

Complaint

IN THE MATTER OF
GAREY CARR, TRADING AS AL VIOLA PRODUCTS

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

Docket 4045. Complaint, Mar. 2, 1940—Decision, June 29, 1940

Where an individual engaged in manufacture of his Al Viola Dental Plate Tightener and Reliner for tightening such plates, and sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements of his said product which he disseminated and caused to be disseminated through the mails, insertion in newspapers and periodicals of general circulation, and in circulars, and other printed or written matter distributed in commerce among the various States, and through other means in commerce and otherwise, and which were intended and likely to induce purchase of his said product—

Represented that his said dental plate tightener and reliner constituted a competent and effective method of tightening dental plates and that use thereof was certain to result in a perfect fit of such plates, and that it might be applied effectively by anyone, and that no expert assistance was required in use thereof, through such statements, among others, as "You can tighten and renew your present plates in a few minutes time in your own home" and "A simple fool-proof method with guaranteed results on any type of dental plate";

Facts being said device or product did not constitute in usual and ordinary case competent or effective method of tightening such plates and use thereof would not result in an improved fit, but satisfactory results therefrom could be obtained only in exceptional and unusual cases where condition of mouth was favorable to use of such method, and in which exceptional cases, also, product had to be applied by one qualified by training to perform such work, and results obtained would be only temporary in their nature;

With tendency and capacity to and effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and claims were true, and into purchase of substantial quantities of his 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. Jesse D. Kash 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 Garvey Carr, an individual trading as Al Viola Products, and 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

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public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Garey Carr is an individual, trading and doing business as Al Viola Products, with his principal place of business located at 1225 Keniston Avenue, Los Angeles, Calif.

PAR. 2. In the course and conduct of his aforesaid business, respondent, Garey Carr, is and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a preparation for tightening dental plates designated as "Al Viola Dental Plate Tightener and Reliner."

Respondent causes said product, when sold by him, to be transported from his aforesaid place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. Respondent maintains, and at all times mentioned herein 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. 4. In the course and conduct of his aforesaid business respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by United States mails, by insertion 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 his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product 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:

You can tighten and renew your present plates in a few minutes time in your own home.

One application of AL VIOLA is guaranteed to produce a perfect, tight-fitting plate.

A simple fool proof method with guaranteed results on any type of dental plate.

Guarantees a tight-fitting plate in a few minutes at home. No adhesive needed.

By the use of the representations and statements above set out and of similar statements used by respondent but not set out herein, respondent represents that his said product constitutes a competent and effective method of tightening dental plates, and that the use of such product is certain to result in a perfect fit of such plates; that such product may be applied effectively by any person, and that no expert assistance is required in the use of such product.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondent's product does not constitute, in the usual and ordinary case, a competent or effective method for the tightening of dental plates, nor will the use of such product result in an improved fit of such plates. In truth and in fact, satisfactory results from the application of respondent's product can be obtained only in exceptional and unusual cases where the condition of the mouth is favorable to the use of such a method. Even in such exceptional cases such product must be applied by one qualified by training to perform such work, and the results obtained will be only temporary in their nature.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and claims with respect to his product, disseminated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true, and into the purchase of substantial quantities of respondent's product.

PAR. 7. 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 March 2, 1940, issued, and on March 8, 1940, served, its complaint in this proceeding upon respondent Garey Carr, an individual trading as Al Viola Products, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 10, 1940, the respondent filed his answer in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission having duly considered the matter and being now fully advised

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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, Garey Carr, is an individual trading and doing business as Al Viola Products, with his principal place of business located at 1225 Keniston Avenue, Los Angeles, Calif.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a preparation for tightening dental plates designated as "Al Viola Dental Plate Tightener and Reliner."

Respondent causes said product, when sold by him, to be transported from his aforesaid place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. Respondent maintains, and at all times mentioned herein 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. 4. In the course and conduct of his aforesaid business, respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by United States mails, by insertion 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 his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product 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:

You can tighten and renew your present plates in a few minutes time in your own home.

One application of AL VIOLA is guaranteed to produce a perfect, tight-fitting plate. A simple fool-proof method with guaranteed results on any type of dental plate. Guarantees a tight-fitting plate in a few minutes at home. No adhesive needed.

By the use of the representations and statements above set out and of similar statements used by respondent but not set out herein, respondent represents that his said product constitutes a competent and effective method of tightening dental plates, and that the use of such product is certain to result in a perfect fit of such plates; that such product may be applied effectively by any person, and that no expert assistance is required in the use of such product.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondent's product does not constitute, in the usual and ordinary case, a competent or effective method for the tightening of dental plates, nor will the use of such product result in an improved fit of such plates. In truth and in fact, satisfactory results from the application of respondent's product can be obtained only in exceptional and unusual cases where the condition of the mouth is favorable to the use of such a method. Even in such exceptional cases such product must be applied by one qualified by training to perform such work, and the results obtained will be only temporary in their nature.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and claims with respect to his product, disseminated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true, and into the purchase of substantial quantities of respondent's product.

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 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Garey Carr, an individual, trading as Al Viola Products, or trading under any other name or names,

his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his preparation designated "Al Viola Dental Plate Tightener and Reliner," or of any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name or names, 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 other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that, except in unusual and exceptional cases where the condition of the mouth is favorable to the use of such method, the use of said preparation constitutes a competent or effective method for tightening dental plates, or supplies an improved fit for such plates or accomplishes satisfactory results; or that said preparation may be applied effectively by anyone other than an expert; or that the satisfactory use of said preparation requires no expert assistance.

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 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.

Syllabus

IN THE MATTER OF
THE MURINE 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 4076. Complaint, Mar. 30, 1940—Decision, June 29, 1940*

Where a corporation engaged in manufacture of its Murine medicinal preparation, and in sale and distribution thereof 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 and through various other means in commerce, and otherwise, and including advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, and which were intended and likely to induce purchase of its said preparation—

Represented that said Murine was a cure or remedy for eyestrain and constituted a competent and effective treatment therefor, and that use thereof would prevent or ward off eyestrain due to driving, attendance at movies, reading, sewing, or other excessive use of the eyes, and would prevent irritation of eyes due to exposure to dust, sun, or light glare, through such statements, among others, as "Quick relief from eyestrain due to dust, sun, light glare, driving, movies, reading, etc.," "*Millions Know This Relief For Eye Strain*," "Here's safe, easy way to end discomfort of tired eyes," and "Sewing and reading hold no terrors for the eyes of those who use Murine * * * helps to ward off eyestrain";

Facts being said product was not a cure or remedy for eyestrain caused by excessive use of eyes, nor a competent or effective treatment therefor, and in those cases in which such strain is due to uncorrected defects in focusing of eyes, instillation of said products or one of substantially similar properties into eyes thus afflicted would not provide cure or remedy therefor or competent treatment, or possess any therapeutic value with respect thereto in excess of furnishing refreshment to eyes and relief from irritation and discomfort of eye associated with such eye strains, would not prevent such strain due to driving, movies, reading, sewing, or other excessive use of eyes nor prevent irritation caused by exposure to dust, sun, or light glare as distinguished from eyestrain, and it possessed no therapeutic value with respect to such irritations in excess of furnishing refreshment to eyes and relief therefrom;

With capacity and tendency to and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and to induce portions of said public, because of such belief, to purchase its said preparation:

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. Robert Mathis, Jr., for the Commission.

Rogers, Hoge & Hills, of New York City, for respondent.