

## Syllabus

IN THE MATTER OF  
RALSTON PURINA COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3102. Complaint, Apr. 10, 1937—Decision, Dec. 28, 1939*

Where a corporation engaged in manufacture of livestock feeds, cereal foods for human consumption, and food for dogs and other animals, including its "Purina Dog Chow," and in sale and distribution of its said product to purchasers in other States, in substantial competition with others similarly engaged in sale of like products or of those for the same purposes—

Represented, in pamphlets, circulars, labels, and other advertising matter circulated through the several States and in the District of Columbia, that said "Purina Dog Chow" contained pure beef, pure meat, and meat, facts being ingredient thus referred to, and properly designated as "meat meal" or dehydrated meat meal, purchased by it from packing companies and manufacturers thereof, was made by them under a process by which the meat trimmings, deposits of fat, various organs, incidental bone, etc., were so treated that two of four chemical food elements of meat, namely, fat and moisture, were removed, and any small amount included in original contents placed in vats or containers made use of was changed both physically and chemically, and there was no meat or beef in the meat meal or finished ingredient placed, in form of dry meal or powder, in said dog food;

With tendency and capacity to mislead and deceive substantial part of purchasing and consuming public into erroneous and mistaken belief that said dog food contained pure beef, pure meat, or meat, and with result, as consequence of such belief, that purchasing and consuming public bought substantial amount thereof and trade was unfairly diverted to it from its competitors engaged in manufacture, sale, and distribution of such products, or in sale and distribution thereof, and who truthfully represent the contents of their said products; to the substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, *Mr. Miles J. Furnas*, and *Mr. Randolph Preston*, trial examiners.

*Mr. S. Brogdyne Teu, II* and *Mr. Donovan Divet* for the Commission.

*Mr. Crawford Johnson* and *Mr. Thomas S. McPheeters, Jr.* of Bryan, Williams, Cave & McPheeters, of St. Louis, Mo., for respondent.

## Complaint

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## COMPLAINT

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Ralston Purina Co., hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located in the city of St. Louis, State of Missouri. It is now, and for some time past has been, engaged in the manufacture of live stock feeds, cereal foods for human consumption and of food for dogs and various other animals, among which said products is a dog food which it offers for sale and sells under the trade name "Purina Dog Chow." The respondent sells and distributes said product in commerce between and among the various States of the United States, causing the same when sold to be shipped from its place of business in the State of Missouri to purchasers thereof located in a State or States other than the State of Missouri.

In the course and conduct of its business, the respondent has been, and is, in substantial competition with various other corporations, partnerships, firms, and individuals engaged in the sale of similar products or products to be used for the same and similar purposes, which competitors cause their products when sold to be transported to purchasers thereof located in the various States of the United States.

PAR. 2. In the course of promotion of sale and sale of its dog food under the trade name "Purina Dog Chow," the respondent causes representations and statements to be made in pamphlets, circulars, labels, and other advertising matter circulated throughout the several States of the United States to the following effect, gist, or meaning:

That the product contains "pure beef," "pure meat," or "meat."  
That it contains "whole milk."

And that 1 pound of its product contains as much food value as 3 pounds of fresh or canned meat.

In truth and in fact, the product does not contain "pure beef," "pure meat," or "meat." The portion of the contents so designated and described is properly known and referred to as dehydrated meat scraps. Said product does not contain "whole milk," but is made of

dried skimmed milk. One pound of the product does not contain as much food value as 3 pounds of fresh or canned meat.

PAR. 3. Under the foregoing facts and circumstances, the representations, statements, and terms used by respondent in its advertising matter, as set forth in paragraph 2 hereof, are false and misleading, and have the capacity and tendency to deceive and do deceive the ultimate purchasers and consumers into buying that which they do not intend to buy. Through and by virtue of the use of such representations, statements, and terms in its advertising matter, as aforesaid, the respondent has placed and is placing in the hands of its wholesaler and retailer purchasers, the means of deceiving the ultimate purchasers and consumers. The aforesaid practices have the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce products of the same kind and nature as those of respondent, which products are truthfully advertised and described, and thereby substantial injury is done by respondent to competition in commerce between and among the various States of the United States.

PAR. 4. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent 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 the 10th day of April 1937, issued, and thereafter served, its complaint in this proceeding upon the respondent, Ralston Purina Co., 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 in support of the allegations of the complaint was introduced, first, by S. Brogdyne Teu, II, before W. W. Sheppard, a duly appointed trial examiner of the Commission; subsequently before Miles J. Furnas, duly appointed trial examiner of the Commission, and later, before Randolph Preston, a duly appointed trial examiner of the Commission, designated by it to preside at said hearings. The respondent was represented at all of these hearings by its attorneys, Bryan, Williams, Cave & McPheeters,

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Crawford Johnson and Thomas S. McPheeters, Jr., of said firm, appearing as its counsel. Said testimony and other evidence was 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 pleadings, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral argument of the counsel aforesaid. Mr. Donovan Divet, of the Chief Counsel's staff, presented the argument on behalf of the Commission; 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 is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located in the city of St. Louis, State of Missouri. It is now, and for some time past has been, engaged in the manufacture of livestock feeds, cereal foods for human consumption, and of food for dogs and various other animals, among which said products is a dog food which it offers for sale and sells under the trade name "Purina Dog Chow." The respondent sells and distributes said product in commerce between and among the various States of the United States, causing the same, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located in a State or States other than the State of Missouri.

In the course and conduct of its business the respondent has been and is in substantial competition with various other corporations and with firms, partnerships, and individuals engaged in the sale of similar products, or of products to be used for the same purposes, which competitors cause their products, when sold, to be transported to purchasers thereof located in various States of the United States.

PAR. 2. In the course of the promotion of sale and the sale of its dog food under the trade name "Purina Dog Chow," the respondent has caused and causes representations and statements to be made in pamphlets, circulars, labels, and other advertising matter circulated throughout the several States of the United States and in the District of Columbia, among others, to the following effect, that the said product contains pure beef, pure meat, and meat, when in truth and in fact said product does not contain pure beef, pure meat, beef or meat; but the ingredient of the said product so designated and described is

properly known and referred to as "meat meal" or more fully as dehydrated meat meal. The ingredient which the respondent represents as pure beef, pure meat, or meat is purchased by said respondent from Armour & Co. of Chicago, from Swift & Co. of Chicago, and from the Kohr Packing Co. of Davenport, Iowa, and after being purchased is put into the final product Purina Dog Chow by the respondent. The said ingredient is made by all the said companies from substantially the same materials and by substantially the same processes of manufacture. For the purpose of manufacturing said ingredient the said companies place meat trimmings, deposits of fat, hearts, lungs, spleen, kidneys, paunches, intestines to a limited extent, incidental bone, and connective tissue in the organs and abdominal tract into large containers or vats. The final product, Purina Dog Chow, is 8 percent beef meal and 8 percent pork meal. When the respective companies are manufacturing pork meal for use by the respondent the ingredients of the meal are taken from hogs and when they are manufacturing beef meal the ingredients are taken from beef animals. The contents of the containers or vats are subjected to a temperature of 212° F. or more. The contents of the containers or vats are subjected to this temperature for from 6 to 8 hours, and as a part of this heating process the fats and oils are drawn off. The remaining contents of the vats or containers are then placed in an expeller or screw-worm, which forces out any fat or oil remaining after the heating process. The heating process also substantially reduces the moisture content of the original contents of the vats or containers. Chemically, meat is composed of four food elements, which are protein, fat, moisture, and calcium. The heating processes used by all of the companies from which the respondent purchases the ingredient in Purina Dog Chow designated as meat or beef remove from the original contents of the vats or containers two of the four chemical food elements of meat, to wit, the fat and the moisture. Meat is the edible portion of the carcass of an animal. The original contents of the said containers or vats include a small amount of meat but the Commission finds that the contents of said vats or containers as a whole cannot properly be designated as meat, as pure meat, as beef, or as pure beef, and further finds that whatever meat is included in the original contents placed in said vats or containers is changed both physically and chemically by the heating process and the expelling process of the various companies with the result that there is no meat or beef in the final ingredient, meat meal, which is placed in the said Purina Dog Chow in the form of a dry meal or powder. The Commission finds that the proper designation of the ingredient on which the respondent has based its assertions

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that said Dog Chow contains meat, pure meat, beef, or pure beef, is meat meal or more fully, dehydrated meat meal.

PAR. 3. The use by the respondent of the representations and statements aforesaid, and of others of similar import not herein set out, in connection with the sale and distribution of the aforesaid product, Purina Dog Chow, has had, and now has, the tendency and capacity to mislead and deceive a substantial part of the purchasing and consuming public into the erroneous and mistaken belief that said product contains pure beef, pure meat, or meat. As a result of this mistaken and erroneous belief, the purchasing and consuming public have purchased a substantial amount of respondent's product, with the result that trade has been unfairly diverted to respondent from its competitors in the manufacture, sale, and distribution of such products, or in the sale and distribution thereof, which competitors truthfully represent the contents of their respective products; as a consequence thereof, substantial injury has been and is being done by the respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

#### CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition 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 on the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before W. W. Sheppard, Miles J. Furnas, and Randolph Preston, examiners of the Commission theretofore duly designated by it, in support of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Donovan Divet, counsel for the Commission, and by Crawford Johnson, counsel for the respondent, 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 Ralston Purina Co., a corporation, 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 its food for dogs known as Purina Dog Chow, or any other product containing substantially similar in-

gredients, whether sold under the same name or under any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the terms "pure beef," or "pure meat" or "meat" or "beef" or any other terms of similar import or meaning to designate or describe dehydrated meat meal, or any product which is not meat or beef in fact.

*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  
A. SCHOTTLAND, INC., AND VALMOR UNDERGARMENT  
COMPANY, INC.

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

*Docket 3276. Complaint, Dec. 2, 1937—Decision, Dec. 28, 1939*

Where a corporation engaged in manufacture of fabrics and in sale thereof to garment manufacturers and other purchasers located throughout the various States and in the District of Columbia; in soliciting and selling certain of its fabrics to such manufacturers—

- (a) Supplied such customers with tags and labels to be affixed and attached to garments made therefrom, and which were thus affixed by said customers to garments made from fabrics in question, and which bore statement "PURE DYE NANUETTE CREPE DuPont Rayon and Silk," with words "Pure Dye" and "Crepe" featured thereon and words "Dupont Rayon and Silk" printed in small and less conspicuous type, and which tags and labels set forth, on back thereof, " 'Nanquette Crepe' makes possible the elimination of tin-weighted cloths for lingerie," "The 'Nanquette Crepe' label is the guarantee of PURE DYE \* \* \*," "Best results are obtainable when the silk lingerie is ironed \* \* \*," and thereby represented to purchasing public and garment manufacturers that fabrics thus advertised, offered, and sold were silk, facts being they were not made of silk, product of cocoon of silkworm, as long definitely and specifically associated with word in mind of retail dealers and consuming public generally, but were composed entirely of materials other than silk, and made of rayon; and

Where second concern engaged in manufacture of women's undergarments and other allied products, and in sale thereof to retailers and other purchasers throughout the various States and in the District of Columbia—

- (b) Tagged and labeled garments made by it from fabrics which it purchased from such fabric manufacturer with tags and labels supplied by manufacturer in question, as above described, and in a display folder, with which it accompanied its said garments, set forth legend "PURE DYE NANUETTE CREPE DuPont Rayon and Silk," with words "Pure Dye" and "Ray silk" featured in large conspicuous type and words "Made of Silk and Rayon" printed in less conspicuous type, and in other display folders, with which it accompanied other garments made, offered and sold by it, featured words "Van Ceta Taffeta Slips" and "Val Sheen Satin Slips," and represented thereby to members of purchasing public and retail and other dealers that garments thus advertised, offered and sold were silk, facts being they were not products of silk, long held in great public esteem and confidence for their preeminent qualities and long associated in public mind with fabric made from cocoon of silkworm, or silk as designated, described and referred to in case of dress goods, ladies' undergarments, and other items of wearing apparel as "Pure Dye," "Crepe," "Taffeta," and "Satin" or through coined word including word "silk";

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and to cause them to purchase said products as result of such erroneous