

IN THE MATTER OF

C. C. JOHNSON, TRADING AS SUPREME MANUFACTURING
COMPANY, CARLYLE SERVICE, MARVO MANUFACTUR-
ING COMPANY AND PEERLESS MANUFACTURING
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3712. Complaint, Feb. 14, 1939—Decision, Nov. 7, 1939

Where an individual engaged in sale and distribution of product represented as preservative of silk hosiery and lingerie, under trade names "Supreme," "Marvel," "Marvo," and "Peerless," through direct selling methods and through sales persons and representatives who traveled from State to State and canvassed cities and towns therein and in the District of Columbia, and made general house-to-house canvass soliciting orders therefor through stereotyped sales talk furnished by him, and in substantial competition, as thus engaged, with others selling and distributing preparations for treating such products and increasing their durability and resistance to snags and runs, and including many who do not misrepresent that they manufacture products sold by them and do not misrepresent quality and effectiveness of their respective products or make any other similar false statements in connection with sale and distribution thereof—

- (a) Represented, through statements on labels affixed to containers of product in question, and through sales talks made to prospective purchasers by his agents, directly or by implication, that use of his said product would prevent runs and snags in, or the rotting and fading of, hosiery and lingerie, and that through such use purchaser could save approximately 50 per cent of the cost of such articles; and
- (b) Represented, as aforesaid, that such use strengthened heels and toes of silk hosiery and that hosiery treated therewith would last four or five times longer than it would without being so treated;

Facts being product in question would not stop runs or snags, prevent rotting or fading, make such a saving, or strengthen, as aforesaid, silk hosiery, with increase in durability or life thereof as above set forth; and

- (c) Represented, as aforesaid, and through use of word "manufacturing" in various trade names employed by him, that he was manufacturer of the product in question, notwithstanding fact he was not such manufacturer;
- With result that many members of the purchasing public, who are of opinion that advantage in price, service, or other respects is to be secured by purchasing direct from manufacturer without intervention of middlemen, were led, through use of trade names aforesaid, to believe that said individual was manufacturer of product in question and were caused to purchase same, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief his said representations as to efficacy of such product were true, and that he was manufacturer thereof, and of causing such substantial portion of public in question to buy his said product in preference to that of competitors, and of thereby diverting trade unfairly to him from competitors; to their injury and that of public:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. John R. Phillips, Jr. for the Commission.

Morris, Kix Miller & Baar, of Washington, D. C., and *Wright, Rogers & Margolin*, of Kansas City, Mo., 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 C. C. Johnson, an individual, trading as Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co., and Peerless Manufacturing Co., 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, C. C. Johnson, is an individual, trading and doing business as the Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co. and Peerless Manufacturing Co., with his principal office and place of business located at 1014 City National Bank Building in the city of Omaha, Nebr. Respondent is now and has been for several years last past engaged in the business of selling and distributing a preservative or mending powder for silk hosiery and lingerie under the trade names of Supreme, Marvel, Marvo, and Peerless, in commerce as hereinafter set out.

PAR. 2. Respondent sells said product by direct selling methods and by means of sales persons and representatives who travel from one State to another and canvass all cities and towns within the various States of the United States and in the District of Columbia and make a general house-to-house canvass soliciting orders for the respondent's product, said sales persons and representatives using a stereotype sales talk as furnished by the respondent. Respondent causes said product when sold to be shipped from his aforesaid place of business in the State of Nebraska to said purchasers located in various States of the United States other than the State of Nebraska 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. The respondent is engaged in substantial competition with other individuals, and with partnerships, firms, and corporations

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selling and distributing a preparation for treating silk hose and lingerie to increase their durability and their resistance to snags and runs in commerce between and among the various States of the United States and in the District of Columbia. Among said competitors are many who do not misrepresent that they are manufacturers of the products they sell, and who do not misrepresent the quality or effectiveness of their respective products, or make other similar false statements in connection with their sale and distribution.

PAR. 4. In the course and conduct of his business as aforesaid and for the purpose of inducing the purchase of said product in said commerce respondent has made and is now making representations with respect to his business status and with respect to the quality and effectiveness of his said product by means of statements appearing on labels affixed to containers of said product and by means of sales talks made to prospective customers by agents of respondent. Among and typical of said representations so used and caused to be used by said respondent in the manner aforesaid are and have been the following:

Supreme Manufacturing Company

Marvo Manufacturing Company

Peerless Manufacturing Company

No more runs and snags.

Prevents runs and snags.

No more rotting and fading.

Prevents rotting and fading.

Saves 50% on hosiery and lingerie expense. One treatment good for life of hose. Strengthens heels and toes.

Prevents the runs and snags in your silk hosiery and lingerie * * * strengthens the heel and toe of your hosiery, thereby making them last 4 or 5 times longer * * * this treatment is permanent * * * now this product will cut your hosiery and lingerie expense in half * * * also prevents the silk from rotting, and one treatment is sufficient for the life of the hose.

PAR. 5. All of said statements purport to be descriptive of his business status and of his product and of its effectiveness when used. In said statements and through other means respondent, directly or by inference, through statements and representations herein set out and other statements of similar import and effect, represents that his product prevents runs and snags in said hosiery, that it prevents rotting and fading, that the public generally are saved approximately 50 percent of silk hosiery and lingerie cost, that it strengthens the heels and toes of said hosiery, and that the life of the silk hosiery and lingerie is preserved due to the quality of the respondent's product; and that he manufactures the products he sells. Many consumers are of the opinion that an advantage in price, service and

other particulars is to be secured by purchasing direct from the manufacturer without the intervention of middlemen.

PAR. 6. In truth and in fact these representations thus made are false and misleading in that the respondent does not manufacture said product. Respondent's product will not stop or prevent runs or snags in silk hosiery and lingerie. It does not prevent silk from rotting and fading. It does not save the purchasing public 50 percent on hosiery and lingerie expense. The so-called treatment is not permanent and it does not strengthen the heels and toes of silk hosiery. In truth and in fact said product is manufactured by an independent manufacturer and the respondent purchases the chemical product from such independent manufacturer and distributes the said product under his various trade names as aforesaid.

PAR. 7. Each and all of said false and misleading statements are calculated to and have had and now have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true, and to cause, and have caused a substantial part of the purchasing public to purchase the products of respondent in preference to the products of his said competitors, and unfairly to divert business from them to respondent. As a result thereof injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The use of the aforesaid acts and practices by the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts 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 February 14, 1939, issued, and on February 16, 1939, served, its complaint in this proceeding upon the respondent, C. C. Johnson, trading as Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co., and Peerless Manufacturing Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor

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an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing 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 on the said complaint and 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. Respondent, C. C. Johnson, is an individual, trading and doing business as the Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co. and Peerless Manufacturing Co., with his principal office and place of business located at 1014 City National Bank Building in the city of Omaha, Nebr. Respondent is now, and has been for several years last past, engaged in the sale and distribution of a product represented as a preservative of silk hosiery and lingerie under the trade names Supreme, Marvel, Marvo, and Peerless.

PAR. 2. Respondent sells said product by direct selling methods and by means of sales persons and representatives who travel from one State to another and canvass all cities and towns within the various States of the United States and in the District of Columbia and make a general house-to-house canvass soliciting orders for the respondent's product; said sales persons and representatives using a stereotyped sales talk as furnished by the respondent. Respondent causes said product when sold to be shipped from his aforesaid place of business in the State of Nebraska to said purchasers located in various States of the United States other than the State of Nebraska 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. The respondent is engaged in substantial competition with other individuals, and with partnerships, firms, and corporations selling and distributing preparations for treating silk hosiery and lingerie to increase their durability and their resistance to snags and runs in commerce between and among the various States of the United States and in the District of Columbia. Among said competitors are many who do not misrepresent that they are manufacturers of the products they sell, and who do not misrepresent the quality or

effectiveness of their respective products, or make other similar false statements in connection with their sale and distribution.

PAR. 4. In the course and conduct of his business as aforesaid and for the purpose of inducing the purchase of said products in said commerce, respondent has made and is now making representations with respect to his business status and with respect to the quality and effectiveness of his said product by means of statements appearing on labels affixed to containers of said product and by means of sales talks made to prospective customers by agents of respondent. Among and typical of said representations so used and caused to be used by said respondent in the manner aforesaid are and have been the following:

Supreme Manufacturing Company.

Marvo Manufacturing Company.

Peerless Manufacturing Company.

No more runs and snags.

Prevents runs and snags.

No more rotting and fading.

Prevents rotting and fading.

Saves 50% off hosiery and lingerie expense.

One treatment good for life of hose.

Strengthens heels and toes.

Prevents the runs and snags in your silk hosiery and lingerie * * * strengthens the heel and toe of your hosiery, thereby making them last 4 or 5 times longer * * * this treatment is permanent * * * now this product will cut your hosiery and lingerie expense in half * * * also prevents the silk from rotting, and one treatment is sufficient for the life of the hose.

PAR. 5. All of said statements purport to be descriptive of respondent's business status and of his product and its effectiveness when used. Through the statements and representations hereinabove set out and others of similar import and meaning not herein quoted, respondent represents and implies that the use of his said product will prevent runs and snags in hosiery and lingerie; that it prevents rotting and fading; that through the use of said product approximately 50 percent of silk hosiery and lingerie costs can be saved; that the use of said product strengthens the heels and toes of silk hosiery, thereby making such hosiery last four or five times longer than it ordinarily would; and that the respondent is the manufacturer of said product.

PAR. 6. In truth and in fact, the use of respondent's said product will not stop runs or snags in silk hosiery or lingerie; it will not prevent rotting and fading; the use of said product will not save approximately 50 percent of silk hosiery and lingerie costs; the use of said product does not strengthen the heels and toes of silk hosiery,

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thereby making such hosiery last four or five times longer than it ordinarily would; and the respondent is not the manufacturer of said product.

PAR. 7. Many members of the purchasing public are of the opinion that an advantage in price, service, or in other respects is to be secured by purchasing direct from the manufacturer of a product without the intervention of middlemen. The use by the respondent of the trade names Supreme Manufacturing Co., Marvo Manufacturing Co. and Peerless Manufacturing Co. in connection with the sale and distribution of said product leads many members of the purchasing public to believe that respondent is the manufacturer of the product and causes them to purchase said product.

PAR. 8. Each and all of said statements and representations have had, and do have, the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations as to the efficacy of said product are true, and that the respondent is the manufacturer thereof, and have caused, and do cause, a substantial portion of the purchasing public to purchase the product of the respondent in preference to the products of his competitors. In consequence thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from his competitors to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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, and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, C. C. Johnson, trading as Supreme Manufacturing Co., Carlyle Service, Marvo Manufacturing Co., and Peerless Manufacturing Co., or trading under any other name or names, his agents, servants, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the product for the treatment of hosiery and lingerie now sold and distributed by the respondent under the trade names Supreme, Marvel, Marvo, and Peerless, or any other product composed of substantially the same ingredients or possessing substantially similar properties, whether sold under said names, or any other trade name or names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the use of said product will prevent runs and snags in, or the rotting and fading of, hosiery and lingerie.

2. Representing, directly or by implication, that through the use of said product, the purchaser can save approximately 50 percent of the cost of silk hosiery and lingerie.

3. Representing, directly or by implication, that the use of said product strengthens the heels and toes of silk hosiery, or that hosiery treated with said product will last four or five times longer than it would without being so treated, or that the use of said product will result in any substantial increase in the wearing qualities of silk hosiery.

4. Representing, through the use of the word "manufacturing," or any other word or term of similar import or meaning, as part of the trade name used by the respondent, or in any other manner or through any other means or device, that said respondent is the manufacturer of the product sold by him, unless and until such respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said product is manufactured by him.

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

IN THE MATTER OF
**THE PERASTHMAN COMPANY, INC., AND E. FOUGERA
& CO., INC.**

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

Docket 3719. Complaint, Feb. 20, 1939—Decision, Nov. 7, 1939

Where a corporation and its exclusive distributor engaged in manufacture, sale, and distribution of first-name corporation's "Perasthman" or "Perasthman Tablets" for asthma, and acting together and in cooperation with one another in acts and practices below set out; in advertisements which they disseminated through the mails, insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter, and by other means, and which were distributed in commerce among the various States and were intended and likely to induce purchase of their said product—

- (a) Represented that preparation in question constituted a cure for asthma and an effective treatment therefor, and for the symptoms thereof, and was of substantial therapeutic benefit in such treatment; and
- (b) Represented that product in question was a new, sensational, European discovery, free from harmful drugs, and preparation which might be used promiscuously without harmful effects, and that use thereof was beneficial to all sufferers from said ailment and would assure nights of restful sleep and days of greater comfort, and stop wheezing and other symptoms of said condition;

Facts being it was not a cure therefor, nor of substantial therapeutic benefit in treatment thereof or of symptoms or manifestations of said condition, ephedrine, as only ingredient therein of any value to sufferers from asthma, had long been used by medical profession to afford, in some cases, temporary relief from symptoms or manifestations in question, and said preparation was neither new nor sensational and could not be used without harmful effects by all sufferers from asthma, but could only be used in limited quantities and under competent medical supervision by those with heart or kidney ailments, and might result, in case of unlimited and unsupervised use by such persons, in injury, and it had not accomplished and would not accomplish results claimed therefor, as above set forth, and only benefit that asthma sufferer could receive therefrom was temporary relief from some of manifestations of ailment, and it had not "freed" thousands or any other substantial number of asthma sufferers;

With effect of misleading and deceiving purchasing public into erroneous and mistaken belief that said preparation was a cure for or of therapeutic benefit in treatment of asthma or symptoms and manifestations thereof, and that other representations and implications set out were true, and of inducing purchasing public, because of such belief, to purchase its said preparation, and with result of thereby unfairly diverting trade in commerce to them from those of their competitors who do not misrepresent efficacy and therapeutic value of their products; to the substantial injury of competitors in commerce and to injury of public: