

Syllabus

IN THE MATTER OF
GEORGE HENRY BRINKLER

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

Docket 2639. Complaint, Nov. 21, 1935—Decision, May 23, 1939

Where an individual engaged in sale and distribution of correspondence courses in diet and health, in which diets recommended contained no water, as such, and no table salt, but consisted of fresh red meats, fruit and vegetable juices, and such other foods as said individual deemed suitable to eliminate waste and produce vitality in the student or patient, in view of his condition and surroundings, and to rid him of diseases and to keep him well for the rest of his life, and in advertising his said courses through testimonial letters and circulars sent by mail into the other States, and in periodicals circulating among the several States, and in competition with others engaged in sale of correspondence courses in home study in the field of diet to men and women living in the several States, and in securing their students through national advertising conforming, as a rule, to recognized canons of truth, and also with those engaged in making and selling in commerce medicinal preparations and apparatus used and useful for the treatment of specific diseases or ailments of the body—

- (a) Represented that congestion or waste matter in the blood was the cause of all diseases, and that starvation of the affected part or parts was the only one disease, and that every disease known or yet to be discovered and named was necessarily a result of poor circulation of the blood or starvation of affected tissues; and
- (b) Represented that his courses were competent and adequate treatment for cure and elimination of all diseases of human beings whatsoever, and specifically for named diseases, including appendicitis, heart trouble, asthma, arthritis, and others, and that through following his courses memory and eyesight would be improved, circulation restored to normal, and various other beneficial results accomplished, including increase in income and wealth and promotion of the health and efficiency of one's children, etc.;

Facts being congestion or waste matter in blood is not cause of all diseases, nor is every disease necessarily result of poor circulation of blood or starvation of affected part or parts, and his said courses did not constitute competent or adequate treatment for all diseases, with possible exception of restricted number caused by diet deficiency, many patients receiving only such treatment would, in opinion of outstanding authorities in medical profession, be neglected, substitution of fruit and vegetable juices for water is positively dangerous to patients suffering from some ailments, and method of treatment or diet outlined do not constitute adequate or competent treatment for various diseases specified, and has no therapeutic or medical value, with possible exception aforesaid in so-called deficiency diseases;

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With capacity and tendency to mislead and deceive substantial portion of public into erroneous and mistaken belief that such representations were true, and to induce many members of purchasing public to buy his said courses as consequence of erroneous and mistaken belief thus engendered, with result that trade was diverted unfairly to him from others engaged in sale and distribution of medicinal preparations and apparatus for treatment of specific diseases and ailments; to the substantial injury of competitors in commerce:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Alden S. Bradley and *Mr. Merle P. Lyon* 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 George Henry Brinkler, 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 issued its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual maintaining his office and principal place of business at 458 Ocean Drive, Miami Beach, in the State of Florida.

PAR. 2. Respondent for more than 5 years last past has operated under various trade names, such as, "Brinkler School of Eating," "Brinkler School of Food Science," "Brinkler School of Nutrition," and now operates under the trade name, "Brinkler Institute," and during the course and conduct of this business, respondent has been and now is engaged in the business of selling and transporting to purchasers in States of the United States and in the District of Columbia, other than the State of Florida, a correspondence course in diet and health; and in the course and conduct of his business, as aforesaid, has maintained a constant current of trade and commerce in interstate commerce of such commodity, and sells and transports said correspondence course from his place of business in the State of Florida to the purchasers thereof at their respective locations in States other than the State of Florida and in the District of Columbia.

PAR. 3. Persons, firms, copartnerships, and corporations other than the respondent are likewise engaged in the business of selling cor-

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respondence courses in diet and health in commerce among the several States of the United States and in the District of Columbia in competition with the respondent.

PAR. 4. In the course and conduct of such business, respondent has represented by statements, by advertisements published in various periodicals, by advertising literature, and otherwise:

(a) That respondent's correspondence course in diet and health is a competent treatment for all diseases.

(b) And that the method of diet as contained in the course of instruction offered by the respondent is an adequate treatment for:

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|------------------------|-------------------------------|
| 1. Indigestion | 20. Goitre |
| 2. Tumors | 21. Liver trouble |
| 3. Boils | 22. Eczema |
| 4. Blood clots | 23. Leucorrhea |
| 5. Pyorrhea | 24. Hay fever |
| 6. Pimples | 25. Hemorrhages |
| 7. Catarrh of the eyes | of the womb |
| 8. Catarrh of the nose | 26. Vaginal blood tumors |
| 9. Deafness | 27. Prurigo |
| 10. Bronchitis | 28. Hemorrhoids |
| 11. Asthma | 29. Sciatica |
| 12. Tuberculosis | 30. Hardening of the arteries |
| 13. Gastritis | 31. Congestion of the brain |
| 14. Appendicitis | 32. Dandruff |
| 15. Gall stones | 33. Headaches |
| 16. Heart trouble | 34. Arthritis |
| 17. Paralysis | 35. Gonorrhea or any sexual |
| 18. Kidney trouble | disease |
| 19. Fevers | 36. Cataract. |

(c) That by following said course one's memory or eyesight will be improved.

(d) That the following of said course will enable one to increase his income.

(e) That by following said course one will either gain or reduce any number of pounds within any certain period of time.

(f) That by following said course circulation or health will be restored.

(g) That by following said course the feet will be restored to normal.

(h) That by following said course the heart will be returned to normal, or the legs will be freed from oedema.

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- (i) That the observance of said course will—
 - (1) Double brain or muscle power.
 - (2) Give dependable health and activity in old age.
 - (3) Improve or increase creative talent, originality, affection, or energy.
- (j) That every disease is due to congestion.
- (k) That the observance of said course will promote a normal functioning of all organs and tissues.
- (l) That the observance of said course will bring wealth.
- (m) That the observance of said course will have any beneficial effect upon marital relations.
- (n) That the children of those who observe said course will be healthy or efficient.
- (o) That the observance of said course of instruction will produce—
 - 1 The cleansing of the system; or
 - 2 The reconstruction or building of the system;
 - 3 The normal functioning of the system.

PAR. 5. In truth and in fact respondent's correspondence course is not a competent treatment for all diseases; is not an adequate treatment for any of the diseases listed, 1 to 36 inclusive, in subparagraph (b) of paragraph 4 of this complaint. The correspondence course of treatment so sold and offered for sale by the respondent as above related has no therapeutic or medical value; does not improve the memory or the eye-sight; will not enable the user to increase his income; has no variable capacity to cause the gain or loss of avoirdupois; will not of itself restore health or circulation; will not reduce the swelling or return to normal condition the feet, heart, or legs; has no capacity to double the brain or muscular power of the user or to insure health and activity in old age; and improve or increase creative talents, originality, affection, or energy. It is not true that every disease is due to congestion. The observance of the course as offered by the respondent will not of itself promote a normal functioning of all organs and tissues; has no capacity to bring wealth; and has no inherent capacity to cause a beneficial effect upon marital relations; and further; that the use of such course as indicated by the respondent will not increase the health or efficiency of children of the user; has no inherent capacity for reconstruction or rebuilding of the system and cannot materially and beneficially effect the normal function of the system.

Customers and potential customers throughout the various States of the United States have been deceived and misled into the false belief that the statements of the respondent were and are as represented by the respondent, and that the same had and have a definite

and valuable therapeutic effect in the treatment of the maladies and diseases of the human body as represented by him. The said statements and representations also had and have a tendency and capacity to cause members of the consuming public, in reliance upon the erroneous belief as above set forth, to purchase and use the course of treatment of the respondent instead of purchasing and using the remedies and products of competitors of the respondent for the treatment of the maladies and diseases and pathological conditions of the human body, including those set forth in the statements of the respondent and others represented by the respondent as being conditions in which the use of one or more of respondent's products have a curative value.

PAR. 6. There are among the competitors of the respondent persons, firms, copartnerships, and corporations in substantial competition with the respondent, but who do not falsely represent the curative or therapeutic values of the commodity vended by them.

PAR. 7. The acts, practices, and representations of the respondent serve as added inducements to purchasers and prospective purchasers, to purchase substantial quantities of the product sold by the respondent, and have a tendency and a capacity to, and do, divert a substantial volume of trade from the competitors of the respondent to the respondent, with a result that substantial injury was done by the respondent to substantial competition in commerce as hereinabove set out.

PAR. 8. The above acts and practices of the respondent are all to the injury and prejudice of the public and substantial competitors of the respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 21, 1935, issued and on November 25, 1935, served its complaint in this proceeding upon George Henry Brinkler, an individual, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act, and said respondent entered his appearance and filed his answer herein. Thereafter, hearings were held and testimony and other evidence was introduced by Alden S. Bradley and Merle P. Lyon, attorneys for the Commission, in support of

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the allegations of the complaint, and by W. E. Walsh, attorney for respondent, in opposition to the allegations of the complaint, before John W. Addison, an examiner of the Commission theretofore duly appointed by it. Thereupon this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence and briefs in support of the complaint and in opposition thereto; 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, George Henry Brinkler, is an individual trading as Brinkler Institute, with his place of business located at 458 Ocean Drive, Miami Beach, Fla. He formerly traded as Brinkler School of Eating and as Brinkler School of Food Science. Respondent is engaged in the sale and distribution of a correspondence course in diet and health. A 4-week course sells for \$20. The diets recommended by respondent in said correspondence course in diet and health contain no water as such and no table salt, but consist of fresh red meats, fruit and vegetable juices and such other foods as respondent deems suitable to eliminate waste and produce vitality in the student or patient in view of his condition and surroundings and to rid him of diseases and keep him well for the rest of his life. The Brinkler Institute is listed as a correspondence school by National Home Study Council.

PAR. 2. Respondent Brinkler advertises his courses in diet and health by means of testimonial letters and circulars sent by mail from Florida into other States and in magazines circulating among the several States and causes the courses, when sold, to be transported from Florida into other States and there delivered to the buyers.

PAR. 3. There are other individuals, partnerships, and corporations in the United States engaged in the business of selling correspondence courses in home study in the field of diet in competition in commerce with respondent to men and women living in the several States and of causing the courses so sold to be transported from the State in which the seller is located into other States and there delivered to the buyers. They secure their students through national advertising conforming as a rule to the recognized canons of truth. There are also individuals, partnerships, and corporations engaged in making and selling in commerce among the several States medicinal preparations and apparatus used and useful for the treatment of specific diseases or ailments of the human body.

PAR. 4. Respondent, to promote the sale of his correspondence courses in commerce, among the several States and in the District of Columbia, represents that congestion or waste matter in the blood is the cause of all diseases and that his courses are competent and adequate treatment for the cure and elimination of all diseases of human beings whatsoever. He makes the representation both generally for all diseases and specifically for named diseases including among many others appendicitis, congestion of the brain, goiter, tuberculosis, heart trouble, asthma, blood clots, deafness, cataract, arthritis, and gall stones. Respondent also represents that, by following his courses of instruction, the memory and eyesight will be improved, circulation will be restored to normal, the feet will be restored to normal, the legs will be freed from oedema, brain or muscle power will be doubled, dependable health and activity in old age will be assured, creative talent, originality, affection, and energy will be improved or increased, normal functioning of all organs and tissues will be promoted, weight can be controlled or regulated at will, income or wealth will be increased, marital relations will be beneficially affected, the health and efficiency of one's children will be promoted, and the system will be cleansed, rebuilt, reconstructed, and restored to normal functioning. Respondent further represents that there is only one disease, starvation of the affected part or parts, and that every disease now known and every disease yet to be discovered and named is necessarily a result of poor circulation of the blood or starvation of affected tissues.

PAR. 5. Congestion or waste matter in the blood is not the cause of all diseases and the method of treatment or the diet outlined in respondent's correspondence courses are not a competent or adequate treatment for all diseases, with the possible exception of the restricted number of diseases such as scurvy, beri-beri, and rickets, caused by diet deficiency and it is false, misleading, and deceptive to represent them as such. Many patients receiving only such treatment would, in the opinion of outstanding authorities in the medical profession, be neglected, and the substitution of fruit and vegetable juices for water is positively dangerous to patients suffering from some ailments. The method of treatment or the diet outlined in respondent's courses of instruction are not an adequate or competent treatment for appendicitis, congestion of the brain, cancer, goiter, tuberculosis, heart trouble, diabetes, asthma, blood clots, deafness, cataract, indigestion, arthritis, osteomyelitis, paresis, typhoid fever, gall stones, septicemia and the other diseases, ailments and conditions mentioned in respondent's advertising literature and courses of instruction. The method of treatment of the diet outlined in the cor-

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respondence courses sold by respondent have no therapeutic or medical value except possibly in the treatment of the so-called deficiency diseases. It is not true that there is only one disease, starvation of the effected part or parts, and that every disease now known and every disease yet to be discovered and named is necessarily a result of poor circulation of the blood or affected tissues.

PAR. 6. Each and all of the false and misleading statements so made by respondent, as set forth above, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such representations are true; and to induce many members of the purchasing public to buy respondent's said courses as a result of the erroneous and mistaken belief engendered by such representations, with the result that trade is diverted unfairly to respondent from other individuals and from partnerships and correspondence courses in diet and health who truthfully advertise and represent their said courses, and from other individuals, and from partnerships and corporations engaged in the sale and distribution of medicinal preparations and apparatus for the treatment of specific human diseases and ailments. Substantial injury has been and is being done by respondent George Henry Brinkler to his competitors in commerce among and between the several States of the United States and to the public.

CONCLUSION

The aforesaid acts and representations of respondent George Henry Brinkler have been and are to the prejudice and injury 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, no oral arguments having been made, 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, George Henry Brinkler, his representatives, agents, and employees, individually or under any

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trade name or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as commerce is defined in the Federal Trade Commission Act, of correspondence courses in diet and health, do forthwith cease and desist from:

1. Representing that congestion or waste matter in the blood is the cause of all diseases.

2. Representing that the diet or method of treatment outlined in said courses of instruction offered for sale and sold by him is a competent or adequate treatment for the cure and elimination of all diseases, or for any diseases except the restricted number of diseases caused by diet deficiency.

3. Representing that the diet or method of treatment outlined in said courses of instruction is a competent or adequate treatment of appendicitis, congestion of the brain, cancer, goiter, tuberculosis, heart trouble, diabetes, asthma, blood clot, deafness, cataract, indigestion, arthritis, osteomyelitis, paresis, typhoid fever, gall stones, or septicemia.

4. Representing that there is only one disease, starvation of the affected part or parts, and that every disease yet to be discovered and named is necessarily a result of poor circulation of the blood or starvation of affected tissues.

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.

IN THE MATTER OF

STEVEN V. GIMINO AND ANTHONY V. GIMINO, TRADING
AND DOING BUSINESS AS ELITE PUBLISHING COM-
PANY¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3521. Complaint, July 30, 1938—Decision, May 25, 1939*

Where two individuals engaged in publication and sale of book variously known as "Collection of Successful Business Plans" and "The Elite Collection of Successful Business Plans," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in publication, sale, and distribution, or in sale and distribution, of similar books and articles in commerce as aforesaid, and including many who do not in any way misrepresent the content of their said books or the earnings which may be derived from the operation of the plans described therein—

- (a) Represented, in advertisements in periodicals of general circulation in various States, that their "free booklet" described "107 plans for making \$20.00-\$100.00 weekly in home or office," and referred in such advertising to "107 plans for operating a successful business of your own," with earnings from \$20 to \$100 a week, starting in spare time at home;

Facts being booklet in question, which was in fact sent free to inquirers, did not describe plans themselves in any practical detail, but was merely suggestive of general nature of each and some of its salient features, and they had no knowledge or information to the effect that the average net earnings or profits consistently made by purchasers of their said books, in following one or more of the said plans in the ordinary and usual course of business, and under ordinary and usual conditions and circumstances, amounted to from \$20 to \$100 as above set forth, and had no reasonable grounds for belief that earnings or profits therefrom amounted to such sums;

- (b) Made such statements, in their said advertising and in letters and circulars sent to prospective purchasers, as "No peddling or house-to-house selling" and "107 plans for starting a business * * * No risk; start the plans which require no investment," and "Statistics prove that the man or woman who starts an independent business, however small, has sixteen times the chance to become a marked success as the man who accepts a position on a salary";

Facts being that all their said plans involved sale of articles or services, many were adapted essentially to peddling or house-to-house sales, and, while methods of sale by mail or through agents or salesmen were suggested in lieu of house-to-house or office-to-office selling by operators of plan and personal direct selling by operator might be avoided by following their proposals, such selling was necessary in many cases, there is no plan for engaging in any independent business which does not involve risk through

¹ Earlier findings, conclusion, and order to cease and desist in this cause, made as of March 15, 1939, were vacated by March 31 order, which also rescinded stipulation approved November 2, 1938.