

Complaint

IN THE MATTER OF
AIR CONDITIONING TEXTILES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3974. Complaint, Dec. 16, 1939—Decision, Aug. 19, 1940*

Where a corporation engaged in sale and distribution of its so-called "Air Conditioning the Human Body" soap to purchasers in various other States, in competition with others also engaged in sale and distribution of soaps designed and used for cleansing the skin, and including many who do not misrepresent properties or efficacy of their respective products—

Represented, through use of term aforesaid, that its said product possessed air-conditioning properties or qualities and reduced body temperature and humidity, and eliminated perspiration objections, and that body breathed through pores of skin, facts being, while menthol synthetic content of product served to impart to skin a slight cooling and soothing sensation, it had no effect on actual temperature of body, which does not breathe through pores as above alleged, and product in question did not air condition the body nor reduce its temperature, nor accomplish the other effects above claimed;

With capacity and tendency to mislead and deceive a portion of the purchasing public, aware of principle of air conditioning as new scientific development advancing and contributing to bodily comfort, but, in case of many, entirely unfamiliar with manner of operation thereof and principle's limitations, into erroneous and mistaken belief that said false representations were true, and that its soap possessed properties claimed and represented, and would accomplish results indicated, and into purchase thereof because of such belief, thus induced, and with result of thereby diverting trade unfairly to it from its competitors in commerce:

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 W. Addison*, trial examiner.

Mr. Randolph W. Branch and *Mr. B. G. Wilson* for the Commission.

Mr. Harry B. Kurzrok, of New York City, 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 Air Conditioning Textiles, Inc., a corporation, 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

Complaint

31 F. T. C.

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

PARAGRAPHS 1. Respondent, Air Conditioning Textiles, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1441 Broadway, New York City, N. Y.

PAR. 2. The respondent has been for 8 years last past engaged in the business of selling and distributing certain toilet preparations including a toilet soap designated variously as "Air Conditioning the Human Body" soap and as "Air Conditioning" soap. Respondent causes the said product, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia.

For 3 years last past respondent 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. 3. In the course and conduct of its business, respondent has been engaged in competition with other corporations and with partnerships, firms, and individuals also selling and distributing soaps and other products designed and used for the cleansing of the skin, in commerce among and between the various States of the United States.

Among such competitors are many who do not in any manner misrepresent the properties or the efficacy of their respective soaps or other products.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said product, respondent has caused advertisements containing false and misleading representations and claims with respect to its said product to be disseminated by means of circulars and other printed and written matter and by the use of labels attached to its said product. Among and typical of the false and misleading representations contained in said advertisements are the following:

Air Conditioning Soaps and Toilet Preparations.

They Definitely Reduce Body Temperature. Reduce Humidity by Evaporation. Eliminates Perspiration Objections.

The use of these preparations is the modern, practical way for "Air Conditioning the Human Body."

The human body breathes through the pores of the skin.

Respondent's soap is generally referred to in all of said advertisements and labels as "Air Conditioning Soap."

PAR. 5. Members of the purchasing public have been made conscious of the term "air conditioning" and of the fact that the principle of

"air conditioning" is a new scientific development advancing and contributing to bodily comfort but many of them are entirely unfamiliar with the manner of operation of the principle of air conditioning and the limitations thereon. The use of the term "air conditioning" as descriptive of respondent's soap product, has the tendency and capacity to mislead and deceive purchasers into the mistaken and erroneous beliefs that to some extent the principle of "air conditioning" has in some manner been incorporated into such soap and that, by reason thereof, such soap possesses properties contributing to human comfort which are not possessed by ordinary soaps. While respondent's soap possesses perfume and menthol in less than 3 percent, it has no properties different from ordinary soap.

Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondent's product and its effectiveness in use, the respondent has represented among other things: That its said product "air conditions the human body"; that said product reduces body temperature, reduces humidity by evaporation and eliminates perspiration objections; and that the human body breathes through the pores of the skin.

PAR. 6. The foregoing representations are grossly exaggerated, misleading, and untrue. In truth and in fact respondent's product will not air condition the human body. It will not reduce body temperature, nor reduce humidity, nor will it eliminate perspiration objections. The human body does not breathe through the pores of the skin. In truth and in fact respondent's product does not differ in any material respect from other soaps used for ordinary cleansing purposes.

PAR. 7. The use by respondent of the foregoing false and misleading representations with respect to its said product has had the capacity and tendency to mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that such false representations are true, and that respondent's said product possesses the properties claimed and represented, and will accomplish the results indicated and into the purchase of quantities of respondent's product on account of such beliefs so induced. As a result, trade has been diverted unfairly to the respondent from its competitors, and in consequence thereof, injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of com-

petition in commerce and 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 December 16, 1939, issued and thereafter served its complaint in this proceeding upon Air Conditioning Textiles, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and 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 complaint were introduced by Randolph W. Branch, attorney for the Commission, before John W. Addison, 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. No testimony or other evidence was offered by the respondent. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint, respondent not having filed brief, and on oral argument by counsel for the Commission and by the respondent through its president; 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, Air Conditioning Textiles, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1441 Broadway, New York City, N. Y.

PAR. 2. Respondent, from June 1937, to the summer or fall of 1939, was engaged in the business of selling and distributing soap designated by it as "Air Conditioning the Human Body" soap. It caused the said soap, when sold by it, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States. Respondent maintained a course of trade in its said soap in commerce among and between the several States of the United States.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, was engaged in competition with other corporations and with partnerships and individuals also engaged in selling and distributing soaps designed and used for cleansing of the skin, in commerce among and between the several States of the United States. Among these competitors are many who do not misrepresent the properties or the efficacy of their respective products.

PAR. 4. Respondent, to promote the sale of its soap in commerce as described above, has represented in its advertising material that its said soap air conditions the human body, that said soap reduces body temperature, reduces humidity by evaporation, eliminates perspiration objections, and that the human body breathes through the pores of the skin.

PAR. 5. The Commission finds that there is no basis in fact for these representations. In truth and in fact, respondent's soap does not air condition the human body, nor does it reduce body temperature. It does not reduce humidity, nor does it eliminate perspiration objections. The human body does not breathe through the pores of the skin.

PAR. 6. Members of the purchasing public have been made conscious of the term "air condition", and of the fact that the principle of "air conditioning" is a new, scientific development advancing and contributing to bodily comfort; but many of them are entirely unfamiliar with the manner of operation of the principle of air conditioning and the limitations thereon. The use of the term "air conditioning" as descriptive of respondent's soap has the tendency and capacity to mislead and deceive purchasers into the mistaken and erroneous belief that to some extent the principle of air conditioning has in some manner been incorporated into such soap, and that by reason thereof, such soap possesses properties contributing to human comfort which are not possessed by ordinary soaps. Respondent's soap contains a perfume solution making up three per cent or less of its total content, and two-thirds of this solution is menthol synthetic. The presence of the menthol serves to impart to the skin a slight cooling and soothing sensation, but it has no effect on the actual temperature of the body.

PAR. 7. The use by respondent of the foregoing false and misleading representations with respect to its said product has the capacity and tendency to mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that said false representations are true, and that respondent's soap possesses the properties claimed and represented and will accomplish the results indicated, and into the purchase of respondent's product because of such belief so induced. As a result, trade has been diverted unfairly to respondent from its competitors in commerce among and between the several States of the United States.

Order

31 F. T. C.

CONCLUSION

The acts and practices of the respondent as found herein are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and 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 the respondent, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, brief filed by counsel for the Commission, and oral argument by B. G. Wilson, counsel for the Commission, and by the president of the respondent corporation, 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 respondent, Air Conditioning Textiles, Inc., 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 soap designated as "Air Conditioning the Human Body" soap and as "Air Conditioning" soap, or any other soap composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Air Conditioning" or "Air Conditioning the Human Body," or any other term of similar import, to designate or describe its said soap, or otherwise representing that said soap possesses air-conditioning properties or qualities.

2. Representing that said soap reduces body temperature or reduces humidity or eliminates perspiration objections.

3. Representing that the human body breathes through the pores of the skin.

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

LOUIS HOFFMAN, TRADING AS L. HOFFMAN

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

Docket 4165. Complaint, June 19, 1940—Decision, Aug. 20, 1940

Where an individual engaged in manufacture, sale, and distribution of desk pads and other office accessories to retail purchasers in the various other States and in the District of Columbia for resale to retail trade and other members of purchasing public, in substantial competition with others engaged in sale and shipment, in commerce as aforesaid, of similar products; in statements and representations in numerous circulars and catalogs circulated generally among prospective purchasers throughout the United States and in said District, and through salesmen traveling through various States and in District aforesaid—

- (a) Made representation and statement "Established 1888," notwithstanding fact business was not established in year in question;
- (b) Made use of words and legends "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather," to describe certain desk pads offered and sold by him, and thereby represented and implied to purchasing public that material from which said products were made was the superior and more costly top grain leather, as understood by general public from word "leather" as meaning top or hairy side of hide, notwithstanding fact he made use of no genuine top grain leather for any of his products aforesaid, but employed therefor mostly splits or first and subsequent cuts under deep buff leather, and, for "Flexhide" pads, leather imitation; and
- (c) Made use of legends "Grecian Gold Tooled Border" and "Genuine Gold Tooled Border," to describe his aforesaid products, and represented and implied thereby to purchasing public that the superior and more costly genuine gold leaf was used in process of finishing, embossing, or tooling borders of his said products, notwithstanding fact leaf aforesaid was not employed, but borders thus described were mostly of imitation gold;

With result that retailers were enabled to mislead and deceive purchasing public as to quality of material from which said pads were made and of material with which borders thereof were finished, embossed, or tooled; and

- (d) Published and circulated depiction of various styles of pads offered by him which were identical with certain products of competitors, and indicated genuine and expensive gold leaf embossing or tooling in quality, notwithstanding fact he did not sell such products of design depicted, and pictorial representations in question in some instances were of competitor's higher priced and superior type of pad, both as to design and pattern;

With effect of misleading and deceiving purchasing public into mistaken and erroneous belief that aforesaid various representations were true, and of inducing said public, because of such belief, to purchase his said products and thereby divert trade to him from those of his competitors who do not in any manner misrepresent their products or business status: