

IN THE MATTER OF
AURINE COMPANY, INC.

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

Docket 3993. Complaint, Jan. 12, 1940—Decision, June 26, 1940

Where a corporation engaged in sale and distribution of its "Ourine" medicinal preparation, to purchasers in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails, by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter, and by other means in commerce, and which were intended and likely to induce purchase of its said preparation—

(a) Represented, directly or by implication, that its said "Ourine" constituted a cure or remedy for deafness and had therapeutic value in treatment thereof and was a competent and effective treatment for deafness and for ringing and buzzing head noises due to hardened or conglobated wax in the ear, through such statements as "Deafened Man Hears Again. 'I heard the minister read scripture for the first time in years' * * *," and "Deafened Boy Hears Radio," etc., facts being said preparation was not a cure or remedy, or a competent or effective treatment for deafness, and had no therapeutic value in treatment thereof, and also was not such a treatment for deafness or partial deafness or ringing or buzzing head noises due to wax as aforesaid, and, while use thereof might soften accumulation of wax in ear without use of instrument or surgery, conditions which might result from such an accumulation, and including temporary deafness and ringing or buzzing head noises, would not be materially benefited or relieved; and

(b) Represented that it refunded purchase price for said preparation to its customers who were not satisfied with results obtained from use thereof, facts being it had not in all cases made refunds to such purchasers; With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of substantial quantities of said preparation because of such belief:

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.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. Frank E. Gettleman, of Chicago, Ill., 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 Aurine Co., Inc., 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. Respondent, Aurine Co., Inc., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Illinois and having its principal office and place of business at 3635 West Cermak Road, Chicago, Ill.

The respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of a medicinal preparation designated "Ourine," in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in the State of Illinois, to purchasers at their respective points of location in various States of the United States, other than the State of Illinois, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparation by United States mails, by insertions in newspapers and periodicals, having a general circulation, and also in circulars and other printed or written matter, 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 its said preparation, and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation 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:

Deafened Man Hears Again. "I heard the minister read scripture for the first time in years," * * * If you are deafened, bothered by ringing, buzzing head noises, or some temporary septic condition, due to hardened or coagulated wax (cerumen), try the treatment that many sufferers say has

Complaint

31 F. T. C.

enabled them to hear well again—that is, Ourine, a Vienna specialist's prescription. * * * Money refunded if not satisfied.

Deafened Boy Hears Radio. "My boy hears everything on the radio", * * * "Before he used Ourine, he could not hear the radio."

Deafened Woman Hears Clock Tick. "I was deafened. Now I can hear the clock tick," * * *

Helps 88 Year Old Deafened Man Hear. "My husband was 88 years old and very hard of hearing. He is getting so he can hear a clock tick," * * *

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent represents, directly or by implication, that its said medicinal preparation designated "Ourine" is a cure or remedy for deafness and has therapeutic value in the treatment of deafness, that said preparation is a competent and effective treatment for deafness, ringing and buzzing head noises due to hardened or coagulated wax in the ear, and that respondent refunds the purchase price for said preparation to its customers who are not satisfied with the results obtained from the use thereof.

PAR. 4. The aforesaid statements and representations by respondent are false and misleading and constitute false advertisements. Deafness may be caused by either a central or systemic or a local disorder or condition. The said preparation "Ourine" is not a cure or remedy or a competent or effective treatment for deafness. It has no therapeutic value in the treatment of deafness. Said preparation is not a competent or effective treatment for deafness or partial deafness, ringing or buzzing head noises due to hardened or coagulated wax in the ear. The use of said preparation may soften accumulations of wax in the ear but without the use of an instrument to extract the wax, the conditions which may result from an accumulation of wax, to wit, temporary deafness, ringing or buzzing head noises, will not be materially benefited or relieved. Respondent does not uniformly make refunds to purchasers not satisfied with the results obtained.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its preparation, dissemination as aforesaid, has had and now has a capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, 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 the 12th day of January 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Aurine Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 2, 1940, the respondent filed its answer in this proceeding. Thereafter, at a hearing in this matter at Chicago, Ill., on April 12, 1940, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts as dictated into the record between counsel for the Federal Trade Commission and counsel for respondent, subject to the approval of the Commission, may be taken as facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon (including inferences which it may draw from such stipulated facts) and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDING AS TO THE FACTS

PARAGRAPH 1. Respondent, Aurine Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and having its principal office and place of business at 3635 West Cermak Road, Chicago, Ill.

The respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of a medicinal preparation designated "Ourine," in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States, and in the District of Columbia.

Findings

31 F. T. C.

PAR. 2. In the course and conduct of the aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of advertisements concerning the said preparation by United States mail, by insertions in newspapers and periodicals, having a general circulation, and also in circulars and other printed or written matter, 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 its said preparation, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of advertisements concerning its said preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Deafened Man Hears Again. "I heard the minister read scripture for the first time in years," * * * If you are deafened, bothered by ringing, buzzing head noises, or some temporary septic condition, due to hardened or coagulated wax (cerumen), try the treatment that many sufferers say has enabled them to hear well again—that is, *Ourine*, a Vienna Specialist's prescription. * * *

Money refunded if not satisfied.

Deafened Boy hears radio. "My boy hears everything on the radio", * * * "Before he used *Ourine*, he could not hear the radio."

Deafened Woman Hears Clock Tick. "I was deafened. Now I can hear the clock tick," * * *

Helps 88 year Old Deafened Man Hear. "My husband was 88 years old and very hard of hearing. He is getting so he can hear a clock tick." * * *

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent represents, directly or by implication, that its said medicinal preparation designated "*Ourine*" is a cure or remedy for deafness and has therapeutic value in the treatment of deafness, that said preparation is a competent and effective treatment for deafness, ringing and buzzing head noises due to hardened or coagulated wax in the ear, and that respondent refunds the purchase price for said preparation to its customers who are not satisfied with the results obtained from the use thereof.

PAR. 4. The aforesaid statements and representations by respondent are misleading and have a capacity and tendency to mislead and deceive. Deafness may be caused by either a central or systemic or a local disorder or condition. The said preparation "*Ourine*" is not a cure or

202

Order

remedy or a competent or effective treatment for deafness and has no therapeutic value in the treatment of deafness. Said preparation is not a competent or effective treatment for deafness or partial deafness, ringing or buzzing head noises due to hardened or coagulated wax in the ear. Although the use of said preparation may soften accumulation of wax in the ear, without the use of an instrument or syringe to remove the wax, the conditions which may result from an accumulation of wax, to wit: temporary deafness, ringing or buzzing head noises, will not be materially benefited or relieved. Respondent has not in all cases made refunds to purchasers not satisfied with the results obtained.

PAR. 5. The use by the respondent of the foregoing statements and representations with respect to its preparation, disseminated as aforesaid, has had and now has a capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent 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, the answer of respondent, and a stipulation as to the facts entered into between the respondent herein and counsel, for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, Aurine Co., Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its medicinal preparation designated "Ourine" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether

Order

31 F. T. C.

sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a cure or remedy or a competent or effective treatment for deafness or partial deafness; that said preparation possesses any therapeutic value in excess of such aid as it may render in softening coagulated wax in the ear; that respondent makes refunds to dissatisfied purchasers of said preparation, when respondent does not in fact establish and maintain a definite policy and practice of making such refunds.

2. 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 preparation, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent shall, within 60 days after the 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

D. VICTOR WALLACE, TRADING AS PARAMOUNT
INSTITUTE

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

Docket 4009. Complaint, Feb. 1, 1940—Decision, June 26, 1940

Where an individual engaged in sale and distribution, in commerce among the various States, of correspondence course of study through the mails to prepare students for various civil service examinations for positions under the United States Government—

- (a) Represented, through use of advertising folder employed in personal solicitation and solicitation by his agents of prospective students, that under normal and ordinary conditions and circumstances most persons desiring to obtain civil service status by examination must have special coaching of the kind offered by him, and that he was in constant touch with the United States Civil Service Commission and its examiners and had advance and inside information concerning civil service examinations, and that he was a specialist in matters relating to the civil service of the United States Government and had a background of civil service experience therein, facts being, under conditions and circumstances referred to, persons wishing to pass such examination and qualified by prior general education and experience for particular positions desired do not require such coaching, very small percentage of those passing such examinations have had such coaching for examinations passed, his instruction is not of kind to prepare students for positions sought and is of little value to them unless otherwise qualified by prior education and experience, and, except as casual correspondent, he was not constantly or otherwise in touch with said commission or its examiners and had no advance information concerning its examinations, and was not such a specialist and had not had background of experience claimed as hereinabove set forth;
- (b) Represented, as aforesaid, that commission referred to holds examinations for all types of positions at frequent intervals from year to year, and especially for those for which he offers instruction, and that civil service employees are never discharged or deprived of their various positions with the Government except for misconduct or gross inefficiency, and that such employees, if efficient, are certain to obtain promotion in position and advancement in salary, and that persons passing civil service examination with high rating are certain of obtaining position with the Government and of doing so within a short time after passing such examination, facts being there are many types of positions, including some of those with respect to which he offers instruction, for which examinations are held only at infrequent intervals, with many years elapsing between them sometimes, many employees are discharged for reasons other than those above set forth, including such matters as insufficient appropriations, efficient employees of said character are not certain to obtain promotion as above set forth, and persons passing such an examination with high rating are not certain of obtaining position at early date or at all;