

Complaint

30 F. T. C.

IN THE MATTER OF
ROXANNA CANNING COMPANY

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

Docket 3904. Complaint, Sept. 30, 1939—Decision, Apr. 29, 1940

Where a corporation engaged in manufacture of dog food and in sale and distribution under various trade names of various brands thereof, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such foods in commerce as aforesaid—

Represented that its said various brands contained beef byproducts, ground beef bone or beef, and that its dog food was a scientifically balanced ration and scientifically balanced beef ration for dogs, through such statements and representations, with respect to ingredients and efficacy of said dog foods, as "Blackspot Brand. A Scientifically Balanced Beef Ration," "Dog Food. Contains Beef By-Products * * * Ground Beef Bone * * *," and "Harty Brand. A Scientifically Balanced Ration," "Contains Beef By-Products * * * Ground Beef Bone * * *," facts being its said products did not contain such ingredients and were neither scientific nor balanced rations, or scientifically balanced beef rations;

With tendency and capacity to mislead and deceive substantial part of purchasing and consuming public into erroneous and mistaken belief that said representations were true, and with consequence, as result of such mistaken and erroneous belief, that such public purchased substantial amount of its said products, and trade was unfairly diverted to it from its competitors engaged in manufacture, sale, and distribution of similar products and who truthfully represent character and ingredients thereof; to the substantial injury of competition in commerce:

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.

Mr. S. Brogdyne Teu, II 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 Roxanna Canning Co., a corporation, hereinafter referred to as respondent, has violated the provisions of 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 Roxanna Canning Co. is a corporation organized, existing, and doing business under and by virtue of the laws

of the State of Ohio and having its principal office and place of business in the city of Lebanon, State of Ohio.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of various brands of dog food, which it sells under the trade names of Harty Dog Food Co. and Dodds Packing Co. For this purpose the respondent maintains a factory and place of business in the city of Dodds, State of Ohio. Respondent causes said dog food, when sold, to be transported from its place of business in the State of Ohio to the purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said dog food 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 its business as aforesaid, respondent is now and during all the times mentioned herein, has been engaged in substantial competition with other corporations and with firms, individuals, and partnerships selling and distributing dog foods in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has made false, deceptive, and misleading statements and representations with reference to the ingredients of its various brands of dog food and their efficacy as a ration for dogs. Among and typical of such false, deceptive, and misleading representations made by the respondent are statements concerning its said products appearing on labels attached to the containers and cartons in which said products are packed and sold, as follows:

BLACKSPOT Brand A Scientifically Balanced BEEF RATION	DOG FOOD Contains Beef By-Prod- ucts Cereal Composed of Wheat, Corn, Oats, and Soy Bean Products, Ground Beef Bone, Beef, Carrots, Salt and Cod Liver Oil Prepared in Broth. Guaranteed to contain not less than 8 percent Protein, 2 per- cent fat and not over 2 percent Fiber. Distributed by DODDS PACKING CO. Lebanon, Ohio.	BLACKSPOT Brand A Scientifically Balanced BEEF RATION
DOG FOOD		DOG FOOD
Net Weight 1 lb. WHOLESOME AND NUTRITIOUS		Net Weight 1 lb. WHOLESOME AND NUTRITIOUS

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HARTY Brand	DOG FEED	HARTY Wholesome—Nutritious
Keeps your Dog Healthy and Hearty	Contains Beef By-Prod- ucts Cereal Composed of Wheat, Corn, Oats, and Soy Bean Products, Ground Beef Bone, Beef, Carrots, Salt and Cod Liver Oil Prepared in Broth and added water sufficient to process the product properly, guaran- teed to contain not less than 10% protein, 2% fat and not over 1½% fiber or 74% water.	A Scientifically Balanced Ration
Net Weight One Pound	Distributed by DODDS PACKING CO. Waynesville, Ohio.	Net Weight One Pound

Through the use of the aforesaid representations, and others similar thereto not specifically set out herein, the respondent has represented and does now represent that its aforesaid Harty Brand and Blackspot Brand dog foods contain beef byproducts, ground beef bone and beef, and that its dog foods are scientifically balanced rations, and scientifically balanced beef rations.

PAR. 5. The aforesaid statements and representations by respondent relative to said dog foods are false, misleading, and untrue. In truth and in fact, the respondent's dog foods do not contain beef byproducts, ground beef bone, or beef, and are not scientifically balanced rations or scientifically balanced beef rations.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements and representations has had and now has the tendency and capacity to and does mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's dog food because of such erroneous and mistaken belief. As a direct result 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 its said competitors who are likewise engaged in the sale and distribution of dog foods in commerce between and among the various States of the United States and who do not falsely represent the ingredients of their products. As a consequence thereof, injury has been 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. 7. The aforesaid acts and practices of the respondent as herein alleged 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 30, 1939, issued and on October 1, 1939, served its complaint in this proceeding upon respondent Roxanna Canning Co., a corporation, charging it 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 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio. Its principal office and place of business is located in the city of Lebanon, State of Ohio.

Respondent is now and for some time past has been engaged in the sale and distribution of various brands of dog food which it sells under various trade names. For the purpose of manufacturing its dog food respondent operates and maintains a plant located in the city of Dodds, State of Ohio. Respondent causes said dog food, when sold, to be transported from its place of business in the State of Ohio to the respective purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. The respondent maintains and at all times mentioned herein has maintained a course of trade in said dog food in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. Respondent is now and during all the times mentioned herein has been engaged in substantial competition with other corporations and with firms, individuals, and partnerships selling and distributing dog foods 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 its said business, as aforesaid, respondent has made false, deceptive and misleading statements and representations concerning the ingredients of which its various brands of dog food are made and with regard to the efficacy of said dog foods as a ration for dogs. Typical of the false, deceptive, and misleading representations so made by the respondent concerning its dog food are the following:

BLACKSPOT Brand A Scientifically Balanced BEEF RATION	DOG FOOD Contains Beef By-Prod- ucts Cereal Composed of Wheat, Corn, Oats and Soy Bean Products, Ground Beef Bone, Beef, Carrots, Salt and Cod Liver Oil Prepared in Broth. Guaranteed to contain not less than 8 percent Protein, 2 per- cent fat and not over 2 percent Fiber. Distributed by DODDS PACKING CO. Lebanon, Ohio.	BLACKSPOT Brand A Scientifically Balanced BEEF RATION
DOG FOOD Net Weight 1 lb. WHOLESOME AND NUTRITIOUS		DOG FOOD Net Weight 1 lb. WHOLESOME AND NUTRITIOUS
HARTY Brand Keeps your Dog Healthy and Hearty	DOG FOOD Contains Beef By-Prod- ucts Cereal Composed of Wheat, Corn, Oats and Soy Bean Products, Ground Beef Bone, Beef, Carrots, Salt and Cod Liver Oil Prepared in Broth and added water sufficient to process the product properly, guaran- teed to contain not less than 10% protein, 2% fat and not over 1½% fiber or 74% water. Distributed by DODDS PACKING CO. Waynesville, Ohio.	HARTY Wholesome—Nutritious A Scientifically Balanced Ration
Net Weight One Pound		Net Weight One Pound

Through the use by the respondent of the above set out representations and others not herein set out respondent has represented and now represents that its various brands of dog foods contain beef byproducts, ground beef bone, and beef, and that its dog food is a scientifically balanced ration, and scientifically balanced beef ration for dogs.

PAR. 4. In truth and in fact the representations and statements made by the respondent with regard to its dog foods are false and misleading. Respondent's dog foods do not contain beef byproducts, ground beef bone, or beef, and are not scientifically balanced rations or scientifically balanced beef rations.

PAR. 5. The use by respondent of the aforesaid false and misleading representations and statements in connection with the sale and distribution of its Black Spot and Harty dog food products 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 representations are true. As a result of such mistaken and erroneous belief the purchasing and consuming public have purchased a substantial amount of respondent's products with the result that trade has been unfairly diverted to respondent from its competitors engaged in the manufacture, sale and distribution of similar products, which competitors truthfully represent the character and ingredients 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 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it 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.

Order

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It is ordered, That the respondent, Roxanna Canning 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 Black Spot and Harty dog foods, or any other product containing substantially similar ingredients, whether sold under the same name or under any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "beef byproducts" or "ground beef bone" or "beef" or any other term of similar import or meaning to designate or describe any ingredients of such products which ingredients are not in fact, respectively, beef byproducts, ground beef bone, or beef.

2. Representing that such products are scientifically balanced rations or scientifically balanced beef rations.

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.

Syllabus

IN THE MATTER OF

HERBERT S. ERWIN AND MABEL T. ERWIN, TRADING AS
ERWIN FEATHER QUILT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4011. Complaint, Feb. 2, 1940—Decision, Apr. 29, 1940*

Where two individuals engaged, under trade name, in manufacture, sale and distribution of quilts, comforts, pillows, pads, bedspreads, drapes, and like products, by agents and through various advertising media, to purchasers in various other States and in District of Columbia—

Represented to members of purchasing public that their said products were offered at special prices and for a limited time only, and that prices quoted were reduced or special prices which did not prevail at any and all times, through circulating to purchasers and prospective customers throughout the United States by mail advertising folders, pamphlets, circulars, and other literature, and through agents who personally solicited orders, such false and misleading statements and representations concerning their said products as "Return this card at once for our Special Offer for This Week Only," "Mail this card today for complete information on this outstanding Summer Purchase Plan. One week only * * *," and through statements and invitations of similar tenor with respect to their so-called "Fall and Pre-Holiday Purchase Plan," and through selling to prospective purchasers thus contacted their products at prices quoted, and represented as special prices or those reduced from the usual, customary and regular selling prices and as limited as to time;

Facts being their said quilts, comforts, pillows, and various other products, as above indicated, never had a usual, regular and customary retail price greater or other than that quoted pursuant to said offer, said quoted special or reduced prices at which such products were sold pursuant to said offer were not, in fact, reduced special prices for limited time only, but were in fact the usual, regular and customary retail selling prices of products in question at which they had regularly sold said products to all purchasers at all times for period of more than 1 year last past;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken beliefs that such false, deceptive, and misleading statements and representations were true, and of inducing portion of said public, because of such erroneous and mistaken beliefs, 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 deceptive acts and practices in commerce.

Mr. Carrel F. Rhodes for the Commission.

Mr. Malcolm H. Lindsey and *Mr. Brough Richey, Jr.*, of Columbus, Ohio, for respondents.