

Complaint

IN THE MATTER OF

ACTINO LABORATORIES, INC., AND CARL LOEB

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

Docket 3813. Complaint, June 8, 1939—Decision, June 13, 1941

Where a corporation and an individual, who was its president and principal stockholder and in charge of its operations, engaged in competitive interstate sale and distribution of certain orthoptic instruments for use in treatment and correction of visual defects, accepting as trade-ins, from purchasers of its "Chrome-Orthoptoscope" certain orthoptic instruments known as "Syntonizers" made by competitors, and resold by it; in advertisements in journals or magazines circulating generally among optometrists—

(a) Represented that certain of such "Syntonizers" were new and unused, through such statements as "FOR SALE—Three Syntonizers, Latest type. Hundred dollars each. One slightly used, seventy-five dollars. * * *," and "FOR SALE.—Three Syntonizers, late type. Price \$125.00 each. * * *"; facts being all were used or second hand machines accepted by it as trade-in allowances on new purchases; and

(b) Failed to disclose in its advertising, offer and sale thereof that such instruments were used or second-hand;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and character of their products, and to cause it to purchase them as a result of the mistaken belief so engendered, and with effect of diverting trade unfairly to them from their competitors who do not misrepresent their products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Randolph Preston* and *Mr. William C. Reeves*, trial examiners.

Mr. R. P. Bellinger for the Commission.

Mr. E. Sydney Feinstein, of Chicago, Ill., 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 Trade Commission, having reason to believe that Actino Laboratories, Inc., a corporation, and Carl Loeb, an individual, hereinafter referred to as respondents, have 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 complaint, stating its charges in that respect as follows:

Complaint

33 F. T. C.

PARAGRAPH 1. Respondent, Actino Laboratories, Inc., is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its office and principal place of business located at 429 West Superior Street, Chicago, Ill. Respondent, Carl Loeb, is an individual and is president of respondent, Actino Laboratories, Inc., and as such manages, dominates, and controls its corporate affairs and activities.

PAR. 2. Respondents are now, and have been for more than 1 year last past, engaged in the business of selling and distributing orthoptic equipment. Respondents cause said products, when sold, to be transported from their place of business in Illinois to the purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said orthoptic equipment 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 business respondents are in substantial competition with other corporations and individuals, and with firms and partnerships engaged in the sale and distribution of orthoptic equipment in commerce between and among the various States of the United States and in the District of Columbia, and who truthfully represent their equipment.

PAR. 4. The orthoptic machines which respondents sell and distribute, as aforesaid, are of three different types and are designated as "Synchro-Orthoptoscopes," "Chrome-Orthoptoscopes," and "Syntonizers." Said Synchro-Orthoptoscopes and Chrome-Orthoptoscopes are products of respondents' own manufacture. The orthoptic machine designated Syntonizer is not manufactured by respondents, but is manufactured by one of respondents' competitors. Respondents, in order to induce the purchase of the machines of their own manufacture, that is, the Synchro-Orthoptoscopes and Chrome-Orthoptoscopes, by purchasers and prospective purchasers, have adopted the practice of accepting used Syntonizers from customers as part payment for their own products. Respondents thereupon sell said Syntonizers at prices substantially lower than prices charged by the manufacturers of said Syntonizers, for new unused Syntonizers.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of said Syntonizers, respondents place advertisements in newspapers and periodicals having a general circulation throughout the United States. Said advertisements are as follows:

211

Complaint

FOR SALE

THREE SYNTONIZERS

AT

\$125.00 EACH.

FOR SALE

THREE SYNTONIZERS

Latest type \$100.00 each

One slightly used, \$70.00.

ACTINO LABORATORIES, INC.

429 West Superior Street,

Chicago, Illinois.

In the manner and by the means aforesaid, respondents represent, directly and by implication, that the Syntonizers which respondents offer for sale are new Syntonizers which have never been used. In truth and in fact, said Syntonizers are not new Syntonizers but are, as above set forth, used Syntonizers which respondents have accepted from purchases of respondents' Synchro-Orthoptoscopes and Chrome-Orthoptoscopes as part payment of the purchase price of said instruments.

PAR. 6. In the course of the operation of his business as aforesaid, respondent, Carl Loeb, uses the name Dr. Carl Loeb with which to carry on his business. Said abbreviation "Dr." is used by respondent Carl Loeb in all of his advertising literature and on letterheads, invoices, and all office stationery. Over a period of many years the universally used professional designations for a medical doctor or a doctor of medicine have been, and now are, either the abbreviation "Dr." or the abbreviation "M. D.," or both. The use by the respondent, Carl Loeb, of the abbreviation "Dr." in close proximity to his name, in the manner and by the means aforesaid, serves as a representation by respondent, Carl Loeb, to prospective purchasers of respondents' orthoptic equipment that respondent, Carl Loeb, is a medical doctor or a doctor of medicine. In truth and in fact, respondent, Carl Loeb, is not a medical doctor or doctor of medicine.

PAR. 7. Each and all of the false and misleading statements and representations made by respondents in offering for sale and selling their orthoptic products, as hereinabove set forth, had, and now has, the capacity to, and does, mislead a substantial number of members

Findings

33 F. T. C.

of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true. As a direct result of this erroneous and mistaken belief members of the purchasing public have purchased a substantial number of respondents' orthoptic products, with the result that trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to respondents from their said competitors who truthfully represent their products. As a result thereof injury has been done, and is being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein above alleged are all to the prejudice and injury of the public and respondents' competitors and constitute unfair methods of competition 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 June 8, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Actino Laboratories, Inc., a corporation, and Carl Loeb, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by R. P. Bellinger, attorney for the Commission, and in opposition to the allegations of the complaint by E. Sydney Feinstein, attorney for the respondents, before trial examiners of the Commission theretofore duly designated by it, and such 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and the exceptions thereto, and briefs in support of the complaint and in opposition thereto (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. Respondent, Actino Laboratories, Inc., is a corporation organized and doing business under the laws of the State of Illinois, with its office and principal place of business located at 429 West Superior Street, Chicago, Ill. Respondent, Carl Loeb, an individual, is president of the corporate respondent and is the principal stockholder therein. He is in general charge of the operations of the corporation and formulates and controls its policies and practices.

PAR. 2. The respondents are now, and for more than 5 years last past have been, engaged in the sale and distribution of certain orthoptic instruments or machines intended for use in the treatment and correction of certain visual defects. Respondents cause their products, when sold, to be transported from their 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. Respondents maintain, and for more than 5 years last past have maintained, a course of trade in their products 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 business, the respondents are, and at all times mentioned herein have been, in substantial competition with other corporations and individuals, and with firms and partnerships, engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of orthoptic instruments intended for the same purposes as those for which respondents' products are intended.

PAR. 4. Among the instruments sold and distributed by the respondents is a certain instrument designated by them as "Chrome-Orthoptoscope," which instrument is manufactured by the respondents. In connection with the sale of this instrument the respondents accept from purchasers certain orthoptic instruments manufactured by respondents' competitors and which have been used by such purchasers, such instruments being accepted by respondents as a "trade-in" allowance on the purchase price of respondents' instrument. These used or second-hand instruments are then resold by respondents. Among the used instruments which have been obtained by respondents in this manner and resold are certain instruments known as "Syntonizers."

PAR. 5. In the course and conduct of their business and for the purpose of promoting the sale of such used instruments, the respondents have placed advertisements in certain journals or magazines

Order

33 F. T. C.

having a general circulation among optometrists. Among these advertisements were the following:

FOR SALE—Three Syntonizers, Latest type. Hundred dollars each. One slightly used, seventy-five dollars. Actino Laboratories, Inc., 429 West Superior St., Chicago.

FOR SALE—Three Syntonizers, late type. Price \$125.00 each. Actino Laboratories, Inc., 429 W. Superior St., Chicago, Ill.

PAR. 6. The Commission finds that through the use of these advertisements, and through the failure of respondents to disclose that such instruments are used or second-hand instruments, the respondents have represented that certain of the instruments are new and unused. The Commission further finds that none of such instruments are new or unused, but all of them are used or second-hand instruments, having been accepted by the respondents as trade-in allowances on new instruments.

PAR. 7. The Commission further finds that these acts and practices on the part of respondents, including the failure of respondents to disclose the true nature and character of certain of their products, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature and character of respondents' products, and to cause such portion of the purchasing public to purchase respondents' products as a result of the erroneous and mistaken belief so engendered. In consequence, trade has been diverted unfairly to the respondents from their competitors, who do not misrepresent their products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition 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 respondents, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and the exceptions thereto, and briefs filed by R. P. Bellinger, attorney for the Commission, and E. Sydney Feinstein, attorney for the respondents (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respond-

211

Order

ents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Actino Laboratories, Inc., a corporation, its officers, and Carl Loeb, individually and as an officer of said corporation, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their orthoptic instruments and machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that used or second-hand products are new or unused.

2. Advertising, offering for sale or selling used or second-hand products without disclosing that such products are in fact used or second-hand.

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.

IN THE MATTER OF

JOHN J. FULTON COMPANY

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

Docket 3819. Complaint, June 14, 1939—Decision, June 13, 1941

Where a corporation engaged in compounding its "Uvursin" medicinal preparation for diabetes, and in competitive interstate sale and distribution thereof to members of the medical profession, together with a suggested diet which it recommended for use therewith; by means of advertisements disseminated through the mails, in periodicals and other publications, and in circulars and other printed or written matter—

Represented that its said "Uvursin" had substantial therapeutic value in the treatment of diabetes mellitus and constituted a competent and effective treatment therefor, and that, when used with the recommended diet, it substantially increased the efficacy and therapeutic value of such diet as a treatment for aforesaid condition;

Facts being there is no accepted treatment for diabetes other than diet and insulin adjusted properly to meet the needs of each patient; said product was essentially a combination of crude plant materials which have enjoyed long reputation, particularly in folklore medicine, for treatment of urinary conditions, and general action of which is mildly diuretic; and use thereof, by increasing the flow of urine, would accomplish no more than possible reduction of amount of sugar therein without affecting the blood sugar level; the diet, recommended by said corporation, conformed closely to type physicians would recommend in diabetic cases and any presumed effectiveness of said product would be due to the spontaneous remissions characteristic of the disease and to dietary control of symptoms rather than to any therapeutic value in and of itself; and use thereof might be definitely harmful and even fatal to patient in giving a false sense of security and delaying inauguration of effective treatment, including, as required, administration of insulin, for which no substitute is known to modern medicine;

With the effect of misleading purchasers and prospective purchasers into the erroneous and mistaken belief that aforesaid false and misleading representations were true, and into the purchase of substantial quantities of its said medicinal preparation, thereby diverting trade unfairly to it from competitors:

Held, That such acts and practices, as above set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

Mr. William L. Pencke and *Mr. Donovan Divet* for the Commission.

Mr. Zach Lamar Cobb, of Los Angeles, Calif., 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