

Syllabus

IN THE MATTER OF
CHARLES ATLAS, LTD.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3308. Complaint, Jan. 22, 1938—Decision, Feb. 25, 1939*

Where a corporation engaged in sale of a course of training in physical culture featuring dynamic tension by correspondence, as successor to a business theretofore carried on by an individual who was its treasurer and owner of one-half of its outstanding capital stock, and, as thus engaged, in advertising its said course or system through its booklet entitled "Everlasting Health and Strength" which it sent, along with circular letter and circular, to those applying therefor in response to its invitation so to do in advertisements in magazines and other periodicals of general circulation in the various States, and in which it set forth, among other things, purported facsimile of certificate of award to aforesaid individual as "America's Most Perfectly Developed Man," together with what was represented as an actual photograph showing his very remarkable muscular development, and with statements as to his height, weight, and body measurements, and also with representation, among others in his advertisements published as above described, to the effect that before he discovered the system of training in physical culture now offered and sold, he was "a physical wreck, a sickly half-pint runt, a 97 pound weakling, flat chested, spindly legs and with arms like pipe stems," and with representations in his various advertisements as aforesaid, along with such photographs, to the effect that the remarkable physical development made by him was due to his use of said course—

- (a) Represented, in said advertisements and advertising matter, that users of its course of training could thereby acquire a muscular development similar to that of said individual, including broad, powerful shoulders, biceps that bulge with smashing strength, chest which would stand out solid and muscular, and an evenly developed body that would make others look like dwarfs in comparison, and that it could prove in 7 days to anyone that he could have such a muscular development, facts being, while such course of training might be generally beneficial to users thereof, it would not accomplish results claimed therefor as above set out, muscular development of anyone is limited by the bony structure and other characteristics of his body, and it is impossible for persons of only average physical development, or less than average, to acquire muscular development approximating that depicted in its advertisements or advertising matter;
- (b) Represented that use of said course would bring about a healthy condition, and that constipation, pimples, skin blotches, and similar ailments would be banished, facts being that use thereof would not, in all cases, bring about a healthy condition or banish constipation, pimples, skin blotches, and similar ailments, and would not affect all users alike, and that, while such use might be beneficial to some, others would receive very little benefit or none at all, and such use on still others might have injurious, rather than beneficial, effect; and

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- (c) Made so-called "extraordinary offer" to prospective purchasers offering, along with course for sum of \$5 as special reduced price, said entire course, together with "free" "Outline Course" on Jiu-Jitsu, wrestling, boxing, feats of strength, and hand-balancing, and so-called 150-page book on sex, and represented that supply of said "Outline Course" and book were limited, facts being said price was not special or extraordinary, but usual and customary price charged by it for said course, including such so-called free items, and such offer of free goods was one of long standing and constituted its permanent method of doing business, and price of such free items was included in that of course of training which had to be purchased in order to obtain such items;

With capacity and tendency to induce members of purchasing public to buy its said course in erroneous belief that such statements and representations were true, and to divert trade unfairly to it from competitors engaged in sale in commerce among the various States and in the District of Columbia of similar courses of training by correspondence, and who do not misrepresent the conditions or terms upon which their courses are sold, and the results that may be expected to be obtained from use thereof; to the injury of competition in commerce:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Daniel R. Forbes, of Washington, D. C., 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 Charles Atlas, Ltd., a corporation, hereinafter referred to as the 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. Charles Atlas, Ltd., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 115 East Twenty-third Street in the city and State of New York. Said respondent is now, and for many years immediately last past has been, engaged in the business of offering for sale and selling a course of instruction by correspondence in the science and art of physical culture to persons residing in various States of the United States

and in the District of Columbia. In the course and conduct of said business, respondent causes its said course of instruction to be sent through the United States mails from its said place of business in the city and State of New York to purchasers thereof located in a State or States of the United States other than the State of New York. There is now, and has been at all times hereinafter mentioned, a course of trade and commerce in said courses of instruction so sold and distributed by the 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 its business, as aforesaid, respondent is now, and for many years last past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and distribution of correspondence courses of instruction in the science and art of physical culture in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its courses, the respondent offers its said course of instruction to the purchasing public in advertisements in magazines, newspapers, and elsewhere, and in letters and printed circulars which are sent out by it through the mail and otherwise. Respondent publishes, among others, advertisements in magazines having a national circulation, containing statements and claims of which the following are typical examples:

Atlas makes muscles grow like magic. Five inches of new muscle after one week. My arms increased $1\frac{1}{2}$ inches, chest $2\frac{1}{2}$ inches, forearms $\frac{7}{8}$ " and I have gained 4 pounds. I have no use for apparatus.

Dynamic Tension—ALONE—right in your own home. Will start new inches of massive power pushing out your chest. Build up your shoulders to champion huskiness. Put regular mountains of muscle under your biceps. Free you of constipation, pimples, makes those stomach muscles of yours hard ridges!

I'll prove in the first 7 days YOU can have a body like mine. No other physical instructor in the world has ever dared to make such an offer. Don't get the idea that it takes a lot of time and hard work for you to get amazing strength and powerful muscles. And don't think you need a room full of contraptions.

All I want to know is where do you want big, powerful muscles. How many pounds of firm flesh do you want distributed over your body to fill you out. Where do you lack vitality, pep and robust health. Where do you want to take off flabby surplus fat. Just tell me. Give me a week and I'll show you that I can make a new man of you, give you bodily power and drive and put you in that magnificent physical condition which wins you the envy and respect of any man and the admiration of any woman.

Give me your measure and I'll prove in the first 7 days you can have a body like mine. I'll give you proof or—in 7 days that I can turn you into

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a man of might and muscle. And I'll also give you a rugged health that banishes constipation, pimples, skin blotches and similar conditions that rob you of the good things of life.

PAR. 4. The said advertisements and others of like and similar import are false, misleading, and deceptive in that respondent represents that the use of the instructions and the practice of the physical exercises comprising respondent's course will in all cases—

(a) Build big powerful muscles on the body wherever they look best.

(b) Give vitality, pep, and strength to the system.

(c) Banish constipation, poor digestion, pimples, skin blotches, and other diseases and imperfections.

(d) Build a new body and make a new man.

(e) Transform the pupil, regardless of age or condition, into a person of superb strength and physical appearance.

In truth and in fact, said instructions and the practice of said physical exercises constituting respondent's course will not build big, powerful muscles on the body wherever they look best, nor will they give vitality, pep, and strength to the system, nor will they banish constipation, poor digestion, pimples, and other diseases and imperfections. Such instructions and the practice of respondent's physical exercises will not build a new body and make a new man, and will not transform the pupil, regardless of age or condition, into a person of superb strength or physical appearance in the manner set forth in said advertisements.

PAR. 5. Respondent, upon the receipt of letters from persons answering the said advertisements, mails to such persons the book or pamphlet entitled "Everlasting Health and Strength" and form letters, together with enrollment blanks. The book or pamphlet and the form letters above mentioned contain, in varying phraseology, the statements and representations set forth in the advertisements recited in paragraph 3 of this complaint and are misleading and deceptive in the particulars and for the reasons mentioned in paragraph 4 as to the false, misleading, and deceptive character of said advertisements.

PAR. 6. The final letter in the series of form letters above referred to and mailed to prospective purchasers of respondent is entitled: "Extraordinary Offer!!" and in substance offers to such prospective purchaser the entire course of physical instruction, together with an assortment of books containing sex information and various outline courses on sports for the sum of \$5, with a statement that the former price of the Dynamic Tension course was \$35. Said letter also contains the statement that the supply of said courses is limited and

suggests an enrollment by return mail in order to be sure of receiving said course.

The representations in said letter are false, misleading, and deceptive in that the so-called "Extraordinary Offer" does not bring about any saving to the pupil or any reduction from the price at which the course is regularly sold by the respondent so that the pupil, while offered the course at a purported saving or reduction of \$30, pays, in fact, the usual and ordinary price received by the respondent for its course.

The free offers of the said book on Sexual Education and Outline Courses, made in said letter, are false, misleading, and deceptive in that the said book and courses referred to are not furnished the pupil free but the price thereof is included in the price charged for the course of instruction.

The representation that the supply of said courses is limited and that the prospective purchaser should enroll by return mail to be sure of getting said course is false and misleading in that the supply is not limited and in that the said offer is not in any sense extraordinary, but is the offer made by respondent in the regular course of its business.

PAR. 7. The statements and representations so made by respondent in the ways and manners above alleged have the tendency and capacity to mislead and deceive pupils and prospective pupils into the erroneous and mistaken belief that such representations are true and to induce them to act on such belief and to enroll as pupils of respondent and thus cause patronage to be diverted unfairly to respondent from respondent's competitors in commerce among and between the various States of the United States.

PAR. 8. In the course and conduct of its business as hereinabove described, respondent is, and has been, in competition with corporations, partnerships, firms, and individuals engaged in the sale and distribution of courses of physical instruction in commerce between the several States of the United States and the District of Columbia, which said competitors do not misrepresent, and have not misrepresented, their said courses in advertisements and otherwise.

PAR. 9. The above-alleged acts and practices of respondent are all to the prejudice of the public and of the competitors of respondent, Charles Atlas, Ltd., and constitute unfair methods in competition in interstate 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 January 22, 1938, issued its complaint in the above-entitled proceeding and caused same to be served on the respondent, Charles Atlas, Ltd., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent entered its appearance herein and filed an answer to said complaint on March 5, 1938, and thereafter, at the instance of William L. Pencke, counsel for the Commission, testimony was introduced and evidence received in support of the charges stated in the complaint and in opposition thereto by Daniel R. Forbes, counsel for the respondent, before William C. Reeves, an examiner of the Commission duly designated by it, and said testimony and other evidence were reduced to writing and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, testimony, and other evidence, briefs of the respective counsel, and the Commission having duly considered the matter and being 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 Charles Atlas, Ltd., is a corporation organized in February 1929, under the laws of the State of New York, with its principal place of business in New York City in said State. It is engaged in the business of selling a course of training in physical culture featuring dynamic tension by correspondence. The course so sold consists of 13 multigraphed lessons. The respondent upon its organization succeeded to the business theretofore carried on by Charles Atlas who is now treasurer of the respondent corporation and the owner of one-half of its outstanding capital stock. Respondent causes copies of the lessons which constitute the course of training sold by it, to be sent by the United States mails from its office in the State of New York to purchasers thereof located in various States of the United States other than the State of New York, and in the course and conduct of its said business, respondent has been and is now in active competition with various persons and partnerships and other corporations also engaged in the sale of courses in physical culture, by correspondence, in commerce among several of the States of the United States.

PAR. 2. The respondent in the course of its business, as set out in paragraph 1 hereof, has caused advertisements to be published in magazines and other periodicals having general circulation in various States of the United States. Each of these advertisements contained an invitation to members of the public to send to respondent for a copy of a free 48-page book entitled "Everlasting Health and Strength," and when responses to such advertisements were received by respondent, it then sent to each of the persons so responding a copy of the book together with a circular letter and circular. This book had on its front inside cover page what purported to be a facsimile of a certificate of award to Charles Atlas of the title "America's Most Perfectly Developed Man," with the statement that such award was made in October 1922, at Madison Square Garden in a physical-culture exhibition and on pages 24 and 25 of the book was what was represented to be an actual photograph of Charles Atlas together with a statement of his height, weight, and bodily measurements which were as follows: Height, 5 feet, 10 inches; weight, 180 pounds; chest, normal, 47 inches; waist, 32 inches; neck, 17 inches; biceps, 17 inches; forearm, 14½ inches; thigh, 23¾ inches; calf, 16¼ inches. Among the representations in the advertisements which respondent caused to be published as stated, were representations to the effect that before Charles Atlas discovered the system of training in physical culture now offered for sale and sold by respondent, that he was "a physical wreck, a sickly half-pint runt, a 97-pound weakling, flat chested, spindly legs and with arms like pipe stems." Each of the advertisements which respondent has caused to be published, as stated, was illustrated by what was represented as a reproduction of a recent photograph of Charles Atlas showing his very remarkable muscular development and throughout such advertisements there were representations to the effect that the remarkable physical development made by Charles Atlas was due to the use by him of the course of training now offered for sale and sold by respondent.

PAR. 3. In the advertisements and advertising matter referred to in paragraph 2 hereof the respondent made many false, misleading, and exaggerated representations concerning the course of training in physical culture offered for sale and sold by it and the benefits that might be derived from such course by the users thereof. Among and typical of such false, misleading, and exaggerated claims were those to the effect that by the use of respondent's course of training anyone could acquire a muscular development similar to that of Charles Atlas; that by the use of such course anyone could acquire broad, powerful shoulders, biceps that bulge with smashing strength, a

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chest which would stand out solid and muscular and an evenly developed body that would make others look like dwarfs in comparison; that respondent in 7 days could prove to anyone that he could have a muscular development like that of Charles Atlas; that the use of such course would bring about such a healthy condition that constipation, pimples, skin blotches, and similar ailments would be banished. Other claims and representations of similar import concerning the benefits which would be offered for sale by respondent were contained in such advertisements and advertising matter.

PAR. 4. In truth and in fact while the course of training by correspondence sold by the respondent may be generally beneficial to the users thereof such course of training will not accomplish the results claimed for it by respondents as set out above. The muscular development of anyone is limited by the bony structure and other characteristics of his body and it is impossible for persons of only average physical development, or less than average, to acquire a muscular development approximating that depicted in the advertisement or advertising matter of the respondent. Furthermore, the use of such course of training would not, in all cases, bring about a healthy condition or banish constipation, pimples, skin blotches, and similar ailments. The use of such course will not affect all users alike, and while its use may be beneficial to some users, other users will receive very little benefit or none at all, and the use of such course might have an injurious effect rather than a beneficial effect on others.

PAR. 5. In truth and in fact the representations made by the respondent in connection with its so-called "extraordinary offer" are false, misleading, and deceptive in that the supply of the so-called "Outline Course" on Jiu-Jitsu, wrestling, boxing, feats of strength, and hand-balancing, and the so-called 150-page book on sex were not limited and were not given free to the purchasers of said course of training, but instead the price of \$5 is the usual and customary price charged by the respondent for such course of training including the so-called free items. Furthermore, this offer of free goods is one of long standing and constitutes respondent's permanent method of doing business, and the price of "free" items is included in the price of the course of training which must be purchased in order to obtain the so-called "free" items.

PAR. 6. The statements and representations made by the respondent in its advertisements and advertising matter, as hereinbefore set out, have had and do have the capacity and tendency to induce members of the purchasing public to buy respondent's course of training in the erroneous belief that such statements and representa-

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tions are true and to divert trade unfairly to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and the District of Columbia of similar courses of training by correspondence who do not misrepresent the conditions or terms upon which their courses of training are sold and who do not misrepresent the results that may be expected to be obtained upon a use of such courses. As a result injury is being done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent as hereinbefore found are all to the prejudice and injury of the public, and to competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 Wm. C. Reeves, an examiner of the Commission, theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, and briefs filed herein by William L. Pencke, counsel for the Commission, and by Daniel R. Forbes, counsel for the respondent, 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, Charles Atlas, Ltd., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its course of training in physical culture by correspondence in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that users of its course of training could thereby acquire a muscular development similar to that of Charles Atlas, or any other person of similar physique and appearance.

2. Representing that respondent in 7 days, or any other specified period of time could prove to anyone that he could have a muscular development like that of Charles Atlas, or any other person of similar physique and appearance.

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3. Representing that the use of respondent's course of training will cure, relieve, or benefit constipation, pimples, skin blotches, and similar ailments.

4. Representing that any price is a special or extraordinary price for respondent's course of training or publications when said price is the usual and customary price charged by the respondent under similar circumstances.

5. Using the term "free" or any other term of similar import or meaning to designate or describe articles of merchandise regularly included in a combination offer with identical, similar, or other articles of merchandise.

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

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IN THE MATTER OF

J. D. DRUSHELL TRADING AS J. D. DRUSHELL COMPANY,
AND LAURENCE A. SMITHCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3642. Complaint, Oct. 31, 1938—Decision, Feb. 25, 1939*

Where an individual engaged in sale and distribution of (1) coin-vending machines especially designed to market 1- and 5-cent candy bars made by Hershey Chocolate Corporation, and referred to in conduct of said business as "Hershey Automatic Merchandisers," "Hershey Vending Machines," "Hershey Machines," and "Advance Hershey Vending Machines," and of (2) "Automatic Stores" vending machines which usually contained four separate slots and compartments for distribution of candy, etc., and of (3) candy, confectionery, peanuts, and other commodities for use in said machines, and of (4) assortments of toys and charms designed to be mixed with commodities placed in said "Automatic Stores," so that members of public, on placing coin therein, would occasionally receive one of said toys or charms, presence of which was concealed, in addition to other commodities purchased, and thus secure same wholly by lot or chance, and in selling and distributing his said products through numerous representatives whom he employed and who traveled throughout the various States calling upon retail trade and soliciting orders for said machines, and whose practice it was, on arrival in city in which they expected to canvass, to insert "Man Wanted" advertising in local newspaper or periodical setting forth glowing opportunities to make large profits with own business in sale of Hershey bars through new patented machines, etc.; and, as thus engaged, in active and substantial competition with others engaged in sale and distribution of coin-operated vending machines of various types, and candy, confectionery, peanuts, and other commodities for use therein, in commerce among the various States and in the District of Columbia; and a traveling and sales representative of said individual; as a part of a fraudulent sales plan and scheme entered into by said individual and his representatives, and which included use of contact advertising as above set forth, and acting directly and through said sales representatives, with his knowledge, acquiescence, and active cooperation—

- (a) Represented to prospects contacted and secured as aforesaid that said individual was the representative or agent of the Hershey Chocolate Corporation or the Chocolate Sales Corporation of Hershey, Pa., and that he, or the said business, was directly connected with said concerns, and a division or subsidiary thereof, and that said individual, or the business, was the sole distributor of Hershey penny candy bars, and that such bars were vended exclusively in his vending machines, facts being said individual, trading under company trade name employed by him, was not a part of said Hershey concerns, had no direct connection therewith, was not a division or subsidiary thereof, nor sole distributor of their penny candy bars, which were not vended exclusively in said individual's machines, and he had no authority to arrange for distributors for such concerns;