

Complaint

28 F. T. C.

IN THE MATTER OF
ANYLITE ELECTRIC COMPANY

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

Docket 3704. Complaint, Feb. 10, 1939—Decision, May 8, 1939

Where a corporation engaged in manufacture, offer, and sale of an electric device consisting of a coil of wire, or solenoid, in container to be placed around patients, whereby, by means of alternating electric current, electromagnetic field of claimed therapeutic value was created—

Represented, through statements appearing on carton in which said product was packed and shipped, and which set forth "Theronold Therapeutic Solenoid The New Way to Health," that use of said device would restore to user thereof normal health, and that it had therapeutic value, facts being such representation and claim was grossly exaggerated, misleading, and untrue, and said "Theronold" did not possess any therapeutic, remedial, or curative value and would not restore user to normal health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said device would, in fact, restore user to normal health, and that it had therapeutic, remedial, or curative value, and of causing substantial portion of such public, because of said erroneous and mistaken belief thus engendered, to purchase same; to the substantial injury of a substantial portion of purchasing public in the various States and in the District of Columbia:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John J. Keenan*, trial examiner.

Mr. James L. Fort for the Commission.

Mr. Arthur W. Parry, of Fort Wayne, Ind., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Anylite Electric 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:

PARAGRAPH 1. Respondent Anylite Electric Co., is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business located at 200 Murray Street in the city of Fort Wayne, within the State of Indiana. Said respondent is now and for more than 2 years last past has been engaged

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in the manufacture, offering for sale, and sale of a device consisting of a coil of wire, or solenoid, in a container intended to be placed around patients, whereby, by means of alternating electric current, an electromagnetic field of the therapeutic value is said by respondent to be created. The said solenoid has been designated by respondent as a "Theronoid." Said respondent causes and for more than 2 years last past has caused said device, when sold by it, to be shipped from its place of business in Fort Wayne, Ind., to the purchasers thereof located in various States of the United States other than the State of origin of such shipments and in the District of Columbia. There is now and has been for more than 2 years last past a course of trade in said device, "Theronoid," sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of said device, the respondent has made, and does now make, false and misleading statements as to the therapeutic value and effect of said device. Said representations are made by means of a statement appearing on the carton in which said product is packed and shipped as follows:

Theronoid
Therapeutic Solenoid
The New way to Health

Through the use of the statement and representation hereinabove set forth, which purports to be descriptive of the remedial, curative, or therapeutic properties of respondent's device, respondent has represented and does now represent directly and indirectly that the use of respondent's device, "Theronoid" will restore to the user thereof normal health and that said device has a therapeutic value.

PAR. 3. The aforesaid representation and claim made by the respondent as hereinabove described is grossly exaggerated, misleading, and untrue in that respondent's device, Theronoid, does not possess any therapeutic, remedial, or curative value and will not restore normal health to the user thereof.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading representation as above set forth has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that respondent's said device will in fact restore the user thereof to normal health and that it has a therapeutic, remedial, or curative value and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief so engendered, to purchase respondent's said device. As a result thereof

injury has been and is now being done by the respondent to a substantial portion of the purchasing public in the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute 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 February 10, 1939, issued, and on February 13, 1939, served, its complaint in this proceeding upon the Anylite Electric Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Respondent filed its answer in which answer the respondent stipulated that the testimony taken in the Federal Trade Commission case, Theronoid, Incorporated, Docket No. 1865,¹ could be reviewed by the Commission in the consideration of the instant complaint with the same force and effect as though the testimony had been introduced directly in this proceeding. Respondent, in its answer, waived all intervening procedure and further hearing as to the said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, and the Commission, having duly considered said complaint, the answer thereto, and testimony introduced in the proceeding before the Commission known as Theronoid, Incorporated, Docket 1865; 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, Anylite Electric Co., is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business located at 200 Murray Street in the city of Fort Wayne within the State of Indiana. Said respondent has been engaged in the manufacture, offering for sale and sale of a device consisting of a coil of wire, or solenoid, in a container intended to be placed around patients, whereby, by means of alternating electric current, an electromagnetic field of therapeutic value is said by respondent to be created. The said solenoid has been

¹ See for findings and order to cease and desist in said case 17 F. T. C. 298.

designated by respondent as "Theronoid." Said respondent has caused said device, when sold by it, to be shipped from its place of business in Fort Wayne, Ind., to the purchasers thereof located in various States of the United States other than the State of origin of such shipments and in the District of Columbia. There has been, for more than 2 years last past, a course of trade in said device, Theronoid, sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of said device, the respondent has made false and misleading statements as to the therapeutic value and effect of said device. Said representations are made by means of a statement appearing on the carton in which said product is packed and shipped as follows:

Theronoid
Therapeutic Solenoid
The New Way to Health

Through the use of the statement and representation hereinabove set forth, which purports to be descriptive of the remedial, curative, or therapeutic properties of respondent's device, respondent has represented, directly and indirectly, that the use of respondent's device, Theronoid, will restore to the user thereof normal health and that said device has a therapeutic value.

PAR. 3. The aforesaid representation and claim made by the respondent as hereinabove described is grossly exaggerated, misleading, and untrue in that respondent's device, Theronoid, does not possess any therapeutic, remedial, or curative value and will not restore normal health to the user thereof.

PAR. 4. The use by respondent of the foregoing false, deceptive, and misleading representation as above set forth has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's said device will in fact restore the user thereof to normal health and that it has therapeutic, remedial, or curative value, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief so engendered, to purchase respondent's said device. As a result thereof, injury has been and is now being done by the respondent to a substantial portion of the purchasing public in the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and constitute 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, the answer of the respondent, and testimony introduced in the proceeding before the Commission known as Theronoid, Incorporated, Docket 1865, which the respondent stipulated in its answer may be considered as evidence in this proceeding with the same force and effect as though same had been introduced directly in this proceeding, and all intervening procedure and further hearing as to the facts having been waived, 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, Anylite Electric Co., Inc., and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a certain electrical device known as a Theronoid, or similar electrical devices, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said Theronoid has any therapeutic, remedial or curative value in the treatment of persons suffering from illness or disease.

2. Representing that the Theronoid will restore a person to normal health or produce other beneficial results to individuals not in normal health.

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.

Syllabus

IN THE MATTER OF

MEYER EDELSON, INDIVIDUALLY, AND TRADING AS
UNITED ADVERTISING SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3738. Complaint, Mar. 16, 1939—Decision, May 9, 1939*

Where an individual engaged in selling and distributing clocks, desk lighters and other articles of merchandize in commerce among the various States and in the District of Columbia; in soliciting the sale of and in selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes through which said merchandise was sold and distributed to ultimate consumers wholly by lot or chance and in accordance with which he distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of his merchandise and circulars explaining his plan of selling same and of allotting it as premiums or prizes to the operator of said cards for use in sale of his products under a plan and in accordance with cards' explanatory legend, pursuant to which amount paid, if any, for chance by customer was dependent upon number pushed by chance, and two numbers and last sale entitled purchaser securing numbers or making sale to "chrome desk lighter", and receipt or failure to receive "numerical clock" 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 under 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 aforesaid or similar sales plans under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid and which of aforesaid articles, if any, he was to receive was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure article of merchandise at a 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 are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other methods contrary to public policy and refrain therefrom;

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