

IN THE MATTER OF
ALBERT E. BERGER TRADING AS RUN-PROOF
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 3366. Complaint, Mar. 30, 1938—Decision, Feb. 24, 1939

Where an individual engaged in advertising, selling, and distributing a preparation for treatment of silk and rayon hosiery and lingerie, under trade name "Run-Proof," to dealers and purchasers in other States and in the District of Columbia, in competition with others engaged in similar sale and distribution of similar preparations or other products intended and used for same purposes and uses, and including those who do not in any way misrepresent the character and nature of their respective businesses or nature and character of their respective products, and do not make use of such misleading representations as below set forth—

- (a) Represented, through use of words "Run-Proof," "Run-Proof Laboratories, Inc.," "Run-Proof Laboratories, Manufacturers of Run-Proof," that said product, when applied to silk and rayon apparel, would render the same proof against runs, rips, snags, breaks, and ladders, facts being it would not accomplish such results; with tendency and capacity to mislead, deceive, and influence a substantial portion of purchasing public into erroneous belief that it would render apparel aforesaid proof against runs, etc.; and
- (b) Represented, through use of corporate name "Run-Proof Laboratories, Inc.," "Manufacturers," and "Run-Proof Laboratories, Manufacturers of Run-Proof," that he made said preparation, or owned, operated, or controlled a laboratory in which such product was analyzed and tested, facts being he neither owned nor operated plant, factory or laboratory in which same was made, and did not directly or indirectly control such plant, factory, or laboratory, but filled orders from purchasers with quantities of preparation made in a plant, factory or laboratory which he did not own, operate, or control; with tendency and capacity to mislead and deceive substantial portion of purchasing public into the belief that he was the manufacturer thereof and maintained a laboratory and employed the same in connection with such manufacture;

With effect of misleading and deceiving members of the purchasing public into the erroneous and mistaken belief that said representations were true, and into purchase of substantial quantities of said product on account of such erroneous and mistaken beliefs thus induced, and of thereby unfairly diverting trade to him from competitors who do not, in sale and distribution of their respective products, make use of same or similar misrepresentations; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. John N. Wheelock* for the Commission.

Mr. William Jaffe, of Chicago, Ill., for respondent.

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 Albert E. Berger, individually, and trading as Run-Proof Laboratories, Inc., hereinafter referred to as 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, Albert E. Berger, is an individual operating and doing business under the trade name, Run-Proof Laboratories, Inc., with his principal office and place of business located at 134 North LaSalle Street, Chicago, Ill.

PAR. 2. Respondent, Albert E. Berger, operating under the trade name Run-Proof Laboratories, Inc., has been for more than 1 year last past, and is now, engaged in the business of advertising, selling, and distributing a preparation for the treatment of silk and rayon hosiery and lingerie which he advertises under the trade name "Run-Proof." Said respondent now causes, and for more than 1 year last past has caused, his said preparation to be sold through advertisements and causes same, when sold, to be transported from his principal place of business in Chicago, Ill., to dealers and purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia.

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

In the course and conduct of his said business respondent is now, and has been during all the time hereinabove stated, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of selling and distributing similar preparations or other products intended and used for the same purposes and uses for which respondent's said preparation is 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 said product offered for sale and sold by him, has published and circulated misleading and deceptive statements to purchasers and prospective customers throughout the United States, by mail, newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature and on wrappers

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in which the said product "Run-Proof" is packed when displayed and offered for sale to ultimate users. In all of said advertisements respondent represents that the preparation designated as "Run-Proof" makes hosiery run-proof and makes hosiery "proof against snags and runs." In describing his business status, respondent has caused the names and designations, "manufacturers" and "laboratories," to be prominently and conspicuously displayed together with other representations. Among such statements and representations, the following are typical examples:

Run-Proof Laboratories, Inc., manufacturers of run-proof.

Amazing invention makes hosiery "Run-Proof."

Run-Proof—resist runs—rips—snags—breaks in silk or rayon hosiery or lingerie.

Makes Silk and Rayon Hosiery and Lingerie proof against heart-breaking runs and "ladders".

The aforesaid statements and representations, together with other representations not herein set out in full, serve as representations on the part of respondent that he is the manufacturer of said product; that respondent owns and operates a laboratory where said product is tested and analyzed and its value, functions, purposes, and uses are determined; and that the said preparation "Run-Proof" is proof against, and will prevent, runs and snags in silk and rayon hosiery, lingerie, and like products.

PAR. 4. In truth and in fact respondent's aforesaid preparation "Run-Proof" is not proof against, and will not prevent runs and snags in silk and rayon hosiery and lingerie. Respondent does not own or operate a laboratory. Respondent is not a manufacturer and does not manufacture said product "Run-Proof."

PAR. 5. The aforesaid false and misleading representations by respondent have had, and do have, the capacity and tendency to induce members of the the purchasing public, relying upon respondent's said representations, to purchase respondent's said product "Run-Proof" under the mistaken and erroneous beliefs that said preparation is proof against, and will prevent, runs and snags in silk and rayon hosiery, lingerie, and like products; that respondent owns and operates a laboratory where said product is analyzed and tested; and that respondent is the manufacturer of said product. Thereby, trade has been unfairly diverted from competitors of respondent engaged in the selling of preparations similar to those sold by respondent, or other products designed for similar usage, who do not misrepresent their status or the qualities, functions and uses of their products. As a consequence thereof, substantial injury has been, 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. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public 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 issued and served its complaint upon respondent Albert E. Berger, individually and trading as Run-Proof Laboratories, Inc., charging respondent with the use of unfair methods of competition in interstate commerce in violation of section 5 of said act. After the issuance of said complaint, to which respondent made no answer, testimony and other evidence in support of the allegations of said complaint were introduced by John Wheelock, an attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by William Jaffee for the respondent, and said testimony and other evidence has been duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony and other evidence and brief of counsel for the Commission in support of the complaint; 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. Respondent, Albert E. Berger, is an individual operating and doing business under the trade name, Run-Proof Laboratories, Inc., with his principal office and place of business located at 134 North LaSalle Street, Chicago, Ill. Respondent, since January 21, 1937, has been operating under such trade name, Run-Proof Laboratories, Inc., and is now engaged in the business of advertising, selling and distributing a preparation for the treatment of silk and rayon hosiery and lingerie which he advertises under the trade name "Run-Proof." Said respondent now causes, and for more than 1 year last past has caused, his said preparation to be sold through advertisements, as stated in paragraph 3 hereof, and causes same, when sold, to be transported from his principal place of business in Chicago,

Ill., to dealers and purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. There is now, and has been for more than 1 year last past a course of trade in said product so sold, distributed, and transported by respondent in commerce 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 during all the time hereinabove stated, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of selling and distributing similar preparations or other products intended and used for the same purposes and uses for which respondent's said preparation is 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 his business described in paragraph 1 hereof, respondent, for the purpose of inducing the purchase of the said product offered for sale and sold by him has published and circulated, by means of inscriptions on the container or package in which the said preparation "Run-Proof" was and is contained, in commerce as aforesaid, and also on invoices which the respondent sent to purchasers of the preparation situated in various States of the United States and in the District of Columbia, the following representations and statements with reference to the manufacture and quality of the product:

Run-Proof Laboratories, Inc.

Manufacturers

Run-Proof

Run-Proof Laboratories, Manufacturers of Run-Proof

PAR. 4. The respondent does not and never has manufactured the preparation he designates as "Run-Proof," sold and distributed in commerce as aforesaid. The respondent does not own and never has owned or operated directly the plant, factory, or laboratory in which such preparation was and is manufactured; neither has he directly or indirectly controlled such plant, factory or laboratory. Respondent, in the course of his business, fills orders from purchasers thereof with quantities of the preparation which is manufactured in a plant, factory, or laboratory which he did not and does not own, operate, or control.

PAR. 5. The product sold and distributed by respondent was originally sold in commerce by Run-Proof Laboratories, Inc., which was a corporation located in Chicago, Ill. This corporation became bankrupt, and the assets thereof were disposed of by sale in the course of the bankruptcy proceedings incident to its dissolution on January

21, 1937. As a purchaser at such sale, the respondent, Albert E. Berger, acquired the office equipment and quantities of the preparation and the legal right to use of the trade name "Run-Proof" used by the corporation, and also the legal right to the use of the corporate name "Run-Proof Laboratories." Respondent, after and since January 21, 1937, continued the use of the trade name, as herein set out, in describing and advertising the product as herein stated. The corporation was engaged for many years prior to 1937 in selling such preparation in commerce.

PAR. 6. The preparation designated "Run-Proof" when applied to silk, rayon hosiery, and lingerie will not render such apparel to be proof against runs, rips, or snags. The preparation is designed and intended to render such effect, and the use of the words "Run-Proof" in branding and labeling the preparation has the tendency and capacity to mislead, deceive, and influence a substantial portion of the purchasing public to erroneously believe the preparation will render the apparel aforesaid proof against runs, rips and snags by the application thereof to such apparel.

PAR. 7. The use of the words "Run-Proof Laboratories, Inc.," "Manufacturers," and "Run-Proof Laboratories, Manufacturers of Run-Proof" in respondent's branding and labeling of the preparation has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the respondent is the manufacturer of the preparation and maintains a laboratory, or laboratories, and employs such laboratory or laboratories in connection with the manufacture of the preparation.

PAR. 8. There are among the respondent's competitors in commerce as set out in paragraph 2 herein, those who do not in any way misrepresent the character and nature of their respective businesses and who do not misrepresent in any way the nature and character of their respective products and do not make use of the misleading representations herein set out or others similar thereto.

PAR. 9. The aforesaid false and misleading statements and representations used by the respondent, in offering for sale and selling his product as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of respondent's product on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted from competitors of respondent who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence

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thereof, injury has been, and is now being, done by respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, Albert E. Berger, an individual, under the conditions and circumstances set forth in the foregoing findings of fact, are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and constitute violations of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, no answer having been filed by the respondent, testimony and other evidence taken before R. S. Hall, 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 counsel for the Commission, 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, Albert E. Berger, his representatives, agents, and employees, directly in connection with the offering for sale, sale, and distribution of the preparation now known as, and sold under the name, "Run-Proof," for the treatment of silk and rayon hosiery and lingerie, or any other product of substantially the same ingredients, or possessing the same properties, whether sold under that name or any other name in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the words "Run-Proof," "Run-Proof Laboratories, Inc.," "Run-Proof Laboratories, Inc., Manufacturers of Run-Proof," or any other word or words of similar import or meaning, or in any other manner, that the product "Run-Proof" when applied to silk and rayon apparel will render such apparel proof against runs, rips, snags, breaks, and ladders.

2. Representing through the use of the corporate or trade name "Run-Proof Laboratories, Inc.," or any other words of similar import or meaning, or in any other manner, that respondent owns, operates, or controls a laboratory where the product "Run-Proof" is analyzed and tested, unless and until the respondent actually owns and oper-

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ates, or directly and absolutely controls, a laboratory wherein such product is analyzed and tested.

3. Representing through the use of the words "Manufacturer" or "Manufacturers of Run-Proof" that respondent owns, operates or controls a factory, and makes the product "Run-Proof," unless and until the respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein such product is manufactured.

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.

IN THE MATTER OF

ISRAEL RASKIN TRADING AS L. & M. MERCANTILE COMPANY, AND GEORGE R. CRAGGETT TRADING AS MISSOURI VALLEY PAINT MANUFACTURING COMPANY

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

Docket 3614. Complaint, Sept. 30, 1938—Decision, Feb. 24, 1939

Where an individual engaged in manufacture and sale of paint, and second individual engaged in sale and distribution of such product of former, and in selling, as thus engaged, their said products to purchasers in other States and in the District of Columbia, in competition with others engaged in sale and distribution of such products in commerce among the various States and in said District, and acting together in the acts and practices below set forth, and at the instance one of the other—

- (a) Designated and labeled as "Certified Double Body Guaranteed Ready Mixed Paint—White," certain white product thus made and dealt in by them, and set forth on label on front of container thereof that it "Contains White Lead, Zinc Oxide, and Linseed Oil";
- (b) Set forth, also, on label placed on such container, analysis purporting to show composition of said product, and setting forth as composition thereof, among other ingredients, "White Lead, Zinc, and Calcited Lithopone" as 47.17 percent, "Carbonate of Calcium" as 17.86 percent, "Oxide of Silicon" as 5.78 percent, "Linseed and Weatherproofing Oils" as 21.77 percent, and "Solution Oil of Pine" as 1.17 percent;

Facts being said product, thus described and labeled, contained so little white lead, zinc, and linseed oil that it had little or no value for use as paint, and did not contain ingredients set out in proportions stated in such purported analysis, but had white lead, zinc, and calcited lithopone content of approximately 10 percent less than stated, with white lead and zinc content so small as to have no value, contained about 14 percent more carbonate of calcium than there set forth, and 22 percent more silicon content, and water in large quantities, presence of which was concealed through use of term "Solution Oil of Pine," and no tung oil, contrary to impression implicit in use of words "Weatherproofing Oils";

With effect of misleading and deceiving purchasing public, through their said false, misleading, and deceptive acts and practices in labeling and representing and describing their said product, as above set out, as being a certified double body guaranteed ready mixed white paint containing white lead, zinc, and linseed oil in substantial quantities, into the erroneous and mistaken belief that said representations were true, and of causing substantial number of such public, because of said erroneous and mistaken belief, to buy their said product in preference to products of competitors who truthfully label and represent the same and the manufacture thereof; and

- (c) Represented name of manufacture of said paint on front label aforesaid as being "The National Paint Co., Chicago, Ill., Tulsa, Okla.," notwithstanding