

Syllabus

IN THE MATTER OF
MAGNECOIL COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 1846. Complaint, June 16, 1930—Decision, Oct. 6, 1939*

Where a corporation engaged in manufacture of blankets and other appliances through which were run, or into which were woven, copper wires connected to an attachment for plugging into electric light sockets, and in sale and distribution of said appliances to purchasers in various other States, in substantial competition with others engaged in sale and distribution of devices, appliances, or treatments designed and used for purposes for which it recommended its said products; in advertising its said appliances in newspapers, periodicals, and other publications of general circulation—

- (a) Represented that use thereof as cover for the body, or portion thereof, would benefit, cure, and prevent diseases and bodily defects and ailments, many of which were specified by name, and that its said appliances constituted discoveries in field of electrotherapeutics and were based upon, and made practical, application of various scientific discoveries and theories of well-known scientists, etc., and, used as directed, set up radiomagnetic energy, and a thermo-electromagnetism which was transmitted to user and caused increased activity in revitalizing of the organs and cells, charged blood stream with electromagnetic energy, and eliminated many times more poisons and waste than was otherwise possible, etc., with resulting cure of disease or ailment from which person might be suffering;

Facts being use of said products did not produce any radiomagnetic energy or thermoelectromagnetism which was transmitted to or had any effect on the body, or cause any results other than those produced as result of application of the heat generated in said products, and statements and representations made by it and attributing to said devices curative, remedial and therapeutic values other than those values resulting from application of heat, were false, and said products had no curative or therapeutic efficacy in treatment of human diseases, ailments, etc., apart from application of heat generated as aforesaid, which, as such, does not constitute competent or effective treatment for many of the diseases, etc., of the body, and in practically all cases is recognized by medical profession as affording temporary relief only;

- (b) Represented that its said products were used, endorsed, and recommended by prominent and well-known physicians, scientists, hospitals, educators, and other well-known and prominent persons, and had been tested and endorsed by them and by institutions for medical and scientific research;

Facts being said statements were false and said products had not been thus used, tested, etc., by reputable members of the medical profession;

- (c) Represented that it had laboratories and an advisory and consulting board of medical experts for analysis and advice in cases where its products were being or to be used;

Complaint

29 F. T. C.

Facts being it did not maintain medical or therapeutic laboratory or clinic, and no recognized medical practitioner had ever been connected with its business; and

(d) Represented that it occupied a large building in which its products were manufactured and its business generally conducted;

Facts being it occupied space on one floor of the building only;

With effect of misleading and deceiving members of the purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of its products because of such belief, and with result that trade in commerce was thereby diverted unfairly to it from its competitors who do not falsely represent the therapeutic properties of their respective products:

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

Before *Mr. Ellis DeBruler* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Eugene W. Burr and *Mr. Joseph C. Fehr* for the Commission.
Ball & Musser, of Salt Lake City, Utah, for respondent.

COMPLAINT

Acting in the public interest 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 charges that *Magnecoil Co., Inc.*, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, *Magnecoil Co., Inc.*, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business in Salt Lake City, State of Utah. It is engaged in the business of manufacturing and selling, to persons located in various States of the United States, blankets and other appliances through which are run or into which are woven copper wire connected to an attachment for plugging into an electric light socket, and in causing said products, when so sold, to be transported from the place of manufacture through and into other States of the United States to the purchasers thereof. In the course and conduct of its said business respondent is in competition with other corporations, partnerships, and individuals engaged in commerce between and among the various States of the United States.

1069

Complaint

PAR. 2. In order to induce the public to purchase its said products, respondent causes to be inserted in newspapers, magazines, periodicals, and other publications of general circulation throughout the United States and in certain sections thereof, advertisements offering its said products for sale and soliciting the purchase thereof, and sends from its place of business in Salt Lake City, State of Utah, to purchasers and prospective purchasers living at points in various States of the United States, letters, pamphlets, booklets, and circulars concerning its said products and offering the same for sale. In the aforesaid advertisements and literature respondent causes to be set forth many false, misleading, and deceptive statements and representations to the effect:

(a) That said products when used as a cover for the human body or a portion thereof will benefit, cure, and prevent all diseases, ailments, and defects of the human body, a great many of which are specified by name in said advertisements and literature, and that such products constitute the greatest discoveries in the field of electrotherapeutics. Whereas in truth and in fact, respondent's said products have no curative or therapeutic value apart from and except because of the heat generated by the electric current passing over the wires of said products, that is, except as a heating pad, and will not benefit, cure, or prevent any of the various diseases, ailments, and defects of the human body.

(b) That said products are based upon and make practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and are the result of painstaking and long experience and tests. Whereas in truth and in fact, said products are not so based and make no practical application of any scientific discoveries or theories for the cure or prevention of human diseases or ailments.

(c) That the said products when used as respondent directs set up a radiomagnetic energy and a thermoelectromagnetism which is transmitted to the person using the appliance causing an increased activity and revitalizing of the organs and cells of the body and a charging of the blood stream with electromagnetic energy, and an elimination of many times more poisons and waste matters than is possible by any other method, and a magnetic stimulation of the various cells of the human body, with a resulting cure of any disease or ailment of which the person may be suffering. Whereas in truth and in fact, said products when so used do not produce any radiomagnetic or thermoelectromagnetism which is transmitted to or has any effect upon the human body, and do not cause any results other

Findings

29 F. T. C.

than those which would be produced as a result of and because of the heat generated in the appliances.

(d) That said respondent occupies a large building in which its products are manufactured and its business generally conducted and that it has laboratories and an advisory and a consulting board of medical experts for analysis and advice in cases where respondent's products are being or are to be used. Whereas in truth and in fact, respondent occupies only a part of one floor in this building and has no laboratory or medical advisory or consulting board.

(e) That said products are used, endorsed, and recommended by prominent and well-known physicians, scientists, hospitals, educators, and other well-known and prominent persons, and have been tested and endorsed by such persons and by institutions for medical and scientific research. Whereas in truth and in fact, said products are not and have not been so used, tested, endorsed, or recommended.

(f) Respondent makes other false, misleading, and deceptive statements and representations in its said advertisements and literature of like tenor and effect as the statements and representations in this paragraph above specifically set forth.

PAR. 3. The aforesaid false, misleading, and deceptive statements and representations made by respondent in its advertisements and literature have the capacity and tendency to and do cause many persons to purchase and use respondent's products in the belief that said statements and representations are true.

PAR. 4. The above alleged acts and practices of respondent 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 section 5 of an act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 16, 1930, issued and served its complaint in this proceeding upon the respondent, Magnecoil Co., Inc., a corporation, charging it 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 the complaint were introduced by Eugene W. Burr, attorney for the Commission, before Ellis DeBruler, an examiner of the Commission theretofore duly designated by it, and said testimony and

other evidence were duly recorded and filed in the office of the Commission. Thereafter, respondent, through its attorney, Burton W. Musser, filed a motion to withdraw its answer and submitted a substitute answer, in which respondent waived all further proceeding and voluntarily consented that the Commission may make, enter and serve upon respondent an order to cease and desist from the method or methods of competition alleged in the complaint, which said motion was granted by the Commission, and which substitute answer was duly filed in the office of the Commission. Thereafter, on September 25, 1933, the Commission issued its order requiring respondent to cease and desist from the practices alleged in the complaint. Thereafter, on June 16, 1937, the Commission set aside said order to cease and desist and ordered the taking of further testimony. Thereafter, additional testimony and other evidence in support of the allegations of the complaint were introduced by Joseph C. Fehr, counsel for the Commission, before Miles Furnas, an examiner of the Commissioner theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Stipulations as to certain facts were made a part of the record herein by agreement of counsel for the respondent and counsel for the Commission and said stipulations 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, testimony, stipulations, and other evidence, and brief in support of the allegations of the complaint (respondent not having filed brief and oral argument not having been requested); 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, Magnecoil Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business in Salt Lake City, State of Utah. Respondent is engaged in the business of manufacturing, selling, and distributing blankets and other appliances through which are run or into which are woven copper wire connected to an attachment for plugging into electric light sockets. Respondent causes said products when sold by it to be transported from the State of Utah or from the State of origin of the shipment thereof to the purchasers thereof at their respective

Findings

29 F. T. C.

points of location in various States of the United States other than the State of origin of the shipment thereof.

PAR. 2. In the course and conduct of its aforesaid business respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms and individuals also engaged in the business of selling and distributing devices, appliances, or treatments designed and used for the purposes for which respondent recommends the use of its said products.

PAR. 3. In the course and conduct of its aforesaid business and in order to induce the purchase of its said products, respondent causes to be inserted in newspapers, magazines, periodicals, and other publications having a general circulation throughout the United States, advertisements offering its said products for sale and soliciting the purchase thereof. Respondent also causes to be distributed from its place of business in the State of Utah to purchasers and prospective purchasers at their respective points of location in various other States of the United States, letters, pamphlets, booklets, and circulars concerning its said products and containing statements and representations relative to the same. In the aforesaid advertisements and advertising material respondent makes statements and representations as follows:

(a) That said products when used as a cover for the human body, or a portion thereof, will benefit, cure, and prevent diseases, ailments, and defects of the human body, a great many of which are specified by name in said advertisements and literature and that said products constitute discoveries in the field of electrotherapeutics.

(b) That said products are based upon and make practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists and are the result of pains-taking and long experience and test.

(c) That said products when used as respondent directs set up a radiomagnetic energy and a thermoelectromagnetism which is transmitted to the person using the appliance, causing an increased activity and revitalizing of the organs and cells of the body and charging of the blood stream with electromagnetic energy, and an elimination of many times more poisons and waste matters than is possible by any other method, and a magnetic stimulation of the various cells of the human body, with a resulting cure of diseases or ailments of which the person may be suffering.

(d) That respondent occupies a large building in which its products are manufactured and its business generally conducted, and that it has laboratories and an advisory and a consulting board of

1069

Findings

medical experts for analysis and advice in cases where respondent's products are being or are to be used.

(e) That said products are used, endorsed, and recommended by prominent and well-known physicians, scientists, hospitals, educators, and other well-known and prominent persons, and have been tested and endorsed by such persons and by institutions for medical and scientific research.

PAR. 4. The aforesaid statements and representations by the respondent are false and misleading. The use of said products are not effective in the treatment of all diseases, ailments, afflictions, conditions, and defects of the human body for the reason that said products have no curative or therapeutic efficacy apart from the application of heat generated by the electric current passing over the wires of said products, and heat does not constitute a competent or effective treatment for many of the diseases, ailments, afflictions, conditions, or defects of the human body, and in practically all cases heat is recognized by the medical profession as affording only temporary relief. The use of said products, as directed by the respondent, does not produce any radiomagnetic or thermoelectromagnetism which is transmitted to, or has any effect on, the human body and does not cause any results other than those which are produced as a result of the application of the heat generated in the said products. The aforesaid statements and representations by the respondent attributing curative, remedial, and therapeutic values to said products other than those values resulting from the application of heat, are false. Said products may at times, if properly and intelligently used, prove beneficial in the treatment of some physical ailments, such as high blood pressure, bone diseases, and pneumonia, but any such beneficial result produced is caused solely by the heat induced by said products. Respondent does not, and did not, maintain a medical or therapeutic laboratory or clinic, and no recognized medical practitioners have ever been connected with the business of the respondent. Respondent's products are not, and have not been, used, tested, endorsed, or recommended by reputable members of the medical profession. Respondent does not, and has not, occupied, in the conduct of its business, an entire building. Respondent has occupied, and now occupies, space only on one floor of a building.

PAR. 5. The use by the respondent of the aforesaid false and misleading statements and representations has the capacity and tendency to, and did, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of respondent's products because of said erroneous and

Order

29 F. T. C.

mistaken belief. As a result thereof, trade in commerce among and between the various States of the United States has been diverted unfairly to the respondent from its said competitors who do not falsely represent the therapeutic properties of their respective products.

CONCLUSION

The aforesaid acts and practices of 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 Ellis DeBruler and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, stipulations between counsel for the respondent and counsel for the Commission, which stipulations were made of record herein, brief in support of the allegations of the complaint (respondent not having filed brief 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.

It is ordered, That the respondent Magnecoil Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its blankets or other devices fitted with wires or other conductors for the transmission of electric current, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of said products has any therapeutic value in the treatment of any ailment, disease, disorder, or condition of the human body other than that which is obtained by the application of heat to the exterior of the body or any part thereof.
2. Representing that the use of said products produces any radio-magnetic or thermoelectromagnetism which will be transmitted to, or have any effect upon, the human body.
3. Representing that said products have been endorsed, tested, used, or recommended by hospitals, members of the medical profession, or any other parties, when such is not the fact.

1069

Order

4. Representing that respondent has or maintains a laboratory unless respondent owns, operates, or controls a scientific laboratory and employs trained scientists and technicians and is equipped to test its products in the manner and with the methods used by recognized scientific laboratories.

5. Representing that respondent has an advisory or consulting board of medical experts for analyses or advice, unless and until such is the fact.

6. Misrepresenting in any manner the extent or nature of the building space occupied by the respondent in the conduct of its business.

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
**RALPH DEWBERRY, DOING BUSINESS AS DEWBERRY
ENGRAVING COMPANY AND THE NATIONAL ENGRAV-
ING COMPANY**

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

Docket 3135. Complaint, May 22, 1937—Decision, Oct. 9, 1939

Where an individual engaged in engraving stationery, letterheads, business and social cards, envelopes, and allied products, through pantograph method employed by some 90 percent of those engaged in business in question, and also through much cheaper method or process employed by him involving use of printing type in which proofs are pulled on transparent paper and in which said step is followed by various other steps, and in sale and distribution of his products, produced as aforesaid, in substantial competition with others engaged in engraving stationery and allied products and in selling same in commerce among the various States and in the District of Columbia, and including many who produce such products and distribute and sell same, and in no wise misrepresent quality or character thereof and do not disparage products of their respective competitors—

Represented that engraving produced from plates incised by hand, or by pantograph method, or method other than that used by said individual, was old style, out of date, antiquated, and inferior, through statement, in some 160,000 letters which he circulated and distributed to prospective customers throughout the United States, to the effect that the reader thereof would be disappointed in the price he had been "soaked" for engraving in the past, but for which reader's engraver, with his "old-style, out-of-date equipment," had "to get a high price" and make such charges, and further statement that his prices were "the lowest in the United States because we have the most modern plant in the country," etc., facts being pantograph method employed by large part of industry, as above set forth, is not accomplished with old style, out of date, or obsolete equipment;

With tendency and capacity, through such statements unlawfully disparaging competitors, and particularly those employing pantograph method, to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true and that engraving equipment of competitors was inferior, antiquated and out of date, and with result, as direct consequence of mistaken and erroneous belief induced by said acts and misrepresentations, that substantial number of consuming public purchased substantial volume of his said engraved stationery and allied products and trade was diverted unfairly to him from competitors likewise engaged in producing, distributing, and selling such products, and who truthfully advertise the same; to the injury of substantial competition in commerce: