

IN THE MATTER OF
CUBAN HEALTH PRODUCTS, INC.

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

Docket 3733. Complaint, Mar. 7, 1939—Decision, Oct. 10, 1939

Where a corporation engaged in importing, selling, and distributing its "El Aguinaldo Cuban Honey" food product to purchasers in various States and in the District of Columbia; in advertisements which it disseminated through the mails, through insertion in newspapers and periodicals of general circulation, and through circulars and other printed or written matter, and which were intended and likely to induce purchase of its said product—

- (a) Represented that said "El Aguinaldo Cuban Honey" was a cure or remedy for coughs, colds, asthma, and bronchitis, and constituted a competent treatment therefor, facts being it was not an effective remedy or cure for such ailments or similar respiratory disorders, excepting as it might be a palliative for coughs due to local irritations of throat and, applied locally, might have soothing effect in case of local irritations of nose;
- (b) Represented that its said product was a cure or remedy for stomach ulcers and digestive disorders, and would reduce free acid content of intestines and would reduce mucous and favorably affect colitis and act as bowel antiseptic, facts being said product contained no alkaloids, consisted principally of water, levulose, and dextrose, differed little in composition from domestic honeys, and would not reduce such acid content or mucous, or have such colitis result, or act as such antiseptic, and was not such a cure or remedy or competent treatment for ulcers or for digestive disorders, other than as a bland food or, as such a food, where bland diet would be prescribed;
- (c) Represented that said honey was a tonic, which would tone the system and restore the body, and that it constituted a tissue builder, and use thereof would normalize blood count, facts being it would not have such normalizing result and was not such a tonic, and would not accomplish other results above set forth, other than as supplying easily assimilated food value; and
- (d) Represented that its said product would heal and cure cuts, bruises, and varicose ulcers, and constituted a competent treatment therefor, facts being it would not accomplish such results and did not constitute such a treatment, other than as local applications thereof might serve as an adjunct to other forms of treatment;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of its said product as result of such belief, and with result of placing in hands of unscrupulous or uninformed retailers means and instrumentality whereby they might deceive or mislead members of said public into erroneous belief that such representations were true and into purchase of its said product by reason of such belief:

1106

Complaint

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Frederic P. Lee of Alvord & Alvord, of Washington, D. C., and *Shields, Ballard, Jennings & Tabor*, of Lansing, Mich., 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 the Cuban Health Products, Inc., 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, Cuban Health Products, Inc., is a corporation, organized and existing under the laws of the State of Michigan, with its office and principal place of business located at 125 East Kalamazoo Street, Lansing, Mich.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of importing, selling, and distributing a food product under the name of "El Aguinaldo Cuban Honey." Respondent causes said product, when sold, to be shipped from its aforesaid place of business in the State of Michigan to said purchasers located in various States of the United States other than the State of Michigan 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 aforesaid business, 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 the United States mails, by insertion in newspapers and in periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, 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 dissemina-

Complaint

29 F. T. C.

tion 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 statements and representations contained in said advertisements, disseminated as aforesaid, are the following:

Used successfully in overcoming stomach ulcers, stomach disorders, bowel and colon troubles. Also asthma, bronchitis, coughs and colds. A natural tissue builder for the weak and anemic.

If you suffer with stomach or intestinal ailments, or from asthma, colds and bronchial troubles, why not correct them with El Aguinaldo Cuban Wonder Honey.

You will want El Aguinaldo Cuban Honey for colds, coughs, bronchitis and asthma. It will clear your nose, throat and stomach of phlegm and mucous. * * * Stomach ulcers are relieved by El Aguinaldo Cuban Honey. * * * Physicians have had excellent results, too, in using this El Aguinaldo Cuban Honey for varicose ulcers. It is applied externally in this condition. * * * Children, or adults, who tire easily, are run down or are susceptible to colds are often in need of general systemic tonic. El Aguinaldo Cuban Honey is nature's own product—a natural tissue builder, toning the system and helping to restore the body to the strong, healthy condition nature meant for you to have. * * * You will want El Aguinaldo Cuban Honey to apply to cuts and burns.

Recommended as an aid in overcoming Asthma, Colds, Bronchitis, Stomach Ulcers, Varicose Ulcers.

Natural Asthma Relief. * * * Physicians report that many of their patients who have used this remarkable medicinal honey show a marked improvement from the first dose. The gasping, choking spasms are relieved. * * *

In Stomach Ulcers—it reduces the free acid content, thus relieving the pain and irritation and giving the ulcerated surface a chance to heal. In Colitis—it tends to change the intestinal flora and reduces the mucous. In Bowel Distress—its antiseptic qualities aid in decreasing gas, mucous and belching. In Asthma—it tends to reduce the spasmodic attacks. In Bronchitis—its action helps loosen mucous and lessens the paroxysms. In Coughs—it has a soothing action and loosens tenacious phlegm.

Normalizing the Red and White Blood Count Clinical tests show normalizing in from five to eight weeks.

Reducing the Free Acid Content in the Digestive Tract.

Loosing Phlegm and Reducing Mucous, Especially in Respiratory Conditions. An imported food sensation for bronchial and asthma victims.

No family should be without this natural product as an insurance against ills. El Aguinaldo Cuban Honey.

Bronchial and asthma victims praise its merits for the real benefits received during this season of the year.

El Aguinaldo Cuban Honey. A diet supplement aiding colds, asthma, bronchitis, digestive disorders.

PAR. 4. All of the said statements, together with similar statements appearing in respondent's literature, purport to be descriptive of

respondent's food product. Through the statements and representations in all its advertising literature herein set out, and other statements of similar import and effect, respondent, directly or by inference, represents that its food product, El Aguinaldo Cuban Honey, is a competent and effective remedy for, and has curative value in the treatment of, coughs, colds, bronchitis, and asthma, and that its use will relieve these disorders; that it relieves stomach ulcers, is a tonic and tissue builder which will tone the system and restore the body; that it will heal and relieve cuts, bruises, and varicose ulcers; that it reduces the free acid content in the intestines and reduces the mucous in colitis and is a bowel antiseptic; and that it normalizes the blood count.

In truth and fact, the above and similar statements made by respondent in its advertising literature are false, misleading, and untrue. Respondent's product is not an effective remedy or competent treatment for coughs, colds, asthma, bronchitis, or similar respiratory disorders, and its use will not relieve these disorders other than in certain cases of coughs when it will produce a soothing effect. It does not relieve the pain of stomach ulcers or have any curative value therefor. It is not a tonic or tissue builder which will tone the system or restore the body. It will not heal cuts, bruises, or varicose ulcers, though it may, in certain cases, serve as an adjunct in treating such conditions. Such product will not reduce the free-acid content of the intestines nor reduce the mucous in colitis, nor is it a bowel antiseptic. It will not normalize the blood count. The representations made by the respondent with respect to the therapeutic qualities of its food product are grossly exaggerated, false, misleading, and untrue, as said product will not accomplish the results claimed. The value of such product in the treatment of digestive disorders is limited to that of a bland food.

PAR. 5. The true facts are that the respondent's honey does not contain any therapeutic qualities nor does it contain any alkaloids. It is merely a concentration of levulose and dextrose, which are the same properties embodied in domestic honey. These properties are not curative of, nor do they act as a relief agency for, any of the aforesaid ills.

PAR. 6. The use by the respondent of the foregoing false advertisements and deceptive and misleading statements and representations with respect to the food product, El Aguinaldo Cuban Honey, disseminated as aforesaid, 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 said statements and representations are true and into the purchase

Findings

29 F. T. C.

of respondent's said product as the result of such erroneous and mistaken belief. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's food product.

Further, the acts and practices of the respondent, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may deceive or mislead members of the purchasing public into the erroneous belief that the aforesaid representations of respondent are true and into the purchase of said product because of said erroneous belief.

PAR. 7. The acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the meaning and intent 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 7th day of March 1939, issued and served its complaint in this proceeding upon said respondent, Cuban Health Products, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 17, 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 and its counsel, Frederic P. Lee, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cuban Health Products, Inc., is a corporation, organized and existing under the laws of the State of Michigan, with its office and principal place of business located at 125 East Kalamazoo Street, Lansing, Mich.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of importing, selling and distributing a food product under the name of "El Aguinaldo Cuban Honey." Respondent causes said product, when sold, to be shipped from its aforesaid place of business in the State of Michigan to said purchasers located in various States of the United States other than the State of Michigan 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 aforesaid business, the respondent has disseminated and has caused the dissemination of, false advertisements concerning its said product by the United States mails, by insertion in newspapers and in periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, 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 statements and representations contained in said advertisements, disseminated as aforesaid, are the following:

Used successfully in overcoming stomach ulcers, stomach disorders, bowel and colon troubles. A natural tissue builder for the weak and anemic.

If you suffer from stomach or intestinal ailments, or from asthma, colds and bronchial troubles, why not correct them with El Aguinaldo Cuban Wonder Honey.

You will want El Aguinaldo Cuban Honey for colds, coughs, bronchitis and asthma. It will clear your nose, throat and stomach of phlegm and mucus. * * * Stomach ulcers are relieved by El Aguinaldo Cuban Honey. * * * Physicians have had excellent results, too, in using this El Aguinaldo Cuban Honey for varicose ulcers. It is applied externally in this condition. * * * Children, or adults, who tire easily, are run down or are susceptible to colds are often in need of general systemic tonic. El Aguinaldo Cuban Honey is nature's own product—a natural tissue builder, toning the system and helping to restore the body to the strong, healthy condition nature meant for you to have. * * * You will want El Aguinaldo Cuban Honey to apply to cuts and burns.

Findings

29 F. T. C.

Recommended as an aid in overcoming Asthma, Colds, Bronchitis, Stomach Ulcers, Varicose Ulcers.

Natural Asthma Relief, * * * Physicians report that many of their patients who have used this remarkable medicinal honey show a marked improvement from the first dose. The gasping, choking spasms are relieved.

In Stomach Ulcers—it reduces the free acid content, thus relieving the pain and irritation and giving the ulcerated surface a chance to heal. In Colitis—it tends to change the intestinal flora and reduces the mucous. In Bowel Distress—its antiseptic qualities aid in decreasing gas, mucous and belching. In Asthma—it tends to reduce the spasmodic attacks. In Bronchitis—its action helps loosen mucous and lessen the paroxysms. In Coughs—it has a soothing action and loosens tenacious phlegm.

Normalizing the Red and White Blood Count. Clinical tests show normalizing in from five to eight weeks.

Reducing the Free Acid Content in the Digestive Tract.

Loosing Phlegm and Reducing Mucous, Especially in Respiratory Conditions.

An imported food sensation for bronchial and asthma victims.

No family should be without this natural product as an insurance against ills.

El Aguinaldo Cuban Honey.

Bronchial and asthma victims praise its merits for the real benefits received during this season of the year.

El Aguinaldo Cuban Honey. A diet supplement aiding colds, asthma, bronchitis, digestive disorders.

PAR. 4. All of the said statements, together with similar statements appearing in respondent's literature, purport to be descriptive of respondent's food product. Through the statements and representations in all its advertising literature herein set out, and other statements of similar import and effect, respondent, directly or by inference, represents that its food product, El Aguinaldo Cuban Honey, is a competent and effective remedy for, and has curative value in the treatment of, coughs, colds, bronchitis, and asthma, and that its use will relieve these disorders; that it relieves stomach ulcers, is a tonic and tissue builder which will tone the system and restore the body; that it will heal and relieve cuts, bruises, and varicose ulcers; that it reduces the free acid content in the intestines and reduces the mucous in colitis and is a bowel antiseptic; and that it normalizes the blood count.

PAR. 5. Respondent's product is not an effective remedy or cure for coughs, colds, asthma, bronchitis, or similar respiratory disorders, and is not a competent treatment for these conditions, excepting that it may be a palliative for coughs due to local irritations of the throat, and when applied locally may have a soothing effect in the case of local irritations of the nose. It does not relieve the pain of stomach ulcers or have any curative value therefor; however, it can be used as a bland article of diet suitable for use wherever a bland diet is necessary, as in diets for the treatment of

1106

Order

gastric ulcers. It is not a tonic or tissue builder, nor will it tone the system or restore the body except to furnish easily assimilated food values. It will not heal cuts, bruises, or varicose ulcers, although when locally applied to cuts, bruises, and varicose ulcers it may serve as an adjunct to other forms of treatment for such conditions. It will not reduce the free acid contents of the intestines or the mucous in colitis. It is not a bowel antiseptic. It will not normalize the blood count. It has no value in the treatment of digestive disorders other than as a bland food; and the statements set forth in paragraph 3 above and similar statements made by respondent in its advertising literature are false, misleading, and untrue.

PAR. 6. Respondent's honey does not contain any alkaloids. It consists principally of water, levulose, and dextrose and differs little in composition from domestic honeys.

The use by the respondent of the foregoing false advertisements and deceptive and misleading statements and representations with respect to the food product, El Aguinaldo Cuban Honey, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of respondent's said product as the result of such erroneous and mistaken belief.

Further, the acts and practices of the respondent, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may deceive or mislead members of the purchasing public into the erroneous belief that the aforesaid representations of respondent are true and into the purchase of said product because of said erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the meaning and intent 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

Order

29 F. T. C.

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, the Cuban Health Products, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of honey in commerce as commerce is defined in the Federal Trade Commission Act, 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 food product now designated by the name "El Aguinaldo Cuban Honey," or any other food product composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same 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 food product, which advertisements represent, directly or through implication:

(a) That respondent's product is a cure or remedy for coughs, colds, asthma, bronchitis, or similar respiratory disorders, or that said product constitutes a competent treatment therefor, other than as a palliative for coughs due to local throat irritation or for local irritations of the nose.

(b) That respondent's product is a cure or remedy for stomach ulcers or that it constitutes a competent treatment therefor, other than as a bland food where a bland diet would be prescribed.

(c) That respondent's product is a tonic or will tone the system, restore the body, or constitute a tissue builder, other than to supply easily assimilated food values.

(d) That respondent's product will heal or cure cuts, bruises, or varicose ulcers, or that it is a competent treatment therefor, other than that local application of said product might serve as an adjunct to other forms of treatment.

(e) That respondent's product will reduce the free acid content of the intestines, reduce mucous, or otherwise favorably affect colitis, or act as a bowel antiseptic.

1106

Order

(f) That the use of respondent's product will normalize the blood count.

(g) That respondent's product is a cure or remedy for digestive disorders, or that said product is a competent treatment therefor other than as a bland food.

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
COTY, INC. AND COTY PRODUCTS CORPORATION ET AL.
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3325. Complaint, Mar. 23, 1938¹—Decision, Oct. 12, 1939

Where a corporation engaged in packaging, labeling, bottling, offering, and selling perfumes which it purchased of its wholly owned subsidiary, and which were blended, compounded, and sold in accordance with the exact formulae originated in Paris, France, by the late M. Francois Coty of Paris, France, and said subsidiary, engaged in blending and compounding such products in the United States, from ingredients imported from France and other countries, with domestic alcohol to make completed perfume, and in selling its said products, thus made, to said parent corporation and to other purchasers, and in active and substantial competition with others engaged in sale and distribution of perfumes in commerce among the various States and in the District of Columbia, and including among their competitors domestic makers and distributors of perfumes who make, blend, and compound their products in the United States, and domestic competitors who do not in any way represent that their products are made, blended and compounded in any foreign country and then imported—

- (a) Made such representations to promote sale of their products, through labels attached and affixed to cartons or containers thereof and through folders, price lists, and advertisements in newspapers and periodicals of general circulation, as "Coty—Paris—France," "Composé par Coty, Paris, France," and "Coty—bottled in U. S. A.—France"; and
- (b) Caused to appear on cartons in which some of their said perfumes were packed and sold words "Cette specialite & ses Accessoires ont ete crees par Coty dans ses Usines de La Cite des Parfums a Suresnes pres Paris (France)," followed by further statement, in French, to the effect that products in question were exclusively those of Coty, Inc., for the United States, and words "ou ils sont fabriques," meaning of which, not supplied in English, was "where they are manufactured"; and

Where various subsidiaries of said corporation first referred to, through which its products aforesaid were distributed prior to said subsidiaries' dissolution—

- (c) Caused their business stationery to bear, in addition to address of particular subsidiary, address "Parfums de Luxe, 25 Place Vendome, Paris";

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that their said products were made or compounded in France and imported into the United States, such as long widely popular and in demand among the trade and consuming public throughout the United States, and considered by many thereof as superior to perfumes made or compounded in the United States, and purchased by many of the consuming public in preference to latter, and into purchase

¹ Amended and supplemental.