

IN THE MATTER OF

H. R. ZIMMER

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

Docket 2862. Complaint, June 30, 1936—Decision, July 29, 1938

Where an individual engaged in manufacture and sale of a metal holder alleged to contain pure refined radium which holder, according to said individual's instructions and directions, placed in a receptacle containing drinking water, would produce an emanation of radon gas and render the water in question radio active—

- (a) Represented, in pamphlets, leaflets, and other printed matter containing statements relative to the remedial and therapeutic qualities and values of his said product, by doctors, laymen, and himself, that said product had curative, remedial, or therapeutic value, or was beneficial in the treatment of anemia, stiff joints, high blood pressure, bronchitis, neuritis, rheumatism, and a large number of other ailments, conditions, and afflictions specified, through such statements, among many others, as "Yes, it seems to be a cure-all!" "Are you afflicted with any illness such as anemia, asthma," etc. (specifying various ailments, etc.), "Would you like to get rid of them? The answer is 'yes!'," facts being said product would not relieve or cure any of the many ailments or diseases, and had no remedial, curative, or therapeutic value whatever in the treatment thereof; and
- (b) Represented that said product would improve health, prolong life, and destroy all injurious bacteria in water, through such statements, among numerous others, "Do you want to live 15 to 20 years longer? Do you want to have vigorous, robust health? * * * Would you like to have your glands function properly, thereby insuring you the full amount of pep and energy that a person of your age should have? Do you want to feel as young at 45 as you did at 25?" etc., facts being said product would not prevent contraction of diseases, prolong life, or improve health, or destroy injurious bacteria in water;

With effect of misleading and deceiving substantial portion of purchasing public into false belief that such statements and representations were true, and with result that a number of members of said public, in such belief, purchased substantial quantities of said product thus advertised and sold, and trade was unfairly diverted to him from competitors, including those engaged in sale and distribution of various devices, drugs, etc., represented as effective remedies or cures for diseases involved, but who do not falsely represent the curative, remedial, or therapeutic values of their said products; to the substantial injury of said competitors and the purchasing public in the various States:

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

Before *Mr. Charles P. Vicini*, *Mr. John W. Addison*, and *Mr. Robert S. Hall*, trial examiners.

Mr. P. C. Kolinski, Mr. T. H. Kennedy, and Mr. Clark Nichols for the Commission.

Matot, Stafford, Smith & Farrar, of Los Angeles, 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 Federal Trade Commission, having reason to believe that H. R. Zimmer, 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 said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, H. R. Zimmer, maintains his manufacturing establishment and principal place of business at 636 West Seventy-seventh Street, Los Angeles, Calif. Respondent is and for more than 2 years last past has been engaged in the manufacture of a metal holder alleged to contain pure refined radium which he recommends to the users thereof that it be placed in a receptacle containing drinking water, and which he represents that if so placed said mechanism will produce an emanation of radon gas and render the water in which it is placed radioactive. For more than 2 years last past respondent has been engaged in the sale of said mechanism under the trade name of "Zimmer Radium Emanator" between and among the various States of the United States and in the District of Columbia. During all of said time he has caused, and still causes, said product when sold by him to be transported from his place of business in California, or other places within the United States, to purchasers thereof, some located in the State of California and others located in various States of the United States other than the State of origin of the shipment, and in the District of Columbia. In the course and conduct of his said business respondent is now, and for more than 2 years last past has been, in constant competition with other persons, firms, partnerships, and corporations engaged in the sale of various products, devices, drugs, appliances, bottled waters, tonics, and other medicaments designed, intended, and beneficially used in the treatment of many of the human ailments and diseases for which respondent claims that the use of his product is a cure-all, in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of his business, described herein, respondent for more than 2 years last past has, by means of a pamphlet entitled "What is Time," and otherwise, represented and still represents that his said product, when used as aforesaid, cures human diseases or ailments or will improve the health of persons, and in particular respondent has made the following statements in said pamphlet:

In all the years of Captain Zimmer's experience with Radon he has never found any human ailment which was not benefitted and usually eliminated through the use of Radon. Yes, it seems to be a cure-all! Something that most of us have laughed about at one time or another when reading some patent medicine advertisement that was extravagant in its claims. And yet all of us have heartily wished and deep down within us have felt that such a thing existed; that some natural, normal method of maintaining that vigorous, glowing sense of health and well-being that makes all the world bright and cheerful could be found.

Respondent has distributed said pamphlet and advertising circulars among his prospective customers and placed the same in the hands of his agents and solicitors in various States of the United States for use by them in advertising his said product, and in said circulars and advertising matter the following statements and representations appear:

OUR STORY

Do you want to live 15 to 20 years longer? Do you want to have vigorous, robust health? Do you want your skin, hair, and lips to glow with health? Would you like to have every bit of water you drink entirely free from injurious bacteria? Would you like to have germ-free, vigorous healthy blood which would keep you from contracting numerous diseases? Instead of that tired, wornout feeling, wouldn't you rather be full of pep and energy? Would you like to have your glands function properly, thereby insuring you the full amount of pep and energy that a person of your age should have? Do you want to feel as young at 45 as you did at 25? Are you afflicted with any illness such as anemia, asthma, stiff joints, hardening of arteries and high blood pressure, arthritis, apoplexy, bronchitis, inflammation of bladder, diabetes, eczema, condition of weakness after sickness, inflammation of stomach and bowels, inflammation of sinus, gout, laryngitis, lumbago, inflammation of uterus, inflammation of spinal cord, sick headaches, inflammation of heart muscles, Bright's disease, neuralgia and neuritis, nervous prostration, peritonitis, polyarthritis, pyorrhea, skin diseases, rheumatism, hay fever, sciatica, synovitis, locomotor ataxia, and old age with symptoms of disease? Would you like to get rid of them? The answer is "yes."

Said representations have been and are made by respondent in such a way that purchasers and prospective purchasers of respondent's products are led to believe that respondent's product, when used as aforesaid, will cure or relieve any or all of the diseases or ailments above set forth.

In truth and in fact each and every said representation has been and is untrue, and respondent's said product is not, nor has it ever been, a cure-all for human ailments or diseases, nor will it produce a natural and normal method of maintaining that vigorous, glowing sense of health and well-being that makes all the world bright and cheerful, nor will it extend the span of human life 15 to 20 years, produce vigorous, robust health, make skin, hair, and lips glow with health, remove injurious bacteria from every bit of water drunk, produce germ-free, vigorous, healthy blood which would keep the user from contracting numerous diseases, produce pep and energy in place of "that tired, worn-out feeling," produce properly functioning glands, thereby insuring "the full amount of pep and energy that a person of" the age of the user should have, make the user feel as young at 45 as he did at 25, rid the user of anemia, asthma, stiff joints, hardening of arteries and high blood pressure, arthritis, apoplexy, bronchitis, inflammation of bladder, diabetes, eczema, condition of weakness after sickness, inflammation of stomach and bowels, inflammation of sinus, gout, laryngitis, lumbago, inflammation of uterus, inflammation of spinal cord, sick headaches, inflammation of heart muscles, Bright's disease, neuralgia and neuritis, nervous prostration, peritonitis, polyarthritis, pyorrhea, skin diseases, rheumatism, hay fever, sciatica, synovitis, locomotor ataxia, and old age with symptoms of disease, nor has respondent's product, when used as directed by respondent or otherwise, any therapeutic capacity, property, or effect.

There is a substantial demand and commercial market for various products, devices, drugs, appliances, bottled waters, tonics, and other medicaments designed, intended, and beneficially used in the treatment of many of the human ailments and diseases for which respondent claims that the use of his product is a cure-all.

The aforesaid representations of the respondent have had and still have a capacity and tendency to mislead and deceive, and have misled and deceived, and still mislead and deceive retailers and the purchasing public into the erroneous belief that said product of respondent has all the properties, capacities, or effects claimed for it by the respondent, as aforesaid, and the use of said misrepresentations causes them to purchase respondent's product in such erroneous belief. The aforesaid representations by the respondent have placed and still place in the hands of retailers of the products of respondent hereinabove described the means of misleading and deceiving the purchasing public.

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PAR. 3. There are among the competitors of respondent manufacturers and distributors of various products, devices, drugs, appliances, bottled waters, tonics, and other medicaments designed, intended and beneficially used in the treatment of many of the human ailments and diseases for which respondent claims that the use of his product is a cure-all, who truthfully represent their products. There are also among the competitors of respondent manufacturers and distributors who do not misrepresent the properties, capacities, or effects of their said products.

By the representations made by the respondent, as set out hereinabove, trade has been, and still is, unfairly diverted to the respondent from such competitors, and thereby substantial injury has been done, and still is being done, by respondent to competition in interstate commerce.

PAR. 4. The above acts and things done by the respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate 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 the Federal Trade Commission Act, the Federal Trade Commission on June 30, 1936, issued, and thereafter served, its complaint in this proceeding upon the respondent, H. R. Zimmer, 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 P. C. Kolinski, Thomas H. Kennedy, and Clark Nichols, attorneys for the Commission (respondent offered no proof in opposition to the allegations of said complaint), before Charles P. Vicini, John W. Addison, and Robert S. Hall, examiners of the Commission theretofore duly designated by it. The said testimony and other evidence were recorded and filed in the office of the Commission. Thereafter this 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 (no brief having been filed and no oral argument having been requested by respondent), and the Commission having duly considered the matter, 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, H. R. Zimmer, is an individual with his principal office and place of business located at 636 West Seventy-seventh Street, Los Angeles, Calif. Respondent is now, and for more than 4 years last past has been, engaged in the manufacture of a metal holder alleged to contain pure refined radium. According to respondent's instructions and directions, said metal holder is to be placed in a receptacle containing drinking water, and he represents that if so placed, said mechanism will produce an emanation of radon gas and render the water in which it is placed radio active. Respondent has been for more than 4 years last past engaged in the sale and distribution of said mechanism described as the "Zimmer Radium Emanator" in commerce between and among the various States of the United States. He causes, and has caused for more than 4 years last past, the said product, when sold, to be transported from his principal place of business aforesaid to purchasers thereof at their respective points of location in the various States of the United States. In so carrying on said business, respondent has been for more than 4 years last past engaged in active competition with other individuals and with partnerships and corporations engaged in the sale and distribution of various devices, drugs, appliances, tonics, and other products in commerce between and among the various States of the United States.

PAR. 2. Respondent, in the course and conduct of his business, as described in paragraph 1 hereof, has distributed, or caused to be distributed, among purchasers and prospective purchasers of his said product, pamphlets, booklets, leaflets, and other printed matter containing many statements and representations concerning the remedial, curative, and therapeutic qualities and values of his said product. Many of said statements are made by doctors and laymen, and the remainder by the respondent. In said advertising matter respondent has made various false, deceptive, and misleading statements and representations concerning his product, of which the following are examples, but are not all inclusive:

In all the years of Captain Zimmer's experience with Radon he has never found any human ailment which was not benefited and usually eliminated through the use of Radon. Yes, it seems to be a cure-all! Something that most of us have laughed about at one time or another when reading some patent medicine advertisement that was extravagant in its claims. And yet all of us have heartily wished and deep down within us have felt that such a thing existed; that some natural, normal method of maintaining that vigorous, glow-

ing sense of health and well-being that makes all the world bright and cheerful could be found.

and further:

OUR STORY

Do you want to live 15 to 20 years longer? Do you want to have vigorous robust health? Do you want your skin, hair, and lips to glow with health? Would you like to have every bit of water you drink entirely free from injurious bacteria? Would you like to have germ-free, vigorous healthy blood which would keep you from contracting numerous diseases? Instead of that tired, worn-out feeling, wouldn't you rather be full of pep and energy? Would you like to have your glands function properly, thereby insuring you the full amount of pep and energy that a person of your age should have? Do you want to feel as young at 45 as you did at 25? Are you afflicted with any illness such as anemia, asthma, stiff joints, hardening of arteries and high blood pressure, arthritis, apoplexy, bronchitis, inflammation of bladder, diabetes, eczema, condition of weakness after sickness. Inflammation of stomach and bowels, inflammation of sinus, gout, laryngitis, lumbago, inflammation of uterus, inflammation of spinal cord, sick headache, inflammation of heart muscles, Bright's disease, neuralgia and neuritis, nervous prostration, peritonitis, poly-arthritis, pyorrhea, skin diseases, rheumatism, hay fever, sciatica, synovitis, locomotor ataxia, and old age with symptoms of disease? Would you like to get rid of them? The answer is "yes."

PAR. 3. Through said false, deceptive, and misleading statements and representations, respondent has represented and implied that his said product will relieve or cure all of the above-named human ailments or diseases; will prevent contraction of diseases; will prolong life; will improve health; and will destroy all injurious bacteria in water.

PAR. 4. In truth and in fact, the use of respondent's said product will not relieve or cure any of the above-named human ailments or diseases; will not prevent contraction of diseases; will not prolong life; will not improve health; and will not destroy injurious bacteria in water. Respondent's said product has no remedial, curative, or therapeutic value whatever in the treatment of said diseases.

PAR. 5. There are, among the competitors of the respondent, other individuals, copartnerships, and corporations engaged in the sale and distribution in commerce, as herein described, of various devices, drugs, appliances, tonics, and other products represented to be effective remedies or cures for said diseases but who do not falsely represent the curative remedial or therapeutic values of such commodities.

PAR. 6. The circulation of said false, deceptive, and misleading statements and representations made by the respondent as herein set forth in connection with the sale and offering for sale of his aforesaid product is and has been designed and calculated to have and has had

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a tendency and capacity to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the false belief that said statements and representations so made are true. A number of the members of the purchasing public have, believing such statements and representations to be true, purchased substantial quantities of said product so advertised and sold by the respondent with the result that trade has been unfairly diverted to respondent from his said competitors. As a result thereof, substantial injury has been done, and is now being done, by respondent to his said competitors and the purchasing public in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, H. R. Zimmer, are all to the prejudice of the public and of respondent's competitors, and constitute an unfair method of competition in commerce within the intent and meaning 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 answer of the respondent, testimony and other evidence taken before Charles P. Vicini, John W. Addison, and Robert S. Hall, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint (no proof having been offered by respondent in opposition to the allegations of said complaint), brief filed herein by Clark Nichols, counsel for the Commission (no brief having been filed and no request having been made by respondent for 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 the respondent, H. R. Zimmer, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of his Zimmer Radium Emanator or any other like or similar device, whether sold under the name Zimmer Radium Emanator or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said product has any curative, remedial, or therapeutic value or is in any way beneficial in the treatment of anemia, asthma, stiff joints, hardening of arteries and high blood pressure, arthritis, apoplexy, bronchitis, inflammation of bladder,

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diabetes, eczema, condition of weakness after sickness, inflammation of stomach and bowels, inflammation of sinus, gout, laryngitis, lumbago, inflammation of uterus, inflammation of spinal cord, sick headaches, inflammation of heart muscles, Bright's disease, neuralgia and neuritis, nervous prostration, peritonitis, polyarthrititis, pyorrhea, skin diseases, rheumatism, hay fever, sciatica, synovitis, locomotor ataxia, and old age symptoms of disease, or any other disease or diseases.

2. Representing that said product will improve health, prolong life, or destroy all injurious bacteria in water.

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

Syllabus

IN THE MATTER OF

AMERICAN FIELD SEED COMPANY, TRADING AS SUN-FIELD SEED SERVICE AND STANDARD SEED COMPANY, AND ERNEST E. ELDER AND J. F. SINN

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

Docket 2872. Complaint, July 7, 1936—Decision, July 29, 1938

Where a corporation and two individuals who controlled the same and managed its business activities, engaged in the sale and distribution of agricultural seed by mail order, and also under certain trade names, respectively, at wholesale to the dealer trade and to local retail merchants, and directly through agents equipped by it with samples, price lists, and trade literature—

- (a) Represented in its mail order catalogs that it was founded or established in 1915, and was "a well-established firm" which had been in the same location for 19 years," notwithstanding fact it did not come into being until organized under the laws of Illinois in 1922;
- (b) Represented in its said catalogs that all its seed was of high germination and high purity, and was so guaranteed, and that it purchased only good seed and that the same was recleaned and relatively free from weed seed, facts being that not all its seed was of high germination and high purity, and its said products did in fact contain considerable quantities of weed and noxious seeds, as well as other foreign matter;
- (c) Represented, as aforesaid, that all seed sold and offered by it was first cleaned by it with its own equipment, and that all its said seed was analyzed and tested by it in its own laboratory and by its own experts in charge thereof, facts being that it purchased quantities of seed already cleaned from companies engaged in business involved, did not itself reclean such seed before sale, and some of its said product purchased from other companies was sold to customers without being tested and analyzed, as above claimed;
- (d) Represented, as aforesaid, that they labeled and tagged shipments of seed in conformity to the laws of the State into which it was sold and shipped, facts being they admittedly made no effort to comply with such laws, and many of the shipments did not in fact so comply;
- (e) Represented, in soliciting orders from seed dealers and retail grain dealers, in connection with a certain variety of oats, that they were winter oats, and if planted in the late fall in State in question would grow through the winter, and flourish in temperatures as low as 11° below, and that yield thereof would be luxuriant and abundant, and that stock from which such oats were obtained was grown within 90 miles of Chicago, facts being that they were not winter oats, "winter killed" after temperatures as low as 2° below, produced no crop at all by reason of said fact, and fact that no oats will grow through winter in State in question, caused a considerable financial loss to customers involved, and said oats were not developed or grown near aforesaid city, but came from places in States far distant from Illinois;