

IN THE MATTER OF

ROY T. EHRENZELLER, TRADING AS MAPLE LAWN POULTRY FARM AND MAPLE LAWN HATCHERY

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

Docket 3941. Complaint, Nov. 3, 1939—Decision, July 16, 1940

Where an individual doing business as Maple Lawn Poultry Farm and Maple Lawn Hatchery and engaged in sale and distribution of baby chicks; in advertisements which he disseminated through newspapers, trade magazines, and other publications having general circulation throughout various States, and through letters, catalogues, circulars, leaflets, and other printed and written matter distributed among prospective purchasers—

- (a) Represented that he personally supervised and controlled flocks from which his eggs were produced and owned and controlled same, through statements referring to his flocks, trade name, alleged methods, etc., such as "We leave in our breeding flocks only those birds," etc., "We will not tolerate any unsanitary or careless management of breeders," etc., and "our careful selection of breeding stock," etc.;

Facts being he did not own, control, or supervise any of the flocks of poultry supplying the eggs used in his hatchery and incubation business, but purchased same from various sources and had no personal knowledge as to whether or not the flocks producing such eggs were blood-tested or culled or free from disease; and

- (b) Represented that the eggs from which his baby chicks were hatched were from blood-tested and culled flocks and that his said eggs and chicks were of superior grade, origin, quality, and type, character, and nature, and were from blood-tested and culled flocks and free from disease, through such statements among others as "Every Breeder is BLOOD-TESTED," "Blood-testing means the testing of a sample of blood, * * *" and "We leave in our breeding flocks only those birds which we are sure have not the slightest trace of this (pullorum) disease in their veins," and all flocks "are of superior worth, coming from proven varieties * * * all from vigorous, hardy breeders blood-tested annually * * *";

Facts being that, as above indicated, he purchased eggs from various sources, and had no personal knowledge as to whether or not flocks producing such eggs were blood tested or culled or free from disease, purchased in many instances eggs from flocks which had not been thus blood tested, etc., and, as understood from term "bloodtested" by purchasers of baby chicks, all chicks sold by him were hatched from eggs purchased as above detailed, and he therefore could not truthfully represent that chicks hatched by him from eggs purchased as aforesaid from flocks which were not blood tested nor culled nor free from disease, were themselves from blood tested and culled flocks or, as aforesaid, free from disease;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such representations were true and with result, as consequence, that substantial portion of purchasing public, because of such belief, was induced to purchase his said chicks:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts in commerce.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John R. Phillips, Jr., for the Commission.

Berman & Smith, of Washington, D. C., and *Mr. Edred J. Pennell*, of Mifflintown, Pa., 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 Roy T. Ehrenzeller, trading as Maple Lawn Poultry Farm and Maple Lawn Hatchery, 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, Roy T. Ehrenzeller, is an individual, residing at McAlisterville, Pa., trading as Maple Lawn Poultry Farm and Maple Lawn Hatchery, with his principal place of business located at McAlisterville in the State of Pennsylvania. Respondent is now and for several years last past has been engaged in the sale and distribution of baby chicks in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent causes his said baby chicks, when sold, to be shipped from his place of business in the State of Pennsylvania to 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 baby chicks in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, and for the purpose of inducing the purchase of his baby chicks by members of the purchasing public, respondent has made false and misleading representations with respect to the grade, origin, quality, and type, character, and nature of his baby chicks. Such representations are disseminated by means of advertisements inserted in newspapers, trade

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magazines, and other publications having a general circulation throughout various States of the United States and by means of letters, catalogs, circulars, leaflets, and other printed and written matter distributed among prospective purchasers. Among and typical of such false and misleading representations disseminated, as aforesaid, are the following:

Every Breeder is BLOODTESTED

Bloodtesting means the testing of a sample of blood from an individual bird to find out whether or not the bird is a carrier of pullorum disease (B. W. D.). This is one of the most dreaded and destructive of baby chick diseases. It is transmitted to the chick through the egg. The only sure way to prevent it is to eliminate from the flock every breeder which shows through bloodtesting that it is a reactor to pullorum disease.

Every breeder, male and female, used for Maple Lawn Hatchery, is blood-tested annually and any reactors are immediately removed.

We leave in our breeding flocks only those birds which we are sure have not the slightest trace of this disease in their veins.

We will not tolerate any unsatisfactory or careless management of breeders from which eggs for Maple Lawn Chicks are produced. This assures your getting big, healthy chicks—chicks that will live, grow and make greater profits for you. It pays to be sure you are buying chicks from bloodtested parentage—from parents that are known to be free of disease.

It is because we know that our careful selection of breeding stock has given to our chicks greater health and potential earning power, because our hatching methods have turned out the most vigorous chicks possible to hatch, and because our entire method of operation enables us to offer a better chick for less money, that we can say with confidence, "Maple Lawn Chicks will make you greater profits during 1939."

We do not mean to infer that our chicks are all hatched from eggs produced right here on our own farm. It would take hundreds of acres for that, as well as a breeding flock of more than 30,000 females. But we do have access to a large number of high class flocks, many of which are under our direct, personal supervision, and as we have stated elsewhere in this folder, every breeder is bloodtested for B. W. D. These birds receive more individual care and attention than could possibly be devoted to birds in huge breeding flocks.

All Maple Lawn Chicks are of superior worth, coming from proven varieties of both the most popular heavy and light breeds—all from vigorous, hardy breeders bloodtested annually for pullorum disease. Maple Lawn Chicks are disease-free and were bred to step out and bring larger profits during 1939.

FOLKS! Here is Something to Remember:—For the past twelve years we have been producing "MAPLE LAWN CHICKS THAT LIVE AND GROW." Each year finds us improving our flock by bloodtesting more closely. Nothing but high-producing male birds are used on our flocks. We want you to have the best.

BLOOD-TESTED

These chicks were hatched from Breeders Blood-Tested for Pullorum Disease B. W. D. by the Antigen Stain Method, all reactors were removed from flocks. Testing done in the present year by Roy T. Ehrenzeller.

PAR. 4. By means of the foregoing representations, together with other representations of similar import not specifically set out herein, all of which purport to be descriptive of respondent's business status and of his products, the respondent represents that he personally supervises and controls the flocks from which his eggs are produced; that such eggs are from blood-tested and culled flocks; that his eggs and baby chicks are of superior grade, origin, quality and type, character and nature, and that said baby chicks are from blood-tested and culled flocks and are free from disease.

To purchasers of baby chicks, the term "blood-tested" means and refers to poultry flocks that have been tested for certain diseases common to poultry, and from which flocks diseased poultry has been eliminated. It is believed by such purchasers that baby chicks hatched from the eggs of blood-tested flocks are less likely to be infected with certain diseases than chicks hatched from the eggs of flocks which have not been blood tested and culled. There is a decided preference among the purchasers for baby chicks hatched from eggs from poultry flocks that have been blood tested, culled, and personally supervised and controlled.

PAR. 5. In truth and in fact these representations thus made are false and misleading. The respondent does not own, control, nor supervise any of the flocks of poultry supplying the eggs used in his hatchery and incubation business. Respondent purchases eggs from various sources and has no personal knowledge as to whether or not the flocks producing such eggs were blood tested or culled or free from disease. In truth and in fact, in many instances, respondent purchases eggs from flocks which were not blood tested, nor culled, nor free from disease.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said product has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true and as a result thereof a substantial portion of the purchasing public, because of such erroneous and mistaken belief, is induced to and does purchase respondent's baby chicks.

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 November 3, 1939, issued, and on November 4, 1939, served, its complaint in this proceeding upon respondent Roy T. Ehrenzeller, trading as Maple Lawn Poultry Farm and Maple Lawn Hatchery, charging him with the use of 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 thereto, testimony, and other evidence in support of the allegations of the said complaint, were introduced by John R. Phillips, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Sidney Smith, attorney for the respondent, before W. W. Sheppard, an examiner 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. Subsequently, the Commission, by order entered herein, granted respondent's motion for permission to withdraw his original 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 the 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, testimony, and other evidence, 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, Roy T. Ehrenzeller, is an individual, residing at McAlisterville, Pa., trading as Maple Lawn Poultry Farm and Maple Lawn Hatchery, with his principal place of business located at McAlisterville in the State of Pennsylvania. Respondent is now and for several years last past has been engaged in the sale and distribution of baby chicks in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent causes his said baby chicks, when sold, to be shipped from his place of business, in the State of Pennsylvania, to 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 baby chicks in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, and for the purpose of inducing the purchase of his baby chicks by members of the purchasing public, respondent has made false and misleading representations with respect to the grade, origin, quality, and type, character, and nature of his baby chicks. Such representations are disseminated by means of advertisements inserted in newspapers, trade magazines, and other publications having a general circulation throughout various States of the United States, and by means of letters, catalogs, circulars, leaflets, and other printed and written matter distributed among prospective purchasers. Among and typical of such false and misleading representations disseminated, as aforesaid, are the following:

Every Breeder is BLOODTESTED.

* * * * *

Bloodtesting means the testing of a sample of blood from an individual bird to find out whether or not the bird is a carrier of pullorum disease (B. W. D.). This is one of the most dreaded and destructive of baby chick diseases. It is transmitted to the chick through the egg. The only sure way to prevent it is to eliminate from the flock every breeder which shows through bloodtesting that it is a reactor to pullorum disease.

Every breeder, male and female, used for Maple Lawn Hatchery, is bloodtested annually and any reactors are immediately removed.

* * * * *

We leave in our breeding flocks only those birds which we are sure have not the slightest trace of this disease in their veins.

We will not tolerate any unsanitary or careless management of breeders from which eggs for Maple Lawn Chicks are produced. This assures your getting big, healthy chicks—chicks that will live, grow and make greater profits for you. It pays to be sure you are buying chicks from bloodtested parentage—from parents that are known to be free of disease.

* * * * *

It is because we know that our careful selection of breeding stock has given to our chicks greater health and potential earning power, because our hatching methods have turned out the most vigorous chicks possible to hatch, and because our entire method of operation enables us to offer a better chick for less money, that we can say with confidence, "Maple Lawn Chicks will make you greater profits during 1939."

We do not mean to infer that our chicks are all hatched from eggs produced right here on our own farm. It would take hundreds of acres for that, as well as a breeding flock of more than 30,000 females. But we do have access to a large number of high class flocks, many of which are under our direct, personal supervision, and as we have stated elsewhere in this folder, every

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breeder is bloodtested for B. W. D. These birds receive more individual care and attention than could possibly be devoted to birds in huge breeding flocks.

* * * * *

All Maple Lawn Chicks are of superior worth, coming from proven varieties of both the most popular heavy and light breeds—all from vigorous, hardy breeders bloodtested annually for pullorum disease. Maple Lawn Chicks are disease-free and were bred to step out and bring larger profits during 1939.

FOLKS! Here is Something to Remember:—For the past twelve years we have been producing “MAPLE LAWN CHICKS THAT LIVE AND GROW.” Each year finds us improving our flock by bloodtesting more closely. Nothing but high-producing male birds are used on our flocks. We want you to have the best.

* * * * *

BLOOD-TESTED

These chicks were hatched from Breeders Blood-Tested for Pullorum Disease B. W. D. by the Antigen Stain Method, all reactors were removed from flocks. Testing done in the present year by Roy T. Ehrenzeller.

PAR. 4. By means of the foregoing representations, together with other representations of similar import not specifically set out herein, all of which purport to be descriptive of respondent's business status and of his products, the respondent represents that he personally supervises and controls the flocks from which his eggs are produced; that such eggs are from blood-tested and culled flocks; that his eggs and baby chicks are of superior grade, origin, quality, and type, character, and nature, and that said baby chicks are from blood-tested and culled flocks and are free from disease.

To purchasers of baby chicks, the term “blood-tested” means and refers to poultry flocks that have been tested for certain diseases common to poultry, and from which flocks diseased poultry has been eliminated. It is believed by such purchasers that baby chicks hatched from the eggs of blood-tested flocks are less likely to be infected with certain diseases than chicks hatched from the eggs of flocks which have not been blood tested and culled. There is a decided preference among the purchasers for baby chicks hatched from eggs from poultry flocks that have been blood tested, culled, and personally supervised and controlled.

PAR. 5. In truth and in fact these representations thus made are false and misleading. The respondent does not own, control, nor supervise any of the flocks of poultry supplying the eggs used in his hatchery and incubation business. Respondent purchases eggs from various sources and has no personal knowledge as to whether or not the flocks producing such eggs were blood tested or culled or free from disease. In truth and in fact, in many instances, respondent purchases eggs from flocks which were not blood tested nor culled nor free from disease. All of the chicks sold by the respondent are

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hatched from eggs purchased by him as hereinabove detailed, and when the respondent purchases eggs from flocks which were not blood tested nor culled nor free from disease, the chicks hatched from such eggs cannot be truthfully represented as being from blood tested and culled flocks or as being free from disease.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said eggs and chicks has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true. As a result thereof a substantial portion of the purchasing public, because of such erroneous and mistaken belief, is induced to, and does, purchase respondent's baby chicks.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice 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, testimony, and other evidence introduced before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, 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, Roy T. Ehrenzeller, individually and trading as Maple Lawn Poultry Farm and as Maple Lawn Hatchery, or trading under any other name, or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of baby chicks in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the flocks of poultry supplying the eggs from which respondent's baby chicks are produced are owned, controlled, or supervised by respondent.

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2. Representing that eggs obtained from flocks which have not been blood tested and found free from disease or which have not been culled are from blood tested and culled flocks or are free from disease.

3. Representing that the chicks hatched from eggs obtained from flocks which have not been blood tested and found free from disease or which have not been culled are from blood-tested and culled flocks or are free from disease.

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
ARTHUR SOHN AND CARL SOHN, INDIVIDUALS,
TRADING AS SOHN BROS.

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

Docket 4073. Complaint, Mar. 28, 1940—Decision, July 16, 1940

Where two individuals engaged in manufacture of mattresses and bedding with old, second-hand, used, and discarded cotton which they purchased, and which, after being combed by machine and reworked, was used by them in making said products, with new coverings, and in sale and distribution to purchasers in various other States, including wholesalers, retailers, and other buyers, who resold same to purchasing public of said products which, after being fitted with new coverings as aforesaid, had appearance of new mattresses—
Sold said products with appearance aforesaid and with no marking or designation clearly and conspicuously stamped thereon or attached thereto to indicate to purchasing public that such mattresses were in fact made of old, previously used, discarded, and second-hand materials and, in case of said mattresses thus made but with labels bearing terms "Made of previously used materials" stamped thereon, with such marking so illegible and inconspicuous that it could not be read by wholesale and retail buyers thereof or by members of purchasing public, to retailers and jobbers and wholesalers, by whom said products were sold to purchasing public without disclosing fact that they were reconditioned and made from old, used, discarded, and second-hand material fitted with new covering, and under such conditions as to cause members of purchasing public erroneously to believe that they were in fact composed in their entirety of new materials which had never been previously used;

With result that through their said acts and practices in placing new coverings on mattresses made from old, used, discarded, and second-hand materials, without disclosing fact that such materials were old, etc., they placed in hands of unscrupulous or uninformed persons means and instrumentality whereby they had been and were enabled to mislead and deceive members of purchasing and consuming public into erroneous and mistaken belief that their said products were manufactured from new materials, and with effect of misleading and deceiving retail and wholesale dealers who purchased such products, and substantial portion of purchasing public, into erroneous and mistaken belief that products in question, manufactured from old, used, and discarded materials, were new mattresses made from new and unused materials, and with result and consequence that purchasing public was induced to and did buy substantial quantities of 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.

Before *Mr. John W. Addison*, trial examiner.

Mr. Robert Mathis, Jr., for the Commission.

Weinstein, Murray & Weinstein and *Dubrow & Sohn*, of Chicago, Ill., for respondents.