

Syllabus

IN THE MATTER OF
R. O. MURPHY, TRADING AS THE STILLWATER
COMPANY

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

Docket 3608. Complaint, Sept. 27, 1938—Decision, June 7, 1939

Where an individual engaged in the manufacture, sale, and distribution of certain medicinal preparations which consisted, as designated, of three different nose sprays, an eye medicine, and a nose salve, and were referred to by him as a "treatment" and, and as thus engaged in selling to purchasers in various other States and in the District of Columbia his said treatment, in substantial competition with others engaged in sale and distribution of other preparations designed and intended for use in treatment of ailments and conditions for which he recommended his said preparations and including many who do not in any manner misrepresent their products or the therapeutic properties thereof and do not make any other false statements in connection with their sale and distribution; in certain advertisements which he caused to be disseminated in commerce through newspapers, periodicals, and other publications circulating through the various States, and through bulletins, circulars, and letters distributed through the mails and otherwise in commerce among prospective purchasers—

- (a) Represented that hay fever resulted from the effect of pollens and the like upon over-sensitive or unhealthy condition of the nasal membranes and that his said preparations possessed therapeutics properties which would heal, toughen, and render less sensitive such membranes and build tissues therein and constituted a remedy and competent treatment for hay fever and would avert the same and fortify the user against such ailment and afford complete relief, facts being said ailment or condition is not attributable to the nasal membranes as above set forth, cannot be successfully treated or cured and cause removed by local medication, his said preparations do not possess therapeutic properties of value in building up such membranes or tissues nor in rendering them less sensitive, and his theories as to treatment or method of averting such affliction by local application are not in accordance with consensus of present day medical opinion and use of his said preparations will not cure, avert, nor fortify the user against such condition nor, in all cases, afford complete relief nor cause subsequent attacks to be less severe or confer any permanent substantial benefit;
- (b) Represented that his said preparations constituted also cure or remedy for asthma, bronchitis, coughs, colds, catarrh, and afflictions of the nose and throat and that use of his said nose salve caused the effect of the use of spray to be retained for several hours and that use of his eye medicine caused the pollens to be eliminated by natural secretions of the eye through tear ducts, facts being his said preparations have no substantial value in the treatment of asthma, bronchitis, and other ailments and conditions mentioned, except insofar as they might be palliatives

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therefor, said nose salve is only partially effective in retaining effect of use of various sprays, though possibly affording partial or temporary protection against pollens, and his said eye medicine would not result in elimination of pollens as above set forth, and effect of treatment as a whole is limited to temporary relief from acute symptoms of hay fever, due to presence of astringents and anesthetics; and

- (c) Represented that the price of \$5 for his said treatment was a reduction from the price at which it was regularly and customarily offered for sale and sold at retail, facts being said price was its usual and customary one, regularly charged therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true and, as consequence, into purchasing substantial quantities of his said drug and of thereby diverting unfairly trade to himself from his competitors engaged in sale and distribution of preparations designed and intended for and used in treatment of ailments and conditions for which he recommended use of his said products:

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

Mr. Randolph W. Branch for the Commission.

Rosen, Francis & Cleveland, of Chicago, Ill., 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 R. O. Murphy, individually and trading as The Stillwater 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, R. O. Murphy, is an individual trading as The Stillwater Co., and having his office and principal place of business in the city of Stillwater, State of Minnesota.

PAR. 2. The respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, selling, and distributing certain medicinal or pharmaceutical preparations designated as follows: (1) "No. 1 Nose Spray"; (2) "No. 2 Nose Spray"; (3) "No. 3 Nose Spray"; (4) "Eye Medicine"; (5) "Nose Salve."

The said preparations constitute what is referred to by the respondent as the "treatment." Respondent sells said preparations to members of the purchasing public situated in various States of the United States and in the District of Columbia and causes the said preparations, when sold by him, to be transported from his aforesaid

place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various States of the United States other than the State of Minnesota and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparations among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other individuals and with corporations, firms, and partnerships selling and distributing medicinal and other preparations and products designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of his said preparations. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of his said business, and for the purpose of inducing the purchase of his said preparations, respondent has caused false advertisements, containing representations and claims with respect to the properties of said preparations and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements in newspapers, magazines, and other publications having a circulation throughout the various States of the United States, through bulletins, circulars, and letters distributed among prospective purchasers of said preparations and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

My belief is that hay-fever is not a disease at all, but usually the result of the nose membranes being oversensitive and weak, and that when they are in this condition the pollens irritate them excessively.

After using it several times a day, during the spring and summer, these membranes will be built up and strengthened, and will have a firm, hard surface which will throw off the hay-fever pollens with little or no irritation; the air passages will then remain open and the suffering from hay-fever should be avoided.

All that is necessary is to build up and toughen the nose membranes a little so that they will not be sensitive to pollen. The whole thing then disappears; regardless of what particular pollens you are sensitive to.

Here is a scientific treatment for hay-fever which has been thoroughly tested and has proven successful.

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Simply spray the nose with it several times a day and let it heal and build up the nose membranes.

I have found a medicine which has a tendency to toughen the nose membranes and make them less sensitive.

I do not claim that this treatment is anything miraculous, but it is certainly a splendid, effective relief for hay-fever.

I have been freed of hay-fever suffering for more than twelve years now by the use of this medicine and since that time I have had the satisfaction of seeing many another sufferer come up the same path by the use of this medicine which I believe to be the absolute specific for the conditions that cause hay-fever.

By the use of this medicine you are completely fortified against the attack of hay-fever.

The reason that this treatment will relieve hay-fever where others fail is this:

Moreover, if my treatment is continued for several seasons, the attacks seem to gradually grow lighter.

Our medicine is not compounded in oil and contains only a few ingredients, all of which are quickly and entirely absorbed leaving the nose and throat in a healthy condition.

Although our medicine is primarily a treatment for hay-fever, it is also beneficial for afflictions of the nose and throat * * * It has given complete relief from bronchitis, head colds, asthma, and uncontrollable coughing spells.

The Nose Salve, which our treatment also includes, gives you additional comfort and a lasting relief when the hay-fever season is on, and our eye medicine prevents itching of the eyes in a perfectly natural and harmless manner, simply by opening the tear ducts and allowing the natural secretions of the eyes to carry off the pollen.

I set about perfecting a nose salve that would hold the effects of the nose spray in the nostrils for several hours.

This complete treatment formerly sold for \$7.50 but right now we are making a special price of \$5.00 to secure as many new customers as possible.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparations and their effectiveness in the treatment of the ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that hay fever is not a disease but results from the effect of pollens and the like upon organic conditions of sickness, abnormality, over-sensitiveness, or unhealthiness of the nasal membranes; that hay fever may be prevented, cured, and the sufferers therefrom substantially relieved by building up, healing, toughening, and strengthening the membranes of the nose; that respondent's treatment is scientific and has been thoroughly tested and proven successful; that the use of said treatment will heal and strengthen, build up and toughen and render less sensitive the nasal membranes and will build tissues therein, thus enabling the nose to throw off the pollens which induce hay fever; that from the use of said treatment,

there is obtained complete comfort, splendid relief, successful and marked results and an escape from the suffering incident to hay fever; that said treatment is a competent and effective remedy or treatment for hay fever and will completely fortify the user against hay fever; that the use of such treatment will assure substantial benefit to the user thereof; that the use of such treatment will bring relief to sufferers from hay fever where the use of treatments sold and distributed by competitors of respondent will fail to bring such relief; that as a result of the use of such treatment, the yearly attacks of hay fever on the user thereof will gradually become less severe; that the said preparations are not compounded in oil; that all of the ingredients of the various preparations are absorbed in the human system; that such treatment is a competent and effective remedy or treatment for, or will cure, asthma, bronchitis, coughs, colds, catarrh, and afflictions of the nose and throat; that the use of the said nose salve causes the effect of the use of the said spray to be retained for several hours; that the use of the said eye medicine causes the pollens to be eliminated by the natural secretions of the eye through the tear ducts; that the price of \$5 for such treatment is a reduction from the price at which the treatment is regularly and customarily offered for sale, and sold, at retail.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading and untrue and constitute false advertisements. In truth and in fact, the condition of hay fever is not attributable to sick or unhealthy local conditions of the nasal membranes and hay fever cannot be successfully treated and cured, and the cause thereof removed, by local medication. The said preparations, used singly or in combination, have no substantial therapeutic value in building up the membranes or tissues in the nose nor in strengthening, toughening, or rendering less sensitive the nasal membranes. The theories as to the proper treatment of hay fever as set forth in the aforesaid statements and representations by the respondent are not in accordance with the consensus of present day medical opinion. The use of said preparations will not cure and have no substantial therapeutic value in the treatment of hay fever, nor will they free the user from the suffering incident thereto. The use of such preparations will not render subsequent attacks of hay fever less severe and no permanent substantial beneficial results will be obtained, nor will any beneficial results be assured, from the use thereof. The use of such preparations do not always bring relief to the sufferers from hay fever when the use of preparations sold by competitors of the respondents failed to bring such relief. Various of the ingredients

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contained in such preparations are not absorbed into the human system if such preparations are used according to the directions of the respondent. The preparation designated "Nose Salve" contains a substantial amount of petrolatum. Such preparations, used either singly or in combination, will not cure and have no substantial therapeutic value in the treatment of asthma, bronchitis, catarrh, coughs, colds, and other afflictions of the nose and throat. The use of the said nose salve is only partially effective in retaining the effect of the use of the said spray. The use of the said eye medicine will not result in the elimination of pollens through the natural secretions of the eyes. The treatment is regularly and customarily offered for sale, and sold, by the respondent at retail for the price of \$5.

Respondent's claims as to the therapeutic value or efficacy of said preparations are grossly exaggerated, false, and deceptive, and greatly exceed any claims as to the therapeutic value and efficacy of said preparations which might truthfully be made. Any effect which the said preparations may have, when used either singly or in combination, is limited to a temporary relief from the acute symptoms of hay fever.

PAR. 7. The use of the aforesaid false advertisements, disseminated in the manner above described, induces, or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparations, 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 such false statements, representations, and advertisements are true, and that respondent's said preparations possess the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparations.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 3. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of

respondent's competitors and constitute unfair methods of competition and 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 the 27th day of September 1938, issued and served its complaint in this proceeding upon said respondent, R. O. Murphy, individually and trading as The Stillwater Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 10, 1938, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of fact to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for the final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, R. O. Murphy, is an individual doing business under the name and style of The Stillwater Co., with his office and principal place of business in the city of Stillwater, State of Minnesota. Respondent is now and has been for more than 3 years last past engaged in the business of manufacturing, selling, and distributing certain medicinal preparations. The said preparations are designated as (1) "No. 1 Nose Spray"; (2) "No. 2 Nose Spray"; (3) "No. 3 Nose Spray"; (4) "Eye Medicine"; (5) "Nose Salve." Said preparations constitute what is referred to by the

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respondent as the "treatment." In the course and conduct of his business respondent causes said preparations when sold to be transported from his aforesaid place of business in the State of Minnesota to purchasers thereof located in various States of the United States other than the State of Minnesota and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparations among and between the various States of the United States and in the District of Columbia.

PAR. 2. The "No. 1 Nose Spray" is a saturated solution of pine tar in pure water. The "No. 2 Nose Spray" is a 1 percent solution of borocaine dissolved in a saturated solution of pine tar in pure water. The "No. 3 Nose Spray" is one-half of 1 percent ephedrine sulphate and $1\frac{1}{2}$ percent borocaine dissolved in water. The "Eye Medicine" is 20 percent of a 1:1000 solution of adrenalin chloride in 80 percent normal salt solution. The "Nose Salve" is 1 percent menthol, 10 percent Kelo-Form (a synthetic anesthetic), 10 percent petrolatum, and 79 percent lanolin.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now, and has been for more than 3 years last past, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of other preparations, designed and intended for and used in the treatment of the ailments and conditions of the human body for which respondent recommends the use of his said preparations, in commerce between and among the various States of the United States. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution thereof.

PAR. 4. In the course and conduct of his business and for the purpose of inducing the purchase of said preparations, respondent has caused certain advertisements to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements in newspapers, magazines, and other publications having a circulation throughout the various States of the United States and through bulletins, circulars, and letters distributed by means of the United States mails and otherwise in commerce, among prospective purchasers of said preparations.

PAR. 5. Through said advertisements, bulletins, letters, and circulars respondent has made representations with respect to the cause of hay fever, the therapeutic properties of said preparations and

the results that may be expected to be obtained from the use thereof, such as the following:

My belief is that hay fever is not a disease at all, but usually the result of the nose membranes being oversensitive and weak, and that when they are in this condition the pollens irritate them excessively.

After using it several times a day, during the spring and summer, these membranes will be built up and strengthened, and will have a firm, hard surface which will throw off the hay-fever pollens with little or no irritation; the air passages will then remain open and the suffering from hay fever should be avoided.

All that is necessary is to build up and toughen the nose membranes a little so that they will not be sensitive to pollen. The whole thing then disappears regardless of what particular pollens you are sensitive to.

Here is a scientific treatment for hay fever which has been thoroughly tested and has proven successful.

Simply spray the nose with it several times a day and let it heal and build up the nose membranes.

I have found a medicine which has a tendency to toughen the nose membranes and make them less sensitive.

I do not claim that this treatment is anything miraculous, but it is certainly a splendid, effective relief for hay fever.

I have been freed of hay fever suffering for more than twelve years now by the use of this medicine and since that time I have had the satisfaction of seeing many another sufferer come up the same path by the use of this medicine which I believe to be the absolute specific for the conditions that cause hay fever.

By the use of this medicine you are completely fortified against the attack of hay fever.

The reason that this treatment will relieve hay fever where others fail is this:

Moreover, if my treatment is continued for several seasons, the attacks seem to gradually grow lighter.

Our medicine is not compounded in oil and contains only a few ingredients, all of which are quickly and entirely absorbed leaving the nose and throat in a healthy condition.

Although our medicine is primarily a treatment for hay fever, it is also beneficial for afflictions of the nose and throat * * * It has given complete relief from bronchitis, head colds, asthma, and uncontrollable coughing spells.

The Nose Salve, which our treatment also includes, gives you additional comfort and a lasting relief when the hay fever season is on, and our eye medicine prevents itching of the eyes in a perfectly natural and harmless manner, simply by opening the tear ducts and allowing the natural secretions of the eyes to carry off the pollen.

I set about perfecting a nose salve that would hold the effects of the nose spray in the nostrils for several hours.

This complete treatment formerly sold for \$7.50 but right now we are making a special price of \$5.00 to secure as many new customers as possible.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparations and their

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effectiveness in the treatment of the ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that hay fever is not a disease but results from the effect of pollens and the like upon organic conditions of sickness, abnormality, oversensitiveness or unhealthiness of the nasal membranes; that hay fever may be prevented, cured, and the sufferers therefrom substantially relieved by building up, healing, toughening, and strengthening the membranes of the nose; that respondent's treatment is scientific and has been thoroughly tested and proven successful; that the use of said treatment will heal and strengthen, build up, and toughen and render less sensitive the nasal membranes and will build tissues therein, thus enabling the nose to throw off the pollens which induce hay fever; that from the use of said treatment, there is obtained complete comfort, splendid relief, successful and marked results and an escape from the suffering incident to hay fever; that said treatment is a competent and effective remedy or treatment for hay fever and will completely fortify the user against hay fever; that the use of such treatment will assure substantial benefit to the user thereof; that the use of such treatment will bring relief to sufferers from hay fever where the use of treatments sold and distributed by competitors of respondent will fail to bring such relief; that as a result of the use of such treatment, the yearly attacks of hay fever on the user thereof will gradually become less severe; that the said preparations are not compounded in oil; that all of the ingredients of the various preparations are absorbed in the human system; that such treatment is a competent and effective remedy or treatment for, or will cure, asthma, bronchitis, coughs, colds, catarrh, and afflictions of the nose and throat; that the use of the said nose salve causes the effect of the use of the said spray to be retained for several hours; that the use of the said eye medicine causes the pollens to be eliminated by the natural secretions of the eye through the tear ducts; that the price of \$5 for such treatment is a reduction from the price at which the treatment is regularly and customarily offered for sale, and sold, at retail.

PAR. 7. The representations made by respondent and used and disseminated by respondent in the manner described with respect to his said preparations are exaggerated, misleading, and untrue, and constitute false advertising. In truth and in fact, hay fever is not attributable to oversensitive, weak, or unhealthy local conditions of the nasal membranes and their consequent susceptibility to excessive irritation from pollens, and cannot be successfully treated and cured, or the cause removed, by local medication. Respondent's preparations, used singly or in combination, do not possess therapeutic properties of value in building up the membranes or tissues of the nose, nor in healing,

strengthening, toughening, or rendering less sensitive the nasal membranes. Respondent's theories as to the treatment of or method of averting hay fever by local applications to the membranes of the nose are not in accordance with the consensus of present-day medical opinion. The use of these preparations will not cure, avert, nor fortify the user against hay fever, nor in all cases afford complete relief. The use of the preparations will not render subsequent attacks of hay fever less severe, and no permanent, substantial beneficial results will be obtained therefrom. Certain of the ingredients are not absorbed into the system when used in accordance with respondent's directions. The preparations, used either singly or in combination, are not cures for, and have no substantial value in the treatment of, asthma, bronchitis, catarrh, coughs, colds, and other afflictions of the nose and throat, except insofar as they may be palliatives for these conditions.

The "Nose Salve" is only partially effective in retaining the effect of the use of the various sprays. The "Eye Medicine" will not result in the elimination of pollens through the natural secretions of the eyes. The effect of the treatment as a whole is limited to a temporary relief from the acute symptoms of hay fever due to the presence of astringents and anesthetics. The "Nose Salve" may afford a partial and temporary protection against pollens.

PAR. 8. The use by respondent of the foregoing exaggerated, misleading, and untrue statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the said representations and statements are true, and, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's drugs.

As a result thereof, trade in commerce among and between various States of the United States has been diverted unfairly to the respondent from his competitors engaged in the business of selling and distributing preparations designed and intended for, and used in the treatment of, the ailments and conditions of the human body for which respondent recommends the use of his preparations.

CONCLUSION

The aforesaid acts and practices of the respondent, R. O. Murphy, individually and trading as The Stillwater Co., are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

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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 a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, R. O. Murphy, individually and trading as The Stillwater Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of United States mails, or in commerce as "commerce" is defined in the Federal Trade Commission Act, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of certain medicines now designated by the names of "No. 1 Nose Spray," "No. 2 Nose Spray," "No. 3 Nose Spray," "Eye Medicine," and "Nose Salve," or any other medicines composed of similar ingredients or possessing substantially similar therapeutic properties, whether sold under those designations or any other designations, which advertisements represent, directly or through implication:

(a) That hay fever results from the effect of pollens and the like upon oversensitive or unhealthy conditions of the nasal membranes, and that respondents preparations, either singly or in combination, possess therapeutic properties which will heal, toughen, strengthen, or render less sensitive the nasal membrane, or build tissues therein.

(b) That respondent's preparations constitute a cure or remedy, or competent treatment, for hay fever or will avert hay fever, or will fortify the user against hay fever, or will afford complete relief for hay fever in all cases, or have any therapeutic value in the treatment of hay fever in excess of furnishing a temporary or palliative relief from the acute symptoms thereof.

(c) That respondent's preparations are a cure or remedy for asthma, bronchitis, coughs, colds, or other afflictions of the nose or throat, or have any substantial value in the treatment thereof except

insofar as they may furnish temporary or palliative relief for such conditions

(d) That the use of respondent's preparations will cause subsequent attacks of hay fever to be less severe, or that any permanent substantial beneficial results will be obtained therefrom.

(e) That respondent's "Eye Medicine" will cause pollens to be eliminated from the system through the natural secretions of the eye.

(f) That respondent's preparations are offered at a special or reduced retail price when such price is the usual and customary price regularly charged by respondent for said preparations.

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
ROBERT R. CHARNEY, DOING BUSINESS AS NATIONAL
SALES COMPANY AND WINDSOR PEN COMPANY

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

Docket 3610. Complaint, Nov. 22, 1938¹—Decision, June 8, 1939

Where an individual engaged in sale and distribution of fountain pens, pencils, and jewelry such as necklaces and rings; in advertising his pens and pencils and necklaces for sale, along with so-called certificates—

- (a) Represented that the customary and usual retail prices at which, said various articles were offered and sold were greatly in excess of the prices at which they were offered and sold under terms and conditions set out in advertisements in question, and that the certificates referred to in said advertisements were actually worth \$4.41 each when offered as part payment of purchase price of such various articles, through such statements, among others, as "THIS CERTIFICATE IS WORTH \$4.41" and "This certificate and 59c entitles the bearer to one of our Genuine Indestructible \$5.00 Vacuum Filler Sackless Fountain Pens * * *," and "Price After Sale \$5.00," and "* * * \$1.50 PENCILS TO MATCH ABOVE PEN, 26c," and similarly referred to and offered, for 59 cents plus the certificate of said alleged worth of \$4.41, its "GENUINE FULL CARAT FACSIMILE DIAMOND RINGS" or its "Regular \$5.00 CROSS NECKLACES in Plain Gold, Silver or Beautiful Facsimile DIAMONDS", and similarly set forth that price of necklaces would be \$5 after the sale, and that there was a limit of two to a coupon and limited supply, and offer was made possible by the manufacturer, facts being said pens and pencils were generally offered and sold for 59 cents and 26 cents each, respectively, and did not have any such value as attributed to them as aforesaid, and rings and necklaces were customarily sold for former figure, and certificates in question did not have value of \$4.41, or any value whatever;
- (b) Represented that fountain pens sold and distributed by him as above set forth would last a lifetime and never need repair, and had greater ink capacity than ordinary pens, and that the points thereof were made from sensational or new material known as "Durium," and were of a design materially different from other pen points, through such statements, among others, as "A LIFETIME GUARANTEED WITH EACH PEN", "Genuine Indestructible", and "* * * holds 200% more ink than any ordinary fountain pen on the market," and "You can write for 3 months with one filling!" "No repair bills!" etc., and, through form letters distributed, that pen points used therein were the "latest design points," made from "Durium, a sensational new material," facts being said pens were not superior to competitive products offered at approximately same price, and other statements as to their capacity, long life, freedom from need of repair, and points of sensational new material and materially different design from other pen points, were untrue; and

¹ Amended and supplemental.