

IN THE MATTER OF
ZONITE PRODUCTS CORPORATION

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

Docket 3363. Complaint, Mar. 22, 1938—Decision, June 19, 1940

Where a corporation engaged in manufacture of its "Larvex" liquid moth repellent for spraying clothing, upholstered furniture, rugs, and other non-washable fabrics, along with its "Larvex" powder which, mixed with water as directed, it recommended as rinse for blankets, sweaters, bathing suits, woolens, and other washable fabrics, and in sale to purchasers in all parts of the United States, including manufacturers and wholesale and retail dealers, for their own use and for resale to public by such wholesale and retail dealers, of said preparations, designed to protect articles aforesaid from the ravages of the worms or larvae of flying and other moths and to prevent damage occasioned thereby, and in substantial competition with others engaged in sale and distribution to purchasers in various States of various preparations for use in prevention of damage to fabrics and garments by moths and other insects, and including among its competitors manufacturers, compounders, and distributors of like and similar products or those designed and intended for similar usage, who do not unfairly disparage competitive goods or articles—

Unfairly disparaged many competitors and their respective products through representing that moth balls, cedar oil, tar, and various other products containing pyrethrum, naphthalene, or paradichlorobenzene fail to give adequate protection against moth damage, and by means of such statements in advertisements of its said "Larvex" in magazines and other forms of printed matter circulated and distributed among the trade and public in the several States as, "If you, too, want sure protection against moth damage, dont take chances with moth balls, chests, and other makeshift ways. Too much is at stake." and "WHY OTHER METHODS FAIL. It is not enough to try with insecticides, bug-killers, moth balls, cedar chests, and tarbags with obnoxious odors, to drive away or kill the flying moth. When you see the flying moth it is too late—she has already laid eggs in your woolen things—and old-fashioned methods don't baffle the hungry moth-worms which hatch from the eggs"; facts being there are many competitive products, as aforesaid referred to, on the market, such as moth balls, cedar oil, tar, and various other competitive products containing pyrethrum, naphthalene, or paradichlorobenzene, which when properly used, will protect fabrics and other articles against moth damage caused by moth worms and larvae;

With capacity and tendency through such statements and representation in its advertisements as above set forth to deceive and mislead manufacturers of fabrics and other articles, dealers therein and members of purchasing public into erroneous and mistaken belief that such disparaging statements and representations made by it were true, and that competitive products referred to as above set forth were of no value in protecting fabrics and other articles against moth damage caused by moth worms or larvae, and

to cause prospective purchasers of such competitive products, because of belief thus engendered, to decline to purchase same and to buy instead its said products, and with result that trade was thereby diverted unfairly to it and dealers in its products from those competitors who do not make statements disparaging products made, sold and distributed by their competitors; to injury of competition in commerce:

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

Before *Mr. John W. Addison* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Mr. Horace G. Hitchcock of Chadbourne, Wallace, Parke & White-side, of New York City, for respondent.

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 Zonite Products Corporation, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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. Zonite Products Corporation, hereinafter referred to as respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business located at 405 Lexington Avenue, in the city of New York, in the State of New York. Respondent is now, and for several years has been, through its Larvex Division, engaged in the business of manufacturing a liquid moth repellent designated as "Larvex" for spraying on clothing, upholstered furniture, carpets, rugs, blankets, draperies and other articles together with a powder designated as "Larvex," which, when mixed with water, is recommended as a rinse for said articles after they have been sprayed with the liquid. Said preparations are designed to protect such articles from the ravages of the flying and other moths and to prevent damage occasioned thereby.

PAR. 2. During all the times above mentioned and referred to, the respondent has sold its liquid and powdered "Larvex" to purchasers located in various States of the United States other than New York including manufacturers, members of the public and wholesale and

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retail dealers for their own use, and also for resale to the public by said wholesale and retail dealers. The respondent has caused "Larvex," both liquid and powdered, when so sold by it, to be transported from its plant or place of business in New York, or from the State of origin of the shipment, to purchasers located in said other States, and has maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. During all the times above mentioned and for many years prior thereto, other corporations, firms, partnerships, and individuals, hereinafter referred to as sellers, have been engaged in the sale and distribution of various preparations, some in liquid and others in powder form, for use in the prevention of the ravages of moths and other insects, to purchasers located in the various States of the United States other than the State of the seller or the State of origin of the shipment. The sellers, respectively, have caused the said preparations when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to purchasers located in said other States.

PAR. 4. During all the times above mentioned and referred to, the respondent, in the sale of its said liquid and powdered preparations is, and has been in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with the other corporations, firms, partnerships, and individuals, referred to in paragraph 3 hereof, as sellers.

PAR. 5. In the course and conduct of its business, as above set forth, the respondent, during all the times above mentioned and referred to, has caused and now causes advertisements pertaining to its product "Larvex" to be published in magazines and other forms of printed matter circulated and distributed amongst the trade and the public in the several States of the United States.

In such advertisements respondent represents through such statements as "One spraying mothproofs a whole year" and "One spraying guards it a whole year" and others similar thereto that one application of respondent's moth repellent to clothing, upholstered furniture, carpets, rugs, blankets, draperies and other articles is sufficient to protect said articles from damage due to moths for a period of approximately one year without further applications of said preparation.

These claims are true only insofar as they are applied to non-washable fabrics treated with the liquid or spraying form of "Larvex." It is necessary that washable fabrics be treated with the powdered or rinsing form of "Larvex" after each washing in order to secure the

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protection claimed. The directions, in small type, on and inside the containers of respondent's product, explain the limitations of "Larvex," but do not adequately convey to the prospective purchaser of said preparations the limitations thereof. Such explanation as to the limitations of said preparations does not appear in respondent's general advertising in magazines and other printed matter. Respondent's statements and representations thus give rise to the impression and belief on the part of purchasers and prospective purchasers that, regardless of conditions, an article treated with the liquid or spraying form of "Larvex" is mothproof for one year. In truth and in fact the washing of articles after spraying, as directed, destroys the effectiveness of the liquid "Larvex" as a one-year mothproof.

PAR. 6. The respondent makes and has made to the trade and the public other unfair, misleading and deceptive statements and representations with reference to the value and merits of its product, "Larvex," a portion of which is as follows:

If you, too, want sure protection against moth damage, don't take chances with moth balls, chests, and other makeshift ways. Too much is at stake.

WHY OTHER METHODS FAIL

It is not enough to try with insecticides, bug-killers, mothballs, cedar chests, and tar-bags with obnoxious odors, to drive away or kill the flying moth. When you see the flying moth it is too late—she has already laid eggs in your woolen things—and old-fashioned methods don't baffle the hungry moth-worms which hatch from the eggs.

The respondent caused and now causes the above statements and other similar statements and representations also to be made to members of the public by others, such as dealers, manufacturers and users of "Larvex."

The aforesaid statements and representations of the respondent unfairly disparage a number of competitive products on the market which, if properly used, will protect fabrics and other articles against moth damage. Further, said statements and representations are misleading and deceptive insofar as they serve to represent or imply that "Larvex" in either liquid or powdered form is not an insecticide and that it is noninjurious. In truth and in fact respondent's product, "Larvex," in powdered form contains a high percentage of sodium silica fluoride and aluminum fluoride which is of sufficient strength to cause a skin rash when the article treated with said powdered "Larvex" contacts the human body. In truth and in fact respondent's product in both liquid and powdered forms is an insecticide.

PAR. 7. There are among the competitors of the respondent in commerce as herein set out, manufacturers, compounders, and distributors of like and similar products, or other products designed and intended for similar usage, who truthfully advertise and represent the nature, merit, and value of their respective products, who do not advertise and otherwise represent that such products have merit or value which they do not have and who do not unfairly disparage the competitive products of others.

PAR. 8. The statements and representations made by the respondent in its advertisements as above set forth had, and now have, the capacity and tendency to deceive and mislead manufacturers of fabrics and other articles, dealers therein and members of the public, purchasing such article or purchasing respondent's preparations, into the erroneous and mistaken belief that said statements and representations so made and caused to be made by the respondent were and are true, and into the purchase of respondent's "Larvex," in both liquid and powdered forms, in reliance upon such belief. As a result thereof trade has been diverted unfairly to respondent and dealers in its products from those competitors who do not misrepresent their respective products. As a consequence thereof injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 22, 1938, issued and served its complaint in this proceeding upon respondent, Zonite Products Corporation, 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 of the said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Horace G. Hitchcock, attorney for the respondent, before John W. Addison and Miles J. Furnas, examiners of

the Commission theretofore 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 the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; 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, Zonite Products Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the Chrysler Building in New York City, N. Y. Its manufacturing plant is located in the city of New Brunswick, N. J.

Respondent is now, and for several years last past has been, through its Larvex Division, engaged in the business of manufacturing a liquid moth repellent, designated as "Larvex," for spraying on clothing, upholstered furniture, rugs and other nonwashable fabrics, together with a powder also designated as "Larvex," which, when mixed with water as directed, is recommended as a rinse for blankets, sweaters, bathing suits, woolens, and other washable fabrics. Said preparations are designed to protect such articles from the ravages of the worms or larvae of flying and other moths and to prevent damage occasioned thereby.

PAR. 2. During all the times referred to herein the respondent has sold and shipped its liquid and powdered "Larvex" to purchasers located in all parts of the United States, including manufacturers and wholesale and retail dealers, for their own use, and also for resale to the public by said wholesale and retail dealers. Respondent has maintained a course of trade in said product, in both its liquid and powdered forms, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. During all the times mentioned herein and for many years prior thereto, other corporations, firms, partnerships and individuals, hereinafter referred to as sellers, have been engaged in the sale and distribution to purchasers located in the various States of the United States other than the State of the seller or the State of origin of the shipment, of various preparations for use in the prevention of damage to fabrics and garments by moths and other insects. The

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sellers thereof, respectively, have caused the said preparations when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to purchasers located in said other States.

PAR. 4. In the course and conduct of its aforesaid business, the respondent is now and has been during all times mentioned herein in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with the other corporations, firms, partnerships, and individuals, referred to in paragraph 3 hereof, as sellers.

PAR. 5. In the course and conduct of its business, as above set forth, the respondent, during all the times above mentioned and referred to, has caused and now causes advertisements pertaining to its product "Larvex" to be published in magazines and in other forms of printed matter circulated and distributed among the trade and the public in the several States of the United States. In such advertisements respondent, among other statements, has made the following representations:

If you, too, want sure protection against moth damage, don't take chances with moth balls, chests, and other makeshift ways. Too much is at stake.

WHY OTHER METHODS FAIL

It is not enough to try with insecticides, bug-killers, moth balls, cedar chests, and tarbags with obnoxious odors, to drive away or kill the flying moth. When you see the flying moth it is too late—she has already laid eggs in your woolen things—and old-fashioned methods don't baffle the hungry moth-worms which hatch from the eggs.

By means of the aforesaid statements and representations the respondent represents that moth balls, cedar oil, tar and various other competitive products containing pyrethrum, naphthalene or paradichlorobenzene fail to give adequate protection against moth damage and thereby unfairly disparages many of respondent's competitors and their respective products. The Commission finds that such representations are false, misleading and deceptive, for there are many such competitive products on the market such as moth balls, cedar oil, tar and various other competitive products containing pyrethrum, naphthalene, or paradichlorobenzene, which, when properly used, will protect fabrics and other articles against moth damage caused by moth worms and larvae.

PAR. 6. There are among the competitors of the respondent in commerce as herein set out, manufacturers, compounders and distributors of like and similar products, or other products designed and intended for similar usage, who do not unfairly disparage competitive products.

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PAR. 7. The statements and representations made by the respondent in its advertisements as above set forth have had the capacity and tendency to deceive and mislead manufacturers of fabrics and other articles, dealers therein, and members of the purchasing public into the erroneous and mistaken belief that said disparaging statements and representations so made by the respondent are true, and that the competitive products referred to in Paragraph Five hereof are of no value in protecting fabrics and other articles against moth damage caused by moth worms or larvae; and the capacity and tendency to cause prospective purchasers of said competitive products, because of the belief so engendered, to decline to purchase such competitive products and to purchase instead respondent's products. As a result thereof, trade has been diverted unfairly to respondent and dealers in its products from those competitors who do not use statements disparaging the products made, sold and distributed by their competitors. As a consequence thereof, injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Zonite Products Corporation, a corporation, as herein found, are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 respondent, testimony and other evidence taken before John W. Addison and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Joseph C. Fehr, counsel for the Commission, and by Horace G. Hitchcock, 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, Zonite Products 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 product now sold and distributed under the name "Larvex" or any other product, whether sold under that name

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or some other name, sold as a moth repellent or mothproofing agent in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that moth balls, cedar oil, tar, and other competitive products containing pyrethrum, naphthalene or paradichlorobenzene will not protect fabrics and garments from damage by moth worms or larvae.

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
GARDNER REMEDIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3595. Complaint, Sept. 19, 1938—Decision, June 19, 1940*

Where a corporation engaged in the manufacture of its "Gardner's Food Herbs" medicinal preparation, and in sale and distribution thereof to dealer and consumer purchasers in various other States, in substantial competition with others engaged in sale and distribution, among the various States, of various medicinal preparations designed for treatment of same ailments and diseases—

(a) Represented, through advertisements disseminated among prospective purchasers by the mails and in periodicals of interstate circulation and by radio broadcasts and through circulars, leaflets, and other advertising literature that use of its preparation would rid the body of excess acid or hyperacidity and of acidosis, and thereby serve as a cure or remedy and competent and effective treatment for numerous ailments and diseases of the body, including rheumatism, kidney disorders, stomach ulcers, indigestion, constipation, liver disorders, stomach disorders, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of breath, and high and low blood pressure and sleeplessness;

Facts being that its said product would not serve to correct or affect to any material extent condition known as hyperacidity or excess acid or condition known as acidosis, and it was not a cure or remedy for and had no substantial therapeutic value in the treatment of rheumatism and the various other ailments and conditions above enumerated, and possessed no therapeutic value except insofar as small peppermint contained therein might have slight tendency to aid digestion;

With effect of causing members of purchasing public to believe that its said preparation possessed therapeutic properties and qualities, which it did not in fact possess, and with result, as consequence of such erroneous and mistaken belief, that such public was induced to and did purchase substantial quantities of its said product and trade was thereby diverted unfairly to it from its competitors; to their substantial injury:

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. William L. Pack and *Mr. DeWitt T. Puckett* for the Commission.