

IN THE MATTER OF

EARL C. NOYES TRADING AS SEYON PRODUCTS COMPANY, INC., AND END-O-CORN LABORATORIES, INC.

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

Docket 3235. Complaint, Oct. 4, 1937—Decision, Dec. 21, 1938

Where an individual engaged in carrying on mail-order business in sale and distribution of his so-called "Seyon Fluid," "Seyon Ointment," and "Seyon Lax-O-Tabs," to purchasers in other States—

- (a) Represented, in various advertisements concerning said preparations in newspapers of wide general circulation and in folders, pamphlets, circulars, and other advertising matter, that said products constituted competent and effective remedies and cures for such diseases and ailments as rheumatism, neuritis, lumbago, sciatica, neuralgia, and arthritis, facts being they did not constitute such remedies or cures for any of the diseases and ailments to which the body is subject, and particularly for the various diseases set forth above, and would not relieve or stop the pain incident thereto or to such condition;
- (b) Represented, as aforesaid, that said "Seyon Ointment" was a competent and effective preventive of colds and competent and effective treatment and remedy for headaches and head and chest colds, facts being it was not such a preventive or remedy for said ailments and conditions and had no effect whatever on the causative factors of either colds or headaches; and
- (c) Featured, in aforesaid advertising, trade names "Seyon Products Company, Inc." and "End-O-Corn Laboratories, Inc.," and represented thereby that such supposed concerns or sellers constituted legally existing corporate entities operating a laboratory or laboratories in which medicines in question were made and compounded by said individual, facts being that they were thus made by pharmaceutical laboratories in which he had no interest whatever, and sold by him in regular course of trade, and he neither operated nor maintained laboratory in which medicinal products were made or tested, and owned no interest in any manufacturing establishment, as aforesaid, from which such products were obtained;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said representations were true, and that said medicinal preparations possessed therapeutic values and properties represented, and into purchase thereof in and on account of such beliefs induced and brought about by reason of his said claims and representations, and with result that trade was diverted unfairly to him from competitors engaged in sale of similar preparations or those designed for usage in treatment of same or similar diseases and conditions, and who do not in any way misrepresent their business status as manufacturers or therapeutic values or properties of their respective products:

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

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Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. S. Brogdyne Teu II* 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 Earl C. Noyes, individually, and trading as Seyon Products Co., Inc., and as End-O-Corn Laboratories, Inc., hereinafter referred to as respondent, has been, for more than 1 year last past, and is now 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:

PARAGRAPH 1. Respondent, Earl C. Noyes, is an individual operating and doing business under the trade names, Seyon Products Co., Inc., and End-O-Corn Laboratories, Inc., with his principal offices and places of business located at 129 State Street, Rutland, Vt., and 4 East Garfield Boulevard, Chicago, Ill.

PAR. 2. Respondent Earl C. Noyes, operating under the trade names Seyon Products Co., Inc., and End-O-Corn Laboratories, Inc., has been for more than 1 year last past, and is now, engaged in the business of manufacturing, advertising, selling, and distributing medicinal and other products. Among the commodities so advertised and sold by respondent are those known as "Seyon Fluid," "Seyon Ointment," and "Seyon Lax-O-Tabs," recommended as a treatment and cure for neuritis, lumbago, sciatica, and rheumatism; and a product designated as "End-O-Corn," a salve for removing corns. Said respondent now causes, and for more than 1 year last past, has caused, his said products, when sold, to be transported from his respective places of business located in the States of Vermont and Illinois to retail dealers and other purchasers located at points in various States of the United States other than the aforesaid States of Vermont and Illinois and in the District of Columbia.

There is now, and has been for more than 1 year last past, a constant current of trade and commerce in said products so sold, distributed, and transported by respondent between and among the various States of the United States and the District of Columbia.

In the course and conduct of his said business respondent is now, and has been, in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of manufacturing, selling, and distributing medicinal and other prod-

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ucts intended and sold for the same purposes for which respondent's said products are sold in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the business set out and described in paragraphs 1 and 2 hereof, respondent, for the purpose of inducing the purchase of the commodities offered for sale by him, has circulated to purchasers and prospective customers throughout the United States, by mail, and by newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature, and by broadcasts over radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, advertisements of the various products sold by him. In all of such advertisements respondent has caused the trade names "Seyon Products Company, Inc." and "End-O-Corn Laboratories, Inc." to be prominently and conspicuously displayed together with statements purporting to describe said products and their effectiveness in use. Among such statements the following are typical examples:

The Seyon treatment consisting of Seyon Fluid, Seyon Ointment and Seyon Lax-O-Tabs is the one really safe and sure way of stopping all pains caused by rheumatism, neuritis, sciatica, lumbago, neuralgia, and arthritis and the best way to get rid of these troubles is by eliminating the cause.

Protect yourself and family from colds this spring. Get a jar of Seyon Ointment at any good drug store today. Refuse anything but Seyon Ointment.

Seyon Fluid will not stop your pains. It gets to the seat of the trouble and eliminates it but that usually takes quite some time. While the treatment aimed at the source of the trouble is more important, yet the relief of pain quick can be accomplished by using Seyon Ointment which is made to stop pains quickly.

Seyon Ointment can also be used by the whole family. It is wonderful for headaches and quickly breaks hard head and chest colds.

Sixteen Day Treatment

SEYON

FLUID

(Internal)

*Approved for use in very severe
cases of*

Neuritis

Lumbago

Sciatica

Neuralgia

Rheumatism

Price One Dollar

Sixteen Day Treatment

Sponsored by

End-O-Corn Laboratories,
INC.

4 East Garfield Boulevard,
Chicago, Illinois.

The aforesaid statements and representations, together with other similar statements and representations not herein set out in full, serve as representations on the part of respondent that said products constitute competent and effective remedies and cures for diseases, conditions, and ailments of the human body such as rheumatism, neuritis, lumbago, neuralgia, arthritis, and sciatica. Respondent also represents that the product Seyon Ointment is a competent and effective preventive of colds and is a competent and effective treatment and remedy for headaches and for head and chest colds. Respondent also represents that said product End-O-Corn will effectively and competently remove corns on the human foot.

PAR. 4. By the use of the word "Laboratories" in the trade name "End-O-Corn Laboratories, Inc.," and the use of the word "Sponsors" after and in connection with the name "End-O-Corn Laboratories, Inc.," respondent represents his said products to be compounded, prepared, sponsored, and approved by an established institution or laboratory where research work, experimentations, and analyses are carried on and maintained by especially trained experts. In truth and in fact, respondent does not do research work or conduct experiments and analyses. Respondent does not own or operate a laboratory wherein research work, experiments, and analyses are conducted, and respondent's products are not made, compounded, sponsored, indorsed, or approved by any recognized or established laboratory conducted by scientists or experts.

PAR. 5. In truth and in fact the respondent's said products do not constitute competent and effective remedies or treatments for any of the maladies, diseases, and ailments to which the human body is subject and specifically do not constitute competent and effective remedies or treatments for neuritis, lumbago, neuralgia, rheumatism, arthritis, and sciatica, and will not relieve pain incident to such diseases, conditions, or maladies or have any effect on the causative factors thereof. The product known as End-O-Corn Salve will not remove corns and will not cure or relieve the pains caused therefrom. The product designated as Seyon Ointment will not prevent colds and is of no beneficial therapeutic value in the treatment of headaches, head colds, or chest colds. Said product has no beneficial therapeutic value in the treatment of any of these conditions.

PAR. 6. The said representations of said respondent as aforesaid are false and misleading and have had and do have the tendency and capacity to mislead and deceive a substantial number of retail dealers and members of the purchasing public into the mistaken and erroneous belief that the respondent operates a laboratory, and that the products "Seyon Fluid," "Seyon Ointment," "Seyon Lax-O-

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Tabs" and "End-O-Corn" will accomplish the results claimed by respondent as herein detailed. The said representations of said respondent have had and do have the capacity to induce retail dealers and members of the purchasing public to buy respondent's said products because of the erroneous beliefs engendered by said false and misleading designations and representations, and to unfairly divert trade from competitors who are engaged in the sale of like products to those sold by respondent in commerce among and between the various States of the United States and in the District of Columbia, who do not use such false and misleading designations and representations, and also from competitors who are engaged in the sale of products designed and intended to act as competent remedies, treatments, cures, or palliatives for the various maladies, diseases, and conditions herein named in commerce among and between the various States of the United States and the District of Columbia. As a result thereof injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above-alleged acts and practices of respondent are all 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 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 the 4th day of October 1937, issued and served its complaint in the proceeding upon respondent, Earl C. Noyes, 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, the respondent having failed to file answer, testimony, and other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu II, attorney for the Commission, and in opposition to the allegations of the complaint by respondent Earl C. Noyes, in person, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed at the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and other evidence, brief in support of the complaint (respondent not having filed brief or oral argument requested), 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, Earl C. Noyes, is an individual operating under the trade names Seyon Products Co., Inc., and End-O-Corn Laboratories, Inc., with his principal place of business located at 129 State Street, Rutland, Vt., and 4 East Garfield Boulevard, Chicago, Ill. Respondent is now, and for several years last past has been, engaged in carrying on a mail-order business in the sale and distribution of medicinal products designated "Seyon Fluid," "Seyon Ointment," "Seyon Lax-O-Tabs," and "End-O-Corn." "Seyon" is a coined word resulting from the spelling of respondent's name backward. The respondent causes his said products when sold to be transported from his place of business in the States of Illinois and Vermont to purchasers thereof located in the various States of the United States other than the States of Illinois and Vermont.

PAR. 2. There are other individuals, firms, partnerships, and corporations engaged in the sale and distribution in commerce among and between the various States of the United States of medicines designed and intended for use in the treatment of similar diseases and conditions of the human body. In the sale and distribution of his said medicinal preparations in commerce among and between the various States of the United States, respondent is in competition with such other individuals, firms, partnerships, and corporations.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of the various medicinal products sold by him, the respondent has circulated to purchasers and prospective purchasers throughout the United States various advertisements and representations concerning said medicinal preparations. These advertisements appear in the newspapers having a wide general circulation and also appear in advertising folders, pamphlets, circulars, and other advertising literature. In all of said advertisements the respondent has caused the trade names "Seyon Products Company, Inc." and "End-O-Corn Laboratories, Inc." to be prominently and conspicuously displayed together with various statements purporting to describe said products and their respective efficacy in use. Among such statements the following are typical examples:

The Seyon treatment consisting of Seyon Fluid, Seyon Ointment and Seyon Lax-O-Tabs is the one really safe and sure way of stopping all pains caused by rheumatism, neuritis, sciatica, lumbago, neuralgia, and arthritis and the best way to get rid of these troubles is by eliminating the cause.

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Protect yourself and family from colds this spring. Get a jar of Seyon Ointment at any good drug store today. Refuse anything but Seyon Ointment.

Seyon Fluid will not stop your pains. It gets to the seat of the trouble and eliminates it but that usually takes quite some time. While the treatment aimed at the source of the trouble is more important, yet the relief of pain quick can be accomplished by using Seyon Ointment which is made to stop pains quickly.

Seyon Ointment can also be used by the whole family. It is wonderful for headaches and quickly breaks hard head and chest colds.

Sixteen Day Treatment

SEYON

FLUID

(Internal)

Approved for use in very severe cases of

Neuritis

Lumbago

Sciatica

Neuralgia

Rheumatism

Price One Dollar

Sixteen Day Treatment

Sponsored by

End-O-Corn Laboratories,

INC.

4 East Garfield Boulevard,

Chicago, Illinois.

Through use of such statements in his advertising literature, and through use of other similar statements, the respondent has represented that said medicinal products constitute competent and effective remedies and cures for such diseases and ailments of the human body as rheumatism, neuritis, lumbago, sciatica, neuralgia, and arthritis; that the product known as Seyon Ointment is a competent and effective preventive of colds and is a competent and effective treatment and remedy for headaches and for head and chest colds; that a preparation known as End-O-Corn will effectively and competently remove corns on the human foot; that Seyon Products Co., Inc., and End-O-Corn Laboratories, Inc., are legally existing corporate entities operating a laboratory or laboratories in which said medicines are manufactured and compounded; and that the various medicines named herein are actually manufactured and compounded by the respondent.

PAR. 4. The Commission finds that there was not sufficient competent testimony to sustain the charge that the preparation "End-O-Corn" would not remove corns or relieve the pain incident thereto.

PAR. 5. The Commission finds that the respondent does not compound or prepare the various medical products sold by him. He does not own, operate, or maintain a laboratory in which said medicinal

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products are manufactured or tested, nor does he own any interest in any such manufacturing establishment from which said products are obtained. The various products designated "Seyon Fluid," "Seyon Ointment," and "Seyon Lax-O-Tabs" are made and compounded by various pharmaceutical laboratories in which the respondent has no interest whatever, and are sold by the respondent in the regular course of trade.

The Commission finds that the various medicinal preparations, to wit, "Seyon Fluid," "Seyon Ointment," and "Seyon Lax-O-Tabs," sold by respondent do not constitute competent and effective remedies or cures for any of the diseases and ailments to which the human body is subject, and particularly do not constitute competent and effective remedies or cures for various diseases such as neuritis, lumbago, sciatica, neuralgia, rheumatism, and arthritis, and will not relieve or stop the pain incident to such diseases or condition. The Commission further finds that Seyon Ointment is not a competent and effective preventive of colds and is not a competent and effective treatment or remedy for headaches or for head and chest colds. The use of said preparation has no effect whatever on the causative factors of either colds or headaches.

PAR. 6. The respondent's use of the foregoing misleading statements and misrepresentations as hereinabove set forth has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true and that said medicinal preparations possess the therapeutic values and properties represented, and into the purchase of respondent's medicinal preparations in and on account of such beliefs induced and brought about by reason of respondent's aforesaid claims and representations. As a result trade has been diverted unfairly to the respondent from competitors engaged in selling similar preparations or other preparations designed for usage in the treatment of the same or similar diseases and conditions of the human body who do not in any way misrepresent their business status as a manufacturer or the therapeutic value or properties of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondent, Earl C. Noyes, trading as Seyon Products Co., Inc., and End-O-Corn Laboratories, Inc., as herein found, are all 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondent not having filed answer, and testimony, stipulation, exhibits, and other evidence taken before Edward E. Reardon, an examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by Carrel F. Rhodes, counsel for the Commission, no brief having been filed by respondent, 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, Earl C. Noyes, individually, and trading as Seyon Products Co., Inc., and as End-O-Corn Laboratories, Inc., or under any other trade name, his agents, representatives, or employees, in connection with the offering for sale, sale and distribution in interstate commerce or in the District of Columbia of various medicinal preparations now designated "Seyon Fluid," "Seyon Ointments," "Seyon Lax-O-Tabs" or any other preparations containing the same or similar ingredients or possessing the same or similar properties, whether sold under those names or any other names, do forthwith cease and desist, directly or through any corporate or other device, from:

1. Representing in any manner that said preparations, separately or in any combination with each other, constitute remedies or cures for neuritis, lumbago, sciatica, neuralgia, arthritis, or rheumatism, or will relieve or stop pain incident to such diseases;

2. Representing that Seyon Ointment is a competent and effective preventive of colds or is a competent and effective remedy or treatment for headaches or for head and chest colds, or is more than a palliative furnishing temporary relief from pain due to such condition;

3. Representing, through the use of the word "laboratories" in his trade name, or in any other manner, or through any other means or device, that he manufactures and compounds various preparations sold by him, or that said preparations have been tested and approved by a laboratory until and unless he actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein such products are so manufactured and are so tested by him.

It is further ordered, That the respondent shall, within 60 days after the 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

EDWARD W. BULLOCK, TRADING AS BONDED
JEWELERS OF AMERICA, AND GLADYS JOHNSTON

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

Docket 3459. Complaint, June 16, 1938—Decision, Dec. 21, 1938

Where two individuals, together engaged in sale of rings, watches, and like products to members of the purchasing public in other States and in the District of Columbia, in substantial competition with others engaged as aforesaid in sale of similar products, and including many who sell and distribute rings, watches, and like articles as aforesaid and do not in any manner misrepresent the quality of, or terms and conditions under which they sell, their said products, and their business status; in advertising rings and watches dealt in by them as aforesaid—

- (a) Made use of trade name "Bonded Jewelers of America" and of such words as "Guaranteed by million dollar factory," facts being they did not own, operate, or control a factory or place of business in which rings, watches, and other merchandise offered and sold by them were made, and business conducted was not bonded;
- (b) Designated and described as finished with white gold, or "White Gold Finish," rings advertised and offered as above set forth, through such statements as "FREE Simulated DIAMOND RING White Gold Finish Send a coupon for your sample ring at once! Several thousand sample rings will be given away under this special offer in order to advertise their startling beauty * * * Only a small deposit of 10¢ you are asked to send as evidence of good faith will be returned. FREE. If you send at once * * *", etc., facts being rings aforesaid were not thus finished; and
- (c) Represented in their said advertising that articles of merchandise were offered "free," through such statements as "FREE, AMAZING ADVERTISING OFFER" and "Your choice of a man's or lady's wrist watch FREE with every ring purchased from us during this sale and paid on our amazingly easy payment plan of only 10¢ a week * * * Our price only \$4.90 in all. Nothing extra for the watch," etc., facts being watches designated and described as "free" were not given without consideration or condition in connection with purchase of ring as aforesaid, but were delivered only to those purchasers who complied with certain requirements in regard to installment payments;

With capacity and tendency to confuse, mislead, and deceive substantial part of purchasing public into mistaken and erroneous belief that merchandise designated and described as "free" was given to all purchasers of such rings without consideration or condition, and that said individuals were bonded as jewelers and were manufacturers of merchandise offered and sold by them, and that rings designated and described as "free" and delivered upon "deposit" of sum of 10¢ were finished with white gold, and with result that such public purchased its said products as result of mistaken and erroneous belief thus engendered, with effect of thereby unfairly diverting trade to them from their competitors in commerce: