

Complaint

IN THE MATTER OF
HENRY O. HARR, DOING BUSINESS AS EASTERN
TRADING COMPANY

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

Docket 3432. Complaint, May 20, 1938—Decision, June 13, 1939

Where an individual engaged in sale and distribution of incense to purchasers in various other States—

Falsely represented, through printed matter on cartons or containers of his said product and in pamphlets enclosed therewith, that same possessed certain mystical charm, and that lucky numbers which appeared in ashes thereof were key to one's fortune, and might be interpreted through comparing such number with numbers appearing in booklets supplied;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of his said incense as result thereof, and of thereby diverting substantial trade in commerce in question to himself from competitors engaged in sale and distribution of said product in commerce among the States and in the District of Columbia, and who do not misrepresent the qualities, characteristics and attributes of incense offered and sold by them:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. William Schiepan, 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 Henry O. Harr, an individual, doing business as Eastern Trading 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 as follows:

PARAGRAPH 1. The respondent, Henry O. Harr, is an individual, doing business as the Eastern Trading Co., at 3974 Vincennes Avenue, Chicago, Ill. He is engaged in the sale and distribution of incense.

Respondent now causes, and for several years last past has caused, his said incense, when sold, to be shipped from his said place of business in Chicago, Ill., to the purchasers thereof, located in the various States of the United States other than the State of Illinois, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said incense so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other individuals, and with partnerships and corporations, engaged in the sale and distribution of incense 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 his business, as aforesaid, the respondent has advertised and now advertises his said incense in trade papers, pamphlets, and in various other ways as follows:

Light the top corner of a triangle "Lucky Number" Incense cake, and bring the subtle charm, the mysterious fragrance and the glamor of the Orient with all its delicate aroma into your home. Stand on long edge, watching both sides till the "Lucky Number" appears in the ashes. This number may be the key to all your Fortunes and Dreams, helping you to get Luck, Love, Happiness and Prosperity.

Lucky Number Incense.

* * * and a mysterious voice rising from the fragrant curling smoke spoke in a wraith-like whisper—"BEHOLD!!! I open to you the portals of the future; look, and heed well, for so shall ye live."

Have your fortune read each morning by burning a cake of Lucky Number Incense, wherein there shall magically appear in the burned white ashes, a number that is the key to your day's fortune. In each box of Lucky Number Incense, there is enclosed a Fortune and Dream Booklet with readings for the future against the corresponding numbers as have become visible in the burned ashes.

PAR. 3. The aforesaid advertising claims serve as representations on the part of respondent to purchasers and prospective purchasers that his said incense possesses certain mystical charms; that lucky numbers appear in the ashes of said incense, which numbers are the key to one's fortune; and that a mysterious voice arises from the smoke emitted from the burning incense.

In truth and in fact, respondent's incense possesses no mysterious charms, and no voice arises from the smoke emitted therefrom. Numbers do not magically appear in the ashes of said incense and such numbers that do appear, if they do, have no value or meaning whatever.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and cor-

porations engaged in the sale and distribution of incense that do not misrepresent the qualities, characteristics, and attributes of the incense which they offer for sale and sell.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's incense as a result of such erroneous belief. As a result of the acts and practices of the respondent as aforesaid substantial trade in said commerce is diverted unfairly to respondent from his aforesaid competitors, to their injury and to the injury of the public.

PAR. 6. 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 the 20th day of May 1938, issued and served its complaint in this proceeding upon the respondent, Henry O. Harr, an individual doing business as Eastern Trading Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it. William Schiepan, attorney for the respondent, introduced no testimony or evidence except he introduced in evidence one of respondent's labels. All of the testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, brief in support of complaint, no brief having been filed by respondent. 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, Henry O. Harr, is an individual doing business as Eastern Trading Company, having his principal place of business at 3974 Vincennes Avenue, Chicago, Ill. Respondent has continuously since the year 1928 been engaged in the sale and distribution of incense. In the course and conduct of his business the respondent causes his incense, when sold, to be shipped from his place of business in the city of Chicago, in the State of Illinois, to purchasers thereof located in various other States of the United States. At all times mentioned herein respondent has maintained a course of trade in the said incense sold and distributed by him in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and since the year 1928 has been, in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of incense in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's sales of incense average \$1,000 a month.

PAR. 4. In the course and conduct of his business the respondent has advertised and now advertises his said incense by means of printed matter appearing on cartons, boxes, or containers in which his said incense is offered for sale and sold and also in pamphlets inclosed in said cartons, boxes or containers. Typical of the representations appearing in such advertising as above described are the following:

Light the top corner of a triangle "Lucky Number" Incense cake, and bring the subtle charm, the mysterious fragrance and the glamour of the Orient, with all its delicate aroma, into your home. Stand on long edge, watching both sides till the "Lucky Number" appears in the ashes. This number may be the Key to all your Fortunes and Dreams, helping you to get Luck, Love, Happiness and Prosperity.

Gradually, in the ashes of the burning incense, a mystic number will appear. The enclosed booklet will help you to understand a meaning of this "Lucky Number."

PAR. 5. Respondent, up to the time of the filing of the complaint in this proceeding, placed in the boxes or containers containing his incense, booklets which purported to tell the fortune of the one burning the incense. This was accomplished by comparing the number appearing in the ashes in the incense with the numbers appearing in the booklet.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented, and does now represent, to purchasers and prospective purchasers of his incense that his product possesses certain mystical charm; that lucky numbers appear in the ashes of the said incense which are the key to one's fortune.

PAR. 7. In truth and in fact respondent's incense possesses no mysterious charms and numbers do not magically appear in the ashes of said incense and such numbers that do appear, if they do appear, have no value or meaning whatever.

PAR. 8. There are among the competitors of respondent individuals, partnerships and corporations engaged in the sale and distribution of incense in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent the qualities, characteristics and attributes of the incense which they offer for sale and sell.

PAR. 9. The use by the respondent of the representations hereinabove set forth has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's incense as the result of such erroneous belief. As a result of the acts and practices of the respondent, as aforesaid, substantial trade in said commerce is diverted unfairly to respondent from his aforesaid competitors.

CONCLUSION

The acts and practices of the respondent, as herein found, are all 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 respondent, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto (no brief having been filed by respondent and oral argument not having been requested) 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.

Order

29 F. T. C.

It is ordered, That the respondent, Henry O. Harr, individually or doing business as Eastern Trading Company or trading under any other name or through any corporate or other device, his agents, employees, and representatives, in connection with the offering for sale, sale and distribution of incense in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That respondent's said incense possesses mystical charms.
2. That lucky numbers appear in the ashes of said incense.
3. That numbers which appear in the ashes of said incense are the keys to one's fortune, or have any significance or meaning whatever.

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

Syllabus

IN THE MATTER OF

LAKE ERIE CHEMICAL COMPANY, DOING BUSINESS AS
U. S. ORDNANCE ENGINEERS, INC., AND U. S. ORDNANCE ENGINEERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AS EXTENDED BY SEC. 4 OF AN ACT OF CONGRESS APPROVED APR. 10, 1918

Docket 2484. Complaint, June 29, 1935—Decision, June 14, 1939

Where two corporations engaged, as case might be and as more fully below set forth, in manufacture, sale, and offer for sale of warfare chemicals, ordnance, munitions, and kindred products, to prospective purchasers and purchasers throughout the several States and the District of Columbia, and in foreign countries, namely—

I. Corporation which was and had been thus engaged for a number of years under name Lake Erie Chemical Co., and which, in the course and conduct of its said business, and as continuously thus engaged in manufacture and sale of warfare chemicals, ordnance, munitions, etc., had from time to time sold such products to the United States Government and had been recipient of information relating to ordnance, munitions, and warfare chemical products, thus, or otherwise disseminated incident to contract bids and to purchase of such materials as the War Department or United States Army purchases from manufacturers from time to time; and

II. Company, which the president of said corporation and others of its managing officials thereafter organized under corporate name U. S. Ordnance Engineers, Inc., and authorized to engage in offer and sale of products of said corporation to prospective purchasers and purchasers in foreign countries and for sale and distribution in export trade from the United States, and voting stock of which was owned, with few exceptions, by those who were also owners of voting stock of said corporation, and which had in common with latter two of its five directors and same president and treasurer, and was located in same city and at same address, had no offices outside of said city, employed New York selling representative on a commission basis with New York office as its exclusive selling representative in South and Central American countries, and who was authorized to and did make use of said company's name, namely, U. S. Ordnance Engineers, Inc., on the door of his offices and in the telephone listing and otherwise, and which, furthermore, as thus organized, was engaged in export business of offering or selling warfare chemicals, ordnance, munitions, and kindred products, made, primarily, by said corporation, to prospective purchasers and purchasers in foreign countries, and also in maintaining and selling certain engineering and construction service for foreign governments, and service involving instruction in military and civil tactics; In jointly advertising, offering, selling, and exporting in foreign commerce and export trade from the United States to foreign countries, the aforesaid products, and in advertising the same through catalogs which contained 22 separate pages of advertising statements, illustrations, and representations