

IN THE MATTER OF
H. F. ALLEN, TRADING AS TECHNICAL LABORATORIES
AND AS TECHNICAL PRODUCTS COMPANY

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

· Docket 3435. Complaint, May 21, 1938—Decision, May 31, 1939

Where an individual engaged in sale of product, under names "Aratone" and "Sinozone," for use by consuming public afflicted with nasal catarrh, simple bronchial asthma and hay fever, and in distributing his said product through wholesale and retail druggists; in advertisements thereof issued, published, and circulated to and among the consuming public of the United States in various forms of printed matter, by radio broadcasts, and in other ways—

- (a) Represented that said product was a competent and safe remedy, cure or treatment for nasal catarrh, hay fever, asthma, and colds, and that it was healing and would prevent or cure nasal irritation and aid in preventing poisons from being carried from the nasal passage into the rest of the body, and would flush out impurities contained therein, and that use thereof was harmless, facts being it would not accomplish said various results, was not a competent treatment or safe and effective remedy for nasal catarrh, hay fever, asthma, or colds, and was no more than a palliative affording temporary relief from some of the symptoms or manifestations of such conditions, repeated use which for such relief might result in harm or serious injury to patient; and
- (b) Represented through use of word "Laboratories" in trade name employed by him, and in his said advertising, that he conducted, operated or maintained a laboratory for the purpose of manufacturing, testing or experimenting with preparation sold by him, facts being he neither owned nor controlled any laboratory for investigation or research in connection with preparation, sale and distribution of such products;

With effect of misleading and deceiving substantial portion of purchasing public into belief that all of said representations made by him, as above set forth and indicated, were true, and with result, as direct consequence of such mistaken and erroneous belief induced by said advertising and representations, of causing consuming public to purchase substantial volume of said preparation, and of thus diverting trade unfairly from others engaged in sale of like and similar products for like and similar purposes, and who truthfully advertise the same; to the substantial injury of competition in commerce:

Held, That such acts and practices, as above set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

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

Mr. Reuben J. Martin for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

1700

Complaint

Trade Commission, having reason to believe that H. F. Allen, trading as Technical Laboratories and as Technical Products Co., 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, H. F. Allen, an individual, trading as Technical Laboratories and as Technical Products Co., with his principal place of business located at 24 Bidge Road, in the city of Berkeley, State of California, is now and has been for more than one year last past engaged in the sale and distribution of a preparation for use in the nose and nasal passages, advertised and sold under the trade names "Sinozone" and "Aratone."

PAR. 2. In the course and conduct of his business, as hereinbefore described, respondent has caused said product, when sold, to be transported from his place of business in the State of California to the purchasers thereof located in various States of the United States other than the State of California, and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent has been, and is now, in substantial competition with other individuals, partnerships, firms, and corporations, engaged in the distribution and sale in interstate commerce of like and similar products or other products and treatments intended, designed and used for similar purposes.

PAR. 4. In the course and conduct of his business, and to induce the purchase of his said product, in said commerce, the respondent, by means of letters, circulars, leaflets, newspaper and magazine advertisements, and radio broadcasts, has circulated and disseminated among prospective purchasers many statements concerning said product. These statements contain many false and misleading representations and implications as to the efficacy of said product and the nature of the business operated by the respondent. Among and typical of the statements so used by the respondent are the following:

Relieves nasal catarrh and simple bronchial asthma.

The medicine will not irritate.

It is healing.

It is harmless.

It will aid in stopping the poisons which are in the nose from being carried into the rest of the body * * * and dropping of mucus into the stomach which causes a loss of appetite, skin eruptions, acid stomach, and a general run-down feeling will be relieved.

It will flush out many impurities in your nasal passages.

Technical Laboratories.

By the means and in the manner aforesaid, the respondent represents and implies that said product is a competent treatment and

Complaint

28 F. T. C.

effective remedy for nasal catarrh and bronchial asthma; that it is a nonirritating, harmless and healing preparation; that it is of material benefit in stopping the poisons which may be in the nose and which may be carried to other parts of the body; that it is of material benefit in stopping and relieving the dropping of mucus from the nose into the stomach; that it will flush out impurities in the nasal passages; and that its use will prevent the loss of appetite, skin eruptions, acid stomach and a general run-down feeling. Through the use of the word "Laboratories" in his trade name and in his advertising matter, the respondent represents and implies that he maintains a scientifically equipped laboratory wherein tests relating to said product have been and are conducted by trained and qualified scientists.

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 competent treatment and effective remedy for nasal catarrh and bronchial asthma, and it is not a nonirritating, harmless and healing preparation. The use of said product is not of material benefit in stopping the poisons which may be in the nose and which may be carried to other parts of the body and in stopping and relieving the dropping of mucus from the nose into the stomach. Said product will not flush out impurities in the nasal passages and the use thereof will not prevent the loss of appetite, skin eruptions, acid stomach and a general run-down feeling. The respondent does not own, operate or control a scientifically equipped laboratory wherein tests pertaining to said preparation have been and are conducted by trained and qualified scientists.

PAR. 6. Among the competitors of respondent described in paragraph 3 hereof are many 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.

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 beliefs, to purchase a substantial volume of

1700

Findings

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 May 21, 1938, issued and served its complaint in this proceeding upon the respondent, H. F. Allen, an individual, trading as Technical Laboratories and as Technical Products Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, H. F. Allen, filed no answer to the complaint. Thereafter, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Howard F. Allen, the respondent, and said testimony and other evidence were 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 brief in support of the complaint, respondent not having requested oral argument; 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, H. F. Allen, is an individual, trading as Technical Laboratories, and as Technical Products Co., with his principal place of business located at 24 Bridge Road, Berkeley, Calif. Respondent is now, and has been for more than 1 year last past, engaged in the sale of a product known as "Aratone" and as "Sinozone," for use by the consuming public who are afflicted with nasal catarrh, simple bronchial asthma and hay fever. Respondent distributes his product through the medium of wholesale and retail druggists.

Findings

28 F. T. C.

PAR. 2. The respondent causes said product, "Aratone" or "Sinozone" when sold, to be transported from his place of business in Berkeley, Calif., to the purchasers thereof located in the States of Oregon and Washington and other States of the United States.

PAR. 3. Respondent is now, and for more than 1 year last past, has been engaged in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of other products of similar usage in commerce between and among the various States of the United States.

PAR. 4. Respondent, in soliciting the sale of and in selling his said products, and for the purpose of creating a demand therefor, now causes, and for more than 1 year last past has caused, advertisements to be issued, published, and circulated to and among the consuming public of the United States in various forms of printed matter, by radio broadcasts, and in other ways.

PAR. 5. Respondent makes, and has made, to the general consuming public, statements with reference to the alleged value and merit of said products, some of which statements so made and circulated by the respondent are as follows:

The Sinozone Laboratories want you to know, when the statement is made that Sinozone is having an outstanding success in relieving nasal catarrh, hay fever, bronchial asthma and head colds, they are making a statement backed by ample and sufficient proof in their files. Are you troubled with nasal congestion, or stuffed up, and feeling out of sorts? Remember, the Laboratories continually make the claim that ordinarily after you have used Sinozone two or three times you will experience a relief from this bothersome, clogged up condition. This statement is supported by unquestionable proof. And keep in mind the fact that Sinozone is harmless. If you are suffering with hay fever, nasal catarrh, a cold or attacks of bronchial asthma, buy a container of Sinozone from your druggist and note the quick relief it brings. Sinozone is spelled S I N O Z O N E and is sold by all Owl Drug Stores and independent druggists.

When the nasal passages are clogged up due to hay fever, nasal catarrh, or a simple attack of bronchial asthma, you will do anything to secure relief. Nasal congestion is certainly a troublesome and annoying ailment. You can use Aratone to relieve and clear this congestion, knowing it possesses four important qualities:

1. Aratone is dependable. Thousands use it and recommend it.
2. Aratone is safe. It does not contain narcotics.
3. Aratone is effective. It fights nasal catarrh, hay fever, and colds with eleven carefully selected ingredients.
4. Aratone acts promptly. The liquid is designed to relieve the congestion the moment you begin to use it, and remember, it is harmless. Don't suffer. All druggists sell Aratone, spelled A R A T O N E.

Are your nasal passages congested due to hay fever, nasal catarrh, or bronchial asthma? Do you feel you would give most anything for relief from this stuffed up, bothersome condition? The Technical Laboratories tell you continually of the remarkable work Aratone is doing in clearing these stubborn

1700

Findings

congestions. Do you think the Laboratories would broadcast the fact that Aratone has produced this clearing action if this were not the case? Based on results secured by those who have purchased Aratone for hay fever, nasal catarrh, or colds, the Laboratory does not hesitate to say that after the first two or three applications you will ordinarily note a quick relief from these congested conditions. The product contains no narcotics and is harmless. If your druggist does not sell Aratone, send \$1.00 to this station, KNX, Hollywood. Don't let hay fever, nasal catarrh, or simple bronchial asthma get you down. Use Aratone, spelled A R A T O N E. You can get Aratone at any Sontag Drug Store. * * * Above all things, you do not have to wait a day or an hour or two minutes to feel Aratone getting to work. Within one minute after it has entered your nasal passages you will feel it beginning to clear and open up the breathing organs. It does not do this harshly, but in a soothing, cleansing way. The medicine will not irritate. Positively not. It is healing. It is harmless. Where you have a bad cold, Nasal Catarrh, Simple Bronchial Asthma, or Nasal Congestion, it will tend to start a flow of mucus that will relieve you almost immediately * * *.

What "Aratone" Does

It will aid in stopping the poisons which are in the nose from being carried into the rest of the body. That dripping and dropping of mucous into the stomach which causes a loss of appetite, skin eruptions, acid stomach, and a general rundown feeling, will be relieved * * *. It will flush out many impurities in your nasal passages. Those morning headaches will disappear, sneezing will stop, you will have a good night's sleep and above all you will get a breath of real fresh air. And that will aid Nature to do its work, for you will have strength to throw off attacks of these nasal troubles. Aratone gets into those inflamed and swollen nasal passages and fights the congestion the moment it enters the nose.

PAR. 6. "Aratone" and "Sinozone" are exactly the same product made according to the following formula:

Alkaline solution $1\frac{1}{2}$ gallons. Chlorabutonol solution strength .8, $1\frac{1}{2}$ gallons. 4 ounces Lilly's ephedrine sulphate making a 1% ephedrine solution.

Ingredients of alkaline solution:

Alcohol 6%
 Thymol $\frac{1}{2}$ grain
 Menthol $\frac{1}{25}$ gr.
 Phenol $\frac{1}{14}$ gr.
 Eucalyptol $\frac{1}{4}$ min.
 Methyl salicylate $\frac{1}{10}$ min.
 Benzoic acid $\frac{1}{2}$ gr.
 Sodium borate 16 gr.
 Glycerine 40 min.
 Coloring
 Oil of peppermint to perfume.

PAR. 7. Respondent neither owns nor controls any laboratory for investigation or research in connection with the preparation, sale and distribution of the products "Aratone" and "Sinozone."

Order

28 F. T. C.

PAR. 8. The preparation "Aratone," or "Sinozone," has no curative or remedial effect on existing irritation but will increase existing irritation and cause independent irritation. It is harmful; is not healing; will not aid in stopping the poisons which are being carried into the rest of the body from the nasal passage; and it will not flush out impurities in the nasal passage. The preparation "Aratone," or "Sinozone," is not a competent treatment or a safe, effective remedy for nasal catarrh, hay fever, asthma or colds, and is no more than a palliative, affording temporary relief from some of the symptoms or manifestations of these conditions, and the repeated use thereof for the relief of these conditions might result in harm or serious injury to the patient.

PAR. 9. Each and all of the false and misleading statements and representations made by respondent, as aforesaid by means of advertisements, radio broadcasts and in other ways in offering for sale and selling "Aratone" and "Sinozone" were and are calculated to and have had and now have the tendency and capacity to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the belief that all of said representations are true.

PAR. 10. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representations, causes the consuming public to purchase a substantial volume of said preparation known as "Aratone" and as "Sinozone," with the result that trade has been unfairly diverted from other corporations, firms, partnerships, and individuals engaged in the sale of like and similar products intended to be used for like and similar purposes, who truthfully advertise their products. As a result thereof, substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as set forth in the foregoing findings as to the facts are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in violation 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, to which no answer was filed, testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission, theretofore duly designated

1700

Order

by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of the complaint filed herein, 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 respondent, H. F. Allen, an individual, individually and trading as Technical Laboratories and Technical Products Co., or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of "Aratone" or "Sinozone" in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the preparation now designated as "Aratone" and "Sinozone" or any other preparation composed of the same or similar ingredients, and possessing similar properties under whatever name sold, is a competent and safe remedy, cure or treatment for nasal catarrh, hay fever, asthma, or colds; that said preparation is healing; that it will prevent or cure nasal irritation; that it will aid in preventing poisons being carried from the nasal passage into the rest of the body; that it will flush out impurities contained in the nasal passages; that its use is harmless, or that said preparation has any medicinal or therapeutic value in the treatment of catarrh, hay fever, asthma or colds other than as a palliative remedy to afford temporary relief.

2. Representing through the use of the word "Laboratory" or any other term of similar meaning or like import as a part of his trade name, or in any other manner, or through any other means or devices, that he conducts, operates or maintains a laboratory for the purpose of manufacturing, testing or experimenting with the preparation sold by him, until and unless he actually owns and operates or directly and absolutely controls a laboratory for said purposes.

It is further ordered, That the respondent, H. F. Allen, an individual, shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and if so, setting forth in detail the manner and form in which he intends to comply; and that within 60 days after the service upon him of this order, said respondent shall 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
MASON, AU & MAGENHEIMER CONFECTIONERY
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 3477. Complaint, July 8, 1938—Decision, May 31, 1939

Where a corporation engaged in manufacture and sale of candy assortments which were so packed and assembled as to involve use of a lottery scheme, gift enterprise, or game of chance, when sold and distributed to consumers thereof, and included two separate packages, which, sold together, constituted one complete assortment which could be sold and distributed to consuming public by means of a lottery scheme, gift enterprise, or a game of chance, and contained, in one of said packages, 150 pieces of penny candy of uniform size and shape, and in other of said packages, 24 larger pieces of candy to be given as prizes to purchasers of said penny pieces of uniform size and shape in first package containing pink instead of white centers;

Sold to dealers and jobbers for display and resale by retail dealer purchasers thereof in accordance with aforesaid sales plan such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in sale of its products in accordance with such sales plan, involving game of chance or sale of a chance to procure larger piece of candy; contrary to the established public policy of the United States Government and in competition with many who are unwilling to offer or sell candy so packed or assembled as above described or otherwise arranged or packed for sale to the purchasing public so as to involve a game of chance or sale of a chance to win by chance or any other methods contrary to public policy and refrain therefrom;

With capacity and tendency thus to induce wholesalers, jobbers, retailers, and public to purchase its said products in preference to candy offered and sold by its competitors and with results that many dealers in, and ultimate purchasers of, candy were attracted by such methods of packing and assembling said candy, and element of chance involved therein, and were thereby induced to purchase such candy so packed, assembled and sold by it in preference to that offered and sold by competitors who do not use such or equivalent method, and with tendency and capacity, because of said game of chance, unfairly to divert to it substantial trade from its competitors aforesaid who do not use such or equivalent method as unfair or unlawful, to lessen competition in said trade, and to deprive purchasing public of benefit of free competition:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel for the Commission.