

Complaint

29 F. T. C.

IN THE MATTER OF

E. A. MORGAN AND COMPANY, AND E. A. MORGAN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3771. Complaint, Apr. 24, 1939—Decision, Oct. 31, 1939*

Where a corporation and an individual, who was president and owner thereof and directed and controlled its sales policies and other activities with respect to acts and practices below set out, engaged in packaging powdered preparation, variously designated as "Run-Safe," "Run-Free," and "Runless," for improving, as represented, wearing qualities of hosiery and lingerie, and in selling and distributing said product through direct selling methods and sales persons and representatives who solicited orders therefor from prospective purchasers in the various States and in the District of Columbia, and also in thus selling and distributing said product in response to orders received at their place of business—

- (a) Represented, through statements on labels affixed to containers of such product, and through their agents and sales representatives, and otherwise, and through use of names "Run-Safe," "Run-Free," and "Runless," that their said preparation prevented runs, snags, and breaks in silk hosiery and lingerie; and
- (b) Represented that use of their said product would reduce hosiery and lingerie cost approximately 50 percent, and would set and hold the color of such products and prevent rotting and fading, and render such products "Rain-Spot Proof";

Facts being product in question would not prevent runs, snags, and breaks in silk hosiery and lingerie, nor prevent rotting or fading, nor set or hold the color thereof, nor render them "Rain-Spot Proof," and would not save for users approximately 50 percent of hosiery and lingerie costs, though it might increase resistance to runs in certain types of hosiery;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of their said preparation because of such belief:

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

Mr. R. P. Bellinger for the Commission.

Mr. Edward H. Brink, Jr., of Cincinnati, Ohio, for respondents.

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 E. A. Morgan & Co., a corporation, and E. A. Morgan, individually, hereinafter re-

1222

Complaint

ferred to as respondents, have 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, E. A. Morgan & Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 412 Building Industries Building, Cincinnati, Ohio. The respondent, E. A. Morgan, of the same address, is president and owner of said respondent corporation, and directs and controls the sales policies and other activities of said corporate respondent with respect to the acts and practices herein described. Respondents are now and for more than 1 year last past have been engaged in the business of packaging, selling and distributing a powdered preparation variously designated as "Run-Safe," "Run-Free," and "Runless," and which is represented as improving the wearing qualities of hosiery and lingerie.

PAR. 2. Respondents sell said products by direct selling methods and by means of sales persons and representatives who solicit orders for said product from prospective purchasers situated in the various States of the United States and in the District of Columbia. Respondents also receive orders for said product at their said place of business in the State of Ohio from purchasers in various States of the United States other than Ohio, and in the District of Columbia, and cause said product when sold to be shipped from their aforesaid place of business in the State of Ohio to said purchasers located in the various States of the United States other than Ohio, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have 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 their business as aforesaid and for the purpose of inducing the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act, respondents have made and are now making representations with respect to the quality and effectiveness of their said product by means of statements appearing on labels affixed to containers of said product and by means of representations made to prospective purchasers by agents and sales representatives of respondents, and by other means. Among and typical of said representations so used and caused to be used by respondents in the manner aforesaid are and have been the following:

Run-Safe: Cuts Hosiery Expense in Half. Insures your hosiery and lingerie against runs, snags and breaks.

Findings

29 F. T. C.

Sets the color, no more rotting or fading.
Rain-Spot Proof.

PAR. 4. By means of the aforesaid statements, together with other statements of similar import or meaning, not herein set out, and by the use of the names "Run-Safe," "Run-Free," and "Runless," as designations of such preparation, respondents represent, directly or by inference, that their product prevents runs, snags and breaks in silk hosiery and lingerie; that it prevents rotting and fading; that it sets or holds the color of silk hosiery and lingerie; that its use renders silk hosiery and lingerie "Rain-Spot Proof" and that it will save for its users approximately 50 percent of hosiery and lingerie cost.

PAR. 5. In truth and in fact the aforesaid statements and representations disseminated as aforesaid by respondents are false and misleading, in that the use of respondents' said product will not stop or prevent runs, snags, and breaks in silk hosiery or lingerie, will not prevent rotting or fading and will not set or hold the color of silk hosiery or lingerie. The use of said product will not render silk hosiery and lingerie rain-spot proof, and will not save for its users approximately 50 percent of hosiery and lingerie cost or any other substantial sum.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations 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 of respondents' said product because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the injury and prejudice 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 the 24th day of April 1939 issued and on the 25th day of April 1939, served its complaint in this proceeding upon the respondents, E. A. Morgan & Co., a corporation, and E. A. Morgan, individually, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 11, 1939 the respondents filed their 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 respondents through their counsel, Edward H. Brink, Jr., Esq., 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, E. A. Morgan & Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 412 Building Industries Building, Cincinnati, Ohio. The respondent, E. A. Morgan, of the same address, is president and owner of said respondent corporation, and directs and controls the sales policies and other activities of said corporate respondent with respect to the acts and practices herein described. Respondents are now and for more than 1 year last past have been engaged in the business of packaging, selling, and distributing a powdered preparation variously designated as "Run-Safe," "Run-Free," and "Runless," and which is represented as improving the wearing qualities of hosiery and lingerie.

PAR. 2. Respondents sell said product by direct selling methods and by means of sales persons and representatives who solicit orders for said product from prospective purchasers situated in the various States of the United States and in the District of Columbia. Respondents also receive orders for said product at their said place of business in the State of Ohio from purchasers in various States in the United States other than Ohio, and in the District of Columbia, and cause said product when sold to be shipped from their aforesaid place of business in the State of Ohio to said purchasers located in the various States of the United States other than Ohio, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have 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 their business as aforesaid and for the purpose of inducing the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act, respondents have made and are now making representations with respect to the quality and effectiveness of their said product by means of statements appearing on labels affixed to containers of said product and by means of representations made to prospective purchasers by agents and sales representatives of respondents, and by other means. Among and typical of said representations so used and caused to be used by respondents in the manner aforesaid are and have been the following:

Run-Safe: Cuts Hosiery Expense in Half. Insures your hosiery and lingerie against runs, snags and breaks.

Sets the color, no more rotting or fading.

Rain-Spot Proof.

PAR. 4. By means of the aforesaid statements, together with other statements of similar import or meaning, not herein set out, and by the use of the names "Run-Safe," "Run-Free," and "Runless", as designations of such preparation, respondents represent, directly or by inference that their product prevents runs, snags and breaks in silk hosiery and lingerie; that it prevents rotting and fading; that it sets or holds the color of silk hosiery and lingerie; that its use renders silk hosiery and lingerie "Rain-Spot Proof" and that it will save for its users approximately 50 percent of hosiery and lingerie cost.

PAR. 5. In truth and in fact the aforesaid statements and representations disseminated as aforesaid by respondents are false and misleading, in that the use of respondents' said product will not stop or prevent runs, snags, and breaks in silk hosiery or lingerie, will not prevent rotting or fading and will not set or hold the color of silk hosiery or lingerie. The use of said product will not render silk hosiery and lingerie rainspot proof, and will not save for its users approximately 50 percent of hosiery and lingerie costs; but may increase the resistance to runs in certain types of hosiery.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations 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 statement and representations are true, and into the purchase of respondents' said product because of said erroneous and mistaken belief.

1222

Order

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the injury and prejudice 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 respondents, and a stipulation as to the facts entered into between the respondents herein by their counsel, Edward H. Brink, Jr., Esq., 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 respondents 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, E. A. Morgan & Co., a corporation, its officers, representatives, agents, and employees, and the respondent, E. A. Morgan, individually, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a powdered preparation designed for application to silk hosiery and lingerie which preparation is now designated as "Run-Safe," "Run-Free," and "Runless," in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the terms, "Run-Safe," "Run-Free" and "Runless," or any other terms of similar import or meaning to designate or describe such preparation, or in any other manner, that such product when applied to silk hosiery or lingerie will stop or prevent or insure against runs, snags, or breaks.

2. Representing that the use of said product will reduce hosiery and lingerie costs approximately 50 percent, or will set or hold the color of silk hosiery and lingerie, or will prevent rotting or fading, or will render silk hosiery and lingerie rain-spot proof.

It is further ordered, That the respondents 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.

IN THE MATTER OF
THE WAHL COMPANY

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

Docket 3836. Complaint, June 27, 1939—Decision, Oct. 31, 1939

Where a corporation engaged in manufacture of its "Eversharp" fountain pens and in sale and distribution of such pens to purchasers thereof at their respective points of location in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products in commerce as aforesaid; in advertising its said pens in magazines and other publications of general circulation throughout the various States and in said District, and in circulars and other literature which were distributed to persons in various States and in said District—

- (a) Represented, through use of term "Leak Proof" and through such statements, among others, as "Trust it Anywhere * * * Can't Leak!" and depiction showing pen, uncapped, on white muff with point at slanting position and lower than other end, that said pens would not leak; and
- (b) Represented that its pens were equipped with a special device which would prevent their leaking, through such statements as "* * * won't stain your fingers, your purse, your gloves. Because it has the exclusive Safety Ink Shut-Off that automatically prevents leakage when the cap is screwed on," and other statements similarly stressing effectiveness of said "Safety Ink Shut-Off," together with depictions purporting to illustrate such effectiveness as well as construction of its said pens;

Facts being that said "Shut-Off" device, designed to prevent ink from flowing into feed duct of pen from reservoir in barrel when cap of pen was screwed tightly over pen point, did not prevent ink in feed duct of pen immediately prior to attachment of cap from leaking into cap after it was screwed tightly over point, and such ink would leak into cap of pen when it was shaken or jostled, though in no greater amount than in case of other high quality fountain pens not so equipped, and only under substantially same conditions, and under certain circumstances ink could and would leak or escape from said fountain pens equipped with such device when the pens were uncapped and the points exposed, though in no greater amount than in case of other high quality fountain pens not so equipped, and only under substantially same conditions; and

- (c) Represented that their said pens held "more than double the volume of ink," facts being they did not hold more than twice as much ink as pens offered and sold by competitors, but had an ink capacity which was substantially less than such amount;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase, because of such belief, of substantial quantities of its said pens, and with result, as direct consequence, that trade in commerce was diverted unfairly to it from its competitors aforesaid: