

Syllabus

IN THE MATTER OF
W. H. COMSTOCK COMPANY, LTD.

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

Docket \$650. Complaint, Nov. 10, 1938—Decision, Mar. 27, 1939

Where a corporation engaged in sale and distribution of medicinal preparations known as "Comstock's Dead Shot Worm Pellets" and "Comstock's N and B Liniment," to purchasers in other States and in District of Columbia, in substantial competition with others engaged in sale and distribution among the various States and in said District of similar medicinal products or products designed for same or similar purposes, and including many who sell such preparations and do not in any way misrepresent the nature and effectiveness thereof—

- (a) Represented, through advertisements disseminated through the mails and in commerce and otherwise, to induce purchase of its said preparations, that said preparation for treatment of worm infection was a specific medicine for such condition which eliminated said worms from the body and was unfailling in its action in the treatment of such infection, facts being it was not such a specific treatment, would not accomplish such results, and was not unfailling in its action; and
- (b) Represented, as aforesaid, including use of purported testimonial quotations, that its said "N and B Liniment" had therapeutic value in the treatment of, and relieved pain of, rheumatism, lumbago, and neuralgia, and was a remedy or cure for, and had therapeutic value in treatment of, chest colds, and in treatment of muscular pains, sprains, strains, and bruises, facts being said liniment did not give quick relief to all types of muscular pains and was not effective treatment for pains of rheumatism, lumbago, and neuralgia, nor treatment or remedy for chest colds, and would not cure or aid in treatment of serious muscular ailments, but was merely counter-irritant and only of value in treatment of muscular pains when due to minor conditions such as exercise or fatigue, and was not aid in treatment of chest colds which, as internal disorders, will not yield to external counter-irritant application;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said statements and representations were true, and with result, as direct consequence of such belief, that number of consuming public purchased substantial volume of its said preparations, and trade in commerce as aforesaid was diverted unfairly to it from its competitors likewise engaged in distribution and sale of similar medicinal preparations, or those designed for similar purposes, and who truthfully advertise 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 and unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

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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 W. H. Comstock Co., Ltd., a corporation, 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. W. H. Comstock Co., Ltd., is a corporation organized and existing under and by virtue of the laws of the Province of Ontario, Dominion of Canada, with its principal offices and place of business located in the city of Brockville, Province of Ontario, and with a branch office located in Morristown, N. Y., U. S. A.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing medicinal preparations known as "Comstock's Dead Shot Worm Pellets" and "Comstock's N and B Liniment." Respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to its customers located in other States of the United States and in the District of Columbia.

Respondent maintains and at all times herein mentioned has maintained a course of trade in said medicinal preparations sold and distributed by it 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, respondent is in active and substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of similar medicinal products, or of products designed for the same or similar purposes as are respondent's preparations, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid respondent has disseminated and caused to be disseminated false advertisements—

1. By the United States mails and in commerce by other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations; and

2. By other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase in commerce of said preparations.

Among and typical of representations thus made by the respondent are the following:

Comstock's Dead Shot Worm Pellets for round and pin worms. Easy to take expellant. The specific medicine for treatment of worm infection. Positively eliminates stomach (round or maw) worms and pin (thread and seat) worms. Unfailing in action. * * *

Comstock's N and B Liniment Works Quickly—It rapidly penetrates the skin and throws a comforting, soothing warmth into the tissues. * * * It eases most muscular pains in a few minutes.

When a liniment is needed it is needed for quick relief of muscular pains. That's the principal purpose of any liniment.

Use it as a liniment should be used, for muscular pains, sprains, strains and bruises; for the pains of rheumatism, lumbago and neuralgia; and for the irritation of chest colds.

When a child, I contracted an illness which left one leg under-developed. It is sometimes impossible for me to walk. Sometime ago I purchased a bottle of your N and B Liniment and it promoted circulation as no other liniment did.

I suffered with a lame back caused by weak muscles and at times was unable to straighten up. I read in your Almanac what Comstock's N and B Liniment had done for others and decided to give it a trial. After two weeks' applications my back felt much stronger, in fact better than it had in three years.

All such statements, together with similar statements appearing in respondent's literature, purported to be descriptive of respondent's products. In all of its advertising literature and through other means, through the statements and representations herein set out and other statements of similar import and effect, respondent directly or by inference represents: that its medicinal preparation known as "Comstock's Dead Shot Worm Pellets" is the specific medicine for the treatment of worm infections, that it positively eliminates stomach worms and pin worms and is unfailing in its action; that its medicinal preparation known as "Comstock's N and B Liniment" gives quick relief to all types of muscular pains, that it is an effective treatment for the pains of rheumatism, lumbago, and neuralgia, that it is a treatment or remedy for chest colds, that it will aid or cure serious muscular ailments of the human body.

PAR. 5. Representations made by respondent with respect to the nature and effect of its preparations are greatly exaggerated, misleading and untrue. In truth and in fact, Comstock's Dead Shot Worm Pellets is not the specific treatment for worm infection and will not eliminate stomach worms and pin worms, nor is it unfailing in its action. Comstock's N and B Liniment does not give quick relief to all types of muscular pains. This preparation is not an effective treatment for the pains of rheumatism, lumbago, and neuralgia. This preparation is not a treatment or remedy for chest colds and will not cure or aid serious muscular ailments of the human body.

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The true facts are that this preparation is merely a counter-irritant and is only of value in the treatment of muscular pains when those pains are due to minor conditions such as exercise or fatigue. It will not constitute an effective treatment for the pains of rheumatism, lumbago, and neuralgia. It is not an aid in the treatment of chest colds because chest colds are internal disorders which will not yield to an external counter-irritant application.

PAR. 6. There are among the respondent's competitors many who distribute and sell similar medicinal preparations designed for the treatment of the same or similar conditions who do not in any way misrepresent the nature and effect of their respective products.

PAR. 7. The use of the false and misleading statements as hereinabove described has had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparations, with the effect that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of distributing and selling similar medicinal preparations or medicinal preparations designed for similar purposes who truthfully advertise their respective products.

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

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 10, 1938, issued and on November 15, 1938, served its complaint in this proceeding upon respondent, W. H. Comstock Co., Ltd., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of

fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. H. Comstock Co., Ltd., is a corporation organized and existing under and by virtue of the laws of the Province of Ontario, Dominion of Canada, and having its principal offices and place of business located in the city of Brockville, Province of Ontario, and a branch office located in Morristown, N. Y., U. S. A.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing medicinal preparations known as "Comstock's Dead Shot Worm Pellets" and "Comstock's N and B Liniment." Respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to the purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said medicinal preparations, sold and distributed by it, 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, respondent is in active and substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution, in commerce between and among the various States of the United States and in the District of Columbia, of similar medicinal products, or of products designed for the same or similar purposes as are respondent's preparations.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has disseminated and caused to be disseminated false advertisements—

1. By the United States mails and in commerce, as commerce is defined in the Federal Trade Commission Act, by other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations; and

2. By other means for the purpose of inducing and which are

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likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparations.

Among and typical of representations thus made by the respondent are the following:

Comstock's Dead Shot Worm Pellets for round and pin worms. Easy to take expellant. The specific medicine for treatment of worm infection. Positively eliminates stomach (round or maw) worms and pin (thread and seat) worms. Unfailing in action. * * *

Comstock's N and B Liniment Works Quickly—It rapidly penetrates the skin and throws a comforting, soothing warmth into the tissues. * * * It eases most muscular pains in a few minutes.

When a liniment is needed it is needed for quick relief of muscular pains. That's the principal purpose of any liniment.

Use it as a liniment should be used, for muscular pains, sprains, strains, and bruises; for the pains of rheumatism, lumbago and neuralgia; and for the irritation of chest colds.

When a child, I contracted an illness which left one leg underdeveloped. It is sometimes impossible for me to walk. Sometime ago I purchased a bottle of your N and B Liniment and it promoted circulation as no other liniment did.

I suffered with a lame back caused by weak muscles and at times was unable to straighten up. I read in your Almanac what Comstock's N and B Liniment had done for others and decided to give it a trial. After two weeks' applications my back felt much stronger, in fact better than it had in three years.

All such statements, together with similar statements appearing in respondent's literature, purported to be descriptive of respondent's products. In all of its advertising literature and through other means, through the statements and representations herein set out and other statements of similar import and effect, respondent directly or by inference represents: that its medicinal preparation known as "Comstock's Dead Shot Worm Pellets" is the specific medicine for the treatment of worm infections, positively eliminates stomach worms and pin worms, and is unfailing in its action; that its medicinal preparation known as "Comstock's N and B Liniment" gives quick relief to all types of muscular pains, is an effective treatment for the pains of rheumatism, lumbago and neuralgia, is a treatment or remedy for chest colds, and will aid in the treatment of or cure serious muscular ailments of the human body.

PAR. 5. The aforesaid representations by respondent with respect to the nature and effectiveness in use of its said preparations are greatly exaggerated, misleading, and untrue. In truth and in fact, Comstock's Dead Shot Worm Pellets is not the specific treatment for worm infection, will not eliminate stomach worms and pin worms, and is not unfailing in its action. Comstock's N and B Liniment does not give quick relief to all types of muscular pains.

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Such preparation is not an effective treatment for the pains of rheumatism, lumbago, and neuralgia, is not a treatment or remedy for chest colds, and will not cure or aid in the treatment of serious muscular ailments of the human body.

The true facts are that Comstock's N and B Liniment is merely a counter-irritant and is only of value in the treatment of muscular pains when those pains are due to minor conditions such as exercise or fatigue. It is not an aid in the treatment of chest colds because chest colds are internal disorders which will not yield to an external counter-irritant application.

PAR. 6. There are among the respondent's competitors in commerce between and among the various States of the United States and in the District of Columbia many who distribute and sell medicinal preparations designed for the treatment of the same or similar conditions who do not in any way misrepresent the nature and effectiveness in use of their respective products.

PAR. 7. The use by the respondent of the false and misleading statements and representations, disseminated as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. As a direct result of such erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparations, and trade in commerce between and among the various States of the United States and in the District of Columbia has thereby been diverted unfairly to respondent from its competitors likewise engaged in the business of distributing and selling similar medicinal preparations or medicinal preparations designed for similar purposes who truthfully advertise their respective products.

CONCLUSION

The aforesaid acts and practices of respondent, 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations

of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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, W. H. Comstock Co., Ltd., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States Mails or in commerce as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a preparation for the treatment of worm infection, now designated by the name of "Comstock's Dead Shot Worm Pellets," or a liniment preparation, now designated as "Comstock's N and B Liniment," or any other preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under said names or under any other names; or disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparations, which advertisements represent, directly or through implication:

(a) That such preparation for the treatment of worm infection is a specific medicine for worm infection, eliminates stomach or pin worms from the human body, or is unfailing in its action in the treatment of worm infection.

(b) That such liniment preparation has therapeutic value in the treatment of, or relieves the pains of, rheumatism, lumbago, or neuralgia.

(c) That such liniment preparation is a remedy or cure for, or has therapeutic value in the treatment of chest colds.

(d) That such liniment preparation has therapeutic value in the treatment of muscular pains of the human body, other than as a counter-irritant for muscular pains due to minor conditions, such as excessive exercise or fatigue.

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.

Complaint

IN THE MATTER OF

HERSHEY CREAMERY COMPANY

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

Docket 3700. Complaint, Feb. 7, 1939—Decision, Mar. 27, 1939

Where a corporation engaged in sale and distribution of frozen confections and assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers, and including (a) a number of 5¢ so called "Fudgicle" and "Banjo" frozen confections for sale and distribution to purchasing public under plan by which purchaser securing handle of one of said confections displaying thereon, after confection's removal, words "Return this stick for free Banjo" (or "free Fudgicle") as case might be, was thus entitled to such additional frozen confection without additional cost, and (b) other assortments involving same principle—

Sold such assortments to dealers by whom same were sold as above described and awards made, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products involving game of chance or sale of a chance to procure frozen confections at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who sell or distribute such confections and are unwilling to adopt and use said or any method involving game of chance or sale of a chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by its said sales plan or method employed in sale and distribution of its frozen confections and by element of chance involved therein and were thereby induced to buy and sell its said products in preference to such products offered and sold by said competitors who do not use same or equivalent methods, and with effect, by reason of said game of chance, of unfairly diverting trade to it from its said competitors who do not use such or equivalent method; to the substantial 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.

Mr. L. P. Allen, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hershey Creamery Co., a corporation, 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: