

Syllabus

IN THE MATTER OF
THE KOLYNOS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3587. Complaint, Sept. 14, 1938—Decision, June 20, 1939*

Where a corporation engaged in manufacture of its "Kolynos" tooth paste or dentifrice, and in sale and distribution thereof in interstate commerce to purchasers in various points in States other than that from which shipment was made; in advertisements which it disseminated or cause to be disseminated through newspapers and other periodicals of general circulation in the various States and in the District of Columbia, and which were calculated to induce purchase of such cosmetic or tooth paste—

- (a) Represented, directly or by implication, that said dentifrice was an outstanding, competent, and effective germicidal or antiseptic agent which would kill all harmful bacteria in the oral cavity, through such statements, among others, as " * * * actually kills harmful germs * * *," "An antiseptic ingredient in that rich foam reaches every tiny crevice, and destroys the germs that cause tooth-decay," and "The use of an outstanding germicidal and economical tooth-paste is the basis for tooth care," facts being there is no germicidal agent which can be put into mouth which will kill all bacteria present and produce sterile condition, germs therein capable of producing harm are located principally in inaccessible areas of said cavity and are not reached by said preparation as used, which, while containing mild antiseptic with tendency to inhibit growth of some microorganisms with which it comes in contact on the teeth, will not kill or destroy all the harmful germs in oral cavity, and is not a competent or proved antiseptic or germicidal agent;
- (b) Represented, as aforesaid, that said dentifrice would remove all stains from teeth and keep teeth and mouth thoroughly clean and healthy, and assure user of sound teeth and bring out and restore brightness to teeth which were dull or discolored, through such statements, among others, as "The amazing scientific discovery that brings out the natural brightness," " * * * works on the yellowish looking dull coating that disfigures your teeth," " * * * gives them the gleaming dazzling brightness you have always wanted," and "Germicidal and cleansing ingredients literally fill each tube of Kolynos," and " * * * keeps teeth and mouth thoroughly clean * * *," facts being it will not accomplish result last set forth nor assure user of sound teeth, efficiency of tooth paste in cleaning teeth depends primarily upon method of application by individual, inefficient brushing will not clean teeth regardless of dentifrice used, and said tooth paste will not remove all types of stains from teeth or any stain other than ordinary surface stains, nor change or alter their natural color or bring out or restore brightness to teeth which are dull or discolored due to causes other than ordinary surface stains; and
- (c) Represented, as aforesaid, that said dentifrice was more concentrated or economical to use than competing products and would accomplish results which they could not, through such statements, among others, as " * * * is

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concentrate," "Use only half an inch * * *," "* * * unique in its action * * * lasts longer—you use only one-third as much as ordinary toothpaste. * * * economical for it contains no water—in other words, germicidal and cleansing ingredients literally fill each tube * * *," facts being said preparation was not more concentrated or economical than a number of competing products, did not accomplish results which could not be brought about by number of competing dentifrices, and was not an amazing scientific discovery or an unique scientific formula;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true, and with result, as direct consequence of such mistaken and erroneous beliefs induced by said misrepresentations, that number of such public purchased substantial quantity of its said product and trade was unfairly diverted from others likewise engaged in sale and distribution of dentifrices and who truthfully advertise and vend the same; to the substantial injury of competition in commerce:

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

Mr. Merle P. Lyon for the Commission.

Rogers, Ramsey & Hoge, of Washington, D. C., 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 Kolynos Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kolynos Co., is a Connecticut corporation, which has its principal office and place of business in the city of New Haven, in the State of Connecticut. Respondent is now, and has been for some years last past, engaged in the manufacture and in the sale and distribution in commerce as herein set-out, of a certain tooth paste, known as "Kolynos."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said tooth paste, when sold, to be transported from its office and place of business in the State of Connecticut to purchasers thereof located at various points in States of the United States other than Connecticut and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in the aforementioned product so sold and distributed by it in commerce between

and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing tooth pastes and other preparations designed for similar usage in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its tooth paste, respondent has caused false advertisements containing representations and claims with respect to the properties of said tooth paste and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Thousand of dentists throughout the world recommend Kolynos because of its ability to remove unsightly looking stain, to clean the teeth without harmful bleaching action or unnecessary abrasion. Kolynos actually kills harmful germs and keeps teeth and mouth thoroughly clean.

It is the discovery of a great dental scientist, N. S. Jenkins, who created a toothpaste so remarkable it is used in a different way.

You see Kolynos contains ingredients not found in ordinary toothpastes.

An antiseptic ingredient in that rich foam reaches every tiny crevice, and destroys the germs that cause tooth-decay.

The proved antiseptic and germicidal tooth paste.

The use of an outstanding germicidal and economical tooth paste is the basis for tooth care.

Germicidal and cleansing ingredients literally fill each tube of Kolynos.

The amazing scientific discovery that brings out the natural brightness.

The remarkable toothpaste that brings out the natural color and brightness of the teeth.

It brings out the natural color and brightness of dull, discolored teeth.

Acts to remove the ugly coating of yellow that covers and encloses your teeth.

It works on the yellowish looking dull coating that disfigures your teeth.

How it gives them the gleaming, dazzling brightness you have always wanted.

It starts in to erase the yellowish discolored appearance of your teeth.

Kolynos is concentrated.

Use only half an inch of Kolynos—the proved antiseptic and germicidal toothpaste—on a dry brush—for two minutes! Your mouth will immediately feel

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cleaner and fresher and your teeth will glisten and sparkle. Discover for yourself the joy of a clean mouth and sound, attractive teeth.

Now Kolynos toothpaste (used in 87 different countries) destroys mouth germs. It is unique in its action—it foams in one's mouth, forcing its germ destroying agents into every crevice and fissure. It cleans teeth—polishing them to their natural brightness. Kolynos lasts longer—you only use one-third as much as ordinary toothpaste. Moreover, it is economical for it contains no water—in other words, germicidal and cleansing ingredients literally fill each tube of Kolynos.

PAR. 5. Through 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 tooth paste and its effectiveness in cleaning and beautifying the teeth and mouth, the respondent has falsely represented, directly and by inference and implication, among other things: That Kolynos tooth paste removes stains from teeth; that it kills all harmful germs in the oral cavity and keeps the teeth and mouth thoroughly clean and healthy on account of its antiseptic and germicidal qualities; that it restores natural color and brightness to teeth which have become dull and discolored; that it removes the yellow coating on teeth; that it is an outstanding and competent germicidal and antiseptic agent; that it is more concentrated and economical to use than competing preparations and that its use accomplishes results which cannot be accomplished with competing preparations.

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. The true facts are that Kolynos tooth paste does not have any of the qualities or achieve any of the results claimed and represented as hereinabove described. Kolynos will not kill or destroy all the harmful germs in the oral cavity and it is not a competent or proved antiseptic and germicidal agent. It does not keep the teeth and mouth thoroughly clean because of any alleged antiseptic and germicidal qualities or for any other reason. The use of Kolynos will not remove all types of stains from teeth or bring out the natural color and brightness of dull discolored teeth or restore natural color and brightness to such teeth. Kolynos is no more concentrated or economical to use than other competing preparations and its use does not accomplish results that cannot be accomplished by other competing preparations. Any cleaning effect accomplished by brushing the teeth with tooth paste is due primarily to the mechanical action of the brush and not to the ingredients contained in the tooth paste.

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 cosmetic, to wit, Kolynos tooth paste.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to Kolynos tooth paste, 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 Kolynos tooth paste possesses the properties claimed and represented and will accomplish the results so represented and into the purchase of substantial quantities of respondent's Kolynos tooth paste as a result of such erroneous and mistaken beliefs induced by the aforesaid misrepresentations, acts, and practices of the respondent.

PAR. 9. As a result, trade has been diverted unfairly to the respondent from competitors likewise engaged in the business of distributing and selling in commerce between and among the various States of the United States and in the District of Columbia tooth pastes and other preparations designed for similar usage who truthfully advertise the effectiveness in use of their respective products. 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. 10. The aforesaid acts and practices of the 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 14th day of September 1938, issued and served its complaint in this proceeding upon said respondent, the Kolynos Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On December 1, 1938, an answer was filed by the respondent. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the said respondent by its counsel, Rogers, Ramsay, and Hoge, and W. T.

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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 facts to make its report, stating its findings as to the 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 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, the Kolynos Co., is a corporation duly organized and existing under the laws of the State of Connecticut with its office and a place of business in the city of New Haven, Conn. Respondent is now and for some time has been engaged in the business of manufacturing, selling, and distributing in interstate commerce a tooth paste or dentifrice known as "Kolynos."

PAR. 2. Respondent, being engaged in business as aforesaid, causes said preparation, when sold, to be transported from its place of business in the State of Connecticut to purchasers thereof located in various points in States of the United States other than the State from which shipments are made. Respondent now maintains a course of trade in commerce in said product distributed and sold by it between and among the various States of the United States.

PAR. 3. Respondent is now and has been in the course and conduct of its said business in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling tooth pastes or dentifrices in commerce among and between the various States of the United States.

PAR. 4. Respondent, in the course and conduct of its business in said commerce for the purpose of inducing the purchase of said product, Kolynos tooth paste, has caused advertisements to be placed in newspapers and other periodicals in general circulation in the various States of the United States and in the District of Columbia. These advertisements contain statements concerning the ingredients in, and efficacy of, the product Kolynos tooth paste, and the results that may be expected to be obtained from the use thereof.

Prior to the date of the issuance of the complaint herein, respondent in said advertisements made in substance the following statements:

Thousands of dentists throughout the world recommend Kolynos because of its ability to remove unsightly looking stain, to clean the teeth without harmful bleaching action or unnecessary abrasion, Kolynos actually kills harmful germs and keeps teeth and mouth thoroughly clean.

It is the discovery of a great dental scientist, N. S. Jenkins, who created a toothpaste so remarkable it is used in a different way.

You see Kolynos contains ingredients not found in ordinary toothpastes.

An antiseptic ingredient in that rich foam reaches every tiny crevice, and destroys the germs that cause tooth-decay.

The proved antiseptic and germicidal toothpaste.

The use of an outstanding germicidal and economical toothpaste is the basis for tooth care.

Germicidal and cleansing ingredients literally fill each tube of Kolynos.

The amazing scientific discovery that brings out the natural brightness.

The remarkable toothpaste that brings out the natural color and brightness of the teeth.

It brings out the natural color and brightness of dull, discolored teeth.

Acts to remove the ugly coating of yellow that covers and encloses your teeth.

It works on the yellowish looking dull coating that disfigures your teeth.

How it gives them the gleaming dazzling brightness you have always wanted.

It starts in to erase the yellowish discolored appearance of your teeth.

Kolynos is concentrate.

Use only half an inch of Kolynos—the proved antiseptic and germicidal toothpaste—on a dry brush—for two minutes! Your mouth will immediately feel cleaner and fresher and your teeth will glisten and sparkle. Discover for yourself the joy of a clean mouth and sound, attractive teeth.

Now Kolynos toothpaste (used in 87 different countries) destroys mouth germs. It is unique in its action—it foams in one's mouth, forcing its germ destroying agents into every crevice and fissure. It cleans teeth—polishing them to their natural brightness. Kolynos lasts longer—you use only one-third as much as ordinary toothpaste. Moreover, it is economical for it contains no water—in other words, germicidal and cleansing ingredients literally fill each tube of Kolynos.

PAR. 5. The use of the aforesaid advertisements, disseminated in the manner described, is likely to induce, directly or indirectly, the purchase of a cosmetic, to wit, Kolynos tooth paste.

PAR. 6. There is no germicidal agent which can be put into the mouth which will kill all bacteria present in the oral cavity and produce a sterile condition. The germs in the mouth capable of producing harm are not principally those floating around in the saliva but those buried in the folds and crypts of the mucous membrane or located in other inaccessible areas of the oral cavity and these germs are not reached by Kolynos tooth paste as same is used. While Kolynos tooth paste contains mild antiseptics which may have a

tendency to inhibit the growth of some micro-organisms with which it comes in contact on the teeth, it will not kill or destroy all the harmful germs in the oral cavity and it is not a competent or proved antiseptic or germicidal agent. It will not keep the teeth and mouth thoroughly clean or assure the user of sound teeth. The efficiency of a tooth paste in cleaning the teeth depends primarily upon the method of application. Efficient brushing will clean the teeth whereas inefficient brushing will not clean the teeth regardless of the dentifrice used on the brush. Kolynos tooth paste will not remove all types of stain from the teeth or any stains other than ordinary surface stains. It will not change or alter the natural color of teeth or bring out or restore brightness to teeth which are dull or discolored due to causes other than ordinary surface stains. Kolynos is not more concentrated or economical to use than a number of competing dentifrices and its use does not accomplish results that cannot be accomplished by a number of competing dentifrices. Kolynos tooth paste is not an amazing scientific discovery or an unique scientific formula.

PAR. 7. Among the competitors of the respondent are many who do not in any way misrepresent the ingredients in, or the efficacy of, their products in distributing the same in commerce.

PAR. 8. The aforesaid acts and practices of the said respondent had and now have, a tendency and capacity to mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that said representations are true. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the misrepresentations of the said respondent as aforesaid, a number of the purchasing public has purchased a substantial quantity of respondent's product, Kolynos tooth paste, with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of dentifrices who truthfully advertise and vend the same. As a result thereof, substantial injury has been, and is now being done by the said respondent herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts, practices, and representations of the said respondent have been, and are, all to the prejudice and injury of the public and said respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and 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 the statement of facts contained therein may be made a part of the record herein, and 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 Commission may proceed upon said statement of facts 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; 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, the Kolynos Co., a corporation, its officers, agents, and representatives, 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 the 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 a dentifrice now designated by the name of Kolynos, or any other dentifrice composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said dentifrice, which advertisements represent, directly or through implication, that said dentifrice is an outstanding or competent or effective germicidal or antiseptic agent, or that it will kill all harmful bacteria in the oral cavity; that said dentifrice will remove all stains from teeth or any stains other than ordinary surface stains; that said dentifrice will keep the teeth and mouth thoroughly clean and healthy or will assure the user of sound teeth; that said dentifrice will change the natural color or brightness of teeth or bring out or restore brightness to teeth which are dull or discolored due to causes other than ordinary surface stains; that said dentifrice is more concentrated or economical to use

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than competing dentifrices, or that it will accomplish results which cannot be accomplished by competing dentifrices.

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

Complaint

IN THE MATTER OF

HYMAN MENDELS, TRADING AS J. J. HENDERSON

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

Docket 3179. Complaint, July 21, 1937—Decision, June 22, 1939

Where an individual engaged in sale and distribution of clocks to customers throughout the United States—

Furnished various devices and plans for selling his said merchandise which involved operation of game of chance through which same was distributed to ultimate consumer wholly by lot or chance, and the furnishing of his customers with push cards, order blanks, and circulars explaining his plan for selling his said products and allotting premiums or prizes to patrons of said cards under such plan, in accordance with which number pushed by chance determined amount paid by customer for his chance, and person securing certain number received fountain pen desk set, and person selecting feminine name corresponding to that concealed within card's master seal received "Venus Rotary Clock," and patrons pushing other disks received nothing, and operator of card was compensated through receipt for himself of one of such clocks; and

Placed thereby in the hands of others means of conducting lotteries in sale of his said products, contrary to the established public policy of the United States Government and in violation of the criminal laws, and in competition with many who do not use same or similar method of distribution as contrary to public policy;

With result that many persons were attracted by his said sales plan or method of distribution for his merchandise and by element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that offered by competitors, many of whom, as aforesaid, do not use such or similar methods, and trade was thereby unfairly diverted to said individual from such competitors:

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

Before *Mr. William C. Reeves*, *Mr. W. W. Sheppard*, and *Mr. Charles F. Diggs*, trial examiners.

Mr. Henry C. Lank, *Mr. D. C. Daniel*, *Mr. Alden S. Bradley*, and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

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 Hyman