

Syllabus

IN THE MATTER OF

EDWARD SHILL AND SANFORD C. CHESICK, TRADING
AS THE CHESHILL MANUFACTURING COMPANY

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

Docket 4123. Complaint, May 1, 1940—Decision, Jan. 22, 1941

Where two individuals engaged in interstate sale and distribution of their
"Safety-Bell Chain Lock" door device—

- (a) Represented, through use of word "Manufacturing" in trade name employed by them, and through display thereof and word "Manufacturers" and "Manufactured" in letterheads and other advertising, as case might be, and on cartons of their products, that they were manufacturers of said and other patented protective devices, facts being they did not own, operate, or control any factory wherein any of said products were made, and were in no sense manufacturers thereof, or a manufacturer, by purchase from whom, direct, according to common belief among wholesalers, retailers, and members of purchasing public, superior grade of merchandise can be secured and at considerable saving in price, due to elimination of middlemen's profit and for other reasons; and
- (b) Represented and implied that said device and other protective or safety devices offered and sold by them were patented, and that application for patent on said "Safety Bell Chain Lock" or some of the parts thereof was pending in the United States Patent Office, through such statements as "* * * Manufacturers of Patented Protective Devices * * *," and "Safety Bell Chain Locks, The Automatic Burglar Alarm * * * Pat. Pend.," facts being they were not holders of letters patent on said "Safety Bell Chain Lock" device or any protective devices or other articles of commerce, and had not applied for patent on former or any of the parts thereof, and had no such application pending, none of their said devices was a patented product or one for which application for patent was pending, and, as such, article which, according to common belief among wholesalers, retailers and members of purchasing public, is a superior product and one to be preferred over nonpatented article or one for which application for patent has not been made;

With effect, through use of word "Manufacturing" by them in their trade name and of other representations and implications aforesaid, of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that they were the manufacturers of protective devices and that they manufactured said "Safety Bell Chain Lock" device in factory owned, operated or directly and absolutely controlled by them, and that said device was patented or that an application for patent for said device or some of the parts thereof was pending, and with result, as consequence of such erroneous and mistaken belief, that substantial number of members of purchasing public brought substantial volume of their said device in commerce:

Complaint

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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 and practices in commerce.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Robbins & Robbins, of New York City, for Edward Shill.

Cole & Cole, of Hartford, Conn., and *Mr. Mathew Vener*, of New York City, for Sanford C. Chesick.

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 Edward Shill and Sanford C. Chesick, individually, and trading as The Cheshill Manufacturing Co., hereinafter referred to as respondents, have 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. Edward Shill and Sanford C. Chesick, are individuals trading and doing business under the name of The Cheshill Manufacturing Co. with their principal place of business located at 501 Seventh Avenue, New York, N. Y.

PAR. 2. Respondents, Edward Shill and Sanford C. Chesick, are now, and for more than 1 year last past have been engaged in the sale and distribution of chain door locks, equipped with so-called safety bells, which are sold under the name Safety Bell Chain Locks. Respondents cause their product, when sold by them, to be transported from their 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.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Safety Bell Chain Locks 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 their said business and for the purpose of inducing the purchase of their said product, respondents by means of advertising matter printed on letterheads, billheads, and on cartons containing their said product, and by other means, have falsely represented that they are manufacturers of said Safety Bell Chain Locks and other patented protective devices.

Respondents further, in the course and conduct of their said business, have sold and distributed said locks with the legend "Pat. Pend." stamped or braized in raised letters on the metal base thereof.

Among and typical of the representations contained in said false advertisements so used and disseminated, as aforesaid, are the following:

The Cheshill Manufacturing Co.
Manufacturers of
Patented Protective Devices
501 Seventh Avenue
New York, N. Y.

Safety Bell Chain Locks
The Automatic Burglar Alarm.
Manufactured and Guaranteed By
Cheshill Manufacturing Co.
501 Seventh Ave., New York, N. Y.

Cheshill Company, New York, N. Y.
Pat. Pend.

In the manner aforesaid, respondents represent and imply that said Safety Bell Chain Locks are patented and that an application for patent on said Safety Bell Chain Locks or some of the parts thereof is pending in the United States Patent Office, and that respondents are manufacturers of said product and that they own, operate or directly and absolutely control the factory in which said locks are made.

PAR. 4. There is a common belief among wholesalers, retailers, and members of the purchasing public that a superior grade of merchandise can be secured by purchasing direct from the manufacturer thereof, and at a considerable saving in price due to the elimination of the middleman's profit and for other reasons, and that a patented product, or one for which an application for patent is pending, is a superior product and one to be preferred over a nonpatented article or one for which an application for patent has not been made.

PAR. 5. The foregoing representations are grossly exaggerated, misleading, and untrue. In truth and in fact, respondents do not own, operate, or directly and absolutely control any factory and they are in no sense the manufacturers of said locks.

The respondents are not the holders of letters patent on said locks or any protective devices or other articles of commerce, and they have not applied for, nor do they have pending, a patent for their said Safety Bell Chain Locks or any of the parts thereof.

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PAR. 6. The use by the respondents of the aforesaid representations and implications has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that respondents are the manufacturers of said Safety Bell Chain Locks and that they own, operate or directly and absolutely control the factory in which said locks are made, and that said locks are patented or that an application for patent is pending for said locks or some of the parts thereof, and because of said erroneous and mistaken belief a substantial number of members of the purchasing public have purchased a substantial volume of respondents' said Safety Bell Chain Locks in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents 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 May 1, 1940, issued, and subsequently served, its complaint in this proceeding upon respondents Edward Shill and Sanford C. Chesick, individually and trading as The Cheshill Manufacturing Co., charging them 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 an answer thereto by respondent Sanford C. Chesick, no answer having been filed by respondent Edward Shill, testimony and other evidence in support of the allegations of said complaint were introduced by Jesse D. Kash, attorney for the Commission, and in opposition to the allegations of the complaint by Abraham Robbins, attorney of the firm of Robbins and Robbins, 522 Fifth Avenue, New York, N. Y., appearing as counsel for respondent Edward Shill, and by Cyril Cole, attorney of the firm of Cole and Cole, 242 Trumbull Street, Hartford, Conn., and Mathew Vener, attorney, 110 William Street, New York, N. Y., appearing as counsel for respondent Sanford C. Chesick, before Lewis C. Russell, a trial 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.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer of respondent Chesick thereto, testimony and other evidence, and brief in support of the complaint (no brief having been filed by either respondent, and oral argument not having been requested); 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. Respondents, Edward Shill and Sanford C. Chesick, are individuals trading and doing business under the name of The Cheshill Manufacturing Co., with their principal place of business located at 501 Seventh Avenue, New York, N. Y.

PAR. 2. Respondents, Edward Shill and Sanford C. Chesick, have been since March 27, 1937, engaged in the sale and distribution of a chain door lock device equipped with a so-called safety bell, which were sold under the name "Safety-Bell Chain Lock." Respondents cause their product when sold by them to be transported from their aforesaid place of business in the State of New York to the purchasers thereof located in various other States of the United States and the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said "Safety-Bell Chain Lock" device 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 their said business and for the purpose of inducing the purchase of their said product, respondents, by means of advertising matter printed on letter-heads, bill-heads, and on cartons containing their said product, and by other means, have falsely represented that they are manufacturers of said "Safety-Bell Chain Lock" device and other patented protective devices.

Respondents further, in the course and conduct of their said business, have sold and distributed said locks with the legend "Pat. Pend." stamped or braised in raised letters on the metal base thereof.

Among and typical of the representations contained in said false advertisements so used and disseminated, as aforesaid, are the following:

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The Cheshill Manufacturing Co.
Manufacturers of
Patented Protective Devices
501 Seventh Avenue
New York, N. Y.

Safety Bell Chain Locks
The Automatic Burglar Alarm.
Manufactured and Guaranteed By
Cheshill Manufacturing Co.
501 Seventh Ave., New York, N. Y.
Cheshill Company, New York, N. Y.
Pat. Pend.

In the manner aforesaid, respondents represent and imply that the safety devices offered for sale and sold by them are patented and that an application for patent on said "Safety Bell Chain Lock" device or some of the parts thereof is pending in the United States Patent Office, and that respondents are the manufacturers of said products.

Through the use of the word "manufacturing" in the trade name "The Cheshill Manufacturing Co.," respondents represent that they are the manufacturers of the products offered for sale and sold by them.

PAR. 4. The representations made and used by the respondents as set out in paragraph 3 hereof are grossly exaggerated, misleading and untrue. In truth and in fact respondents are in no sense the manufacturers of any of said products. They do not own, operate, or control any factory wherein any of said products are made or manufactured.

Respondents are not the holders of letters patent on said "Safety Bell Chain Lock" device or any protective devices or other articles of commerce, and they have not applied for a patent for their said "Safety Bell Chain Lock" device or any of the parts thereof, nor do they have any such application pending.

PAR. 5. There is a common belief among wholesalers, retailers, and members of the purchasing public that a superior grade of merchandise can be secured by purchasing direct from the manufacturer thereof, and at a considerable saving in price due to the elimination of the middleman's profit and for other reasons, and that a patented product, or one for which an application for patent is pending, is a superior product and one to be preferred over a nonpatented article or one for which an application for patent has not been made.

PAR. 6. The use by the respondents of the word "manufacturing" in their trade name and of the other representations and implications

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aforesaid, has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that respondents are the manufacturers of protective devices and that they manufacture said "Safety Bell Chain Lock" device in a factory owned, operated or directly and absolutely controlled by them, and that said lock device is patented or that an application for patent is pending for said lock device or some of the parts thereof. As a result of such erroneous and mistaken belief, a substantial number of members of the purchasing public have purchased a substantial volume of respondents' said "Safety Bell Chain Lock" device in commerce between and among the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are 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, the answer of the respondents, testimony and other evidence taken before Lewis C. Russell, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of the allegations of the complaint, no brief having been filed or oral argument requested by respondents' counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Edward Shill and Sanford C. Chesick, individually, and trading as The Cheshill Manufacturing Co., or any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of a chain door lock device, designated, and sold under the name, "Safety Bell Chain Lock," or any other such device or product whether sold under that name or some other name or names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Order

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1. Using the word "manufacturing" or any other word or words of similar import and meaning as a part of the trade or corporate name under which the respondents conduct their business, unless and until such respondents actually own and operate or directly and absolutely control a manufacturing plant wherein the products offered for sale and sold by them are manufactured.

2. Representing that respondents are the manufacturers of said "Safety Bell Chain Lock" device, or any other safety device, or any other product.

3. Representing that said "Safety Bell Chain Lock" device, or any other safety device, is patented or that an application for patent for such device is pending, when such is not the fact.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

A. F. DUVERGER, DOING BUSINESS AS NATIONAL
DISTRIBUTORS AND INCOME AUDIT SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3616. Complaint, Sept. 30, 1933—Decision, Jan. 23, 1941*

Where an individual engaged in compilation of his "Income Audit Service," comprising a bookkeeping, accounting, or business record system consisting of bound record for recording business transactions, and including so-called free advisory service in which, upon request, he gave advice concerning Federal income tax, social security and accounting questions, and agreement to aid and assist in the preparation and submission of the purchaser's Federal income tax return and to indicate thereon all purchaser's deductions, allowances, exemptions and credits, and in sale and distribution of said "Income Audit Service" to purchasers thereof in other States and in the District of Columbia, upon a down-payment and c. o. d. balance basis, through representatives, salesmen, agents, and canvassers, and through the mails, in active and substantial competition with others engaged in sale and distribution of like or similar systems and service in commerce as aforesaid, and including many who sell and distribute their systems without making any representation that same are offered or sold by Government or that their purchase by user is compulsory or required by law, or that heavy penalties will accrue if person solicited fails to buy same—

- (a) Represented, directly and indirectly, and impliedly and inferentially, through the mails and through methods employed by his representatives, etc., under his direction, control and supervision, and particularly to small businessmen and including immigrants and poorly educated people, that his representatives, salesmen, agents and canvassers were officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury, and that the purchase and use of a bookkeeping, accounting or business record system, and more particularly, of his said "Income Audit Service", was necessary or required under laws of the United States or under rules, regulations or orders of some department or agency thereof, and that his said "Income Audit Service" emanated from or was sold and distributed under the auspices of United States Government or aforementioned Income Tax Unit; and
- (b) Represented that his said "Income Audit Service" was the only bookkeeping, accounting or business record system approved by United States Government or said unit, and that all other systems or services in use must be removed and replaced by his said service, and that prospective purchasers who failed to purchase and use his said service or who did not comply with requests or demands of his representatives, etc., as made by them in connection with sale of his said service, would, as result of