

Complaint

IN THE MATTER OF

SCHOLL MANUFACTURING 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 4241. Complaint, Aug. 20, 1940—Decision, Dec. 2, 1940

Where a corporation engaged in manufacture, interstate sale and distribution of its "Dr. Scholl's Zino-Pads" and "Dr. Scholl's Kurotex Foot Plasters" for treatment of corns, bunions, and other foot ailments, in advertisements of its said products which it disseminated and caused to be disseminated through the mails, and in various other ways in commerce, through newspaper and periodical advertisements and by radio continuities, and circulars, leaflets, pamphlets, and other advertising literature, and otherwise, and which were intended and likely to induce purchase of such products—

- (a) Represented that use of said pads stopped pain instantly and in 1 minute, and that corns and callouses could be lifted out after application thereof without use of surgery or other aids, and that they constituted a cure or remedy for said conditions and had healing properties, facts being said pads were not such a cure or remedy, any relief from pain afforded by their use would be gradual, and would not relieve pain as above claimed, and while, in some instances, through relief of pressure of shoes, it might be possible to peel off or remove layers of the corn, use thereof would not make it possible, without use of surgery, to lift out corns or callouses; and
- (b) Represented that use of said foot plaster instantly relieved pain caused by corns, sore toes, callouses, bunions, and tender spots on the feet or toes caused by new or tight shoes, facts being such plasters would give only such degree of relief as would follow from the protection from outside pressure and friction and only that as long as they were employed or worn for protective purposes, and they would not instantly relieve pain caused by various conditions above set forth, as claimed therefor;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of inducing portion of such public, because of said erroneous and mistaken belief, to purchase its said products or devices:

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. Donovan R. Divet for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Scholl Manufactur-

Complaint

32 F. T. C.

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

PARAGRAPH 1. The respondent, Scholl Manufacturing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at 211 West Shiller Street in the city of Chicago, State of Illinois.

Respondent is now, and has been for several years last past, engaged in the manufacture, sale, and distribution of certain devices known as "Dr. Scholl's Zino-Pads" and "Dr. Scholl's Kurotex Foot Plasters," and designed for the treatment of corns, bunions, and other foot ailments. Respondent causes said devices, when sold, to be transported from its aforesaid place of business in the State of Illinois or from the State of origin of the shipment thereof to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of the shipment thereof and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. 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 products by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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 advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

In relation to said device designated as Zino-Pads—

1. Pain stops instantly.
2. Pain stops the instant you apply Dr. Scholl's Zino-Pads.
3. Stops pain in one minute.
4. Corns, callouses soon lift out.
5. Ends corns.
6. — healing — pads.
7. New miracle relief from corns, callouses, bunions, sore toes.

and in relation to said device designated Dr. Scholl's Kurotex Foot Plaster—

Instantly relieves corns, sore toes, callouses, bunions, tender spots on feet and toes caused by new or tight shoes.

Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's said products, respondent represents that the use of said Dr. Scholl's Zino-Pads stops pain instantly and in 1 minute; that corns and callouses can be lifted out after the application of said Zino-Pads without the use of surgery or other aids; that the use of said Zino-Pads is a cure or remedy for corns, callouses, and bunions; that the said Zino-Pads have healing properties; that the use of said Zino-Pads abolishes shoe pressure and friction; and that the use of said Kurotex Foot Plaster instantly relieves the pain caused by corns, sore toes, callouses, bunions, and tender spots on the feet and toes caused by new or tight shoes.

PAR. 3. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact, said product or device known as "Dr. Scholl's Zino-Pads" is not a cure or remedy for corns, callouses, or bunions. Said product will not relieve pain instantly or in 1 minute, any relief from pain afforded by the use of said product being gradual. The use of said product will not make it possible to lift out corns or callouses without the use of surgery, although in some cases, as a result of relieving the pressure of shoes, it may be possible to peel off or remove layers of the corn. Said Zino-Pads have no healing qualities. The use of respondent's product "Kurotex Foot Plaster" does not instantly relieve the pain caused by corns, sore toes, callouses, bunions, or tender spots on the feet caused by new or tight shoes, but would give only such degree of relief as would follow from the protection from outside pressure and friction, and then only as long as these pads were employed or worn for protective purposes.

Findings

32 F. T. C.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements disseminated as aforesaid, has the capacity and tendency to and does mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's products or devices.

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 August 20, 1940, issued and served its complaint in this proceeding upon respondent, Scholl Manufacturing Co., Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On September 14, 1940, respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the 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. The respondent, Scholl Manufacturing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at 211 West Shiller Street, in the city of Chicago, State of Illinois.

Respondent is now, and has been for several years last past, engaged in the manufacture, sale, and distribution of certain devices known as "Dr. Scholl's Zino-Pads" and "Dr. Scholl's Kurotex Foot Plasters," and designed for the treatment of corns, bunions, and other foot ailments.

Respondent causes said devices, when sold, to be transported from its aforesaid place of business in the State of Illinois or from the State of origin of the shipment thereof to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of the shipment and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. 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 products by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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 United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

In relation to said device designated as Zino-Pads:

1. Pain stops instantly.
2. Pain stops the instant you apply Dr. Scholl's Zino-Pads.
3. Stops pain in one minute.
4. Corns, callouses soon lift out.
5. Ends corns.
6. — — healing — — pads.
7. New miracle relief from corns, callouses, bunions, sore toes.

and in relation to said device designated Dr. Scholl's Kurotex Foot Plaster:

Instantly relieves corns, sore toes, callouses, bunions, tender spots on feet and toes caused by new or tight shoes.

Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, all of which

Conclusion

32 F. T. C.

purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's said products, respondent represents that the use of said Dr. Scholl's Zino-Pads stops pain instantly and in 1 minute; that corns and callouses can be lifted out after the application of said Zino-Pads without the use of surgery or other aids; that the use of said Zino-Pads is a cure or remedy for corns, callouses, and bunions; that the said Zino-Pads have healing properties; and that the use of said Kurotex Foot Plaster instantly relieves the pain caused by corns, sore toes, callouses, bunions, and tender spots on the feet and toes caused by new or tight shoes.

PAR. 3. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact, said product or device known as "Dr. Scholl's Zino-Pads" is not a cure or remedy for corns, callouses, or bunions. Said product will not relieve pain instantly or in 1 minute, any relief from pain afforded by the use of said product being gradual. The use of said product will not make it possible to lift out corns or callouses without the use of surgery, although in some cases, as a result of relieving the pressure of shoes, it may be possible to peel off or remove layers of the corn. Said Zino-Pads have no healing qualities. The use of respondent's product "Kurotex Foot Plaster" does not instantly relieve the pain caused by corns, sore toes, callouses, bunions, or tender spots on the feet caused by new or tight shoes, but would give only such degree of relief as would follow from the protection from outside pressure and friction, and then only as long as these pads were employed or worn for protective purposes.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements disseminated as aforesaid, has the capacity and tendency to and does mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's products or devices.

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.

13.

Order

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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said 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 respondent, Scholl Manufacturing Co., 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, or distribution of its products, "Dr. Scholl's Zino-Pads" and "Dr. Scholl's Kurotex Foot Plasters," whether sold under the same name or any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that the use of said "Dr. Scholl's Zino-Pads" stops pain instantly, or in 1 minute; that corns or callouses can be lifted out after the application of said "Dr. Scholl's Zino-Pads" without the use of surgery or other aids; that the use of said "Dr. Scholl's Zino-Pads" is a cure or remedy for corns, callouses, or bunions; that said "Dr. Scholl's Zino-Pads" have healing properties; or that the use of said "Kurotex Foot Plasters" instantly relieves the pain caused by corns, sore toes, callouses, bunions, or tender spots on the feet caused by new or tight shoes, or gives any degree of relief for such conditions in excess of that which follows from the protection from outside pressure and friction, or gives any relief from such conditions except during the time that said "Kurotex Foot Plasters" are worn.

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 "Dr. Scholl's Kurotex Foot Plasters," or of said "Dr. Scholl's Zino-Pads," which advertisements contain any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent shall, within 60 days after service upon 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.

IN THE MATTER OF

SAMUEL R. ISRAEL AND AL GOLDSTEIN TRADING
AS HOUSE OF ROYALSUN

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

Docket 3849. Complaint, July 14, 1939—Decision, Dec. 3, 1940

Where three partners engaged under trade name in interstate sale and distribution of various grades and types of textiles, fabrics, and knitting yarns, in substantial competition with others engaged in sale and distribution of various grades and types of such fabrics and yarns in commerce as aforesaid, in pursuance of a practice of representing falsely the constituent fiber or material of which the various products sold and distributed by them were made, and which included textile products composed of various combinations of rayon, wool, and cotton—

- (a) Represented as composed of silk certain products through use of brand names such as "New Pigment Crepe" on labels attached to particular one concerned, notwithstanding fact said product thus designated was not, as known to public from said word and designation, without modifying words, pure silk, but was in fact made from various combinations of wool, cotton, and rayon;
- (b) Represented as composed of wool certain products through use of brand names such as "Zephyr Tweed," "Oriental Tweed," "Rainbow Tweed," "Tropical Tweed," and "Scotch Tweed" on labels attached to various textile products concerned, notwithstanding facts such products were not fabrics composed entirely of wool as favorably known to substantial portion of purchasing public from words "tweed" and "worsted," but were otherwise composed of various combinations of rayon, wool, or cotton as hereinabove set forth;
- (c) Represented as composed of wool obtained from hair of the "Cashmere" goat certain products through use of brand names such as "Cashmere Sport Yarn" on labels attached to particular product, notwithstanding fact fabrics in question were not composed of such wool as understood by substantial portion of purchasing public from use of word "Cashmere" in marking of product, but were otherwise composed as hereinabove described;
- (d) Represented as composed of wool certain of their said products through the use of such brand names as "Lustre Wool" on labels attached to particular product concerned, notwithstanding fact said products were not wool but were otherwise composed as hereinabove set forth; and
- (e) Represented falsely constituent fiber or material of which certain of their said products were composed through failure to reveal in such products presence therein of rayon, chemical fiber or fabric which, when manufactured to simulate appearance and feel of either silk or wool and not properly labeled as rayon, is by purchasing public, practically indistinguishable from silk or wool as case may be; and

Where said partners engaged as aforesaid, in statements, descriptive, or purportedly descriptive, of their said business—