

Complaint

32 F. T. C.

IN THE MATTER OF

E. B. HALL, TRADING AS E. W. HALL

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

Docket 4330. Complaint, Oct. 3, 1940—Decision, Feb. 5, 1941

Where an individual engaged in interstate sale and distribution of his "Texas Wonder" medicinal preparation in advertisements thereof which he disseminated and caused to be disseminated through the mails and newspapers and periodicals, and by radio continuities, and in circulars, leaflets, pamphlets, and other advertising literature, and otherwise in commerce and by various means, and including also use of purported testimonial letters or excerpts thereof in pamphlets, booklets and other advertising copy—

Represented, directly and through inference, that his said product constituted a cure or remedy for, and possessed substantial therapeutic value in treatment of, kidney and bladder disorders, including inflammation of bladder and kidneys, stones in kidneys, and tuberculosis of kidneys, diabetes, rheumatism, swollen joints, weak and lame back, pains in the back, and lumbago, facts being it did not constitute a cure or remedy for said various ailments and conditions or possess any therapeutic value in the treatment thereof, in excess of such slight symptomatic relief as it might afford in cases of swollen joints and pains in the back by reason of its properties as a mild diuretic;

With the effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false representations were true, and with result, as consequence of such erroneous and mistaken belief, that purchasing public was induced to and did purchase substantial quantities of his said product:

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. J. W. Brookfield, Jr. for the Commission.

Flynn & Mohrman, of St. Louis, Mo., 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 E. B. Hall, an individual trading as E. W. Hall, 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. Respondent, E. B. Hall, is an individual doing business under the trade name of E. W. Hall, with his principal office and place of business located at 3679 Olive Street, in the city of St. Louis, State of Missouri.

Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation known as "Texas Wonder," intended for use in the treatment of various ailments and conditions of the human body. In the course and conduct of his business, respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Missouri to the purchasers thereof at their respective points of location in various States of the United States other than the State of Missouri, 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. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his 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 his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his 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 advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

THE TEXAS WONDER

For Kidney and Bladder Troubles, Rheumatism and Kindred Diseases

* * * the remedy that for 47 years has been bringing relief to those who suffer from kidney, bladder, and rheumatic conditions.

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Texas Wonder is also used to help such irregularities as kidney and bladder conditions for both men and women * * * inflammation of the bladder * * * weak and lame back * * * swollen joints and so forth.

A TEXAS WONDER

For certain Irregularities of the Kidneys and Bladder and Certain So-called Rheumatic Pains

In addition to the foregoing advertisements, the respondent disseminates false advertisements in the same manner as set out above through the use of purported testimonial letters, excerpts from which the respondent places in pamphlets, booklets, and advertising copy. Among and typical of the false statements and representations contained in such excerpts are the following:

* * * she had inflammatory rheumatism for about a year. She used the remedy about two months and got well and has remained well ever since.

* * * he had kidney and bladder trouble and was relieved altogether by two weeks' treatment with the Texas Wonder.

* * * he had kidney and rheumatic trouble. He took about one bottle—"the result was that it cured me entirely"—occupying about a month. He had no return of trouble.

* * * he began using The Texas Wonder for stone in the kidneys, inflammation of the bladder and tuberculosis of the kidneys as diagnosed by his physicians. His urine contained 40% pus. One of the physicians advised that only an operation could give relief. He was operated upon without results. He began using The Texas Wonder in 1915, when his weight was 114. He was still using the medicine with wonderful results, and his weight had increased to 138 lbs.

* * * he took The Wonder for terrible pains in the back. He took a half bottle and was relieved and had no trouble since.

* * * he had lumbago and inflammation of the kidneys. He took about a quarter of a bottle and since has had no trouble.

* * * he had kidney and bladder trouble, with rheumatism. He took The Wonder for six months—having before been treated by every physician in Reynolds County without relief. He was unable to go about, when he began with The Wonder and was entirely relieved.

* * * I was cured of a false case of kidney and bladder complaint by the use of one-half bottle of The Texas Wonder.

* * * he had diabetes, his urine showing 18 per cent sugar. He took the treatment for a year or more and got all right. His weight had been reduced from 255 to 160 pounds, but was restored after treatment. He was relieved from sugar and regained his normal condition.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and other similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondent's preparation, respondent has represented, and does now represent, directly and through inference, that his said preparation constitutes a cure or rem-

edy for, and possesses substantial therapeutic value in the treatment of, kidney and bladder disorders, including inflammation of the bladder and kidneys, stones in the kidneys and tuberculosis of the kidneys, diabetes, rheumatism, swollen joints, weak and lame back, pains in the back, and lumbago.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation does not constitute a cure or remedy for inflammation of the bladder or kidneys, stones in the kidneys, tuberculosis of the kidneys, or any other disorders of the bladder or kidneys, diabetes, rheumatism, swollen joints, weak or lame back, pains in the back, or lumbago. Nor does said preparation possess any therapeutic value in the treatment of any of such ailments or conditions, in excess of such slight symptomatic relief as it may afford in cases of swollen joints and pains in the back, by reason of its properties as a mild diuretic.

PAR. 5. The use by the respondent of the foregoing false and misleading representations with respect to his said product 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 representations are true, and as a result of such erroneous and mistaken belief the purchasing public has been induced to, and has, purchased substantial quantities of respondent's product.

PAR. 6. 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 October 3, 1940, issued and on October 8, 1940, served its complaint in this proceeding upon respondent E. B. Hall, individually and trading as E. W. Hall, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. After the issuance of the said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's motion 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

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Commission. Thereafter, this proceeding regularly 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. Respondent, E. B. Hall, is an individual doing business under the trade name of E. W. Hall, with his principal office and place of business located at 3679 Olive Street, in the city of St. Louis, State of Missouri.

Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation known as "Texas Wonder," intended for use in the treatment of various ailments and conditions of the human body. In the course and conduct of his business, respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Missouri to the purchasers thereof at their respective points of location in various States of the United States other than the State of Missouri, 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. 2. In the course and conduct of his aforesaid businesss, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his 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 his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his 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 advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

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In addition to the foregoing advertisements, the respondent disseminates false advertisements in the same manner as set out above through the use of purported testimonial letters, excerpts from which the respondent places in pamphlets, booklets, and advertising copy. Among and typical of the false statements and representations contained in such excerpts are the following:

* * * she had inflammatory rheumatism for about a year. She used the remedy about two months and got well and has remained well ever since.

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* * * he had kidney and rheumatic trouble. He took about one bottle—"the result was that it cured me entirely"—occupying about a month. He had no return of trouble.

* * * he began using The Texas Wonder for stone in the kidneys, inflammation of the bladder and tuberculosis of the kidneys as diagnosed by his physicians. His urine contained 40% pus. One of the physicians advised that only an operation could give relief. He was operated upon without results. He began using The Texas Wonder in 1915, when his weight was 114. He was still using the medicine with wonderful results, and his weight had increased to 138 lbs.

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* * * he had kidney and bladder trouble, with rheumatism. He took The Wonder for six months—having before been treated by every physician in Reynolds County without relief. He was unable to go about, when he began with The Wonder and was entirely relieved.

* * * I was cured of a bad case of kidney and bladder complaint by the use of one-half bottle of The Texas Wonder.

* * * he had diabetes, his urine showing 18 percent sugar. He took the treatment for a year or more and got all right. His weight had been reduced from 255 to 160 pounds, but was restored after treatment. He was relieved from sugar and regained his normal condition.

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PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's preparation, respondent has represented, and does now represent, directly and through inference, that his said preparation constitutes a cure or remedy for, and possesses substantial therapeutic value in the treatment of, kidney and bladder disorders, including inflammation of the bladder and kidneys, stones in the kidneys and tuberculosis of the kidneys, diabetes, rheumatism, swollen joints, weak and lame back, pains in the back, and lumbago.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation does not constitute a cure or remedy for inflammation of the bladder or kidneys, stones in the kidneys, tuberculosis of the kidneys, or any other disorders of the bladder or kidneys, diabetes, rheumatism, swollen joints, weak or lame back, pains in the back, or lumbago. Nor does said preparation possess any therapeutic value in the treatment of any of such ailments or conditions, in excess of such slight symptomatic relief as it may afford in cases of swollen joints and pains in the back, by reason of its properties as a mild diuretic.

PAR. 5. The use by the respondent of the foregoing false and misleading representations with respect to his said product 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 representations are true, and as a result of such erroneous and mistaken belief the purchasing public has been induced to, and has, purchased substantial quantities of respondent's product.

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

It is ordered, That the respondent E. B. Hall, individually and trading under the name of E. W. Hall, or trading under any other name or names, 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 medicinal preparation known as Texas Wonder or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or 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 inflammation of the bladder or kidneys, stones in the kidneys, tuberculosis of the kidneys, or any other disorder of the bladder or kidneys, or for diabetes, rheumatism, swollen joints, weak or lame back, pains in the back, or lumbago; that said preparation possesses any therapeutic value in the treatment of any of said ailments or conditions, in excess of such slight symptomatic relief as it may afford in cases of swollen joints and pains in the back, by reason of its properties as a mild diuretic.

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.

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
**INTERSTATE BAKERIES CORPORATION (INTERSTATE
BAKING CORPORATION),¹ THE CONTINENTAL BAKING
COMPANY, THE SIOUX CITY BAKERY, LOCAL NO. 393
OF THE CHAUFFEURS, ETC., UNION, ET AL.**

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

Docket 3900. Complaint, Sept. 28, 1939—Decision, Feb. 6, 1941

Where (1) three corporations and four individuals engaged in manufacture of bakery products at Sioux City, Iowa, and in sale thereof in said city and State and also, in case of certain of their number, in sale and distribution of such products in other States, and engaged in competition with one another, and with corporation which, with baking plant at Omaha, shipped therefrom its products to customers in Sioux City, and also with other bakeries located without State of Iowa and which were selling bakery products in said city last referred to, (2) an unincorporated association or labor union in said city, members of which did not operate bakeries and were not engaged in trade and commerce, but were employees of bakeries and operated delivery trucks belonging thereto, and (3) seven individuals, who were officers and members of said union; following strike at said city called by said union and its officers and members, including union drivers of bakery trucks, the stopping of work and prevention of sale and distribution of bakery products, and the initiation of negotiations between the bakers of said city and said union and its members—

Entered into an agreement under which, among other things, it was provided that "Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938," and conformed thereto and made no sales of bakery products to persons who had not been operating wholesale or retail bakery routes in said city prior to date aforesaid;

With the result that—

(1) Independent route men who theretofore had been buying bakery products from bakeries located without the State and shipped and delivered in city aforesaid to themselves, by whom they were sold to general purchasing public, were forced, by the threats of members of said union, who, following said agreement, accosted such independent route men, to cease operations and go out of business;

(2) Corporation above referred to, with Omaha plant and which was not party to aforesaid contract and agreement and undertook to continue shipping, first directly and then indirectly, to independent route man in

¹ Complaint dismissed, however, as to respondent named by terms of cease and desist order entered against other respondents joined in proceeding.