

Syllabus

IN THE MATTER OF
KUHN REMEDY COMPANY

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

Docket 4264. Complaint, Oct. 17, 1940¹—Decision, Nov. 29, 1940

Where a corporation engaged in sale and distribution of its "Kuhn's Rheumatic Fever Remedy" or, as more recently described, "Kuhn's Remedy," medicinal preparation, to purchasers in various other States and in the District of Columbia; in advertisements thereof which it disseminated and caused to be disseminated through the mails, radio continuities, advertisements in newspapers and periodicals, and through circulars, leaflets, and other advertising literature, and through various other means in commerce and otherwise, and in which were included testimonial or purported testimonial statements, and which were intended and likely to induce purchase of its said product—

(a) Represented, directly or by implication, that its said preparation constituted a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, and lumbago, and for muscular and joint aches and pains generally, and possessed substantial therapeutic value in the treatment of such ailments and conditions and was entirely safe and harmless and might be used without danger of ill effect upon health of the user;

Facts being it was not a cure or remedy for aforesaid ailments and conditions, possessed no therapeutic value in the treatment of rheumatism, rheumatic fever, gout, neuralgia, or lumbago in excess of affording, in some cases, temporary symptomatic relief from the aches and pains associated with such disorders, and was not, by virtue of its potassium iodide content in quantities sufficient to cause, in some instances, injury to health if taken under conditions prescribed in advertisements in question or under such conditions as are usual or customary, in all cases safe or harmless and might be harmful to those having healed lesions of arrested tuberculosis or goiter; and

(b) Failed to reveal, in said advertisements, facts material in the light of the representations contained therein, and that use of preparation in question, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in injury to health, in that said advertisements did not contain any cautionary statement to effect that said preparation should be used only as directed on label thereof; and

(c) Represented, falsely and misleadingly, through use of word "Remedy" in its corporate name and in designation and description of its said preparation, that same constituted a cure or remedy for ailments and conditions above set forth;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true, and into purchase of substantial quantities of its said preparation:

¹ Amended and supplemental.

Complaint

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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. John M. Russell, for the Commission.

AMENDED AND SUPPLEMENTAL 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 Kuhn Remedy Co., 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kuhn Remedy Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1855 North Milwaukee Avenue, Chicago, Ill.

PAR. 2. Respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a medicinal preparation, formerly described as "Kuhn's Rheumatic Fever Remedy," now known as "Kuhn's Remedy" and intended as a treatment for various ailments of the human body.

Respondent causes its said preparation, when sold, to be transported from its aforesaid place of business in the State of Illinois 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 preparation 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 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 product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations

contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by radio continuities, by advertisements in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

Kuhn's Remedy * * * You should try to alleviate the pain which causes you so much suffering in joints, muscles and tissues, and avoid the cause if possible, in order to prevent a recurrence of the symptoms. * * * It would be wrong to stop the treatment when a few more bottles of Kuhn's Remedy would have brought complete relief and satisfaction.

B. Anderson of Cuba, N. Y., writes:

It is now 9 years since I got Kuhn's Remedy after being in bed about 9 months * * * After taking the treatment the pains left me and that alone is worth more than every dollar in this world * * *

That is just what Kuhn's Remedy is intended to do, and that is why it should relieve Rheumatic aches and pains or neuralgia. The aches and pains have to go if you want to be free from suffering, so you can work, play and enjoy life. * * *

I WANT TO PROVE THIS TO YOU * * * I don't care how long you have been suffering from these painful conditions.

Kuhn's Remedy is compounded of ingredients that are recognized as being of value in the treatment of Acute Rheumatic-Fever and Gout, * * * for Aches and Pains of Rheumatism and Gout. It is also an aid in reducing temperature, caused by Rheumatic Fever.

Many people have had the pains of rheumatism, neuralgia, gout and lumbago for a long time. This might necessitate taking the medicine for a longer period of time—perhaps several weeks. When you have taken a few bottles of Kuhn's Remedy regularly, we feel confident that you will be happy and satisfied and be able to enjoy the privileges that go with good health.

No DISEASE is more pitiless in the misery and distress it brings to the waning years of life than the various forms of Muscular Aches and Pains. * * * Those still young and middle-aged who are experiencing the touch of this tyrant disease, should lose no time in seeking its relief.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondent represents directly or by implication that its said preparation is a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, and lumbago, and that said preparation possesses substantial therapeutic value in the treatment of such ailments and conditions; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

The use by the respondent of the word "Remedy" in its corporate name and in the designation and description of its said preparation constitutes within itself the false and misleading representation that

said preparation is a cure or remedy for the ailments and conditions hereinabove mentioned.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's preparation is not a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, or lumbago. Said preparation is not a cure for muscular or joint aches and pains generally. Said preparation does not possess any therapeutic value in the treatment of rheumatism, rheumatic fever, gout, neuralgia, or lumbago in excess of affording, in some cases, temporary symptomatic relief from the aches and pains associated with such disorders. Said preparation is not in all cases safe or harmless, as it contains the drug potassium iodide in quantities sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis, or goiter. In arrested cases of tuberculosis the tendency of potassium iodide is to dissolve the conditions prescribed in said advertisements or under such the tuberculous process. The hazard in cases of goiter is the tendency to convert a benign adenoma to a toxic adenoma.

PAR. 6. Further, the advertisements disseminated by the respondent as aforesaid constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in injury to health, in that said advertisements do not contain any cautionary statement to the effect that said preparation should be used only as directed on the label thereof.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, 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 false statements and representations are true and into the purchase of substantial quantities of respondent's preparation.

PAR. 8. The aforesaid acts and practices of 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 August 23, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Kuhn Remedy Co., 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 October 17, 1940, the Commission issued and on October 18, 1940, served its amended and supplemental complaint herein, on said respondent. On the 9th day of November 1940, the respondent filed its answer to the amended and supplemental complaint, admitting all of the material allegations of fact set forth in said amended and supplemental complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint and answer thereto, 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, Kuhn Remedy Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1855 North Milwaukee Avenue, Chicago, Ill.

PAR. 2. Respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a medicinal preparation, formerly described as "Kuhn's Rheumatic Fever Remedy," now known as "Kuhn's Remedy" and intended as a treatment for various ailments of the human body.

Respondent causes its said preparation, when sold, to be transported from its aforesaid place of business in the State of Illinois 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 preparation 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 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 product by the United States mails and by various

other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by radio continuities, by advertisements in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

Kuhn's Remedy * * *

You should try to alleviate the pain which causes you so much suffering in joints, muscles and tissues, and avoid the cause if possible, in order to prevent a recurrence of the symptoms. * * * it would be wrong to stop the treatment when a few more bottles of Kuhn's Remedy would have brought complete relief and satisfaction.

B. Anderson of Cuba, N. Y., writes:

It is now 9 years since I got Kuhn's Remedy after being in bed about 9 months * * * After taking the treatment the pains left me and that alone is worth more than every dollar in this world * * *

That is just what Kuhn's Remedy is intended to do, and that is why it should relieve Rheumatic aches and pains or neuralgia. The aches and pains have to go if you want to be free from suffering, so you can work, play and enjoy life. * * *

I WANT TO PROVE THIS TO YOU * * * I don't care how long you have been suffering from these painful conditions.

Kuhn's Remedy is compounded of ingredients that are recognized as being of value in the treatment of Acute Rheumatic-fever and Gout, * * * for Aches and Pains of Rheumatism and Gout. It is also an aid in reducing temperature, caused by Rheumatic Fever.

Many people have had the pains of rheumatism, neuralgia, gout and lumbago for a long time. This might necessitate taking the medicine for a longer period of time—perhaps several weeks. When you have taken a few bottles of Kuhn's Remedy regularly, we feel confident that you will be happy and satisfied and be able to enjoy the privileges that go with good health.

No DISEASE is more pitiless in the misery and distress it brings to the waning years of life than the various forms of Muscular Aches and Pains. * * * Those still young and middle-aged who are experiencing the touch of this tyrant disease, should lose no time in seeking its relief.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondent represents directly or by implication that its said preparation is a cure

or remedy for rheumatism, rheumatic fever, gout, neuralgia, and lumbago, and for muscular and joint aches and pains generally, and that said preparation possesses substantial therapeutic value in the treatment of such ailments and conditions; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

The use by the respondent of the word "Remedy" in its corporate name and in the designation and description of its said preparation constitutes within itself the false and misleading representation that said preparation is a cure or remedy for the ailments and conditions hereinabove mentioned.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, or lumbago. Said preparation is not a cure for muscular or joint aches and pains generally. Said preparation does not possess any therapeutic value in the treatment of rheumatism, rheumatic fever, gout, neuralgia, or lumbago in excess of affording, in some cases, temporary symptomatic relief from the aches and pains associated with such disorders. Said preparation is not in all cases safe or harmless, as it contains the drug potassium iodide in quantities sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis, or goiter. In arrested cases of tuberculosis, the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tuberculous process. The hazard in cases of goiter is the tendency to convert a benign adenoma to a toxic adenoma.

PAR. 6. Further, the advertisements disseminated by the respondent as aforesaid constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in injury to health, in that said advertisements do not contain any cautionary statement to the effect that said preparation should be used only as directed on the label thereof.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated, as aforesaid, has had, and now has, the tendency and capacity to, and

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does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and into the purchase of substantial quantities of respondent's preparation.

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 amended and supplemental complaint of the Commission and the answer of the respondent, in which answer respondent admits all of the material allegations of fact set forth in said amended and supplemental complaint and states that it 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, Kuhn Remedy Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparation, formerly designated "Kuhn's Rheumatic Fever Remedy" and now known as "Kuhn's Remedy," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether 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 advertisement represents, directly or through inference, that said preparation is a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, or lumbago; that said preparation is a cure or remedy for muscular or joint aches or pains generally; that said preparation possesses any therapeutic value in the treatment of rheumatism, rheumatic fever, gout, neuralgia, or lumbago, in excess of affording temporary symptomatic relief from the aches and pains associated with such disorders; that said preparation is in all cases safe or harmless; or

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which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goiter (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof, when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goiter).

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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goiter (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof, when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goiter).

3. Using the word "Remedy" or any other word of similar import or meaning, as part of respondent's corporate or trade name, or to designate, describe, or in any way refer to, such preparation in connection with the offering for sale, sale or distribution of such preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

It is further ordered, That the respondent shall, within 10 days after service upon it of this order, file with the Commission an interim report in writing stating whether it intends to comply with this order and, if so, the manner and form in which it intends to comply; and that within 60 days after service upon it of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
BECKER CLOAK 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 4295. Complaint, Aug. 30, 1940—Decision, Nov. 29, 1940

Where a corporation engaged in manufacturing, among other things, women's textile fabric coats and other garments, and in selling and distributing said products to purchasers in various other States and in the District of Columbia—

- (a) Represented that its said textile fabric garments were made from the peltries of "Persian" lambs, young of Karakul breed of sheep, or were made from wool taken from the young of said breed of sheep, through referring to and designating its said textile fabric women's coats and other garments by name "Duro-Persian" and making use of and displaying said name on tags and labels attached to said garments, and through depiction, along with said words, of sheep or lambs upon some of such tags and labels (upon reverse of which were instructions for care of garment in question, outstanding feature of which was set forth as "beauty and likeness to a fur coat of the same type" with "wearing quality of the fabric * * * not GUARANTEED"), and through use of said designation in advertisements of its said garments in trade journals of interstate circulation, window display cards and other advertising matter, and further describing therein garments in question by use of words "Imported Persian" and by other words and phrases of like import and meaning, including pictorial designs of sheep or lamb, and through use in its said advertisements of large pictorial representations of garments in question which served further to emphasize resemblance thereof to Persian lamb fur;

Facts being textile fabric garments, thus labeled and advertised, were made of rayon and cotton, presence of which was not disclosed, through the twisting of former into a pile about a core of all cotton yarn, with appearance of silky, tightly curled fur, and thus close resemblance to Persian lamb fur, and products in question were not imported either from Persia or elsewhere, but were of domestic manufacture, and, as aforesaid, were not made of the wool of any animal, nor from the fur of Persian lambs obtained from the young of the Karakul breed of sheep, as long indicated to consuming public from words "Persian" and "Persian Lamb" in association with coats, cloaks or similar garments for women, and accepted as meaning or indicating peltries of the young of the Karakul breed of sheep originally found in Asia and marketed through Persian traders, and noted for their silky, tightly curled fur, and commanding high prices in the world's marts of trade and commerce, and preferred in coats, capes, or other garments made therefrom among discriminating women throughout the world;

With capacity and tendency, through use of such labels, tags, and advertising matter, to create impression in minds of purchasers and prospective purchasers of such textile fabric garments that same were made in whole or in part from the peltries of the young of the Karakul breed of sheep, or from the wool taken from such young, and that the materials from which they