

IN THE MATTER OF
JOSEPH ROSENFELD, INDIVIDUALLY, AND TRADING AS
RIGHTWAY INSTITUTE

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

Docket 3158. Complaint, June 19, 1937—Decision, April 11, 1939

Where an individual engaged, under name "Rightway Institute," in sale, under name "Rightway Method," of courses of instruction represented as treatment and cure for indigestion, heartburn and relief of gas, and in thus selling and distributing, under such various designations as "Rightway Method," "Relief Without Medication," and "Rightway Institute," books and pamphlets which purportedly contained system or method of exercising for the treatment of or relief from conditions above set forth, and in describing, in advertisements, magazines, newspapers, and other media circulated in the various States and in the District of Columbia and in books, pamphlets, circulars and letters distributed from his place of business through the mails and otherwise, his said method to purchasers or prospective purchasers in other States, in competition with many who make and compound various products and publish various books, pamphlets and treatises on methods designed and intended to relieve, cure or treat the various ailments or conditions similiar to those for which he represented his said method as relief or cure, and who do not, in thus selling and distributing their products and publications in commerce among the several States and in said District, in any way misrepresent their nature and character or their effectiveness or their true status as private business vendors—

- (a) Represented, directly or by implication, that his said system or method of exercising was a scientific way to relieve indigestion and stomach and intestinal gas, and that it would cure such ailments and conditions, and that it could be used with safety by all persons suffering therefrom, through such statements, among others, as "The Rightway Method is a wonderful cure and I can recommend it to anyone who is distressed with heartburn caused from indigestion and gas," "Safe! and Sure!," "I can truthfully say that I am entirely cured from my old ailment that I had been troubled with for years," and "SCIENTIFIC GUARANTEED METHOD," and "STOP GAS PAINS"; and
- (b) Represented, through use of word "institute" in aforesaid trade name, which he featured, and through other statements including those hereinabove indicated, that his business was that of an institute or scientific research body conducted by graduate physicians and specially trained experts in physical culture, and that he maintained a trained technical staff of employees and a properly equipped laboratory for the conduct of scientific research and experiments as to use and effect of exercise in treatment and cure of aforesaid ailments and conditions, or that his said system or method of exercising was founded on, or the result of, such research and experiments;

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Facts being he did not conduct an institute or organization for scientific research, had no place of business other than desk space, conducted his business without aid of employees or assistants, was not a physician, had no knowledge of physical culture, and did not have associated with him, or consult with, any physician or specialists in said subject, had never made or had made any physical examination of any customers or prospective customers and users of the system or method, or any clinical test of the therapeutic value thereof, exercises provided could not properly be represented as a treatment or cure for said conditions and would not remove such gas, causes of which can be determined only by physical examination by physicians or specially trained physical experts, and his said system was not a scientific one for aforesaid purposes, nor a safe and sure cure for relief of such pain and distress, and use thereof under certain conditions sometimes attending those suffering therefrom would be dangerous;

With capacity and tendency to mislead and deceive public and persons suffering from indigestion and gas as above set forth, and from pains in stomach and intestines thus caused, and with result that customers and potential customers, through reading of statements as above indicated, were deceived and mislead into false and erroneous belief that such statements were true and that said system or method had a definite and valuable therapeutic effect in the treatment of such conditions and maladies, and with tendency and capacity, because of such erroneous and mistaken belief, to cause members of consuming public to purchase and use such system or method instead of remedies, products and courses of treatment of competitors, devised, intended and used for treatment of same or similar maladies, diseases and conditions, and with effect of diverting trade to him from competitors who do not use such false and deceptive acts and practices in sale of methods of treatment by correspondence and commodities sold for similar ailments and diseases; to the substantial injury of competition in commerce:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

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 Joseph Rosenfeld, an individual trading as Rightway Institute, hereinafter referred to as respondent, has been, and now is, using unfair methods of competition in commerce, as "commerce" is defined in 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 Joseph Rosenfeld, is an individual trading under the name and style Rightway Institute with his principal office and place of business located at 815 South Hill Street, Los Angeles, Calif. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of books, pamphlets, and other literature variously designated "Health Service," "Method of Relief without Medication," and "The Rightway Method." These books and pamphlets describe and set out respondent's methods of undertaking to cure or relieve indigestion, heart burn, excess gas in the stomach and other distressed intestinal and stomach conditions. He causes, and for more than 1 year last past has caused, his said books and pamphlets describing and setting forth his method of treatment, when sold, to be transported through the United States mail from his place of business in Los Angeles, Calif. to the purchasers thereof, some located in the State of California and other (sic) located in various other States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a constant current of trade and commerce in said pamphlets and method of treatment sold by the respondent between and among the various States of the United States and in the District of Columbia.

Respondent is now, and for more than 1 year last past has been, in substantial competition with persons, corporations and with firms and partnerships engaged in the sale of similar books and pamphlets undertaking to provide methods for curing, relieving or treating the same ills and conditions of the human body or in the sale of various medical preparations designed, intended, and used for the treatment of the same ills and conditions in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of his business, and for the purpose of inducing the purchasing of his books and pamphlets, respondent has caused advertisements to be inserted in newspapers and periodicals of general circulation throughout the United States and has printed and circulated throughout the several States to customers and prospective customers, through the United States mail and otherwise, advertising folders, letters, and literature. In all of said types of advertisements and advertising literature, the respondent has caused his trade name "Rightway Institute" to be prominently and conspicuously displayed, together with such statements as the following:

The Rightway Method is a wonderful cure and I can recommend it to anyone who is distressed with heartburn caused from indigestion and gas.

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And if you decide to try the Rightway Method, the Rightway Institute positively guarantees you that the \$3 you spend will be the last money you will need to spend.

And knowing the "Rightway" not any of you will be without the means for quick, blessed relief from the evils of indigestion no matter where you happen to be.

Do this and you will obtain the same prompt and gratifying results as the other numerous users of the "Rightway."

You can rest assured that with it you get rid of your gas distress promptly. Safe! and Sure!

HOW I RID MYSELF OF GAS PAINS in three minutes.

I can truthfully say I am entirely cured from my old ailment that I had been troubled with for years.

SCIENTIFIC GUARANTEED METHOD.

STOP GAS PAINS.

PAR. 3. All of said statements, together with other similar statements appearing in respondent's advertising that are not herein set out in full purport to be descriptive of respondent's method of undertaking to cure or relieve indigestion, heartburn, excess gas in the stomach and other distressed intestinal and stomach conditions and the effectiveness of respondent's method in curing or relieving said ailments and conditions. Through said statements, the respondent represents that his recommended methods or treatments set out in his books and pamphlets form competent and effective cures or competent and effective treatments for the relief of all cases of indigestion, heartburn, excess gas in the stomach and other distressed intestinal and stomach conditions.

PAR. 4. In addition, the use of the trade name which includes the word "Institute" serves as a representation to members of the public that the respondent is conducting an institute which is some sort of an organization devoted to the scientific study of the various ailments and conditions of the human body hereinabove named and to a study of competent and effective remedies, treatments and cures for said ailments and conditions and that said organization is primarily interested in such scientific investigation rather than in the sale of any books and pamphlets or other articles of commerce.

PAR. 5. In truth and in fact, the representations made by the respondent with respect to the effect of his method of treating the above named ills and conditions are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the study of respondent's books and pamphlets and the use of his method set out herein will not afford relief in three minutes or in any other length of time for all persons suffering from distressed heartburn, indigestion or gas. The methods described in respondent's pamphlets consist principally in a series of body movements which will not have any effect in over-

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coming the causative factors in the production of gas either in the stomach or in the intestines. The use of such body movements will not afford permanent aid in this respect and is not in all cases a reliable procedure for the relief of such ailments and conditions. The use of respondent's method will not afford relief in cases of indigestion.

The respondent does not operate any institute within the commonly accepted meaning of that term. He does not conduct any place where research or scientific investigation is conducted and he maintains no scientific body or group of persons cooperating in research work. The business conducted by the respondent is nothing more than a private venture designed, intended, and used in the furtherance of the sale of his aforementioned books and pamphlets.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell various books, pamphlets or products designed, intended and sold for the purpose of curing, relieving, or treating the various ailments and conditions of the human body, hereinabove named, who do not, in any way, misrepresent the nature or character of their respective products or their effectiveness when used and who do not misrepresent their true status as private business ventures.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing his business status and the effectiveness of the methods set out in his books and pamphlets for curing, treating or relieving the aforementioned ailments and conditions of the human body were, and are, calculated to, and had, and now have a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that upon following respondent's methods of treatment, the results claimed will be accomplished. Further, as a consequence of such mistaken and erroneous beliefs, induced as aforesaid, a number of the consuming public have purchased and used a substantial number of respondent's books and pamphlets with the result that trade has been unfairly diverted to the respondent from competitors described in paragraph 6 hereof. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the several states of the United States.

PAR. 8. The aforementioned methods, acts and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts and practices constitute unfair methods of competition in commerce within the intent and

meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and served its complaint upon respondent, Joseph Rosenfeld, an individual, trading under the name and style, Rightway Institute, charging respondent with the use of unfair methods of competition in commerce, as commerce is defined in said act. After the issuance of said complaint, testimony and other evidence in support of the allegations of said complaint were introduced by Clarence T. Sadler, and Sherman R. Hill, attorneys for the Commission, before Charles P. Vicini, examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by the respondent in his own behalf, 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 briefs of counsel for the Commission in support of the complaint and that of the respondent in his own behalf; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Joseph Rosenfeld, is an individual trading under the name and style "Rightway Institute," with his principal office and place of business at 815 South Hill Street, Los Angeles, Calif. Respondent sold and distributed in interstate commerce, from 1929 until February 1937, a course of instruction represented as a treatment and cure for indigestion, heartburn, and relief of gas on the stomach and in the intestines, designating such course as the "Rightway Method," and representing that he conducted the "Rightway Institute" and "Rightway Method Company," and that the Rightway Method is a scientific method and a "wonderful cure guaranteed as a means for quick relief from indigestion and gas pains."

PAR. 2. The respondent during the time herein stated in paragraph 1, sold and distributed in commerce between and among the several States of the United States and in the District of Columbia,

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books and pamphlets variously designated under the titles or captions "Rightway Method," "Relief Without Medication," and "Rightway Institute," and others, which contain, or are purported to contain a system, or method of exercising for the treatment of, or relief from indigestion, gas on the stomach and in the intestines, and pains and distress in the stomach and intestines. Respondent likewise caused statements to be published in advertisements, magazines, newspapers, periodicals, and other media, circulated in various States of the United States and in the District of Columbia, and in books, pamphlets, circulars, and letters describing his said method of treatment, distributed by respondent from his place of business in Los Angeles, Calif., through the mails and otherwise, to purchasers or prospective purchasers thereof located in States of the United States other than the State of California and in the District of Columbia.

PAR. 3. In the course of the operation of his said business and for the purpose of inducing the purchase by the public of his said books, pamphlets, and other literature outlining and describing his said system or method, respondent caused his trade name, "Rightway Institute," to be prominently and conspicuously displayed. Respondent also represented that his said method was a scientific method, and guaranteed that the \$3 spent for his method of treatment would be the last money one would need to spend; and made the following further statements and representations:

The Rightway Method is a wonderful cure and I can recommend it to anyone who is distressed with heartburn caused from indigestion and gas.

And if you decide to try the Rightway Method, the Rightway Institute positively guarantees you that the \$3 you spend will be the last money you will need to spend.

And knowing the "Rightway" not any of you will be without the means for quick, blessed relief from the evils of indigestion no matter where you happen to be.

Do this and you will obtain the same prompt and gratifying results as the other numerous users of the "Rightway."

You can rest assured that with it you get rid of your gas distress promptly. Safe! and Sure!

Gas Pains relieved in three minutes.

I can truthfully say I am entirely cured from my old ailment that I had been troubled with for years.

Scientific guaranteed method.

Stop gas pains.

Through these statements and representations respondent represents that his business is that of an institute or scientific research body conducted by graduate medical doctors and specially-trained experts in physical culture; that his method of treatment is a scientific method, the result of research and scientific tests; that the

method will relieve diseases caused from indigestion and gas on the stomach and intestines and will relieve or cure pains in the stomach and intestines produced by gas in the stomach and intestines no matter from what cause; and that the \$3 paid for his method of treatment will be all the expense that will be necessary to effect relief from or cure of such distress, pain or disease.

PAR. 4. An institute as represented by respondent in his advertising matter, as set out in paragraph 3 hereof, signifies an institution or organization for scientific research. In truth and in fact, respondent does not conduct and never has conducted an institute. In conducting similar businesses, as herein stated, respondent used several designations and names for his business other than those set out in his said advertising matter; and, ascertaining that the State Board of Health of the State of California would permit the use of the word "institute" in the manner described by him in the conduct of such business, employed and now employs the word "institute" as described. Respondent has no place of business other than desk space from which his business is transacted, and conducts such business without the aid of employees or assistants. Respondent is not a physician and has no knowledge of physical culture and does not have associated with him and does not consult with any physician or specialist in physical culture in the conduct of his business. Respondent has never made or caused to be made any physical examination of the customers or prospective purchasers and users of his system or method of treatment, and has never made or caused to be made and there has not been made at his instance any clinical test of the therapeutic value of his system or method of treatment sold and shipped as herein set out, the exercises provided for in respondent's system or method cannot be properly represented as a treatment or cure for heartburn caused by indigestion or gas, and would not remove gas from the stomach or intestines. Gas is caused or produced in the human stomach and intestines by various causes, and unless the cause is removed gas will continue to form. The causes of such gas formations can be determined only by physical examination by graduate medical practitioners or specially-trained physical experts. The respondent's suggested system or method will not relieve or cure such condition, irrespective of its cause and respondent's system or method is not a scientific system or method curing indigestion and removing gas from the intestines and stomach; it is not a safe and sure cure for the relief of pain and distress caused by such gas formation. There are certain conditions sometimes attending persons suffering gas pains wherein the use of respondent's system or method would be dangerous.

PAR. 5. There were and are among respondent's competitors many who manufactured and compounded, and who manufacture and compound, various products and publish various books, pamphlets and treatises on methods designed and intended for the purpose of relieving, curing or treating the various ailments or conditions of the human body, similar to or like those which respondent represented his method would relieve or cure, who sold and distributed and who sell and distribute, said products and publications in commerce between and among the several States of the United States and in the District of Columbia, who did not and do not in any way misrepresent the nature and character of their respective products, methods and treatments, or their effectiveness when used, and who did not and do not misrepresent their true status as private business ventures.

PAR. 6. The statements and representations made by respondent, as set out in paragraph 3 hereof, have the capacity and tendency to mislead and deceive the public and persons suffering from indigestion and gas on the stomach and in the intestines and who suffer from pains in the stomach and intestines caused from gas due to indigestion or other causes. Customers and potential customers throughout the several States of the United States, reading the statements made by respondent as set out in paragraph 3 hereof, have been deceived and misled into the false and erroneous belief that the said statements of the respondent were and are true, and that the system or method referred to has a definite and valuable therapeutic effect in the treatment of indigestion and the maladies and diseases causing gas and pain in the stomach and intestines. The said statements and representations also have had and have a tendency and capacity to cause members of the consuming public, because of said erroneous and mistaken belief, to purchase and use the system or method of treatment offered for sale and sold by the respondent instead of purchasing and using the remedies, products and courses of treatment of competitors of the respondent devised, intended and used for the treatment of the same or similar maladies, diseases and pathological conditions of the human body. Substantial testimony of expert and lay witnesses shows, and the Commission finds, that the respondent's representations, as aforesaid, relative to the method or course of treatment sold by him, are exaggerated, misleading, false, and deceptive and tend to and do divert trade to respondent from those of his competitors who do not use such false and deceptive acts and practices in the sale of methods of treatment by correspondence, and commodities sold for like or similar ailments and diseases, for which

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respondent represents his methods to be a cure, with the result that substantial injury has been and is now being done by respondent to competition in commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Joseph Rosenfeld, are to the prejudice and injury of the public and of 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 respondent) testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by Carrel F. Rhodes, counsel for the Commission, and by respondent, Joseph Rosenfeld, 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, Joseph Rosenfeld, individually, or trading as the Rightway Institute, or any other trade name, his representatives, agents and employees, in connection with the offering for sale, sale and distribution of courses of instruction in the system or method of exercising, now known as the Rightway Method, whether sold under that name or any other name, or any other similar or comparable system or method of exercising, under whatever name sold, and in connection with the offering for sale, sale and distribution of books, pamphlets, or other written matter describing said system or method of exercising, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said system or method of exercising is a scientific way to relieve indigestion or stomach and intestinal gas.

2. Representing, directly or by implication, that said system or method of exercising will cure indigestion or stomach and intestinal gas.

3. Representing, directly or by implication, that said system or method of exercising can be used with safety by all persons suffering from indigestion or stomach and intestinal gas.

4. Representing through the use of the word "institute" in his trade name or through the use of any other word or words, or in any other manner, that the respondent maintains a trained technical staff of employees and a properly equipped laboratory for the conduct of scientific research and experiments as to the use and effect of exercising in the treatment and cure of indigestion or stomach and intestinal gas, or that respondent's said system or method of exercising is founded on or the result of such research and experiments, unless and until respondent actually operates and controls an establishment staffed and equipped for the conduct of such scientific research and experiments wherein respondent's system or method of exercising has been scientifically tested and proven by recognized standards.

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

Syllabus

IN THE MATTER OF

J. P. SHEEHAN, INDIVIDUALLY AND TRADING AS
NATIONAL ADVERTISERS COMPANY

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

Docket 3705. Complaint, Feb. 10, 1939—Decision Apr. 11, 1939

Where an individual engaged in sale and distribution of watches, radios, pipe sets, electric mixers, and a variety of other articles of merchandise to purchasers in various other states and in the District of Columbia; in selling and distributing his said merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was sold and distributed to the ultimate consumers thereof wholly by lot or chance, and under which he distributed to purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said products, and circulars explaining his plan of selling said push cards in accordance with which and explanatory legend set forth on cards, amount paid for chance by purchaser was dependent upon number pushed by chance, and receipt of certain number or making of last sale entitled purchaser securing said number or making such sale to fountain pen, and receipt or failure to receive electric shaver or article being thus disposed of was dependent upon success or failure in selecting from list of feminine names on card, name corresponding to that concealed within card's master seal; and

Supplied thereby and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with such or similar plan through which, by various push cards supplied by him, and varying from that described in detail only, sale of all his merchandise aforesaid was accomplished, and under which plan fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, and which of said articles, if any, purchaser received, and whether article received was without cost to person, was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to established public policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by a chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said sales plan or method employed by him in the sale and distribution of his merchandise and by element of chance involved therein, and were thereby induced to buy and sell his said products in preference to merchandise offered and sold by said competitors who do not use such or equivalent method, and with the result, through use of such method and because of said game of chance, of unfairly diverting trade to him from his competitors aforesaid who do not use such or equivalent method: