

IN THE MATTER OF

JOHN J. KANE, TRADING AS LA PEP HEALTH
BEVERAGE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2681. Complaint, Jan. 7, 1936—Decision, Feb. 23, 1939*

Where an individual engaged in manufacture of a preparation composed of the juices of a variety of fruits, together with sassafras root, nettle leaves, dog grass, and stick licorice, and in sale and distribution thereof to purchasers in other States, in competition with others engaged in sale and distribution of like and similar products in commerce among the various States and in the District of Columbia; in advertising his said product through circulars, folders, pamphlets and radio broadcasts circulated generally throughout the United States, and in labels—

- (a) Represented that said preparation was a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, gall bladder trouble, heart trouble, rheumatism, or other similar ailments, facts being it was not such a remedy;
- (b) Represented that said preparation was not a medicine or a drug, and that it cleansed the body of toxic germs and was a body disinfectant, facts being it was a medicine or drug and would not accomplish results above set forth, and was not such a disinfectant; and
- (c) Represented that said preparation would rejuvenate a person or guide him to health, or keep him young and healthy, or cause him to eat and sleep, and that it would cause wrinkles to disappear and cleanse and clarify the skin, facts being such various representations were false;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as a direct consequence of such mistaken and erroneous belief induced by aforesaid advertising and representations, that a number of the purchasing public bought substantial quantity of said product and trade was unfairly diverted from others likewise engaged in sale and shipment of preparations of medicinal character, and also of a beverage character, who truthfully advertise their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Mr. Samuel E. Kratzok, of Philadelphia, Pa., 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 John J. Kane, an individual, trading as the La Pep Health Beverage Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John J. Kane, is an individual doing business under the trade name of La Pep Health Beverage Company, having his principal office and place of business located in the city of Philadelphia, in the State of Pennsylvania. Respondent, for more than 1 year last past has been and still is engaged in the manufacture of a beverage known as "La Pep," made of a mixture of fruit juices, herbs, and lactic acid, and in offering said product for sale, and selling the same, in commerce between the State of Pennsylvania and the several States of the United States and in the District of Columbia. When said product is sold, respondent transports or causes the same to be transported from his place of business in the State of Pennsylvania to the purchasers thereof located in States of the United States other than the State of Pennsylvania and in the District of Columbia. There has been for more than 1 year last past and still is a constant current of trade and commerce in said product so manufactured by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now and for more than 1 year last past has been in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture of beverages and similar products and in the sale thereof between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent, in soliciting the sale of and selling "La Pep" and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than 1 year last past has caused advertisements to be issued, published and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter, and by radio broadcasting, and in other ways. In said ways and by said means respondent makes and has made to the general public many unfair, false, and misleading statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which are as follows:

Nature's gift to mankind, because La Pep is indeed an invigorator * * * no need to suffer with skin eruptions, sluggish blood, constipation, fatigue, or other inexcusable ailments.

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La Pep guides you to radiant, buoyant health, * * * La Pep is not a medicine nor a drug, but a healthful refreshing drink—a combination of fresh fruit juices, herbs, and lactic acid which in itself is a “body disinfectant.” Don’t merely exist, but really live and keep one hundred per cent physically fit by drinking La Pep.

La Pep cleanses the body of * * * toxic germs, tones the system and promotes regularity.

A lady said it had not only rejuvenated her, but wrinkles on her face and neck had disappeared, that her skin was clean and clear, and that she eats and sleeps well.

PAR. 3. The statements and representations set forth in paragraph 2 hereof have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent’s product into the belief:

(a) That La Pep is a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, or other similar ailments, or for gall bladder troubles, heart trouble, or rheumatism.

(b) That La Pep is not a medicine or a drug.

(c) That La Pep cleanses the body of toxic germs.

(d) That La Pep will:

1. Guide one to a radiant, buoyant health.
2. “Rejuvenate” a person.
3. Cause wrinkles on the face and neck to disappear.
4. Cleanse and clarify the skin.
5. Cause one to eat and sleep well.
6. Keep one young and healthy.

(e) That La Pep is a body disinfectant.

Whereas in truth and in fact “La Pep” is not a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, or other similar ailments, or for gall bladder troubles, heart trouble, or rheumatism; is a medicine or drug; does not cleanse the body of toxic germs; will not guide one to a radiant, buoyant health; will not rejuvenate a person; will not cause wrinkles on the face and neck to disappear; will not cleanse and clarify the skin; will not cause one to eat and sleep well or keep one young and healthy; and is not a body disinfectant.

PAR. 4. There are among the competitors of the respondent in interstate commerce and have been for more than one year last past, manufacturers of beverages and similar products who truthfully advertise and otherwise represent the ingredients and therapeutic value of their products. There are also among such competitors of the respondent, and have been for more than one year last past, manufacturers of beverages and similar products who do not adver-

tise and otherwise represent that such products have ingredients or therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the beliefs described in paragraph 3 hereof and to purchase respondent's product in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce and as a consequence thereof substantial injury is done by respondent to substantial competition in interstate commerce.

Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, under date of January 7, 1936, issued and served its complaint in this proceeding upon the respondent, John J. Kane, trading as the La Pep Health Beverage Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After issuance of said complaint, the respondent, having entered his appearance by his attorney, Samuel E. Kratzok, Esq., 1907 North American Building, Philadelphia, Pa., under date of April 1, 1936, filed his answer to said complaint in which he denies all of the material allegations contained in said complaint. Thereafter hearings were had and evidence was thereupon introduced in support of the allegations of the complaint and on behalf of the respondent before John J. Keenan, a trial examiner of the Federal Trade Commission, theretofore duly appointed. The testimony and other evidence was duly recorded and filed in the office of the Commission. A brief was filed upon behalf of the Commission in support of the allegations of the complaint. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and the answer and evidence adduced at said hearing, 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, John J. Kane, is an individual trading and doing business under the trade name and style of the La Pep Health Beverage Co., with his office and principal place of business located at 2765 Kensington Avenue, Philadelphia, Pa. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, selling, and distributing a preparation known as La Pep. This preparation is composed of the juices of grapes, cherries, pineapples, apples, peaches, apricots, raspberries, huckleberries, wortleberries, and pomegranates, to which are added the following aromatics: sassafras root, nettle leaves, dog grass, and stick licorice, the latter are termed herbs by respondent. La Pep is sold and shipped by respondent to purchasers in States other than the State of Pennsylvania in which the respondent's place of business is located and from which said shipments are made. The respondent has been for more than a year last past and is presently engaged in the sale and shipment of his product in commerce between and among various States of the United States and the District of Columbia. In the course and conduct of his business, respondent has been, and is presently, in competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of like or similar product in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent, in the sale of his preparation and for the purpose of inducing the public to purchase the said preparation, has, by means of various advertising circulars, folders, labels, pamphlets, and radio broadcasts, circulated generally throughout the United States, made statements and representations concerning the character and nature of said preparation and concerning the results obtained from its use. Among the said representations made by the respondent are the following:

Nature's gift to mankind, because La Pep is indeed an invigorator * * * no need to suffer with skin eruptions, sluggish blood, constipation, fatigue, or other inexcusable ailments.

La Pep guides you to radiant, buoyant health * * * La Pep is not a medicine nor a drug, but a healthful refreshing drink—a combination of fresh fruit juices, herbs, and lactic acid which in itself is a "body disinfectant." Don't merely exist, but really live and keep one hundred per cent physically fit by drinking La Pep.

La Pep cleanses the body of * * * toxic germs, tones the system, and promotes regularity.

A lady said it had not only rejuvenated her, but wrinkles on her face and neck had disappeared, that her skin was clean and clear, and that she eats and sleeps well.

PAR. 3. The said statements, together with similar statements and representations, serve as representation to members of the purchasing public as properly descriptive of respondent's product and of its effectiveness in use. The use of such statements mislead members of the purchasing public into the erroneous and mistaken belief that respondent's product is a competent remedy for skin eruptions, sluggish blood, constipation, fatigue, or other similar ailments; also gall bladder trouble, heart trouble, and rheumatism; that La Pep is not a medicine nor a drug; that La Pep cleanses the body of toxic germs; that La Pep will guide one to radiant, buoyant health; rejuvenate a person, cause wrinkles around the face and neck to disappear; cleanse and clarify the skin; cause one to eat and sleep well; keep one young and healthy; that La Pep is a body disinfectant; and that respondent's preparation will succeed where others fail. The aforesaid statements and representations are false, misleading, and untrue. The product "La Pep," is not a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue or other similar ailments, or for gall bladder trouble, heart trouble, or rheumatism; it is a medicine or drug; does not cleanse the body of toxic germs; will not guide one to radiant buoyant health; will not rejuvenate a person; will not cause wrinkles on the face or neck to disappear; will not cleanse and clarify the skin; will not cause one to eat and sleep well or keep one young and healthy; and is not a body disinfectant.

PAR. 4. Each and all of the false, misleading, and untrue representations made by respondent in offering for sale and selling his product were, and are, calculated to and do, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous belief, induced by the advertising and representations of respondent, as aforesaid, a number of the purchasing public have purchased a substantial quantity of said product, with the result that trade has been unfairly diverted from other individuals, corporations, firms, and partnerships likewise engaged in the sale and shipment of preparations of a medicinal character and also of a beverage character who truthfully advertise their products.

CONCLUSION

The aforesaid acts, representations, and practices of the respondent John J. Kane, trading as La Pep Health Beverage Co., have been and are, to the prejudice and injury of the public and of respondent's

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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, the answer of the respondent, testimony, and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, 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, John J. Kane, trading as La Pep Health Beverage Co., or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of a medicinal preparation now known as "La Pep," or any other preparation possessing substantially similar ingredients or substantially similar therapeutic value, whether sold under that name or under any other name in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by inference:

1. That said preparation is a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, gall bladder trouble, heart trouble, rheumatism, or other similar ailments.

2. That said preparation is not a medicine nor a drug.

3. That said preparation cleanses the body of toxic germs, or is a body disinfectant.

4. That said preparation will rejuvenate a person, or guide a person to health, or keep a person young and healthy, or cause a person to eat and sleep well.

5. That said preparation will cause wrinkles to disappear or have any effect on wrinkles, or will cleanse or clarify the skin or have any effect thereon.

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

LOUIS COHEN, ALSO KNOWN AS LOUIS KAHN, TRADING
AS NATIONAL GUARD EQUIPMENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3588. Complaint, Sept. 15, 1938—Decision, Feb. 23, 1939*

Where an individual engaged in sale and distribution of general merchandise, which included articles similar in make and design to those which the United States Government requires personnel of its National Guard and other military units to wear, and, as thus engaged, in selling its goods to purchasers in other States and in the District of Columbia, in substantial competition with those engaged in similar sale and distribution of merchandise, and including those engaged in sale and distribution of merchandise similar in character and design to that sold by said individual who do not, in their trade or corporate names or in their advertising or in any manner, import or imply any connection or association with any military organization of the United States Government when they are not in fact so connected or associated;

Operated under trade name "National Guard Equipment Company," and made use of said name in his catalogs, order blanks, and other printed advertising matter circulated among prospective customers, notwithstanding fact none of his stock of merchandise was purchased from the United States War Department and no substantial part thereof was made for said Department for use by the National Guard, but great majority of his merchandise consisted of usual stock found generally in general merchandise establishments and was purchased from usual marts of trade and not from said Department, and small amount of Army goods in said stock, if any, was bought from jobbers, wholesalers, and others who buy at Army departmental refuse and reject goods sales, and he was in no way connected with said Department and had no affiliation, association, agreement, or connection therewith or with National Guard division thereof;

With result that purchasers and prospective purchasers were led to believe that his stock was made for or purchased from the War Department, and of causing members of purchasing public to believe that he was connected therewith for the merchandising of equipment made for or purchased from the National Guard division thereof, and that he operated and maintained an establishment connected with said Department for the merchandising of official National Guard equipment, and with tendency and capacity to mislead and deceive substantial portion of such public into erroneous and mistaken belief that his merchandise was made for or purchased from the War Department and that he was connected or associated therewith or with the National Guard as aforesaid for the merchandising of equipment made for or purchased from it, and with result, as a consequence of such