

Syllabus

IN THE MATTER OF

BUFORD & OWENS COLLEGE, AND GUSSIE BUFORD,
MARY OWENS BOONE WELLINGHAM AND GEORGE
BUFORD

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

Docket 3790. Complaint, May 12, 1939—Decision, Feb. 23, 1940

Where a corporation and three individuals, who were general officers thereof and formulated, controlled, and directed its policies, acts and practices, engaged in sale and distribution, under their trade or corporate name, of hair oil, pressing oil, and shampoo, and acting together in cooperation with each other in acts and things below set forth; in advertisements which they disseminated by the mails, by newspaper of general circulation, and by circulars distributed in commerce among the various States, and by other means in commerce, and which were intended and likely to induce purchase of their said products—

- (a) Represented that said hair preparations were cure or remedy for dandruff, falling hair and scalp diseases, and would promote growth of hair, through such statements as, "As a Dandruff Remover it cannot be beaten," "As a Hair Grower it cannot be excelled and has no equal," "It stops the hair from falling out, cures many cases of scalp diseases, and causes stubborn hair to grow," and others of similar tenor, facts being said products were of no value in promoting growth of hair or preventing same from falling out, and said representations and claims were otherwise also grossly exaggerated, misleading and untrue; and

Where said corporation and individuals, engaged as aforesaid—

- (b) Made use of word "College" in corporate name employed by them, and thereby represented that they were conducting an institution of higher learning, facts being said corporation was not college, as commonly understood by public, and institution of higher learning empowered to confer degrees, with faculty of learned instructors in various branches of learning, and including liberal arts and sciences;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations and advertisements were true, and of causing portion of said public, because of such belief, to purchase their said products;

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 newspapers and other publications of general circulation throughout various

Mr. Karl Stecher for the Commission.

Jarman, Brown, Looney & Watts, of Oklahoma City, Okla., for respondents.

Complaint

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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 Buford & Owens College, a corporation, and Gussie Buford, Mary Owens Boone Wellingham, and George Buford, as individuals and officers of Buford & Owens College, hereinafter referred 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. Buford & Owens College is a corporation, organized and existing under the laws of the State of Oklahoma, with its office and principal place of business at 812 North East Third Street in Oklahoma City, Okla. Gussie Buford, Mary Owens Boone Wellingham, and George Buford are, respectively, president, vice-president, and secretary of said corporate respondent, and have their office at the same address as said Buford & Owens College.

Respondents, Gussie Buford, Mary Owens Boone Wellingham, and George Buford, as individuals and as officers of said corporate respondent, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of certain hair and scalp preparations known as Buford & Owens preparations and more specifically described as Buford & Owens Hair Oil, Buford & Owens Pressing Oil, Buford & Owens Special Oil, and Buford & Owens Shampoo. In the course and conduct of their business the respondents cause said preparations when sold to be transported from their place of business in the State of Oklahoma to purchasers thereof located in other States of the United States and in the District of Columbia. At all times mentioned herein respondents have maintained a course of trade in said preparations, sold and distributed by them 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 the aforesaid business the respondents have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning said preparations by United States mails, by insertion in a newspaper having a general circulation, and also in circulars, all of which are distributed in commerce among and between

the various States of the United States; and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations 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 and caused to be disseminated as aforesaid, are the following:

Buford & Owens College, makers of wonderful B. & O. Hair Oil—Shampoo.

We wish to call your attention to the wonderful uses and results obtained by using our wonderful B. & O. Hair Oil.

As a Dandruff Remover it cannot be beaten.

As a Hair Grower it cannot be excelled and has no equal.

It stops the hair from falling out, cures many cases of scalp diseases, and causes stubborn hair to grow.

We grow your hair.

We recommend and guarantee it to grow any person's hair under any climate.

Don't forget to use B. & O. Hair Oil and obtain these results.

We recommend this special treatment for customers who cannot attend our College.

The B. & O. Preparations have stood the test as a hair grower, dandruff remover.

By the use of B. & O. Shampoo you get a genuine treatment for dandruff. Promote the growth of the hair and aids in preventing it from falling out.

PAR. 4. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' preparations, respondents have represented and do now represent directly and indirectly that their preparations are a cure or remedy for dandruff, falling hair, scalp diseases, and that said preparations will promote the growth of hair.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact respondents' preparations are not a cure or remedy for dandruff, falling hair or scalp diseases and do not constitute a competent treatment therefor. Respondents' preparations are of no value in promoting the growth of hair or preventing hair from falling out.

PAR. 6. In addition to the false and misleading statements hereinabove set forth the respondents represent that they are conducting an

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institution of higher learning by use of the word "college" in the corporate name.

In truth and in fact said corporate respondent is not a college as commonly understood by the public and is not an institution of higher learning empowered to confer degrees, with a faculty of learned instructors in the various branches of learning, including the liberal arts and sciences.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparations 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 such false statements, representations, and advertisements are true and causes a portion of the purchasing public because of said erroneous and mistaken belief to purchase respondents' said preparations.

PAR. 8. The aforesaid acts and practices of respondents are all to the prejudice and injury 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 May 12, 1939, issued, and on May 15, 1939, served, its complaint in this proceeding upon respondents Buford & Owens College, a corporation, and Gussie Buford, Mary Owens Boone Wellingham and George Buford, individually, and as officers of Buford & Owens College, charging them with the use of 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 respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor 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. Buford & Owens College is a corporation, organized and existing under the laws of the State of Oklahoma, with its office and principal place of business at 812 North East Third Street in Oklahoma City, Okla. Gussie Buford, Mary Owens Boone Wellingham, and George Buford are, respectively, president, vice-president, and secretary of said corporate respondent, and have their office at the same address as said Buford & Owens College.

Respondents, Gussie Buford, Mary Owens Boone Wellingham, and George Buford, as individuals and as officers of said corporate respondent, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of certain hair and scalp preparations known as Buford & Owens preparations and more specifically described as Buford & Owens Hair Oil, Buford & Owens Pressing Oil, Buford & Owens Special Oil and Buford & Owens Shampoo. In the course and conduct of their business the respondents cause said preparations when sold to be transported from their place of business in the State of Oklahoma to purchasers thereof located in other States of the United States and in the District of Columbia. At all times mentioned herein respondents have maintained a course of trade in said preparations sold and distributed by them 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 the aforesaid business the respondents have disseminated and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning said preparations by United States mails, by insertion in a newspaper having a general circulation, and also in circulars, all of which are distributed in commerce among and between the various States of the United States; and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations 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 and caused to be disseminated, as aforesaid, are the following:

Buford & Owens College, makers of wonderful B. & O. Hair Oil—Shampoo.

We wish to call your attention to the wonderful uses and results obtained by using our wonderful B. & O. Hair Oil.

As a Dandruff Remover it cannot be beaten.

As a Hair Grower it cannot be excelled and has no equal.

It stops the hair from falling out, cures many cases of scalp diseases, and causes stubborn hair to grow.

We grow your hair.

We recommend and guarantee it to grow any person's hair under any climate.

Don't forget to use B. & O. Hair Oil and obtain these results.

We recommend this special treatment for customers who cannot attend our College.

The B. & O. Preparations have stood the test as a hair grower, dandruff remover.

By the use of B. & O. Shampoo you get a genuine treatment for dandruff. Promote the growth of the hair and aids in preventing it from falling out.

PAR. 4. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' preparations, respondents have represented and do now represent, directly and indirectly, that their preparations are a cure or remedy for dandruff, falling hair, scalp diseases, and that said preparations will promote the growth of hair.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact respondents' preparations are not a cure or remedy for dandruff, falling hair or scalp diseases and do not constitute a competent treatment therefor. Respondents preparations are of no value in promoting the growth of hair or preventing hair from falling out.

PAR. 6. In addition to the false and misleading statements hereinabove set forth the respondents represent that they are conducting an institution of higher learning by use of the word "college" in the corporate name.

In truth and in fact said corporate respondent is not a college as commonly understood by the public and is not an institution of higher learning empowered to confer degrees, with a faculty of learned instructors in the various branches of learning, including the liberal arts and sciences.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparations has had, and now has, the capacity and tendency to and does mislead and deceive a

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substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and causes a portion of the purchasing public because of said erroneous and mistaken belief to purchase respondents' said preparations.

CONCLUSION

The aforesaid acts and practices of respondents, 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 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 substitute answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Buford & Owens College, a corporation, and its officers and Gussie Buford, Mary Owens Boone Wellingham, and George Buford, individually, and as officers of Buford & Owens College, and respondents' representatives, agents, and employers, directly or through any corporate or other device, 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 respondents' cosmetic preparations now designated by the names of "Buford & Owens Hair Oil," "Buford & Owens Pressing Oil," "Buford & Owens Special Oil," and "Buford & Owens Shampoo," or any other cosmetic preparations composed of substantially similar ingredients. or possessing substantially similar therapeutic properties, whether sold under the same names or under 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 cosmetic preparations which said advertisements represent, directly or through implication:

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That said cosmetic preparations, or any of them, are a cure or remedy for dandruff, falling hair or diseases of the scalp, or that said preparations, or any of them, will promote the growth of hair, or will prevent hair from falling out.

It is further ordered, That the respondents, Buford & Owens College, a corporation, and its officers, and Gussie Buford, Mary Owens Boone Wellingham, and George Buford, individually, and as officers of Buford & Owens College, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "College" as part of the corporate name of the corporate respondent, or in any way representing that the respondents conduct an institution of higher learning.

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.

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IN THE MATTER OF

W. T. WAGNER'S SONS COMPANY

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

Docket 3932. Complaint, Oct. 19, 1939—Decision, Feb. 23, 1940

Where a corporation engaged in manufacture of soda water and other soft drinks and in sale and distribution thereof to purchasers in various other states, in offer and advertisement of its "Wagner English Club Soda" in newspapers and other publications of general circulation throughout various States—

Represented directly or by implication that its product aforesaid was imported from England or made of ingredients imported therefrom and that only soda water there made had properties possessed by said product, through use of word "English" in designation thereof and through such depictions as head of one of British Buckingham guards, large bottle labeled "Wagner English Club Soda," Westminster Clock or Big Ben, and head of London policeman in characteristic helmet, together with such accompanying statements as "British as the Buckingham Guards" and "* * * like the sodas served in regimental clubs," "* * * distinctively British in the added leisure it gives to drinking * * *," "Pour Wagner's in your glass and discover what every Englishman knows: It's the soda that makes or mars the drink," "Wagner English Club Soda guards the liveliness of your drink * * * just as Big Ben, brooding over the House of Parliament, guards the hours for wayfaring Londoners," "* * * has the true British quality of holding life and flavor in a drink," and featured in advertisements aforesaid "Wagner The *English* Club Soda";

Notwithstanding fact neither product in question nor ingredients thereof were made in and imported from England, such as preferred by substantial number of members of purchasing public in the United States, but product aforesaid was made in United States from domestic ingredients and did not have any properties possessed by soda water made in England not possessed by other such water made in United States from domestic ingredients;

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, by reason thereof, into purchase of substantial quantities of its said product;

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. Karl Stecher for the Commission.

Bettinger, Schmitt & Kreis, of Cincinnati, Ohio, for respondent.