

Syllabus

IN THE MATTER OF

EUGENE H. HUNTER AND RAE LAMARR HUNTER, TRADING AS THE FLORACUBE COMPANY, INC.

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

Docket 3284. Complaint, Dec. 17, 1937—Decision, Sept. 8, 1939

Where two individuals engaged in advertisement, sale, and distribution of medicinal preparation designated as "Floracubes" and, as thus engaged, in selling said product to purchasers in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of like medicinal preparations and of preparations designed for treatment of same ills, maladies, and conditions for which their product was recommended, and including many who sell and distribute, in commerce among the various States and in said District, such various preparations and do not misrepresent the properties, therapeutic virtues, and functions, uses, or effects thereof—

Represented, in letters, circulars, pamphlets, and other advertising media published and circulated throughout the country, that preparation in question was a cure or remedy for colitis, digestive disorders, headaches, overacidity, food decay, nervousness, rheumatism, ailments common to old age, high blood pressure, arthritis, heart trouble, weak eyes, and numerous other ailments and conditions, and for all common and annoying diseases, which would eliminate the cause of aforesaid ailments and conditions, facts being said "Floracubes" constituted nothing more than a laxative or purgative, depending upon amount, and therapeutic value thereof was limited to temporary relief of constipation, and it would not prevent, cure, eliminate, or rid the body of any disease, disorder, or malady, or of the causes of said ailments and conditions, and it was not a cure or remedy therefor, as above claimed;

With capacity and tendency to mislead and deceive members of public into erroneous and mistaken belief that said preparation was a competent, adequate, and effective treatment and remedy for constipation, colitis, digestive disorders, and the various other ailments and conditions claimed and indicated as above set forth, including "loss of vitality" and "all common and annoying diseases," and that it would eliminate causes thereof, and to induce members of public to buy and use said preparation because of such erroneous belief thus engendered, and to divert unfairly trade to them from competitors engaged in the sale of competing preparations in commerce:

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

Before *Mr. Charles P. Vicini* and *Mr. John J. Keenan*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Mr. LeRoy Reames, of Los Angeles, Calif., for respondents.

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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 Eugene H. Hunter and Rae LaMarr Hunter, individually and trading as The Floracube Co., Inc., hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce, as "commerce" is defined in 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. Respondents, Eugene H. Hunter and Rae LaMarr Hunter are individuals trading and doing business under the name "The Floracube Company, Inc.," and having their office and principal place of business located at 2133 Sunset Boulevard, in the city of Los Angeles, in the State of California. They are now, and for more than 1 year last past have been, engaged in advertising, selling, and distributing a certain medicinal preparation designated as Floracubes. Respondents cause, and for several years last past have caused, said preparation, when sold, to be shipped from Los Angeles, Calif., to the purchasers thereof located in the various States of the United States other than the State of origin of such shipments, and in the District of Columbia. There is now, and has been for several years last past, a course of trade and commerce in said preparation sold by said respondents between and among the various States of the United States and in the District of Columbia. Respondents are now, and for more than 1 year last past have been, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of like medicinal preparations and other preparations designed for the treatment of the same ills, maladies, and conditions for which respondents' product is recommended in commerce among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents, in soliciting the sale of and selling said preparation "Floracubes," represent, and during the time herein mentioned have represented, in letters, circulars, pamphlets, and other advertising media, having interstate circulation, as follows:

Eliminate body ailments by controlling overacidity, constipation, stomach, and intestinal disorders. Get rid of waste acids and attain better health. Floracubes eliminate food decay and food fermentation, which are the causes of headaches, nervousness, rheumatism, and many other disorders.

Food decay within your body, eliminate it and renew health. Food decay produces destructive acids and wastes which have accumulated within the body since childhood and are the main causes of declining age, physical ailments, and diseases. * * * Eliminates food decay, its causes and effects, overacidity, constipation, colitis, digestive disorders, rheumatics, and many other distressing conditions.

Your life depends upon clean blood. Science now offers you a sure, safe method of eliminating all kinds of body ailments without diet or exercise.

Eliminate destructive acids and waste produced by food decay within the body, which are the primary causes of all body ailments, diseases, and old age. Why struggle with diets, why suffer from effects of food decay when by applying one simple law of Nature, the ravages of body ailments, disease, and old age can be eliminated.

Floracubes are insoluble but break down into microscopic particles that mix with the wastes in the colon and check excessive absorption of decomposed minerals. Keep in mind that when Decay Acids are kept out of the body and billions of Food Decay bacteria are eliminated daily along with food wastes there will be only one answer—abundant Health!

Floracubes * * * eliminate destructive acids and wastes which have accumulated within the cells and tissues since childhood and are the primary causes of body disorders such as constipation, digestive and intestinal disorders, rheumatics, arthritis, heart trouble, weak eyes, lack of pep, dizzy spells, liver, kidney, and bladder trouble, declining age, loss of gland stamina, vitality, etc.

All of said representations and statements, together with other statements not herein detailed, purport to be descriptive of respondent's preparation, and the beneficial results that may reasonably be expected by the use of said preparation. In and by such representations respondents represent that said preparation is a competent, adequate, and effective treatment and remedy for the cure of constipation, colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis, heart trouble, weak eyes, "lack of pep," dizzy spells, "liver trouble," "kidney trouble," "bladder trouble," "loss of gland stamina," "loss of vitality," stiff joints, and "all common and annoying diseases," and that said preparation will eliminate the cause of such ailments and conditions.

PAR. 3. The representations made by the respondents in aid of the sale of their Floracubes are grossly exaggerated, false, misleading, and incorrect. In truth and in fact Floracubes are nothing more than a laxative or purgative depending upon the amount ingested. The therapeutic value of said product is limited to the relief of temporary constipation and it will not prevent, cure, eliminate, or rid the human body of any disease, disorder, or malady or of the causes of such ailments and conditions.

PAR. 4. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, many who sell and distribute in com-

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merce similar medicinal preparations, and other preparations designed for the same general purposes and uses who do not misrepresent the properties, qualities, therapeutic virtues, functions, uses, or effects of their said competing products.

PAR. 5. The representations as hereinabove set forth and other similar representations made by respondents have had and do have the capacity and tendency to confuse, mislead, and deceive members of the public into the erroneous and mistaken belief that said preparation is a competent, adequate, and effective treatment and remedy for constipation, colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis, heart trouble, weak eyes, "lack of pep," "dizzy spells," "liver trouble," "kidney trouble," "bladder trouble," "loss of gland stamina," "loss of vitality," stiff joints, and "all common and annoying diseases" of the human body and will eliminate the causes of such ailments and conditions. The said representations of respondents have had and do have the capacity and tendency to induce members of the public to buy and use said preparation because of the erroneous beliefs engendered as above set forth and to unfairly divert trade to said respondents from competitors engaged in the sale of competing preparations in commerce among and between the various States of the United States and in the District of Columbia. Thereby substantial injury has been and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above alleged acts and practices of the respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 17, 1937, issued and on February 7, 1938, served its complaint in this proceeding upon respondents Eugene H. Hunter and Rae LaMarr Hunter, individuals, trading as The Floracube Co., Inc., charging them 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 said respondents' answer thereto, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting

all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission in the said complaint and the substitute answer, 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. Respondents, Eugene H. Hunter and Rae LaMarr Hunter are individuals trading and doing business under the name "The Floracube Company, Inc." Their office and principal place of business is located at 2133 Sunset Boulevard, in the city of Los Angeles, in the State of California. They are now, and for more than 1 year last past have been, engaged in advertising, selling, and distributing a certain medicinal preparation designated as Floracubes. For several years last past respondents have caused, and now cause, said preparation, when sold, to be shipped from Los Angeles, Calif., to purchasers of said product located in various States of the United States, and in the District of Columbia. There has been for several years last past, and is now, a course of trade and commerce in said preparation sold by said respondents between and among the various States of the United States, and in the District of Columbia. During all the times mentioned herein respondents have been in substantial competition in commerce as herein set out with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of like medicinal preparations and other preparations designed for the treatment of the same ills, maladies, and conditions for which respondents' product is recommended.

PAR. 2. During the time herein mentioned, respondents, in the course and conduct of their business as described in paragraph 1 hereof, have solicited the sale of and sold said preparation "Floracubes," by way of letters, circulars, pamphlets, and other advertising media, published and circulated throughout the country. In said ways and by said means, respondents have made many representations of which the following are typical:

Eliminate body ailments by controlling overacidity, constipation, stomach, and intestinal disorders. Get rid of waste acids and attain better health. Floracubes eliminate food decay and food fermentation, which are the causes of headaches, nervousness, rheumatism, and many other disorders.

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Food decay within your body, eliminate it and renew health. Food decay produces destructive acids and wastes which have accumulated within the body since childhood and are the main causes of declining age, physical ailments, and diseases. * * * Eliminates food decay, its cause and effects, overacidity, constipation, colitis, digestive disorders, rheumatics, and many other distressing conditions.

Your life depends upon clean blood. Science now offers you a sure, safe method of eliminating all kinds of body ailments without diet or exercise.

Eliminate destructive acids and waste produced by food decay within the body, which are the primary causes of all body ailments, diseases, and old age. Why struggle with diets, why suffer from effects of food decay when by applying one simple law of Nature, the ravages of body ailments, disease, and old age can be eliminated.

Floracubes are insoluble but break down into microscopic particles that mix with the wastes in the colon and check excessive absorption of decomposed minerals. Keep in mind that when Decay Acids are kept out of the body and billions of Food Decay bacteria are eliminated daily along with food wastes there will be only one answer—abundant Health!

Floracubes * * * eliminate destructive acids and wastes which have accumulated within the cells and tissues since childhood and are the primary causes of body disorders such as constipation, digestive, and intestinal disorders, rheumatism, arthritis, heart trouble, weak eyes, lack of pep, dizzy spells, liver, kidney, and bladder trouble, declining age, loss of gland stamina, vitality, etc.

All of said representations and statements together with other statements not herein detailed, purport to be descriptive of respondents' preparation, and the beneficial results that may reasonably be expected by the use of said preparation. In and by such representations respondents represent that said preparation is a competent, adequate, and effective treatment and remedy for the cure of constipation, colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis, heart trouble, weak eyes, "lack of pep," dizzy spells, liver, kidney, and bladder trouble, "loss of gland stamina," "loss of vitality," stiff joints, and "all common and annoying diseases," and that said preparation will eliminate the cause of such ailments and conditions.

PAR. 3. The representations made by the respondents in aid of the sale of their Floracubes are grossly exaggerated, deceptive, misleading, and incorrect. In truth and in fact, Floracubes are nothing more than a laxative or purgative depending upon the amount ingested. The therapeutic value of said product is limited to the temporary relief of constipation and it will not prevent, cure, eliminate or rid the human body of any disease, disorder, or malady or of the causes of such ailments and conditions. Said product is not a cure or remedy for colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis,

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heart trouble, weak eyes, "lack of pep," dizzy spells, "loss of gland stamina," liver, kidney and bladder trouble, "loss of vitality," stiff joints, and "all common and annoying diseases."

PAR. 4. There are among the competitors of respondents, mentioned in paragraph 1 hereof, many who sell and distribute in common among and between the various States of the United States and in the District of Columbia similar medicinal preparations and other preparations designed for the same general purposes, and uses who do not misrepresent the properties, qualities, therapeutic virtues, functions, uses, or effects of their said products.

PAR. 5. The representations as hereinabove set forth and other similar representations made by respondents have had and now have the capacity and tendency to mislead and deceive members of the public into the erroneous and mistaken belief that said preparation is a competent, adequate, and effective treatment and remedy for constipation, colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, old age, high blood pressure, arthritis, heart trouble, weak eyes, "lack of pep," dizzy spells, "liver trouble," "kidney trouble," "bladder trouble," "loss of gland stamina," "loss of vitality," stiff joints, and "all common and annoying diseases" of the human body and will eliminate the causes of such ailments and conditions. The said representations of respondents have had and now have the capacity and tendency to induce members of the public to buy and use said preparation because of the erroneous beliefs engendered as above set forth and to unfairly divert trade to said respondents from competitors engaged in the sale of competing preparations in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Eugene H. Hunter and Rae LaMarr Hunter, individuals, trading as The Floracube Co., Inc., as herein found, are all to the prejudice of the public and of respondents' 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 and the answer of respondents, in which answer respondent's admit all the material allegations of fact set forth in said complaint, and state that they

waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Eugene H. Hunter and Rae LaMarr Hunter, individuals, trading as The Floracube Co., Inc., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation now designated as "Floracubes," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondents' preparation has any therapeutic value other than as palliative in the treatment of constipation, or that said preparation is a cure or remedy for any disease, disorder, or malady, or that said preparation will prevent, eliminate, or rid the human body of any disease, disorder, or malady or the causes of such ailments and conditions.

2. Representing that respondents' preparation is a cure or remedy for colitis, digestive disorders, headaches, overacidity, food decay within the body, nervousness, rheumatism, ailments common to old age, high blood pressure, arthritis, heart trouble, weak eyes, lack of pep, dizzy spells, liver trouble, kidney trouble, bladder trouble, loss of gland stamina, loss of vitality, stiff joints, and all common and annoying diseases, or constitutes a competent or effective treatment therefor.

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

Syllabus

IN THE MATTER OF
JEAN LAWRENCE, INDIVIDUALLY AND TRADING
AS WELLS SALES COMPANY

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

Docket 3767. Complaint, Apr. 17, 1939—Decision, Sept. 8, 1939

Where an individual engaged in sale and distribution of radios, waffle irons, tableware, griddles, automatic pencils, and other articles of merchandise to purchasers in various other States and in the District of Columbia, in soliciting, selling, and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery scheme for sale and distribution of such products to ultimate consumers wholly by lot or chance, and which included certain literature and instructions and push cards, order blanks, depictions of said merchandise, and circulars explaining plan of selling same and of allotting it as premiums or prizes to operators of said cards and to purchasing and consuming public under plan in accordance with which person selecting by chance from 64 feminine names displayed on card, name corresponding to that concealed under card's seal, received choice, in accordance with card's explanatory legend and as there described, of radio, automatic waffle iron, or Wm. A. Rogers Tableware, with tarnishproof chest, or Nesco Table Broiler-Griddle, and in accordance with which amount, if any, paid by customer for chance was contingent upon number secured by chance depending on disk of card pushed, and three numbers, as announced, and last sale entitled those securing said numbers or making such purchase to "\$1.00 Wahl Eversharp Pencil"; and

Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise in accordance with sales plan above set forth, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid or article of merchandise free and which of said articles of merchandise purchaser was to receive, if any, was determined wholly by lot or chance, and involving game of chance or sale of chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and by element of chance involved therein and were thereby induced to buy and sell such products in preference to those offered and sold by his competitors aforesaid who do not use such or equivalent method and with effect through use of such method and because of said game of chance of diverting unfairly trade in commerce to him from his said competitors who do not use such or equivalent method: