

Complaint

IN THE MATTER OF

OZON CHEMICAL COMPANY, INC., ALSO TRADING AS
DUNCAN CHEMICAL CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4421. Complaint, Dec. 17, 1940—Decision, Sept. 5, 1941*

Where a corporation engaged in interstate sale and distribution of its "Duncan's Ozon"; by means of newspaper advertisements and circular letters, directly or by implication—

Represented that its said preparation constituted a cure or remedy and competent and effective treatment for colds, coughs, sore throat, athlete's foot, and poison ivy, and that it was an effective preventive of coughs and sore throat, facts being the product in question, which was made from a variety of pine oil and was a counter-irritant and aromatic, possessing slight expectorant and antiseptic properties, was of no therapeutic value in the treatment of poison ivy, athlete's foot, or sore throat, was not an effective preventive thereof or of coughs, and did not constitute a cure for colds, although capable of affording some relief from the symptoms thereof because of such expectorant properties;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its said preparation possessed therapeutic properties which it did not in fact possess, and to cause it to purchase substantial quantities of said preparation as a result of such belief:

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. Robert S. Hall*, trial examiner.

Mr. Charles S. Cox 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 Ozon Chemical Co., Inc., a corporation, also trading as Duncan Chemical Co., 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, Ozon Chemical Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and having its principal place of business at 607 Delmonte Way, St. Louis, Mo. Respondent also trades from said address as Duncan Chemical Co.

PAR. 2. The respondent is now and for more than two years last past has been engaged in the business of selling and distributing a medicinal preparation designated as "Duncan's Ozon." In the course and conduct of its business, respondent causes its said medicinal preparation, when sold, to be transported from its place of business in the State of Missouri to the purchasers thereof located 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 herein mentioned has maintained, a course of trade in said medicinal preparation 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 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 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 its said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of 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 and by pamphlets, circulars, and other advertising literature, are the following:

For * * * poison ivy, athlete's foot.

Now is the time of the year when your demand for COLD remedies should begin to grow.

DUNCAN'S OZON is one of the best preventives and treatments of sore throat and coughs, that is known. It is a natural household remedy and no family medicine chest can afford to be without a bottle.

At the first sign of approaching sore throat, this medicine can be applied with a swab and instantly relief is had, and in most cases, infection is stopped and cold avoided.

By the same method of treatment it can be used as a COUGH MEDICINE and in most cases will stop a cough instantly.

Prescribed by physicians and hospitals.

Manufactured and distributed by

DUNCAN CHEMICAL CO.,

607 Delmonte Way,

St. Louis, Missouri.

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PAR. 4. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondent represents and has represented, directly or by implication, that its said preparation constitutes a cure or remedy and a competent and effective treatment for colds, coughs, sore throat, athlete's foot, and poison ivy, and is an effective preventive of colds, coughs and sore throat; that said preparation is recommended by physicians generally and is in general use in hospitals. Respondent further represents that it manufactures or compounds its said preparation.

PAR. 5. The aforesaid representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation does not constitute a cure or remedy nor a competent or effective treatment for colds, coughs, sore throat, athlete's foot or poison ivy, nor is said preparation an effective preventive of colds, coughs, or sore throat. Said preparation is composed principally of pine oil, and is of no substantial therapeutic value in either the treatment or the prevention of any of the ailments or conditions mentioned. Said preparation is not recommended by physicians generally, nor is it in general use in hospitals. Respondent does not manufacture or compound said preparation but obtains said preparation from other sources.

PAR. 6. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has had and now 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 representations are true, and to cause the public, because of such erroneous belief, to purchase substantial quantities of respondent's preparation.

PAR. 7. 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 December 17, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Ozon Chemical Co., Inc., a corporation, also trading as Duncan Chemical Co., charging it 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 (no answer being filed by re-

spondent), testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before Robert S. Hall, a trial examiner 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, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (respondent not having filed brief 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. Respondent, Ozon Chemical Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Missouri and having its principal place of business at 607 Delmonte Way, St. Louis, Mo. Respondent also trades under the name Duncan Chemical Co.

PAR. 2. Respondent is now, and since May 1938 has been, engaged in the sale and distribution of a medicinal preparation designated as "Duncan's Ozon." In the course and conduct of its business respondent causes its preparation, when sold, to be transported from its place of business in the State of Missouri to purchasers thereof located in various other States of the United States, including, among others, the States of Illinois, Kentucky, Tennessee, and Alabama. Respondent maintains, and since May 1938 has maintained, a course of trade in its preparation in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business respondent advertises its preparation by means of advertisements inserted in newspapers which have general circulation among and between various States of the United States. Respondent also makes use of circular letters, which are sent by it through the United States mails to purchasers and prospective purchasers of its preparation. All of respondent's advertisements and advertising material are for the purpose of inducing, and are likely to induce, directly or indirectly, the purchase of respondent's preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical

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of the statements and representations appearing in such advertisements and advertising material are the following:

For * * * poison ivy, athlete's foot.

Now is the time of the year when your demand for COLD remedies should begin to grow.

DUNCAN'S OZON is one of the best preventives and treatment of sore throat and coughs, that is known. It is a natural household remedy and no family medicine chest can afford to be without a bottle.

At first sign of approaching sore throat, this medicine can be applied with a swab and instantly relief is had, and in most cases, infection is stopped * * *.

By the same method of treatment it can be used as a COUGH MEDICINE and in most cases will stop a cough instantly.

PAR. 4. Through the use of these statements and representations, and others of similar import, the respondent represents and has represented, directly or by implication, that its preparation constitutes a cure or remedy and a competent and effective treatment for colds, coughs, sore throat, athlete's foot, and poison ivy, and that it is an effective preventive of coughs and sore throat.

PAR. 5. Respondent's preparation is made from a certain kind or variety of pine oil. The oil is made from long leaf yellow pine, being steam distilled from the wood. The oil is removed from the wood by subjecting the ground-up wood to the action of live steam. The oil is volatilized along with the steam, after which it condenses.

PAR. 6. The expert testimony in the record shows, and the Commission finds, that respondent's preparation is a rubifacient or counter-irritant, that it is aromatic, and possesses expectorant properties to a slight degree. It also possesses antiseptic properties but not to any substantial degree, and it is seldom prescribed by physicians for that purpose, there being other drugs which are much more effective.

The preparation is of no therapeutic value in the treatment of poison ivy or athlete's foot. Athlete's foot is a fungus infection of the skin and in order to treat the condition successfully it is necessary to destroy the fungi. To do this the drug used must be able to penetrate the dead skin which contains the fungi, and must be sufficiently antiseptic to destroy the fungi. While pine oil is mildly antiseptic and will penetrate the skin to a limited extent, these properties are insufficient to reach and kill all of the fungi in the deeper layers of the skin.

Nor is respondent's preparation of any therapeutic value in the treatment of sore throat. Sore throat is caused by an infection either of the tonsils or the mucous membrane of the throat. The properties of pine oil are not sufficient to have any substantial effect upon the condition. Nor is pine oil an effective preventive of sore throat.

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While certain pine oil products are sometimes incorporated in cough remedies, they are usually combined with expectorants, sedatives, or other drugs, these being more effective than the pine oil constituent. Used alone, pine oil has no therapeutic value in the treatment of coughs in excess of such relief as may be afforded by its expectorant properties, which may tend to afford some comfort to the patient. Pine oil is not an effective preventive of coughs.

Pine oil does not constitute a cure or remedy for colds, although it is capable of affording some relief for the symptoms of colds.

PAR. 7. The Commission therefore finds that respondent's representations with respect to its preparation, as set forth in paragraphs 3 and 4 hereof, are grossly exaggerated, misleading, and deceptive, and constitute false advertisements.

PAR. 8. The Commission further finds that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation possesses therapeutic properties and values which it does not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's preparation as a result of such belief.

CONCLUSION

The acts and practices of the respondent as herein found are all 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 (no answer having been filed by respondent), testimony and other evidence taken before Robert S. Hall, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ozon Chemical Co., Inc., a corporation, also trading as Duncan Chemical Co., and its officers, representatives, agents, and employees, directly or through any cor-

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porate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparation designated "Duncan's Ozon," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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 inference:

(a) That said preparation constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of, sore throat, poisoning, or athlete's foot.

(b) That said preparation constitutes a cure or remedy for colds or coughs, or that it possesses any therapeutic value in the treatment of coughs in excess of such comfort as it may afford by reason of its expectorant properties.

(c) That said preparation is an effective preventive of sore throat or coughs.

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 heréof.

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.

Complaint

33 F. T. C.

IN THE MATTER OF
CONTINENTAL PREMIUM MART

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

Docket 4462. Complaint, Feb. 11, 1941—Decision, Sept. 5, 1941

Where a corporation engaged in the competitive interstate sale and distribution of novelty jewelry, fountain pens, billfolds, knives, wearing apparel, carnival supplies, lamps, premium novelties and other merchandise, including three assortments of its merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumer, and which consisted of a large cardboard carton enclosing a pull card and a number of smaller cartons, each containing an article of merchandise, and bearing on the end a number, function of which was to determine the chance recipient of the particular article, dependent upon the securing of the corresponding number from the pull card so that which of such articles—many of greater retail value than the 10 cents paid for a chance—purchaser received was determined wholly by lot—

Sold such assortments, directly or indirectly, to dealers and retailers by whom they were exposed for sale and sold to the purchasing public in accordance with the aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of its merchandise, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to use any sales methods involving chance or contrary to public policy, and refrain therefrom;

With the result that many dealers in and ultimate consumers of said merchandise were attracted by its said sales plans, and were thereby induced to buy its said merchandise in preference to that of aforesaid competitors, with effect of unfairly diverting trade to it from them; to the substantial injury of competition in commerce:

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 and unfair acts and practices therein.

Before *Mr. John W. Addison*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Joseph H. Bilansky, of Milwaukee, Wis., 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 Continental Premium Mart, a corporation, hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Com-