

Syllabus

IN THE MATTER OF
WYETH CHEMICAL COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 3754. Complaint, Apr. 7, 1939—Decision, July 7, 1939

Where a corporation engaged in sale and distribution of "Freezone," preparation for removal of corns and callouses, to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of like and similar products or other products and treatments designed, intended and used for similar purposes, in commerce as aforesaid, and in said District—

- (a) Represented, in its advertising in newspapers and periodicals of general circulation, and in bulletins and other advertising literature circulated to prospective purchasers in various States and in said District, that use of said "Freezone" would cure corns and callouses and prevent their formation and recurrence, and promptly stop the pain which they caused and prevent its recurrence;

Facts being that, while such preparation might have analgesic effect and mitigate pain caused by corns, use thereof would not promptly stop such pain and prevent recurrence, and its said statements and representations with respect to therapeutic value of its said product and effectiveness thereof were false, misleading and untrue;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all of its said representations were true, and with result, as direct consequence of such erroneous and mistaken belief, that number of purchasing public bought substantial volume of its product, and trade in commerce was diverted unfairly to it from competitors likewise engaged in sale and distribution of like and similar products, or other products and treatments intended, designed and used for similar purposes, and who truthfully advertise their products and effectiveness thereof; to the substantial injury of competition in commerce among the States and in said District:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce; and

Where said corporation engaged in sale and distribution of its said "Freezone," for removal of corns and callouses, to purchasers in other States and in the District of Columbia, as aforesaid; in advertisements which it disseminated through the mails, through insertion in newspapers and periodicals of general circulation, and through other printed or written matter distributed in commerce among the various States, and through continuities broadcast from radio stations of extrastate audience, and through other means, and which were intended and calculated to induce purchase of its said product—

- (b) Represented, directly and by implication, that corns had roots, and that said preparation would remove such roots and deaden pain caused by corns and prevent their recurrence, and that entire corn could be removed by the fingers through one application, through such statements, among others,

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as "There is one—and only one—way to treat a piercing, painful corn—to remove it completely, root and all. * * *," " * * * Put the corn to sleep, then in a few days you lift it right out with the fingers," and " * * * pain is scientifically deadened. * * *";

Facts being corns do not have roots, it is necessary to make repeated applications of such preparation to corn and to remove cornified layers gradually by peeling off tissue dissolved after each application of preparation, and entire corn cannot be removed, as above set forth, and, while said product may have an analgesic effect and mitigate pain caused by corns, it will not deaden such pain or prevent its recurrence, and said statement and representations relative to therapeutic value of such product and its effectiveness were deceptive, misleading and untrue, and constituted false advertisements;

With effect of misleading and deceiving members of purchasing public in various States into erroneous and mistaken belief that such statements and representations were true and into purchase of its said drug-containing product: Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. George Foulkes for the Commission.

Mr. Simon Michelet, 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 Wyeth Chemical 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, Wyeth Chemical Co., is a corporation organized, existing and doing business under the laws of the State of Delaware with its office and principal place of business located at 15 Exchange Place, Jersey City, N. J.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing a preparation for the removal of corns and calluses, designated by respondent as "Freezone." Respondent causes said product when sold to be transported from its place of business in New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product 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 business respondent is in substantial competition with other corporations and with individuals, firms and partnerships engaged in the sale and distribution of like and similar products or other products and treatments intended, designed and used for similar purposes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its preparation, respondent has caused statements and representations relative to the therapeutic value of such preparation and its effectiveness in use to be inserted in newspapers and periodicals having a general circulation throughout the United States and in bulletins and other advertising literature circulated to prospective purchasers of such preparation situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated or caused to be disseminated by the respondent, as aforesaid, are the following:

If you want to keep your feet free from aching corns, just get a bottle of Freezone from any druggist.

Now lift off corns AND STOP PAIN INSTANTLY.

Pain stops like a flash and soon the corn gets so loose you can lift it right off with your fingers. You will agree that it is the quickest, easiest way to stop pain and get rid of hard and soft corns, even corns between the toes.

Hard corns, soft corns, corns between the toes, and callouses lift right off. * * *

Stops pain instantly. Corns lift off.

Hard corns or soft—all are quickly ended by FREEZONE. Callouses, too.

The aforesaid statements and representations by respondent and statements and representations of similar import and meaning not herein set out but disseminated as aforesaid purport to be descriptive of the therapeutic value of respondent's preparation and of its effectiveness in use. In the manner and by the means aforesaid, respondent represents directly and by implication that the use of such preparation will cure corns and callouses and prevent the formation and recurrence thereof, and will promptly stop the pain caused by corns and prevent the recurrence thereof.

PAR. 5. The aforesaid statements and representations by respondent with respect to the therapeutic value of such preparation and of its effectiveness in use are false, misleading and untrue. In truth and in fact, such preparation will not cure corns and callouses and will not prevent the formation and recurrence thereof. Such preparation may have an analgesic effect and mitigate the pain caused

by corns but the use of such preparation will not promptly stop the pain caused by corns and will not prevent the recurrence thereof.

PAR. 6. Each and all of the false and misleading representations made by the respondent in its advertising in newspapers and magazines, in offering for sale, and selling, its product, as hereinabove set out, had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief a number of the purchasing public has purchased a substantial volume of respondent's product with the result that trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing like and similar products or other products and treatments intended, designed and used for similar purposes and who truthfully advertise their products and the effectiveness thereof when used. As a result thereof, injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of its said business and since March 21, 1938, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in the various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false and misleading representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Just a few drops at a time is all that is necessary. The corn is quickly put to sleep—pain is scientifically deadened. Soon the corn lifts right out. It's as easy as that—even with the most painful corns and callouses.

Just a few drops of this clear liquid are enough. * * * It puts the corn to sleep and soon you can lift the corn right out * * *.

There is one—and only one—way to treat a piercing, painful corn—to remove it completely, root and all. * * * This scientific remedy, a clear liquid, gets at the real trouble, the roots of the corn. Freezone soon lets you lift the corn out completely. Even more, Freezone rapidly puts the corn to sleep—deadens the pain. * * *

CORNS LIFT RIGHT OUT. Freezone does it. Put the corn to sleep, then in a few days you lift it right out with the fingers.

In the manner and by the means aforesaid, respondent represents directly and by implication that corns have roots and that such preparation will remove the roots of corns, will deaden pain caused by corns and prevent the recurrence thereof, and that the entire corn can be removed by use of the fingers by reason of one application of such preparation.

PAR. 8. The aforesaid statements and representations by the respondent relative to the therapeutic value of such preparation and of its effectiveness in use are deceptive, misleading and untrue and constitute false advertisements. In truth and in fact, corns do not have roots and consequently such preparation will not remove the roots of a corn. Such preparation may have an analgesic effect and mitigate the pain caused by corns but will not deaden such pain and prevent the recurrence thereof. The entire corn cannot be removed by use of the fingers by reason of one application of such preparation. In fact, it is necessary to make repeated applications of such preparation to the corn and to remove the cornified layers gradually by peeling off the tissue dissolved after each application of the preparation.

PAR. 9. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has the capacity and tendency to, and does, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondent's aforesaid medicinal preparation containing drugs.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, in paragraphs 1 to 6, inclusive, 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.

The aforesaid acts and practices of respondent, as herein alleged, in paragraphs 1, 2, 7, 8, and 9, are all to the prejudice and injury of the public and constitute 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 April 7, 1939, issued, and on April 10, 1939, served, its complaint in this proceeding upon the respondent, Wyeth Chemical Co., a corporation, charging it 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 May 12, 1939, the respondent filed its 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's counsel, Simon Michelet, 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 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 this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Wyeth Chemical Co., is a corporation organized, existing and doing business under the laws of the State of Delaware with its office and principal place of business located at 15 Exchange Place, Jersey City, N. J.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of selling and distributing a preparation for the removal of corns and callouses, designated by respondent as "Freezone." Respondent causes said product when sold to be trans-

ported from its place of business in New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product 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 business respondent is in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of like and similar products or other products and treatments intended, designed and used for similar purposes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its preparation, respondent has caused statements and representations relative to the therapeutic value of such preparation and its effectiveness in use to be inserted in newspapers and periodicals having a general circulation throughout the United States and in bulletins and other advertising literature circulated to prospective purchasers of such preparation situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated or caused to be disseminated by the respondent, as aforesaid, are the following:

"If you want to keep your feet free from aching corns, just get a bottle of Freezone from any druggist.

Now lift off corns AND STOP PAIN INSTANTLY.

Pain stops like a flash and soon the corn gets so loose you can lift it right off with your fingers. You will agree that it is the quickest, easiest way to stop pain and get rid of hard and soft corns, even corns between the toes.

Hard corns, soft corns, corns between the toes, and callouses lift right off. * * *

Stops pain instantly. Corns lift off.

Hard corns or soft—all are quickly ended by FREEZONE. Callouses, too.

The aforesaid statements and representations by respondent and statements and representations of similar import and meaning not herein set out but disseminated as aforesaid purport to be descriptive of the therapeutic value of respondent's preparation and of its effectiveness in use. In the manner and by the means aforesaid, respondent represents directly and by implication that the use of such preparation will cure corns and callouses and prevent the formation and recurrence thereof, and will promptly stop the pain caused by corns and prevent the recurrence thereof.

PAR. 5. The aforesaid statements and representations by respondent with respect to the therapeutic value of such preparation and of its effectiveness in use are false, misleading, and untrue. In truth and in fact, such preparation will not cure corns and callouses and will not prevent the formation and recurrence thereof. Such preparation may have an analgesic effect and mitigate the pain caused by corns but the use of such preparation will not promptly stop the pain caused by corns and will not prevent the recurrence thereof.

PAR. 6. Each and all of the false and misleading representations made by the respondent in its advertising in newspapers and magazines, in offering for sale, and selling, its product, as hereinabove set out, had, and now has, the tendency and capacity to, and does, mislead, and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief a number of the purchasing public has purchased a substantial volume of respondent's product with the result that trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing like and similar products or other products and treatments intended, designed and used for similar purposes and who truthfully advertise their products and effectiveness thereof when used. As a result thereof, injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of its said business and since March 21, 1938, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in the various States of the United States other than the State in which said broadcasts originate, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of, false adver-

tisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false and misleading representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Just a few drops at a time is all that is necessary. The corn is quickly put to sleep—pain is scientifically deadened. Soon the corn lifts right out. It's as easy as that—even with the most painful corns and callouses.

Just a few drops of this clear liquid are enough. * * * It puts the corn to sleep and soon you can lift the corn right out * * *.

There is one—and only one—way to treat a piercing, painful corn—to remove it completely, root and all. * * * This scientific remedy, a clear liquid, gets at the real trouble, the roots of the corn. Freezone soon lets you lift the corn out completely. Even more. Freezone rapidly puts the corn to sleep—deadens the pain. * * *

CORNS LIFT RIGHT OUT. Freezone does it. Put the corn to sleep, then in a few days you lift it right out with the fingers.

In the manner and by the means aforesaid, respondent represents directly and by implication that corns have roots and that such preparation will remove the roots of corns, will deaden pain caused by corns and prevent the recurrence thereof, and that the entire corn can be removed by use of the fingers by reason of one application of such preparation.

PAR. 8. The aforesaid statements and representations by the respondent relative to the therapeutic value of such preparation and of its effectiveness in use are deceptive, misleading, and untrue and constitute false advertisements. In truth and in fact, corns do not have roots and consequently such preparation will not remove the roots of a corn. Such preparation may have an analgesic effect and mitigate the pain caused by corns but will not deaden such pain or prevent the recurrence thereof. The entire corn cannot be removed by use of the fingers by reason of one application of such preparation. In fact, it is necessary to make repeated applications of such preparation to the corn and to remove the cornified layers gradually by peeling off the tissue dissolved after each application of the preparation.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has the capacity and tendency to, and does, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondent's aforesaid medicinal preparation containing drugs.

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CONCLUSION

The aforesaid acts and practices of respondent, as herein found, in paragraphs 1 to 6, inclusive, 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.

The aforesaid acts and practices of respondent, as herein found, in paragraphs 1, 2, 7, 8, and 9, are all to the prejudice and injury of the public and constitute 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 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, Wyeth Chemical Co., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of a preparation for the removal of corns or callouses now designated as "Freezone," or of any other preparation containing substantially the same ingredients or possessing similar therapeutic properties whether sold under the name of "Freezone" or under any other name or names, do forthwith cease and desist from:

1. Representing that said product, when used, will cure corns or callouses or prevent the formation or recurrence of corns or callouses.

2. Representing that said product, when used, will promptly stop the pain caused by corns or prevent the recurrence of pain caused by corns.

3. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is

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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 preparation for the removal of corns, now designated by the name of "Freezone," or any other preparation for the removal of corns composed of substantially the same ingredients or possessing substantially similar therapeutic properties, whether sold under that name or any other name, or names, 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 product, which advertisements represent, directly or through implication, that corns have roots or that the preparation "Freezone" will remove the roots of corns or will deaden pain caused by corns or will prevent the recurrence of corns, or that an entire corn can be removed by the use of the fingers by reason of one application of such preparation.

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.

IN THE MATTER OF
HART, SCHAFFNER & MARX, AND WALLACH'S, INC.

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

Docket 3560. Complaint, Aug. 29, 1938. Decision, July 10, 1939

Where a corporation engaged in manufacture, sale and distribution of men's clothing, and subsidiary thereof engaged in sale and distribution of men's clothing and furnishings, and in featuring, in retail trade, products of former, and, as thus engaged, in selling their said products to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of men's wearing apparel made from wool, silk, rayon and other fibers, in commerce among the various States and in said District—

- (a) Attached to garments made by said corporation and sold and distributed by it and by said subsidiary, labels which displayed under name of said manufacturing corporation, designation "Silkool" and legend "Cool, sheer, porous, style retaining. Made of 50% natural silk. 50% man made silk (acetate)"; and
- (b) Made use also of other label bearing word "Silkool" without qualification, and advertised their said products under said name in newspapers and other periodicals of interstate circulation, and supplied to dealers purchasing its products electrotype mats, for newspaper advertisements, featuring said word, together with legend "What's the secret of this unique fabric? A blend of 50% natural silk and 50% man made silk (Acetate)";

Facts being garments thus advertised and offered were not, as thus represented, composed wholly of silk, product of cocoon of silkworm, as long understood by consuming public generally from word "silk," but were composed of wild silk and rayon of about equal parts, and use of word "acetate," not generally understood by substantial portion of purchasing public as identifying product as rayon, did not place purchasers on notice that fabric thus designated was in fact rayon and not silk, products of which have long been held in great public esteem and confidence for their preeminent qualities;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such statements and representations were true, and that garments in question were composed entirely of silk, and to induce purchase of their said products as result of such erroneous and mistaken belief, and to divert unfairly trade to them from competitors who do not misrepresent the goods which they manufacture and offer:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James L. Fort for the Commission.

Mayer, Meyer, Austrian & Platt, of Chicago, Ill., and *Mr. George S. Ward*, of Washington, D. C., for respondents.