

Syllabus

IN THE MATTER OF

J. H. CAMP, TRADING AS J. H. CAMP, AND DRUG
PROFITS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 446. Complaint, Jan. 14, 1941—Decision, Mar. 12, 1941*

Where an individual engaged in interstate sale and distribution of his "Phalene" and "Burtone" drug-containing preparations; by advertisements disseminated through the mails and through radio continuities—

- (a) Represented, directly and by implication, that said "Phalene" was a tonic for the liver and that its use would help remove poisons that cause premature aging, and that it was a competent and effective treatment for sick headache, nauseated stomach, loss of appetite, aching muscles and joints, indigestion, and acid conditions;

Facts being it was primarily an irritant laxative and was not a tonic for the liver, effect upon which would be limited to tending to increase secretion of bile; its action in removing poisons from the system was no greater than that of any ordinary laxative; and it had no value in preventing premature aging nor in the treatment of aforesaid ailments and conditions, in excess of affording temporary relief when such conditions were due to constipation; and

- (b) Represented, directly and by implication, that said "Burtone" was a competent and effective treatment for bilious attacks, stomach nausea, headaches, indigestion, stomach gas and weak, tired-out feeling, and that it would correct faulty habits of elimination, produce free organic action of the liver and lower bowel and free the body of toxic poisons;

Facts being, said preparation's therapeutic property was limited to that of a laxative and mild choleric, it had no therapeutic value in treatment of aforesaid ailments and conditions in excess of affording temporary relief when such conditions were due to constipation, and it would not correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body from toxic poisons;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading representations were true, and because of said belief, of inducing purchase by it of products aforesaid in substantial quantities:

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. Jesse D. Kash for the Commission.

Complaint

32 F. T. C.

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 J. H. Camp, an individual trading as J. H. Camp and as Drug Profits, Inc., 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, J. H. Camp, is an individual trading as J. H. Camp and as Drug Profits, Inc., with his office and principal place of business located at Ravenswood, W. Va.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of certain preparations containing drugs, designated by him as "Phalene" and "Burtone," and recommended by him for use in treatment of various ailments and conditions of the human body.

Respondent causes the said preparations, when sold by him, to be transported from his aforesaid place of business in the State of West Virginia, 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 preparations 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 his aforesaid business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products 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 the said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the 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 by radio continuities, are the following:

Complaint

PHALENE

Reach for health with Phalene! When you feel tired, weak, worn, old—

Phalene acts to restore the normal flow of vital digestive juices—helps remove poisons that make you old before your time.

When you suffer from sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, and a tired, weak body * * * and when your condition indicates the need for anti-acid and digestive treatments give Phalene a trial.

Phalene is a guaranteed tonic for the liver.

This is an old, tried and true product * * * When you feel bad * * * when you're sluggish * * * get a bottle of Phalene tablets.

* * * was developed for use in the medical world as a laxative tonic for the liver * * *

BURTONE

A more thorough treatment when there's Bilious Attacks, Stomach Nausea, Headaches, Indigestion, Stomach Gas, and that Weak Tired-Out Feeling. These will remain—unless you correct faulty habits of the elimination; unless there's free organic action of the liver and lower bowel.—that's why we say try Burtone * * * Because Burtone now contains these helps.

Treatment: Begin the cathartic dose. Then one tablet night and morning until your tongue clears and your body feels free from toxic poisons.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents, directly and by implication, that his preparation designated "Phalene" is a tonic for the liver and that its use will help remove poisons that cause premature aging; that it is a competent and effective treatment for sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, tired, run-down condition of the body, indigestion and acid conditions. By the same means the respondent represents that "Burtone" is a competent and effective treatment for bilious attacks, stomach nausea, headaches, indigestion, stomach gas and weak, tired-out feeling; that it will correct faulty habits of elimination and produce free organic action of the liver and lower bowel; and that it will free the body of toxic poisons.

PAR. 5. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation "Phalene" is primarily an irritant laxative. This preparation is not a tonic for the liver and its effect upon the liver would be limited to tending to increase the secretion of bile by the liver. Its action in removing poisons from the system is no greater than that of any ordinary laxative, and it will have no value in preventing premature aging. Respondent's preparation has no therapeutic value in the treatment of sick headache, nauseated stomach, loss of appetite, aching

Findings

32 F. T. C.

muscles and joints, restless sleep, tired, run-down condition of the body, indigestion, or acid conditions in excess of affording temporary relief when such conditions are due to or symptomatic of constipation.

The therapeutic property of respondent's preparation "Burtone" is limited to that of a laxative and mild choleric. The preparation has no therapeutic value in the treatment of bilious attacks, stomach nausea, headaches, indigestion, stomach gas or weak, tired out feeling in excess of affording temporary relief when such conditions are due to constipation. Said preparation will not correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body from toxic poisons.

PAR. 6. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading advertisements and representations are true and to induce the purchasing public to purchase substantial quantities of respondent's preparations as a result of such erroneous and mistaken belief.

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 January 14, 1941, issued and served its complaint in this proceeding upon the respondent J. H. Camp, trading as J. H. Camp, and Drug Profits, Inc., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 22 and January 29, 1941, the respondent filed answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent J. H. Camp and W. T. Kelley, chief counsel of the Federal Trade Commission, subject to approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that said Commission may proceed upon said statement of facts, making its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and the respondent expressly waived the filing of the report upon the evidence by the trial examiner.

Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answers, and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, J. H. Camp, is an individual trading as J. H. Camp and as Drug Profits, Inc., with his office and principal place of business located at Ravenswood, W. Va.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of certain preparations containing drugs, designated by him as "Phalene" and "Burtone" and recommended by him for use in the treatment of various ailments and conditions of the human body.

Respondent causes the said preparations, when sold by him, to be transported from his aforesaid place of business in the State of West Virginia 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 preparations 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 his aforesaid business respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said products 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 the said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the 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 by radio continuities, are the following:

PHALENE

Reach for health with Phalene! When you feel tired, weak, worn, old—

Phalene acts to restore the normal flow of vital digestive juices—helps remove poisons that make you old before your time.

Findings

32 F. T. C.

When you suffer from sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, and a tired, weak body * * * and when your condition indicates the need for antacid and digestive treatments give Phalene a trial.

Phalene is a guaranteed tonic for the liver.

This is an old, tried and true product * * * When you feel bad * * * when you're sluggish * * * get a bottle of Phalene tablets.

* * * was developed for use in the medical world as a laxative tonic for the liver * * *

BURTONE

A more thorough treatment when there's Bilious Attacks, Stomach Nausea, Headaches, Indigestion, Stomach Gas, and that Weak Tired-Out Feeling. These will remain—unless you correct faulty habits of the elimination; unless there's free organic action of the liver and lower bowel.—that's why we say try Burtone * * * Because Burtone now contains these helps.

Treatment: Begin the cathartic dose. Then one tablet night and morning until your tongue clears and your body feels free from toxic poisons.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents, directly and by implication, that his preparation designated "Phalene" is a tonic for the liver and that its use will help remove poisons that cause premature aging; that it is a competent and effective treatment for sick headache, nauseated stomach, loss of appetite, aching muscles and joints, indigestion, and acid conditions. By the same means the respondent represents that "Burtone" is a competent and effective treatment for bilious attacks, stomach nausea, headaches, indigestion, stomach gas and weak, tired-out feeling; that it will correct faulty habits of elimination and produce free organic action of the liver and lower bowel; and that it will free the body of toxic poisons.

PAR. 5. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation "Phalene" is primarily an irritant laxative. This preparation is not a tonic for the liver and its effect upon the liver would be limited to tending to increase the secretion of bile by the liver. Its action in removing poisons from the system is no greater than that of any ordinary laxative, and it will have no value in preventing premature aging. Respondent's preparation has no therapeutic value in the treatment of sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, tired, run-down condition of the body, indigestion, or acid conditions in excess of affording temporary relief when such conditions are due to or symptomatic of constipation.

The therapeutic property of respondent's preparation "Burtone" is limited to that of a laxative and mild choloretic. This preparation has no therapeutic value in the treatment of bilious attacks, stomach nausea, headaches, indigestion, stomach gas or weak, tired-out feeling in excess of affording temporary relief when such conditions are due to constipation. Said preparation will not correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body from toxic poisons.

PAR. 6. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading advertisements and representations are true and to induce the purchasing public to purchase substantial quantities of respondent's preparations as a result of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of 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, the answers of respondent and the stipulation as to the facts entered into by the respondent J. H. Camp, trading as J. H. Camp, and Drug Profits, Inc., and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, the filing of a report upon the evidence by the trial examiner having been expressly waived, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent J. H. Camp, individually and trading as J. H. Camp, and Drug Profits, Inc., 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 preparations designated "Phalene" and "Burtone" or any other preparation or

Order

32 F. T. C.

preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same or any other name or names, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through implication—

(a) That the preparation "Phalene" is a tonic for the liver.

(b) That the preparation "Phalene" has any value in preventing premature aging or has any value for removing poisons from the system in excess of that afforded by an ordinary laxative.

(c) That the preparation "Phalene" has any therapeutic value in the treatment of sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, tired run-down condition of the body, indigestion, or acid conditions in excess of causing a laxative action by the intestines and thus affording temporary relief when such conditions are due to or symptomatic of constipation.

(d) That the preparation "Burtone" will correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body of toxic poisons, or that said preparation has any therapeutic value in the treatment of bilious attacks, stomach nausea, headaches, indigestion, stomach gas, or sick, tired-out feeling, in excess of affording temporary relief when such conditions are due to constipation.

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 preparations "Phalene" and "Burtone," 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 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.

Complaint

IN THE MATTER OF

LESSING HAT COMPANY, INC., AND JOSEPH LORING,
TRADING AS LORING HAT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4245. Complaint, Aug. 20, 1940—Decision, Mar. 13, 1941*

Where a corporation and an individual, who was its president and managed, controlled, and dominated its affairs and activities, engaged in manufacture of caps and hats from old, used, and second-hand hats purchased by them, through cleaning, steaming, ironing, and shaping and, in some instances, fitting with new trimmings, sweat bands, and size labels, such previously used felt hat bodies so that they had appearance of new hats and caps made from felts and other materials which had never been worn or used—

(a) Sold their said hats and caps to retailers, jobbers, and wholesalers, with no labeling, marking, or designation stamped thereon to indicate to purchasing public that they were in fact made from old hat bodies, cleaned and renovated; and

(b) Failed adequately to inform members of purchasing public that such products made by them were in fact made from old, worn, and previously used bodies, as distinguished from those made from newly manufactured materials, through stamping term "Made of Castaway Hats" on sweat bands or size labels in such a way that jobbers, wholesalers, and retailers, leaving number, could readily remove that portion of label bearing aforesaid term;

With result that, through use of said labels and other acts and practices above set forth, they placed in hands of uninformed or unscrupulous dealers means and instrumentality whereby they might deceive or mislead members of purchasing public, by whom, lacking clear and conspicuous label disclosure, articles thus made are readily taken for those of new material entirely, into erroneous and mistaken belief that they were purchasing hats and caps made from new and unused materials or from bodies from shopworn or unsalable hats, and with effect of misleading and deceiving a substantial number of wholesalers, jobbers, retailers, and members of said public into aforesaid erroneous belief and, by reason thereof, into purchase of a substantial number of said hats and caps:

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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Robert Mathis, Jr., for the Commission.

Mr. S. Jerome Loring, of Long Island, N. Y., for respondents.

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