

Complaint

IN THE MATTER OF
TOMMY LOUGHRAN

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

Docket 3976. Complaint, Dec. 16, 1939—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of correspondence courses in which he outlined methods of physical culture, exercise, and instructions as to diet intended to improve health and physical condition of purchasers thereof—

Represented, through statements and claims disseminated in commerce through the mail and advertisements in newspapers and magazines of general circulation and otherwise, directly or by implication, that his courses of instruction would keep everyone in a healthy condition, insuring everyone of big muscles and a huge, robust, powerful body, and would produce health and a perfect functioning of the organisms for all users thereof, and that his book "Puissant Body Building" would show how all users could obtain big muscles and a robust body, and that such courses would enable everyone to become a paragon of strength;

Facts being that, while proper exercise and diet are important factors in building up and preserving health and body strength, they do not constitute all that is necessary to be done to correct ill health or preserve health and strength, and following his instructions as to exercise and diet would not produce health for everyone or keep everyone in a healthy condition, nor insure everyone of big muscles or a huge, robust and powerful body, nor result in the perfect functioning of the human body, his said book would not teach everyone how to obtain such big muscles and powerful body, and his said courses would not enable everyone to become a "paragon of strength";

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of causing portion of such public, because of such erroneous and mistaken belief, to purchase his said correspondence courses; to the injury of the public in various States and in the District of Columbia:

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. Clark Nichols, for the Commission.

Cross & Quinlan, of Philadelphia, 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 Tommy Loughran,

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an individual, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the 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. Respondent Tommy Loughran is an individual doing business in his own name with his principal office and place of business located at 4 South Fifteenth Street, Philadelphia, Pa. Respondent is now, and has been for several years last past, engaged in the business of preparing and selling correspondence courses which teach methods of building and improving the body physically and improving general health, by use of certain exercises and apparatus and advice about proper food and proper methods of selecting and eating food. Respondent sells such correspondence courses directly to the purchasers thereof by the use of direct advertising through the United States mails and by newspaper and magazine advertising.

In the conduct of his business as aforesaid, respondent has been, and is, engaged in commerce among and between the various States of the United States, by causing his correspondence courses to be mailed from his aforesaid place of business in the State of Pennsylvania to purchasers thereof at their respective points of location in the various States of the United States other than the State of Pennsylvania, and in the District of Columbia.

PAR. 2. In the course and conduct of his business aforesaid respondent has been and is engaged in preparing courses of instruction wherein he teaches the purchasers thereof in several lessons how to breathe properly, how to use certain apparatus he furnishes with the lessons and how to exercise the different external and internal muscles through different setting up exercises. In several of the lessons he explains the qualities of different foods, advising which classes and kinds of food his students should eat in order to obtain optimum health. He assures his students through the correspondence courses that if they follow his instruction and perform the exercises therein set forth and eat the foods he mentions and recommends, perfect health will be produced and maintained and large muscles and a powerful, robust body will be built; that his object is to spread the gospel of perfect health and puissant body building and that if students and purchasers of his courses follow his teachings they will become paragons of strength.

All of the statements and claims aforesaid are disseminated in commerce as hereinabove described, by use of the United States mails and by advertising in newspapers and magazines of general circulation.

Among and typical of the statements made in said false advertisements disseminated and caused to be disseminated as aforesaid, with reference to such correspondence courses are the following:

You will find my rules for proper living sound, and following them will keep you in health.

Tells how to build a powerful body.

Now do you believe me when I say my big ambition in life is to spread the gospel of perfect health and Puissant Body Building? Where on earth could you expect to get this big, massive body with its perfectly functioning organism for such a ridiculous price as I am passing it out today? I only wish someone had offered it to me.

Do you want big muscles and a huge robust body? My book "Puissant Body Building" is absolutely FREE.

Any man who will sacrifice a few dollars he daily wastes on so-called empty pleasures can become a paragon of strength if he will only settle down to do it.

PAR. 3. Through the use of said statements in said advertising, disseminated as aforesaid, and others similar thereto not herein set out, all of which purport to represent the benefits to the general health and physical condition of the purchasers and users of respondent's correspondence courses, the respondent represents, directly and by implication, that his course of instruction will keep every one in a healthy condition; will insure everyone big muscles, and a huge, robust, powerful body; that his course of study will produce health and perfect functioning of the organism for all users thereof; that his book "Puissant Body Building" will show how all users can obtain big muscles and a robust body; and that his course will enable everyone to become a paragon of strength.

In truth and in fact respondent's course will not produce health for everyone nor keep everyone in a healthy condition. It will not insure everyone big muscles or a huge, robust, and powerful body. It will not produce perfect health and perfect functioning of the organism for all who use it. Respondent's book "Puissant Body Building" will not show everyone how to obtain big muscles and a powerful body, and the course of instruction will not enable everyone to become a paragon of strength. While proper exercise and diet are important factors in building up and preserving health and body strength, they are not the only ones. On account of physiological and other factors, many people, even though following such course of instruction and diet, cannot attain perfect health or perfect functioning of the body organism, nor can they obtain huge, robust or powerful bodies nor are they enabled to have big muscles or a powerful body, nor become paragons of strength.

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PAR. 4. The use by the respondent of the foregoing deceptive and misleading statements and representations with respect to the beneficial effects of his course of study 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 such statements, representations and advertisements are true and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's course of study.

PAR. 5. 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 December 16, 1939, issued and served its complaint in this proceeding upon respondent, Tommy Loughran, an individual, 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, the Commission, by order entered herein, granted respondent's request for permission to withdraw said 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 said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint 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. The respondent, Tommy Loughran, an individual with his principal place of business at 4 South Fifteenth Street, Philadelphia, Pa., is now, and has been for several years last past, engaged in the sale and distribution of correspondence courses, wherein he outlines methods of physical culture, exercise, and instructions as to diet intended to improve the health and physical condition of purchasers thereof. Respondent causes, and has caused, said correspondence courses, when sold, to be transported from his place of business in Philadelphia, Pa., to the purchasers thereof located at

various points in the several States of the United States, other than the State of Pennsylvania, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said correspondence courses in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, respondent prepares courses of instruction wherein he teaches the purchasers thereof in several lessons how to breathe properly, how to use certain apparatus he furnishes with the lessons, and how to exercise the various external and internal muscles through different exercises. In other lessons he explains the qualities of foods, advising students as to the qualities of foods they should eat in order to obtain optimum health. He assures his students, through said courses, that, if they follow his instructions and perform the exercises therein set forth and eat the foods he mentions and recommends, perfect health will be produced and maintained and large muscles and powerful, robust body will be built; that his object is to spread the gospel of perfect health and puissant body building; and that if students and purchasers of his correspondence courses follow his teaching they will become paragons of strength. All of the statements and claims aforesaid are disseminated in commerce as hereinabove described, by use of the United States mail and by advertisements inserted in newspapers and magazines of general circulation. Among and typical of the statements made in said false advertisements, disseminated and caused to be disseminated, as aforesaid, with reference to such correspondence courses are the following:

You will find my rules for proper living sound, and following them you will keep your health.

Tells how to build a powerful body.

Now do you believe me when I say my big ambition is to spread the gospel of perfect health and Puissant Body Building? Where on earth could you expect to get this big, massive body with its perfect functioning organisms for such a ridiculous price as I am passing it out today? I only wish someone had offered it to me.

Do you want big muscles and a huge robust body? My book, "Puissant Body Building" is absolutely free.

Any man who will sacrifice a few dollars he daily wastes on so-called empty pleasures can become a paragon of strength if he will only settle down to do it.

PAR. 3. Through the use of said statements in said advertisements, disseminated as aforesaid, the respondent represents directly or by implication that his courses of instruction will keep everyone in a healthy condition; that they will insure everyone of big muscles, and a huge, robust, powerful body; that his courses of study will produce health and a perfect functioning of the organisms for all users

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thereof; that his book "Puissant Body Building" will show how all users can obtain big muscles and a robust body; and that his courses will enable everyone to become a paragon of strength.

PAR. 4. The following of the instructions as to exercise and diet outlined in said correspondence courses prepared by respondent will not produce health for everyone or keep everyone in a healthy condition. Said exercise and diet outlined in said courses will not insure everyone of big muscles or a huge, robust and powerful body, or result in the perfect functioning of the human body. Respondent's said book "Puissant Body Building" will not teach everyone how to obtain big muscles and a powerful body, and said courses of instruction will not enable everyone to become a "paragon of strength." While proper exercise and diet are important factors in building up and preserving health and body strength, they do not constitute all that is necessary to be done to correct ill health or to preserve health and body strength.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the results to be obtained by all those purchasing said correspondence courses and following the instructions therein outlined 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 such false statements, representations, and advertisements are true, and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said correspondence courses. In consequence thereof, injury has been, and is now being, done by the respondent to the public in various States of the United States and in the District of Columbia.

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 conclusion

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

It is ordered, That the respondent, Tommy Loughran, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his correspondence courses on health and physical culture, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication that following the instructions as to exercise and diet outlined in said correspondence courses will produce good health for everyone or keep everyone in a healthy condition; or will insure everyone of "big" muscles or a "huge," "robust," and powerful body; or enable one to become a "paragon" of strength.

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.

IN THE MATTER OF
CHESTER E. THOMAS, TRADING AS THOMAS BROTHERS

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

Docket 4151. Complaint, June 4, 1940—Decision, Oct. 21, 1940

Where an individual engaged in manufacture of candy, salted peanuts, and other products, and in sale and distribution of certain assortments of such products which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers, and which included (1) plaster of paris toy and 30 bags of salted peanuts of uniform size, shape, and quality, stapled to cardboard sheet for sale and distribution to purchasers under a plan, and in accordance with said sheet's explanatory legend, by which purchaser paid from 1 to 5 cents for bag of peanuts, in accordance with number concealed on card's tabs as disclosed by removal of bag from card and the opening of the tab attached, and under which purchaser of last package or bag received aforesaid toy; (2) box of chocolate candy and number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said candy under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for nickel paid, only one, or additional bars, dependent upon success or failure in securing by chance from card certain designated numbers, and under which purchaser making last punch on card received, without additional cost, said box of candy; and (3) various other assortments of peanuts or candy involving lot or chance feature similar to those respectively above described, from which they varied in detail only—

Sold such assortments to wholesalers, jobbers, and retailers by whom, as direct or indirect retailer-purchasers thereof, assortments in question were exposed and sold to purchasing public in accordance with sales plans aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his said products in accordance with such sales plans as above set forth, involving game of chance or sale of a chance to procure bags of peanuts at prices which are much less than normal retail prices thereof, or additional pieces or boxes of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said sales plans or methods employed by him in sale and distribution of his candy and other products and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those of his competitors above set forth, and with effect, through use of such methods and because of said game of chance, of diverting trade unfairly to him from his said competitors who do not use same or equivalent methods: