

IN THE MATTER OF
CRETE MILLS

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

Docket 3408. Complaint, May 6, 1938—Decision, May 28, 1940

Where a corporation engaged in milling and selling feed for animals, including its "Victor Chick Pellets" chicken feed, to purchasers in various other States, in substantial competition with others engaged in sale and distribution of similar products in commerce among the various States and in the District of Columbia, and including those who make, sell, and distribute similar products in commerce as aforesaid and do not in any way misrepresent the quality or character of their respective goods—

(a) Represented, through advertisements in newspapers, farm papers, and by radio broadcasts that its said pellets would grow chicks faster, healthier, and cheaper with less likelihood of disease or death than any other feed, regardless of price, and that chicks fed therewith reached the egg-laying period in 4 weeks' less time than those fed mash feed and lay invariably at the age of 5 months, and that said pellets cost less and excel all other feeds, regardless of price;

Facts being that use of such pellets, compared with those of other feeds of same general formula, kind, and quality, would not grow chicks faster, healthier, or more cheaply than other feeds, and use thereof, compared with other comparable feeds, as aforesaid, would not reduce costs substantially nor lessen mortality rate, and said pellets, subject to aforesaid qualification, did not exceed all other feeds nor assure one of greater poultry profits, and they were not the only feed which was properly digested by chicks, and said pellets would not cause chickens to produce eggs within any definite time or period earlier than chicks fed other feeds of similar composition; and

(b) Represented, as aforesaid, that any other feed that did not contain kiln-dried corn was dangerous to the health and life of chicks, and that said pellets would keep indefinitely, and that there was no possibility of any ingredient therein getting rancid or moldy and causing chick deaths;

Facts being corn other than kiln-dried is not dangerous and does not, absent an excess of moisture, become moldy, and said pellets would not keep indefinitely under all conditions or be free from rancidity or mold;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as consequence of such belief, that number of consuming public purchased substantial volume of its product, and trade was diverted unfairly to it from its competitors engaged in sale and distribution in commerce of products intended and used for purpose for which it recommended its said feed, and who truthfully represent the effectiveness of their respective products:

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

Before *Mr. Miles J. Furnas* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. R. A. McOuat for the Commission.

Perry, Van Pelt & Marti, of Lincoln, Nebr., 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 Crete Mills, 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 this respect as follows:

PARAGRAPH 1. Respondent, Crete Mills, is a corporation organized under the laws of the State of Nebraska, with its principal office at Crete, Nebr.

Respondent is engaged in the business of milling and selling feed for animals, including a chicken feed manufactured and sold under the trade name of "Victor Chick Pellets." Respondent causes said products when sold to be shipped or transported from its aforesaid place of business in the State of Nebraska to purchasers thereof at their various places of location in States of the United States other than the State of Nebraska and in the District of Columbia. Respondent maintains, and during all the times herein mentioned has maintained, a course of trade in said products so sold by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other corporations, and with persons, firms, and partnerships likewise engaged in the sale and distribution of chick feeds and other milling products similar to those sold by the respondent in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course of its said business, as hereinabove described, and for the purpose of inducing the purchase of its products, respondent has made extravagant, deceptive, false, and misleading statements concerning the efficacy and effect of its products and the results that are achieved by using it as chick feed, by means of advertisements inserted in newspapers and magazines, and by printed pamphlets, letters, testimonials, and radio programs broadcast over the air. The following are examples of the many representations that are false and misleading:

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Victor Chick Pellets will grow your chicks faster, healthier, and cheaper, than any other feed, regardless of price.

This year any feed that does not contain kiln dried corn, that is, artificially dried corn, and corn products, may kill your chicks, since last year's corn crop contained moisture in excess of the amount that it can carry safely in baby chick feeds.

Chicks fed Victor Chick Pellets reach the egg-laying stage in four weeks less time than those fed mash feed.

You save over 20% in your feed costs, lower your mortality rate and bring your pullets to the laying stage in four weeks less time by feeding the modern, economical feed—Victor Chick Pellets.

Why not use the feed that will shorten the period to profits from your poultry by four weeks and feed Victor Chick Pellets? From every angle, increased growth, cleanliness, economy, lower mortality, less disease, Victor Chick Pellets excel all other feeds regardless of price.

One of the many advantages of the modern chick feed—Victor Chick Pellets—is that chick feed in pellet form will keep indefinitely. There is no possibility of any ingredient in the feed getting rancid, or mouldy, causing chick deaths, nor will any of the ingredients lose their feeding value through deterioration.

Victor Chick Pellets will invariably insure eggs in 5 months—and you'll get more eggs and better quality eggs. That's because Victor Chick Pellets contain the 19 ingredients vital to chick health, growth and vitality.

19 prescribed ingredients that will insure eggs in 5 months.

All of said statements, together with similar statements appearing in the respondent's advertising literature and in broadcasts of its radio programs, purport to be descriptive of respondent's product and of its efficacy in use as a chick feed. In all of its advertising literature, its radio broadcasts, and through other means, respondent represents through the statements and representations herein set out and other statements of similar import and effect (1) that Victor Chick Pellets will grow chicks faster, healthier, cheaper, with less liability to disease or death than any other feed regardless of price; (2) that any other feed that does not contain kiln-dried corn is dangerous to health and life of chicks; (3) that chicks which are fed Victor Chick Pellets reach the egg-laying period in 4 weeks' less time than those fed mash feed; (4) that Victor Chick Pellets will keep indefinitely; (5) that there is no possibility of any ingredient in the feed getting rancid or moldy, causing chick deaths; (6) that pullets fed upon respondent's product will invariably lay eggs at the age of 5 months; (7) that Victor Chick Pellets cost less and excel all other feeds regardless of price.

PAR. 4. The representations made by the respondent with respect to the efficacy and effect of its product are false, deceptive, misleading, and grossly exaggerated.

In truth and in fact Victor Chick Pellets will not grow chicks faster, healthier, or cheaper nor with less liability to disease or death

than any other feed regardless of price. Chicks which are fed Victor Chick Pellets do not reach the egg-laying period in 4 weeks' less time than those chicks fed mash feed, nor will they invariably lay eggs at the age of 5 months. Other feeds which do not contain kiln-dried corn are not necessarily dangerous to chicks. Respondent's product will not keep indefinitely. It will get rancid and moldy under precisely the same conditions which would cause any chick feed in pellet form to become rancid and moldy. Many other types of chick feed are as good as respondent's product and cost no more.

PAR. 5. The false and misleading representations used by the respondent, as set forth herein, in connection with the sale of its product, have the capacity to and tendency to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true and that said product will accomplish the results claimed. As a direct consequence of the false, deceptive, and misleading representations of the respondent and the erroneous and mistaken beliefs induced thereby, as herein set out, the purchasing public has purchased a substantial quantity of respondent's product, with the result that trade has been diverted unfairly from competitors engaged in the business of distributing or selling other products designed for similar use, who truthfully advertise and represent the efficacy and effect of their respective products and the result that may be expected to obtain from the use thereof. As a result thereof, injury has been done and is now 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.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition 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 6, 1938, issued, and subsequently served, its complaint in this proceeding upon respondent, Crete Mills, a corporation, 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 and other evidence in support of the allegations were introduced by R. A. McOuat, attorney for the Commission, and in opposition to the allegations of the complaint by Robert Van Pelt, attorney for the respondent, before Miles J. Furnas and Arthur F. Thomas, examiners of the Commission, theretofore

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duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief or requested oral argument); 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. The respondent, Crete Mills, is a corporation organized and existing under the laws of the State of Nebraska, with its office and principal place of business located at Crete, Nebr., and is now and for more than 2 years last past has been engaged in the business of milling and selling feed for animals, including chicken feed manufactured and sold under the trade name of "Victor Chick Pellets," and has caused its said product when sold to be transported from its place of business in the city of Crete, State of Nebraska, to purchasers located in various States of the United States other than the State of Nebraska. It maintains a course of trade in commerce in said products among and between the various States of the United States and in the District of Columbia. Respondent is now and for several years last past has been in substantial competition with other corporations, firms, and individuals likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia. There are competitors of the respondent who manufacture, sell, and distribute products similar to those of respondent among and between the various States of the United States and in the District of Columbia who do not in any way misrepresent the quality or character of their respective products.

PAR. 2. In the course and conduct of its business as set out in paragraph 1 hereof, and for the purpose of inducing members of the public to purchase its said product, respondent has caused and causes advertising to be published in newspapers, farm papers, and by radio broadcasts, in which it represents that:

(a) Victor Chick Pellets will grow chicks faster, healthier, and cheaper with less likelihood of disease or death than any other feed regardless of price;

(b) Any other feed that does not contain kiln-dried corn is dangerous to the health and life of chicks;

(c) Chicks which are fed Victor Chick Pellets reach the egg-laying period in 4 weeks' less time than those fed mash feed;

(d) Victor Chick Pellets will keep indefinitely;

(e) There is no possibility of any ingredient in the feed getting rancid or moldy, causing chick deaths;

(f) Pullets fed upon respondent's product will invariably lay eggs at the age of 5 months;

(g) Victor Chick Pellets cost less and excel all other feeds, regardless of price.

PAR. 3. The Commission finds that the use of Victor Chick Pellets, when compared with pellets of other feeds of the same general formula, kind, and quality, will not grow chicks faster, healthier, or cheaper than other feeds; other than kiln-dried corn is not dangerous and does not become moldy unless it contains an excess of moisture; as compared with other feeds of the same general formula, kind, and quality, the use of Victor Chick Pellets will not reduce feeds costs substantially nor lessen the mortality rate of chicks; as compared with other feeds of the same general formula, kind, and quality, Victor Chick Pellets do not excel all other feeds nor is one assured of greater poultry profits by feeding same; Victor Chick Pellets will not keep indefinitely under all conditions or be free from rancidity or mold; Victor Chick Pellets is not the only feed which is properly digested by chicks nor will it cause chickens to produce eggs within any definite time or period earlier than chicks fed other feeds of similar composition.

PAR. 4. The Commission further finds that the statements and representations made by the respondent in its advertising matter and radio broadcasts concerning the benefits to be derived from respondent's product, Victor Chick Pellets, as herein set forth, 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 all said representations are true. As a result of this erroneous belief, a number of the consuming public has purchased a substantial volume of respondent's product, with the result that trade has been diverted unfairly to the respondent from its competitors engaged in the business of selling and distributing in commerce among and between the various States of the United States products intended and used for the purpose for which respondent recommends its said product, and who truthfully represent the effectiveness of their respective products.

CONCLUSION

The aforesaid acts and practices as herein found are all to the prejudice and injury of the public and of respondent's competitors and

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constitute unfair methods of competition 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, the answer of the respondent, testimony, and other evidence taken before Miles J. Furnas and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, brief on behalf of the Commission filed herein (respondent not having filed brief or requested oral argument), 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, Crete Mills, 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 chicken feed now known as "Victor Chick Pellets," or any other chicken feed containing substantially similar ingredients, whether sold under that name or any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by inference, that:

1. Said product will grow chicks faster, healthier, cheaper, and with less likelihood of disease or death than any other feed, regardless of price.
2. Any feed containing corn other than kiln-dried is dangerous to the health and life of chicks.
3. Chicks which are fed said product reach the egg-laying period in less time than those fed mash feed.
4. Said product will keep indefinitely.
5. There is no possibility of any ingredient in the feed getting rancid or moldy and causing chick deaths.
6. Pullets fed upon respondent's product will invariably lay eggs within any definite time or period earlier than chickens fed upon feeds of similar composition.
7. Said product costs less than other similar feeds, or that respondent's product excels all other feeds, regardless of price.

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
MCDONNELL & SONS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3907. Complaint, Oct. 4, 1939—Decision, May 28, 1940*

Where a corporation engaged in sale of grave markers, monuments, memorials, and mausoleums, and in installation thereof in cemeteries, and in thus selling its said products direct to owners of cemetery lots in various other States of the United States and in the District of Columbia, in active competition with others engaged in sale of similar products in commerce, as aforesaid, among practically all the States—

Represented, through catalogs and advertising matter to which it gave wide distribution in various States, that sales of such markers, monuments, memorials, and mausoleums were made by it direct from quarry to cemetery and that it designed, manufactured, and erected memorials in any cemetery in the United States, and was one of the few erectors of monuments and memorials which owned quarries and a manufacturing plant at Barre, Vt., and made sales direct to cemetery lot owners, and that it was operating its quarry and finishing plant and that all work turned out by it was manufactured and finished by craftsmen in the plant and shops which it operated, and that its quarrying and manufacturing facilities placed it in a position to execute the highest grade of memorial work at the lowest possible cost, and illustrated its catalog and advertising with apparent pictures of the plant in active operation and men at work in its quarry;

Facts being that, while business in question had been established over 80 years ago by grandfather of president of said corporation, and continuously carried on in family since that time, and said corporation did own a granite quarry and fully equipped plant at Barre, suitable for the finishing of granite parts for grave markers, and maintained an office in the plant building, in charge of the corporate vice president and treasurer, under whose direct supervision work produced for it as below set forth was gotten out, no granite had been produced from said quarry nor the finishing plant operated for some 5 or 6 years or more last past, and granite parts for grave markers, monuments, memorials, and mausoleums sold by it were produced for it by proprietors of finishing plants other than that owned by it, as aforesaid, and from another quarry, or quarries, and, while catalogs and other advertising aforesaid were gotten out when it was producing granite from its own quarries and operating its factory and finishing plant at Barre, it continued to distribute from supply thereof remaining, after discontinuance of operation, such catalogs and advertising to prospective customers in the various States, and reprints thereof after exhaustion of original supply;

With capacity and tendency to mislead and deceive purchasing public, through representations that it was selling direct from quarry to cemetery and was prepared to render complete service in sale of its said grave markers, monuments, memorials, and mausoleums, many purchasers of which products have preference for buying same directly from the quarry and the