home treatment of disease, and that the publishers and distributors thereof are endorsed by and affiliated with the health authorities. As a result of such false, deceptive, and mislead-

Findings

27 F. T. C.

ing statements contained in said "Health Knowledge" published, sold, and distributed by said respondents, American Health Society, Inc. and Medical Book Distributors, Inc., trade is diverted to said respondents from other publishers of medical works for home use and thereby injury has been done and is being done by said respondents, American Health Society, Inc. and Medical Book Distributors, Inc., to competition in commerce among and between the various States of the United States.

PAR. 8. Said false, deceptive, and misleading statements contained in said "Health Knowledge" published, sold, and distributed by said respondents, American Health Society, Inc. and Medical Book Distributors, Inc., have resulted in injury to said respondents' competitors and to retail dealers and in prejudice to the buying public 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, and 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 the Federal Trade Commission Act, the Federal Trade Commission, on April 10, 1936, issued its complaint in this proceeding against the respondents, American Health Society, Inc., and Medical Book Distributors, Inc., 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and a stipulation as to certain facts executed by the respondents was made a part of the record herein by order duly entered, no testimony or other evidence in opposition to the allegations of the complaint was introduced by the respondents; 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 answers thereto, testimony and other evidence, and brief in support of the complaint, respondents having failed to file briefs herein 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. The respondent, Medical Book Distributors, Inc., is a corporation organized under the laws of the State of New York, and maintains its place of business at 1476 Broadway, New York City, within said State of New York. Respondent Medical Book Distributors, Inc., publishes a two-volume set of books entitled "Health Knowledge." Said respondent causes said books, when sold, to be transported to the respective purchasers thereof from its place of business in New York, N. Y., through and into, various other States of the United States. In the course and conduct of its said business, said respondent Medical Book Distributors, Inc., has been, and is now, in active competition with numerous persons, partnerships, and other corporations also engaged in the publication, sale, and distribution, or the sale and distribution of similar books in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. The respondent, American Health Society, Inc., is a corporation organized under the laws of the State of New York, and maintains its place of business at 1476 Broadway, New York City, within said State of New York. Said respondent American Health Society, Inc., acts as the agent for the respondent Medical Book Distributors, Inc., in the sale and distribution of the books, "Health Knowledge," published by said respondent Medical Book Distributors, Inc. Said respondent American Health Society, Inc., causes said books, when sold, to be transported to the respective purchasers thereof from its place of business in New York, N. Y., through and into various other States of the United States. In the course and conduct of its said business, said respondent American Health Society, Inc., has been, and is now, in active competition with numerous persons, partnerships, and other corporations also engaged in the sale and distribution of similar books in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 3. The books published and distributed by the respondents under the title of "Health Knowledge," as set out in paragraph 1 and 2 hereof, comprise a two-volume set of books containing various plates and charts, and suggest and recommend methods for home diagnosis and treatment of various diseases and illnesses. Said "Health Knowledge" was first copyrighted in 1919. Thereafter, in 1931, a reprint of such books was issued; and in 1934 a new edition of "Health Knowledge" was issued, which said edition was described on the fly-leaf thereof as a "New, Revised Edition"; but in fact no substantial revision of the original text, as issued in 1919, has ever

Findings

27 F. T. C.

been made in the subsequent editions. The title pages of all copies of each of the various editions contain the name of J. L. Corish, M. D., who is described therein as the editor in chief of "Health Knowledge." Said title pages of each edition also contain the statement that the editor in chief was assisted by a corps of competent physicians and surgeons from the leading hospitals, colleges, and universities of the United States and foreign countries. Although the two-volume set of books designated as "Health Knowledge" is described on the title pages therein as "New, Revised Edition, 1934," said books are not new, up-to-date medical works, but are antiquated works which recommend many treatments not now recognized or accepted by the medical profession as being the proper and customary treatment for the particular illness or disease for which they are recommended in said books. Many of the modern diagnoses and treatments of the various diseases and illnesses mentioned in said "Health Knowledge" are omitted.

Each edition of "Health Knowledge" contains, among other statements, a list of alleged eminent medical authors, who were allegedly contributors to said work. None of the said alleged eminent medical authors contributed in any way toward the writing of the work, but in various instances, books written by said alleged eminent medical authors were consulted. Although "Health Knowledge, New Revised Edition, 1934" purports to be a modern, up-to-date work, a number of the medical authorities who were listed therein as having been consulted in the preparation of said work have been dead for a number of years, and in several instances, the authorities alleged to have been consulted were never connected with the institution with which they are alleged, by said work, to have been connected.

PAR. 4. In the course and conduct of its said business of selling and distributing "Health Knowledge, New, Revised Edition, 1934" the respondent American Health Society, Inc., has employed, and now employs, crews of salesmen, each crew under the charge of a manager, which said crews are located in various cities of the United States. Said respondent American Health Society, Inc., furnishes to its salesmen cards identifying the salesmen. Said cards have stated that the salesman is from the American Health Society and is authorized to "call in your home and give a health talk." Said respondent American Health Society also furnishes to its salesmen various forms of literature, including a prospectus showing representative pages from "Health Knowledge," and various pamphlets, folders, and letters describing "Health Knowledge," which said prospectus and other advertising matter is made use of by the salesmen in making sales of "Health Knowledge."

PAR. 5. The inclusion by the respondents in said work of the list of "Authorities Consulted," and the use by the salesman of such identification card, prospectus, and advertising matter, has the capacity and tendency to mislead and deceive members of the public and to induce them to purchase sets of said "Health Knowledge" in the erroneous belief that "Health Knowledge" is a modern, up-to-date set of books written by outstanding physicians for use in the home diagnosis and treatment of ailments and diseases, and that the publishers and distributors of "Health Knowledge" are endorsed by, and are affiliated with, the public health authorities. Said misrepresentations and practices on the part of the respondents have had, and do now have, the capacity and tendency unfairly to divert trade to the respondents from competitors selling similar products in commerce among and between the various States of the United States who do not misrepresent their said products.

CONCLUSION

The aforesaid acts and practices of the respondents, Medical Book Distributors, Inc., and American Health Society, Inc., are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers 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 the brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents, American Health Society, Inc., and Medical Book Distributors, Inc., have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, American Health Society, Inc., and Medical Book Distributors, Inc., whether trading under said name, or any other names, their officers, representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of the two-volume set of books now known as, and sold under the name of, "Health Knowledge," or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Order

27 F. T. C.

1. Representing, through such statements as "The New, Revised Edition of 1934," or other statements of like import and meaning, or in any other manner, that said books are modern, up-to-date, new, or recently revised;

2. Representing that said books are a modern, up-to-date medical treatise for use in the home diagnosis and treatment of various illnesses and diseases, and contain the methods of diagnosis and treatment of various illnesses and diseases which are in current use and accepted by the general medical profession;

3. Representing, by means of inclusion of names of outstanding and eminent medical authorities under the heading of "Authorities Consulted," or in any other manner, that said books were written by outstanding and eminent medical authorities of the United States or foreign countries;

4. Representing, through the use of the words "American Health Society" in the corporate name of the respondent American Health Society, Inc., or through the use of any other word or words of similar import and meaning, or by the use of identification cards, or other advertising matter, or in any other manner, that their salesmen are in any way connected with any health society or any public or private health authorities, or that the publishers and distributors of such books are endorsed by, and are affiliated with, any public health authorities.

It is further ordered, That the respondents, American Health Society, Inc., and Medical Book Distributors, Inc., 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 the order hereinabove set forth.

Complaint

IN THE MATTER OF
 KELLY J. SHADDY, DOING BUSINESS AS MAGIC
 CHEMICAL CO.

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

Docket 2870. Complaint, June 30, 1936—Decision, June 15, 1938

Where an individual engaged in the manufacture of a vegetable oil preparation for the treatment of the scalp and hair, and in the sale of said preparation as a "Hair Rejuvenator"—

Falsely represented, through radio broadcasts, pamphlets, advertising matter, testimonials, and otherwise, that "Dandruff is the main cause of baldness," etc., and that said preparation would eradicate dandruff and stop falling hair and stimulate and promote the growth of hair and induce new hair to grow to replace that which had fallen out, and that it took care of the entire needs of the hair, continually helping to keep the hair organs functioning normally in accordance with nature, etc., and promoted lively hair growth and was the world's safest hair dressing;

Facts being dandruff is not principal cause of baldness, there is no one preparation that will serve as a specific for all conditions or disorders of the scalp or hair, and aforesaid various representations were false and misleading;

With effect of misleading and deceiving retailers and members of the purchasing public into the erroneous belief that its preparation possessed the properties, capacities, and beneficial values claimed for it as above set forth, and into purchase thereof in and on account of such beliefs, and with result of placing in the hands of retailers thereof the means of deceiving and misleading members of the purchasing public as to the true merits and properties of the product, and of diverting thereby unfairly trade to him from competitors selling in commerce who do not falsely represent that their respective preparations will eradicate or permanently remove dandruff or stop or prevent falling hair or accomplish the other results claimed by him for his said preparations:

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

Before *Mr. Charles P. Vicini*, *Mr. Henry M. White*, and *Mr. John J. Keenan*, trial examiners.

Mr. T. H. Kennedy, *Mr. P. C. Kolinski*, and *Mr. Merle P. Lyon* for the Commission.

Mr. Roger A. Bramy, of San Francisco, Calif., 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