

IN THE MATTER OF

FRED A. STOCK, TRADING AS STOCK'S NU-TONE TONIC

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

Docket 3448. Complaint, May 27, 1938—Decision, Aug. 9, 1938

Where an individual engaged in sale and distribution of a medicinal preparation designated "Stock's Nu-Tone Tonic"—

Represented, in advertising the same through radio broadcasts and other means, that said preparation constituted a tonic which toned up the digestive organs and promoted healthful sleep and a hearty appetite, and a remedy or treatment for underweight or weak or run-down condition and that tired feeling, and that use thereof would bring back the color to one's cheeks and make one feel strong, healthy, and more vigorous, and that thousands had been helped to health by it, and that it was a competent remedy in treating the common cold;

Facts being the therapeutically significant ingredients thereof were not such as to make the same dependable as a competent remedy in the treatment of the pathological condition mentioned, product was not a tonic and inclusion of word "tonic" in name thereof and references thereto as such were false, misleading, and deceptive, and it did not have the qualities or properties claimed therefor, would not bring back color to one's cheeks, help boys and girls who are thin, had not helped thousands of others to health, and various other representations made therefor were false and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were true, and with the result that a substantial number of the purchasing public, induced by such representations, bought its said product and trade was diverted unfairly to him from competitors engaged in the sale and distribution of products designed for similar usage, and who truthfully advertise and represent the properties and effects of their respective products and the results that may be obtained from the use thereof; to the injury of competition in commerce:

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

Mr. Merle P. Lyon for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Fred A. Stock, an individual, trading as Stock's Nu-Tone Tonic, hereinafter referred to as the respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fred A. Stock, is an individual trading as Stock's Nu-Tone Tonic, with his office and principal place of business located in the city of Quincy, in the State of Illinois. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution, in commerce between the various States of the United States and in the District of Columbia, of a medicinal preparation designated "Stock's Nu-Tone Tonic." Respondent causes said medicinal preparation, when sold by him, to be transported from his place of business in the State of Illinois to purchasers thereof located in other States of the United States than the State of Illinois. There is now, and has been at all times mentioned herein, a course of trade and commerce in said medicinal preparation so sold by respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent is now, and has been, in substantial competition with other individuals, and with firms, partnerships, and corporations likewise engaged in the sale and distribution of medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia. Among the competitors of the respondent in said commerce are many who do not in any manner misrepresent their said products.

PAR. 3. In the course and conduct of his said business, and for the purpose of creating a demand upon the part of the consuming public for the medicinal preparation designated "Stock's Nu-Tone Tonic," and to induce the purchase thereof, respondent has caused said medicinal preparation to be advertised through the medium of radio broadcasts, labels, and through other means, among customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 4. Among the representations made by respondent by the aforesaid means are the following:

Stock's Nu-Tone Tonic.

Stock's Nu-Tone Tonic, the great herbal tonic helps you to get the full nourishment from the food you eat.

Stock's Nu-Tone Tonic is recommended to people who are underweight, weak, run-down and suffering from that tired feeling. For that tired feeling and restoring lost strength, try Stock's Nu-Tone Tonic.

Stock's Nu-Tone Tonic, the excellent tonic.

Take a tablespoon of this fine mixture of vegetable juices before meals for just a few days and see how quickly it brings back the color to your cheeks and makes you feel strong and healthy and more vigorous.

Boys and girls who are weak and thin are usually helped wonderfully by this famous tonic.

Thousands of others have been helped to health by Stock's Nu-Tone Tonic.

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In many cases of over-work and over-exertion, Stock's Nu-Tone Tonic has proved a valuable tonic. It quickly tones up the digestive organs and promotes healthful sleep and a hearty appetite.

An excellent means of curing colds quickly and to ward off imminent colds is to take Stock's Nu-Tone Tonic.

Many who have used it praise it most highly, especially in the treatment and prevention of common colds.

PAR. 5. In truth and in fact the aforesaid representations of respondent concerning the preparation "Stock's Nu-Tone Tonic" are false, misleading and untrue. The therapeutically significant ingredients in said product are not such as to make the said preparation dependable as a competent remedy in the treatment of the pathological conditions mentioned, and the use of the word "Tonic" in the name, and references to the product as a tonic are false, misleading, and deceptive.

In truth and in fact, "Stock's Nu-Tone Tonic" is not a tonic and has not proved valuable as such. It does not help one to get the full nourishment from the food he eats. It does not tone up the digestive organs, promote sleep or a healthy appetite, or restore lost strength. It does not have any therapeutic value in the treatment of underweight, weak, or run-down condition, or that tired feeling.

A tablespoon of said preparation taken before meals for a few days, or otherwise, will not bring back the color to one's cheeks, or make one feel strong, healthy, and more vigorous. The use of said preparation does not help boys and girls who are thin, and thousands of others have not been helped to health by its use. Said preparation is not a competent remedy in the treatment or prevention of colds.

PAR. 6. Each and all of the aforesaid false and misleading representations and statements of the respondent in offering for sale and selling said medicinal preparation "Stock's Nu-Tone Tonic" have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true. As a direct consequence of said erroneous and mistaken beliefs, induced by said representations, a substantial number of the purchasing public have purchased said "Stock's Nu-Tone Tonic," with the result that trade in said commerce has been diverted unfairly to said respondent from competitors engaged in the sale and distribution of products designed for similar usage who truthfully advertise and represent the properties and effects of their respective products and the results that may be obtained from the use thereof. As a result thereof, injury has been, and is now being, done by the said respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent have been, and are, all to the prejudice of the public and of respondent's competitors as aforesaid, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 27, 1938, issued, and subsequently served, its complaint in this proceeding upon the respondent Fred A. Stock, an individual trading as Stock's Nu-Tone Tonic, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance and service of said complaint, the respondent filed an answer admitting all the material allegations of the complaint to be true, and stated that he waived hearing on the charges set forth in the complaint and the taking of further evidence and all other intervening procedure, which answer was duly filed in the office of the Commission on July 11, 1938. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, 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. The respondent, Fred A. Stock, is an individual trading as Stock's Nu-Tone Tonic, with his office and principal place of business located in the city of Quincy, in the State of Illinois. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution, in commerce between the various States of the United States and in the District of Columbia, of a medicinal preparation designated "Stock's Nu-Tone Tonic." Respondent causes said medicinal preparation, when sold by him, to be transported from his place of business in the State of Illinois to purchasers thereof located in other States of the United States than the State of Illinois. There is now, and has been at all times mentioned herein, a course of trade in commerce in said medicinal preparation so sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent is now, and has been, in substantial competition with other individuals,

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and with firms, partnerships, and corporations likewise engaged in the sale and distribution of medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia. Among the competitors of the respondent in said commerce are many who do not in any manner misrepresent their said products.

PAR. 3. In the course and conduct of his said business, and for the purpose of creating a demand upon the part of the consuming public for the medicinal preparation designated "Stock's Nu-Tone Tonic," and to induce the purchase thereof, respondent has caused said medicinal preparation to be advertised through the medium of radio broadcasts and other means, among customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 4. Among the representations made by respondent by the aforesaid means are the following:

Stock's Nu-Tone Tonic.

Stock's Nu-Tone Tonic, the great herbal tonic, helps you to get the full nourishment from the food you eat.

Stock's Nu-Tone Tonic is recommended to people who are underweight, weak, run-down and suffering from that tired feeling. For that tired feeling and restoring lost strength, try Stock's Nu-Tone Tonic.

Stock's Nu-Tone Tonic, the excellent tonic.

Take a tablespoon of this fine mixture of vegetable juices before meals for just a few days and see how quickly it brings back the color to your cheeks and makes you feel strong and healthy and more vigorous.

Boys and girls who are weak and thin are usually helped wonderfully by this famous tonic.

Thousands of others have been helped to health by Stock's Nu-Tone Tonic.

In many cases of over-work and over-exertion, Stock's Nu-Tone Tonic has proved a valuable tonic. It quickly tones up the digestive organs and promotes healthful sleep and a hearty appetite.

An excellent means of curing colds quickly and to ward off imminent colds is to take Stock's Nu-Tone Tonic.

Many who have used it praise it most highly, especially in the treatment and prevention of common colds.

PAR. 5. In truth and in fact the aforesaid representations of respondent concerning the preparation "Stock's Nu-Tone Tonic" are false, misleading, and untrue. The therapeutically significant ingredients in said product are not such as to make the said preparation dependable as a competent remedy in the treatment of the pathological conditions mentioned, and the use of the word "Tonic" in the name, and references to the product as a tonic are false, misleading, and deceptive.

In truth and in fact, "Stock's Nu-Tone Tonic" is not a tonic and has not proved valuable as such. It does not help one to get the full

nourishment from the food he eats. It does not tone up the digestive organs, promote sleep or a healthy appetite, or restore lost strength. It does not have any therapeutic value in the treatment of underweight, weak, or run-down condition, or that tired feeling.

A tablespoon of said preparation taken before meals for a few days, or otherwise, will not bring back the color to one's cheeks, or make one feel strong, healthy, and more vigorous. The use of said preparation does not help boys and girls who are thin, and thousands of others have not been helped to health by its use. Said preparation is not a competent remedy in the treatment or prevention of colds.

PAR. 6. Each and all of the aforesaid false and misleading representations and statements of the respondent in offering for sale and selling said medicinal preparation "Stock's Nu-Tone Tonic" have had, and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that all of said statements and representations are true. As a direct consequence of said erroneous and mistaken beliefs, induced by said representations, a substantial number of the purchasing public have purchased said "Stock's Nu-Tone Tonic," with the result that trade in said commerce has been diverted unfairly to said respondent from competitors engaged in the sale and distribution of products designed for similar usage who truthfully advertise and represent the properties and effects of their respective products and the results that may be obtained from the use thereof. As a result thereof, injury has been, and is now being done by the said respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent Fred A. Stock, an individual, trading as "Stock's Nu-Tone Tonic," have been, and are, all to the prejudice of the public and of respondent's competitors as aforesaid, and constitute unfair methods 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 and the answer of the respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint, and that, without

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further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Fred A. Stock, an individual, trading as Stock's Nu-Tone Tonic, or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the medicinal preparation designated "Stock's Nu-Tone Tonic," or any other preparation containing substantially similar ingredients or possessing substantially similar properties, either sold under this name or any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

(a) That said preparation is a tonic or that it tones up the digestive organs and promotes healthful sleep and a hearty appetite.

(b) That said preparation is a remedy or treatment for underweight, that tired feeling, or for a weak or run-down condition.

(c) That the use of said preparation will bring back the color to one's cheeks, or make one feel strong, healthy, or more vigorous.

(d) That thousands have been helped to health by the use of this preparation.

(e) That said preparation is a competent remedy in the treatment or prevention of common colds.

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

IRVING ROY JACOBSON AND PROGRESSIVE EDUCATION
SOCIETY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2132. Complaint, June 30, 1936¹—Decision, Aug. 10, 1938*

Where an individual and a corporation, of which he was president and which he organized and of which he was the dominant stockholder, and operation and sales activities and policies of which he directed and controlled, engaged in sale and distribution of a set of books titled "Source Books," together with a loose-leaf supplement or extension service, for general reference use and represented as especially useful to school teachers and students, and sold through their agents, representatives, and salesmen who personally interviewed prospective purchasers in the various States and in the District of Columbia, and required and forwarded down payment from ordering customer, and required latter's signature to order blank and contract under which he agreed to pay balance in monthly installments until paid in full; in competition with those who truthfully described the nature, conditions and terms of sale of their books and publications to their prospective customers and do not, through use of false, deceptive, and misleading statements and representations, induce purchase thereof—

- (a) Represented or caused their said agents, etc., to represent, to prospective customers, that a set of said "Source Book" would be presented free of charge upon condition that such prospective purchasers give other prospects in their community their opinions concerning the merits of said set of books, but subject to condition that particular prospective purchaser subscribe to so-called extension or supplemental service, purporting to keep books up-to-date, at a price of \$69.50, payable at rate of \$6.95 a year for 10 years, facts being said amount was excessive and unreasonable for said service and was sufficient and intended to and did compensate them both for books and service, and prospects were not permitted to pay amount in question in 10 years, but were required to pay total sum in monthly installments in 1 year from date of signing order blank;
- (b) Represented or caused their said agents, etc., to represent to prospective purchasers that a limited number of people would be sold said "Source Book" at a special reduced price as introductory offer for advertising, and falsely and grossly exaggerated, in such connection, the usual and customary retail price of said book and service by naming a fictitious price therefor far exceeding the usual and customary price of \$69.50 for both book and service; and
- (c) Represented or caused their said agents, etc., to represent that said book and service had been recommended and endorsed by various State and county superintendents of schools, and by principals of various State teachers colleges, notwithstanding fact said persons had not thus endorsed and recommended such book and service;

¹ Date is that of second amended and supplemental complaint. Original findings and order in this matter on September 24, 1934 (19 F. T. C. 242), were vacated and case reopened on June 30, 1936. See 22 F. T. C. 916.