

IN THE MATTER OF

C. C. JOHNSON, TRADING AS SUPREME MANUFACTURING COMPANY, CARLYLE SERVICE, MARVO MANUFACTURING COMPANY, AND PEERLESS MANUFACTURING COMPANY.¹

COMPLAINT, 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, Mar. 8, 1940

Where an individual engaged in sale and distribution of his Supreme, Marvel, Marvo, or Peerless product, represented as preservative of silk hosiery and lingerie, through direct selling methods and sales persons and representatives who traveled from State to State canvassing cities and towns therein and in District of Columbia, and using in their general house-to-house solicitation of orders stereotyped sales talk furnished by said individual, and, as thus engaged, in substantial competition with others selling and distributing, in commerce among the States and in said District, preparations for treating said products to increase their durability and resistance to snags and runs, and including many who do not misrepresent that they are manufacturers of the products sold and do not misrepresent quality or effectiveness thereof or make other similar false statements in connection with their sale and distribution—

- (a) Represented, through statements on labels affixed to containers of his said product, and through agents' sales talks to prospective customers, that said product would prevent runs and snags in hosiery and lingerie, and rotting or fading thereof, and strengthen heels and toes of silk hosiery substantially, and that through use thereof purchaser could save 50 percent of cost of said various products, facts being use thereof would not save approximately such amount, and product was not permanent and would not strengthen heels and toes of silk hosiery or in other respects accomplish results claimed therefor as aforesaid; and
- (b) Included word "manufacturing" in various trade names made use of by him, notwithstanding fact he was not manufacturer of said product, which was actually made by independent manufacturer, with capacity and tendency thereby to cause purchasing public to believe that he was manufacturer of products sold, and that by purchasing from him direct, as manufacturer, without intervention of middleman, they would, as believed by many members of such public, secure advantages in price, service, and in other particulars not to be had in purchasing from competitors who do not represent themselves as manufacturers of products sold by them;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said representations as to efficacy of said product were true, and that he was manufacturer thereof, and of causing substantial portion of said public to purchase his said product in preference to those of his competitors, and of thereby diverting unfairly to him from them trade in commerce as aforesaid:

¹ Original findings and order, 29 F. T. C. 1270, were vacated and set aside Dec. 20, 1939 (see *infra* page 1386).

Held, That such acts and practices, under the circumstances set forth, 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, 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 is 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

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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. 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 salespersons 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 salespersons 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% 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 respondent's business status and of his product and of its effectiveness when used. In said statements and through other means respondent, directly and by inference, represents that his product prevents runs and snags in 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 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 product he sells.

PAR. 6. The aforesaid representations are false and misleading. In truth and in fact, the use of respondent's said product will not prevent or stop runs or snags in silk hosiery or lingerie. Said preparation will not prevent silk from rotting and fading. The use of said product will not save approximately 50 percent of hosiery and lingerie expense. Said product is not permanent and the use of said product does not strengthen the heels and toes of silk hosiery. The respondent is not the manufacturer of said product which is actually manufactured by an independent manufacturer.

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

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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 has the capacity and tendency to cause the purchasing public to believe that respondent is the manufacturer of the product he sells and to believe that by purchasing from respondent they will secure advantages in price, service, and in other particulars not to be had in purchasing from the said competitors of respondent who do not represent that they are manufacturers of the products they sell.

PAR. 8. Each and all of said statements and representations by the respondent 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 beliefs 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 said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 considered 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, his agents, servants, representatives and employees acting directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as defined in the Federal Trade

Commission Act, of the product for the treatment of hosiery and lingerie now sold and distributed by him under the trade names Supreme, Marvel, Marvo, and Peerless, or any other product composed of substantially the same ingredients or possessing substantially similar properties, 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 50 percent of the cost of silk hosiery and lingerie, or any percent approximating 50 percent.

3. Representing, directly or by implication, that the use of said product strengthens the heels and toes of silk hosiery substantially.

4. Using the term "manufacturing" or any other word or term of similar import or meaning as part of any trade or corporate name or otherwise representing that the respondent is the manufacturer of said product, unless and until the respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said product is actually manufactured by the respondent.

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.

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IN THE MATTER OF
W. H. MAZE COMPANY

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

Docket 3953. Complaint, Nov. 18, 1939—Decision, Mar. 8, 1940

Where a corporation engaged in manufacture, sale, and distribution of its Lead Head Anchor Shank (roofing) Nails, to purchasers in various other States and in the District of Columbia; in advertising its said product in periodicals and other publications of general circulation among the various States and in catalogs, circulars, price lists, and other printed and written matter distributed among prospective purchasers—

Represented that its said nails had two times the holding power under normal conditions of all other nails ordinarily used for roofing, and four times such power under certain conditions as some other nails used for said purpose, facts being they did not have any holding power approximating such amount, and such statements and representations were grossly exaggerated, misleading, and untrue;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such statements and representations were true, and 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. Donovan R. Divet for the Commission.

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 W. H. Maze Co., 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. The respondent, W. H. Maze Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its office and principal place of business at Peru, in the State of Illinois.

Respondent is now and has been for several years last past engaged in the business of manufacturing, selling, and distributing roofing nails known as Maze Lead Head Anchor Shank Nails. Respondent causes said nails, when sold, to be transported from its aforesaid place of