

IN THE MATTER OF
FREDERICK CLUTHE, TRADING AS CHARLES CLUTHE
& SONS; AND CHARLES CLUTHE & SONS (A CORPORATION)

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

Docket 3512. Complaint, July 27, 1938—Decision, Apr. 10, 1939

Where an individual and a corporation, engaged in manufacture of trusses for ruptures, and in sale and distribution thereof to purchasers in various other States, in competition with others engaged in sale and distribution in commerce among the various States of trusses and similar appliances; in advertising their said products in pamphlets and circulars distributed to prospective purchasers in various States, and in newspapers, and periodicals circulating among the various States—

- (a) Represented, through use of term "Guaranteed to hold," that their said truss would prevent the intestines from passing through the rupture; and
- (b) Represented that use thereof would enable ruptured persons to engage safely in severe forms of exercise and physical effort, and that same would seal the rupture opening; and

Where said individual—

- (c) Represented, as above set forth, that their said appliance was a new kind of truss or invention, and that elastic or spring trusses were not adaptable for use on the body, and that ruptured person using their said truss would be assured of beneficial results by reason of such use, and that it would fit ruptures; and
- (d) Represented, through use of term "overcome rupture troubles," that use of their said truss would cure a rupture, and that the necessity for an operation for rupture would be eliminated by reason of the use of such truss;

Facts being said product was not a new kind of truss and invention, and would not overcome rupture troubles or fit and cure the rupture, and was not a way of obtaining sure results in the treatment of such condition, and would not end rupture worries and accomplish results above claimed, elastic or spring trusses could be adapted for use on the body, and their said truss would not seal the opening or save and eliminate necessity of operation for rupture, and their said representations were false and misleading;

With effect of misleading and deceiving members of purchasing public in various States into erroneous and mistaken belief that said statements and representation were true, and into purchasing substantial quantities of their said products because of such erroneous and mistaken belief, and with result that trade was thereby diverted unfairly to them from their competitors aforesaid 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.

1390

Complaint

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

Mr. Charles S. Cox for the Commission.

Cromelin, Townsend, Brooke & Kirkland, of Washington, D. C., for respondent.

COMPLAINT ¹

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 Frederick Cluthe, trading as Charles Cluthe & Sons, 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, Frederick Cluthe, is an individual trading as Charles Cluthe & Sons, with his principal place of business located at 232 Broad Street, Bloomfield, N. J. Respondent, under the trade name of Charles Cluthe & Sons, is now, and for more than two years last past has been, engaged in the advertising, manufacture, sale, and distribution of trusses, which are appliances used for bodily afflictions commonly called ruptures. Such trusses, when sold, are transported or caused to be transported by the respondent to purchasers of the same located in various States of the United States other than the State of New Jersey and thus respondent at the times

¹ Charles Cluthe & Sons, a corporation, was added as party respondent to the original complaint by following order dated October 21, 1938:

This matter coming on to be heard by the Commission upon the motion of Charles Cluthe & Sons, a corporation, that the complaint herein be amended and that it be added as a party respondent, and it appearing to the Commission that Charles Cluthe & Sons was organized and incorporated under the laws of the State of New Jersey on July 8, 1937, and has at all times thereafter conducted the business formerly conducted by Frederick Cluthe, an individual, trading as Charles Cluthe & Sons, and that all the acts complained of in the complaint in this proceeding subsequent to July 8, 1937, should also be directed to Charles Cluthe & Sons, a corporation, and that petitioner has waived the service of said complaint on it and has waived hearing on, or service of notice as to action on its petition, and has waived the formal amendment and service of an amended complaint in this proceeding naming it as a party respondent herein; and the Commission having duly considered said motion and the record herein, and being now fully advised in the premises.

It is ordered, That the complaint herein be, and the same hereby is, amended so as to make Charles Cluthe & Sons, a corporation, a party respondent herein, and that the charges set forth in said complaint insofar as the same were subsequent to July 8, 1937, shall be, and the same are, considered as also directed to Charles Cluthe & Sons, a corporation.

It is further ordered, That the respondent, Charles Cluthe & Sons, a corporation, shall file its answer to the complaint herein within twenty days from the date of service of this order upon it.

Complaint

28 F. T. C.

herein mentioned has maintained and now maintains a constant current of trade and commerce in said product into and through the various States of the United States.

PAR. 2. Respondent offers said trusses for sale through pamphlets and circulars which are sent to States in the United States other than the State of New Jersey and in advertisements which are published and circularized in various newspapers, magazines and periodicals having a circulation in other States than the State of New Jersey.

PAR. 3. The respondent in the course and conduct of his said business at all times herein mentioned has been and is now in competition with other individuals, and with partnerships, firms, and corporations engaged in the advertising, manufacture, sale, and distribution of trusses and appliances similar to those of respondent into and through the various States of the United States.

PAR. 4. In the course and conduct of his business respondent makes certain representations to prospective customers in said circulars or advertisements in the following words, to wit:

Ruptured? Improvement or recovery can result only from having your Rupture continuously held. The principle of the famous Cluthe Comfort Truss provides the needed holding support and in the proper direction as is possible with no other type of truss or appliance. * * * Positively guaranteed to hold.

New Kind of Truss Amazes Ruptured!

Ruptured? Try the Cluthe Automatic Comfort Truss. Doctors themselves wear and recommend it. Guaranteed to hold your rupture safely under heaviest strain.

Know The Truth About Rupture. Can you really overcome rupture trouble? Yes! * * * sure help may be obtained without an operation. * * * the Cluthe Automatic Easy Truss. * * *

* * * saves operation, insures safety, * * *

Beware The Danger in Wearing Trusses Like These (pictured) * * * It will enable you to be just as active, work just as hard as anybody, with absolute safety and maximum ease. It will hold your rupture in under all conditions of strain. This is absolutely necessary for improvement or recovery.

Your Cluthe Truss * * * is fitted correctly, and * * * does exactly the job you want done. * * * we can and do provide a truss that permits you to be just as active and work just as hard as you ever did. * * * When you consider that no improvement or recovery can result except through complete and proper holding, why continue to expect the impossible from any truss which fails to hold at all times.

* * * For with no other type of truss can rupture be so easily held * * * Cluthe Truss that holds under all conditions of strain.

Ruptured? Get Up-To-Date Relief. Why try to worry along with old-fashioned trusses that gouge your flesh—press heavily on hips and spine—enlarge opening—fail to hold rupture up and in? You need the Cluthe. No harness. Automatic adjustable pad seals opening * * * Cannot slip. Holds rupture whether at work or play.

* * * elastic and spring trusses simply aren't adapted to the human body. * * *

If ruptured Try This Wonder Truss. * * * Guaranteed to hold even the worst rupture under all conditions.

If Ruptured Try This Wonder Truss * * * Guaranteed to hold even the worst rupture under the most difficult conditions.

* * * you don't realize how much it means to be protected against the danger of having your rupture come out—or you would never have gone all this time without trying a Cluthe Truss. * * * you are secure against all likelihood of such trouble and danger the minute you put on a Cluthe Truss * * *.

If Ruptured Try This Wonder Truss. Nothing ever known to equal its amazing combination of perfect, safe holding support and astonishing comfort. * * * Guaranteed to hold.

and statements and representations of similar import.

By the means and in the manner aforesaid, the respondent represents and implies that the Cluthe Truss is a new kind of truss and invention; that by using the Cluthe Truss rupture troubles can be "overcome"; that the Cluthe Truss will fit and cure the rupture; that the wearing of said appliance is a way of obtaining sure results; that by using said appliance the person will end rupture worries; that said appliance will make one secure against all likelihood of having his rupture come out; that said appliance can be worn with absolute safety; that elastic or spring trusses are not adapted to the human body; that the Cluthe Truss will enable its user to engage in the most severe form of exercise and strain; that said truss will seal the opening; and that the Cluthe Truss will save the necessity of an operation.

PAR. 5. The representations and implications so made and used by the respondent, as hereinabove alleged, with respect to said product are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, said product is not a new kind of truss and invention; will not overcome rupture troubles; will not fit and cure the rupture; is not a way of obtaining sure results; will not end rupture worries; will not make one secure against all likelihood of having his rupture come out; can not be worn with absolute safety; that elastic or spring trusses can be adapted to the human body; that the Cluthe Truss will not enable its user to engage in the most severe form of exercise and strain; will not seal the opening; and will not save the necessity of an operation.

PAR. 6. Among the competitors of respondent are those who do not in any manner misrepresent the qualities and properties of their products and who do not use the methods, acts and practices used by the respondent, as herein alleged, in connection with the sale and distribution of their said products in said commerce.

Findings

28 F. T. C.

PAR. 7. The acts and practices of the respondent in making and using said representations and implications in connection with the sale and distribution of said product in said commerce and to induce the purchase thereof, as hereinabove alleged, have had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that all of said representations and implications are true and have caused many members of the purchasing public, because of said mistaken and erroneous belief, to purchase a substantial volume of respondent's said product with the result that trade in said commerce has been diverted unfairly to the respondent from his competitors to their injury and to the injury of the public.

PAR. 8. The aforesaid acts and practices of the 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 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 July 27, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Frederick Cluthe, an individual trading as Charles Cluthe & Sons, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

On October 21, 1938, the complaint was amended by director of the Commission so as to make Charles Cluthe & Sons, a corporation, a party respondent thereto, and all the allegations in the complaint relating to acts and practices committed subsequent to July 8, 1937, were also directed against Charles Cluthe & Sons, a corporation.

On March 2, 1939, respondent Frederick Cluthe, an individual trading as Charles Cluthe & Sons, Bloomfield, N. J., and the respondent Charles Cluthe & Sons, a corporation, filed motions to be allowed to withdraw their answers in this proceeding and not to substitute in lieu thereof answers admitting all the material allegations of fact set forth in said amended complaint and waiving all intervening procedure and further hearing as to the said facts. The Commission by order entered herein granted respondents' motion for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations set forth in said amended complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final

1390

Findings

hearing before the Commission, on the said amended complaint and substitute answers, 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, Frederick Cluthe, is an individual trading as Charles Cluthe & Sons, and having his principal office and place of business located at 232 Broad Street, Bloomfield, N. J. Respondent, Charles Cluthe & Sons, is a corporation organized, existing and doing business under the laws of the State of New Jersey, and having its principal office and place of business at 232 Broad Street, Bloomfield, N. J. Respondent Frederick Cluthe, an individual trading as Charles Cluthe & Sons, for more than one year prior to July 8, 1937, was, and respondent Charles Cluthe & Sons, a corporation, is now and has been since July 8, 1937, engaged in the manufacture, sale and distribution of trusses, which are appliances used for bodily afflictions commonly called rupture. Such trusses, when sold, are transported, or caused to be transported, by respondents to purchasers of the same located in various States of the United States other than the State of New Jersey, and thus respondents at the times herein mentioned have maintained, and now maintain, a constant current of trade in commerce in said products into and through various States of the United States.

PAR. 2. In the course and conduct of their said business, and to induce the purchase of their trusses, respondent, Frederick Cluthe, prior to July 8, 1937, and respondent, Charles Cluthe & Sons, a corporation, subsequent to July 8, 1937, caused statements and representations relative to the effectiveness in use of their trusses, to be inserted in pamphlets and circulars, distributed to prospective purchasers situated in various States of the United States, and in newspapers, magazines and periodicals having a circulation among and between various States of the United States. Among and typical of the statements and representations disseminated as aforesaid are the following:

Ruptured? Try the Cluthe Automatic Comfort Truss. Doctors themselves wear and recommend it. Guaranteed to hold your rupture safely under heaviest strain.

Ruptured? Get Up-To-Date Relief. Why try to worry along with old-fashioned trusses that gouge your flesh—press heavily on hips and spine—enlarge opening—fail to hold rupture up and in? You need the Cluthe. No

Findings

28 F. T. C.

harness. Automatic adjustable pad seals opening * * * Cannot slip. Holds rupture whether at work or play.

If Ruptured Try This Wonder Truss * * * Guaranteed to hold even the worst rupture under all conditions.

If Ruptured Try This Wonder Truss * * * Guaranteed hold even the worst rupture under the most difficult conditions.

If Ruptured Try This Wonder Truss. Nothing ever known to equal its amazing combination of perfect, safe holding support and astonishing comfort. * * * Guaranteed to hold.

and statements and representations of similar import.

By the means and in the manner aforesaid, the respondent, Frederick Cluthe, an individual trading as Charles Cluthe & Sons, and respondent, Charles Cluthe & Sons, a corporation, represent and imply that the Cluthe Truss will enable its users to engage safely in the most severe form of exercise and strain; that by using said appliance the person will end rupture worries; that said appliance will seal the rupture opening; and that said appliance will make one secure against all likelihood of having his intestines pass through the rupture.

PAR. 3. In the course and conduct of his business and in addition to the aforesaid statements and representations, the respondent Frederick Cluthe, an individual trading as Charles Cluthe & Son, caused other statements and representations relative to the effectiveness in use of his trusses to be disseminated in the manner described in paragraph 2 hereof. Among and typical of such statements and representations disseminated as aforesaid are the following:

Ruptured? Improvement or recovery can result only from having your Rupture continuously held. The principle of the famous Cluthe Comfort Truss provides the needed holding support and in the proper direction as is possible with no other type of truss or appliance. * * * Positively guaranteed to hold.

Know The Truth About Rupture. Can you really overcome rupture troubles? Yes! * * * sure help may be obtained without an operation. * * * the Cluthe Automatic Easy Truss. * * *

* * * saves operation, insures safety, * * *.

Beware The Danger In Wearing Trusses Like These (pictured) * * * It will enable you to be just as active, work just as hard as anybody, with absolute safety and maximum ease. It will hold your rupture in under all conditions of strain. This is absolutely necessary for improvement or recovery.

Your Cluthe Truss * * * is fitted correctly, and * * * does exactly the job you want done. * * * we can and do provide a truss that permits you to be just as active and work just as hard as you ever did. * * * When you consider that no improvement or recovery can result except through complete and proper holding, why continue to expect the impossible from any truss which falls to hold at all times.

* * * For with no other type of truss can rupture be so easily held * * * a Cluthe Truss that holds under all conditions of strain.

* * * elastic and spring trusses simply aren't adapted to the human body. * * *

1390

Findings

* * * you don't realize how much it means to be protected against the danger of having your rupture come out—or you would never have gone all this time without trying a Cluthe Truss. * * * you are secure against all likelihood of such trouble and danger the minute you put on a Cluthe Truss * * *.

and statements and representations of similar import.

By means and in the manner aforesaid the respondent, Frederick Cluthe, an individual trading as Charles Cluthe & Sons, Bloomfield, New Jersey, represents and implies that the Cluthe Truss is a new kind of truss and invention; that by using the Cluthe Truss rupture troubles can be "overcome"; that the Cluthe Truss will fit and cure the rupture; that the wearing of said appliance is a way of obtaining sure results in the treatment of a rupture; that elastic or spring trusses are not adapted to the human body; and that the Cluthe Truss will save the necessity of an operation for rupture.

PAR. 4. The representations thus made by the respondents are false and misleading. In truth and in fact, said product is not a new kind of truss and invention; will not overcome rupture troubles; will not fit and cure the rupture; is not a way of obtaining sure results in the treatment of a rupture; will not end rupture worries; will not make one secure against all likelihood of having his intestines pass through the rupture; will not enable a ruptured person to engage safely in the most severe form of exercise and strain. Elastic or spring trusses can be adapted for use on the human body. Respondents' truss will not seal the rupture opening and will not save or eliminate the necessity of an operation for rupture.

PAR. 5. In the course and conduct of their aforesaid business, the respondents are now, and have been during all the times mentioned herein, in competition with other individuals and corporations and with firms and partnerships engaged in the sale and distribution in commerce among and between the various States of the United States of trusses and appliances similar to those of respondents.

PAR. 6. The use by the respondents of each and all of the aforesaid false and misleading statements and representations now has, and has had, the tendency and capacity to, and does, and did, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that said statements and representations are true and into purchasing substantial quantities of respondents' products because of said erroneous and mistaken belief. As a result thereof trade in commerce among and between various States of the United States has been diverted unfairly to the respondents from their said competitors engaged in the sale and distribution of trusses and who truthfully advertise their respective products.

Order

28 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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 amended complaint of the Commission, and the answers of the respondents, in which answers the respondents admit all the material allegations of fact set forth in said amended complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Frederick Cluthe, individually and trading as Charles Cluthe & Sons, or under any other name or names, his representatives, agents, and employees, and the respondent Charles Cluthe & Sons, a corporation, its representatives, officers, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a truss now designated as the "Cluthe Truss," or any other truss of substantially the same design, style and workmanship, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

(a) By the use of the term "guaranteed to hold," or any other term or terms of similar import and meaning, or in any other manner, that the use of such truss will prevent the intestines from passing through the rupture.

(b) That the use of such truss will enable ruptured persons to engage safely in severe forms of exercise and physical effort.

(c) That such truss will seal a rupture.

It is further ordered, That the respondent Frederick Cluthe, individually and trading as Charles Cluthe & Sons, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a truss now designated as the "Cluthe Truss" or any other truss of substantially the same design, style, and workmanship, in commerce, as commerce is defined

1390

Order

in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

(a) That such truss is a new kind of truss or invention.

(b) That a ruptured person using such truss will be assured of beneficial results by reason of the use thereof.

(c) That elastic or spring trusses are not adaptable for use on the human body.

(d) That such truss will fit ruptures.

(e) By the use of the term "overcome rupture troubles", or any other term or terms of similar import and meaning, or in any other manner, that the use of such truss will cure a rupture.

(f) That the necessity for an operation for rupture will be eliminated by reason of the use of such truss.

It is further ordered, That the respondents shall, within 60 days after service on them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
**HAROLD L. ROTHSCILD, TRADING AS CORONADO
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 2829. Complaint, May 29, 1936—Decision, Apr. 11, 1939

Where an individual engaged in sale and distribution of cosmetics and toilet preparations among the various States, under a plan involving (1) the disposition of his products through distributors who were required to deposit \$300 and were then supplied with assortment of such products, together with thirty display cases to be placed in drug stores and other establishments, for sale of product on commission by proprietors of such stores and establishments, and (2) employment of supervisors who visited various cities and advertised at own expense, but with copy which he furnished, for distributors, in business and opportunity columns of local papers, and were paid by him commission of 25 percent on amount of business placed by them—

- (a) Represented through such advertising and through his said representatives or supervisors, that he had been established in business since 1923, and that a substantial demand had been established for his preparations, and exhibited letters setting forth high quality and salability of his said products, and represented that distributors would receive \$50 weekly with steady increase, and that they were earning from \$10 a day to \$5,000 a year, even without sales experience, and that least distributor would earn would be \$40 a week, and in some instances guaranteed minimum income of between \$3,000 and \$5,000 a year, and exhibited to applicants list containing names of those represented as receiving such amounts, and letters purporting to be from distributors showing their sale of large quantities of his said merchandise;

Facts being he established his business in 1933 and not in 1923, had not established substantial demand for his preparations, letters setting forth high quality and salability of his said products above referred to had been, in a number of such cases, presented to storekeepers for their signature when the goods were placed with them and before they had time to verify statements contained therein and later found such products not of high quality and with very little sale therefor, and distributors did not earn amounts as above alleged, and none had earned such amounts, but instead, in numerous cases, had suffered losses, and in some instances loss of entire investment, and in others loss ranging from \$165 to \$285, and, according to admission of supervisor, in no case had met with success or earned any substantial amount; and

- (b) Represented to applicants that supervisors would assist them in disposing of his merchandise, and that if applicants were unable to dispose thereof their money would be refunded upon its return to him, and informed applicants that after having made original purchase, they would be furnished with additional supplies of cosmetics and toilet preparations under profit-sharing plan, and that they would be given new and exclusive territory;