

IN THE MATTER OF

SPENCER SYSTEM, AND JOHN L. SHEA, WILLIAM J. HAGERTY, JEAN G. MITCHIE, AND GLENDA S. HILLS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4350. Complaint, Oct. 16, 1940—Decision, Sept. 12, 1941

Where a concern, organized as a Massachusetts trust, and four individuals in charge of its business, determining and carrying out its policies and practices, engaged in interstate sale of courses of instruction, including lesson sheets, tools, and materials, in the design and fabrication of arch supports and foot exercisers, and in a system of foot correction and culture; in circulars, letters and pamphlets, and in advertisements in periodicals of general circulation, directly and indirectly—

- (a) Represented that the structure of the foot is simple, that anyone of ordinary intelligence who could read and write could readily master their courses and become proficient therein, that their treatment was infallible, that the instruction could be given by mail and the necessary knowledge and proficiency acquired in 10 weeks or less, and that by reason of such mastery and the use of their system of foot culture and arch supports made by their method, student would be able to determine whether or not a person required arch supports and prescribe, design and fabricate the proper supports, and diagnose as surgical or nonsurgical all foot ailments or conditions; and
- (b) Represented further that student would be able to correct, overcome and cure all foot troubles, other than those requiring operative surgery, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty or too dry feet, calluses, chilblains, foot neuralgia, hammer or Morton's toes, stretched ligaments, enlarged joints and bunions, and prevent the growth of corns and bunions;

The facts being the structure of the foot is not simple; adequate correction of arch troubles, diseases, and ailments of the feet, and the proper designing of arch supports, require a diagnosis which can be properly made only by one familiar not only with the structure and physiology of the feet but also of the rest of the body; the knowledge necessary for proper diagnosis of all foot troubles as surgical or nonsurgical, and the application of adequate corrective or curative methods to latter conditions by arch supports, exercises, or otherwise, cannot be imparted by mail, in the short time indicated, to the ordinary literate person, and cannot be acquired from their courses of instruction; proper arch support cannot be made by one without substantial practical experience and training, and those mastering the course cannot be assured, in all cases of nonsurgical foot conditions or diseases, of successful results from use of the corrective system as taught, either with or without use of exercises of their design or arch supports made and fitted in accordance with their instructions; and

- (c) Falsely represented that the student would learn how to obtain trade without solicitation, delay, or expense, and was assured, by mastery of the course, of a paying business and large income;

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With tendency and capacity to mislead and deceive purchasers and prospective purchasers of their said courses of instruction into the erroneous belief that such representations were true, and to induce a substantial part of the public, because of such mistaken belief, to purchase the same:
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. Randolph Preston*, trial examiner.

Mr. Randolph W. Branch 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 Spencer System, a Massachusetts trust, John L. Shea, William J. Hagerty, Jean G. Mitchie, and Glenda S. Hills, individually and as trustees of said trust, 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:

PARAGRAPH 1. The said respondent, Spencer System, is a Massachusetts trust, organized under the laws of the Commonwealth of Massachusetts and having an office and principal place of business at 55 Belvidere Street in the city of Boston, Mass., with respondents John L. Shea, William J. Hagerty, Jean G. Mitchie, and Glenda S. Hills as its trustees. The said trustees are in charge of the business conducted by said trust, and determine and carry out its policies and practices.

PAR. 2. Respondents are now, and have been for more than 6 months last past, engaged in the business of selling courses of instructions and instructing students in the design and fabrication of arch supports and "foot exercisers" and in a system of foot correction and culture.

The conduct of such courses of instruction contemplates and results in the transportation from respondents' place of business in the Commonwealth of Massachusetts to students located in various States of the United States, of information, textual matter, charts, tools, materials and other things useful or necessary in such courses of study, and from students to respondents of reports and specimens of their work.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses, including said lesson sheets, tools, materials and other things, in commerce between and among 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 courses of instruction,

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respondents have engaged in the practices of distributing circulars, letters, and pamphlets containing claims with respect to said courses, the proficiency and ability which will be acquired, and the financial rewards to be anticipated, by those who purchase and master said courses of instruction, to be distributed between and among the various States of the United States and in the District of Columbia, and of causing advertisements containing similar claims to be inserted in magazines and periodicals of general circulation between and among the various States of the United States, and in the District of Columbia.

Among and typical of such claims are the following:

We * * * teach you the simple construction of the foot, foot culture and the use of the exercisers * * *

The course of instructions is easy to master by anyone of ordinary intelligence who can read and write.

You can enter this new profession of arch support making and foot culture methods by becoming proficient in this system.

The foot exercisers are sold outright or rented to the customer, who uses them or any other instructions suggested to him, in his own home, a few minutes daily, which overcome flat foot, distorted toes, weak feet, painful heel, aching, sweaty, or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toes, prevents bunions, corns, etc. by correcting them at the source.

There are twenty-six delicately suspended small bones in the foot which are easily displaced. Falling arches, crooked toes, weak feet, flat foot, stretched ligaments, enlarged joints, callosities and bunions are not natural to the normal feet. Through the use of foot culture methods and adjustment by this system, in cases where operative surgery is not required, and by wearing made to individual impression arch supports, the results obtained are practically one hundred percent efficient.

In addition thereto you are instructed in foot culture methods and certain exercises that tend to correct foot troubles of every kind that do not require operative surgery * * *

The superior quality of the Spencer System for overcoming foot troubles of every kind that do not require operative surgery * * *

Instruction by correspondence in many lines is an established means today.

You can complete these instructions in your own home in ten weeks, or in a shorter period * * *

We also teach you a business plan that is successful, and brings customers without waiting for them to hear of your ability. Years of experience of other operators have shown how to get trade without soliciting, expense or delay.

You can have **MORE INCOME.**

* * * a new business that will earn you more than a good living anywhere * * *

There are no "ifs" about this business paying, it does it.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and indirectly, among other things, that the structure of the foot is simple; that anyone of ordinary intelligence who can read and write can readily

master respondents' courses of instruction in arch support making and foot culture and become proficient therein; that by reason of such mastery and the use of respondents' system of foot culture and arch supports made by respondents' method, the student will be able to determine whether or not a person requires arch supports, prescribe, design and fabricate the proper supports, diagnose as surgical or nonsurgical all foot ailments or conditions and correct, overcome and cure all foot troubles other than those requiring operative surgery, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toes, stretched ligaments, enlarged joints and bunions and prevent the growth of corns and bunions; that respondents' treatment is, to all practical intents and purposes, infallible; that this instruction can be given by mail and the necessary knowledge and proficiency acquired in ten weeks or less; that the student will learn how to obtain trade without solicitation, delay or expense and is assured, by the mastery of the course, of a paying business and a large income.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact the structure of the foot is not simple. The adequate correction of arch troubles, diseases and ailments of the feet, and the proper designing of arch supports, require, as a preliminary, a diagnosis which can be properly made only by one familiar not only with the structure and physiology of the feet but of the rest of the body. The knowledge necessary for the proper diagnosis of all foot troubles as surgical or nonsurgical, and the application of adequate corrective or curative methods to nonsurgical conditions by arch supports, exercises, or otherwise, cannot be imparted by mail in the short time indicated by respondent to the ordinary literate person, and cannot be acquired from respondents' courses of instruction. A proper arch support cannot be made by one without substantial practical experience and training. Those mastering the course cannot in all cases of nonsurgical foot conditions or diseases, be assured of successful results from the use of the corrective system as taught, either with or without the use of exercisers of respondents' design or arch supports made and fitted in accordance with respondents' instructions. The student is not assured of a profitable business by completing the course, nor of a big income; neither is he assured that he will be able to obtain trade without solicitation, delay or expense.

PAR. 6. The use by respondents of the foregoing false and misleading misrepresentations as set forth herein, in connection with the offering for sale and sale of its said courses of instruction, has

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had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce a substantial part of the public, because of such erroneous and mistaken belief, to purchase respondents' courses.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 16, 1940, issued and on October 17, 1940, served its complaint in this proceeding upon respondents Spencer System, a Massachusetts trust, and John L. Shea, William J. Hagerty, Jean G. Mitchie, and Glenna S. Hills (the individual referred to in the complaint as Glenda S. Hills), individually, and as trustees of said trust, charging them with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondents' answer, the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and substitute thereof an answer admitting all the material allegations of fact set forth in said complaint, except the allegation in paragraph 1 of the said complaint that Jean G. Mitchie and Glenna S. Hills are trustees of respondent Spencer System, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearing before the Commission on 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. The said respondent, Spencer System, is a Massachusetts trust, organized under the laws of the Commonwealth of Massachusetts and having an office and principal place of business at 55 Belvidere Street in the city of Boston, Mass., with respondents John L. Shea and William J. Hagerty as its trustees. The said trustees are in charge of the business conducted by said trust and

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they, and respondents Jean G. Mitchie and Glenna S. Hills, determine and carry out its policies and practices.

PAR. 2. Respondents are now, and have been for more than six months last past, engaged in the business of selling courses of instruction and instructing students in the design and fabrication of arch supports and "foot exercisers" and in a system of foot correction and culture.

The conduct of such courses of instruction contemplates and results in the transportation from respondents' place of business in the Commonwealth of Massachusetts to students located in various States of the United States of information, textual matter, charts, tools, materials, and other things useful or necessary in such courses of study, and from students to respondents of reports and specimens of their work.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said courses, including said lesson sheets, tools, materials, and other things, in commerce between and among 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 courses of instruction respondents have engaged in the practices of distributing circulars, letters, and pamphlets containing claims with respect to said courses, the proficiency and ability which will be acquired, and the financial rewards to be anticipated, by those who purchase and master said courses of instruction, to be distributed between and among the various States of the United States and in the District of Columbia, and of causing advertisements containing similar claims to be inserted in magazines and periodicals of general circulation between and among the various States of the United States and in the District of Columbia.

Among and typical of such claims are the following:

We * * * teach you the simple construction of the foot, foot culture and the use of the exercisers * * *

The course of instructions is easy to master by anyone of ordinary intelligence who can read and write.

You can enter this new profession of arch support making and foot culture methods by becoming proficient in this system.

The foot exercisers are sold outright or rented to the customer, who uses them or any other instructions suggested to him, in his own home, a few minutes daily, which overcome flat foot, distorted toes, weak feet, painful heel, aching, sweaty, or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toes, prevents bunions, corns, etc. by correcting them at the source.

There are twenty-six delicately suspended small bones in the foot which are easily displaced. Falling arches, crooked toes, weak feet, flat foot, stretched

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ligaments, enlarged joints, callosities and bunions are not natural to the normal feet. Through the use of foot culture methods and adjustment by this system, in cases where operative surgery is not required, and by wearing made to individual impression arch supports, the results obtained are practically one hundred per cent efficient.

In addition thereto you are instructed in foot culture methods and certain exercises that tend to correct foot troubles of every kind that do not require operative surgery * * *

The superior quality of the Spencer System for overcoming foot troubles of every kind that do not require operative surgery * * *

Instruction by correspondence in many lines is an established means today.

You can complete these instructions in your own home in ten weeks, or in a shorter period * * *

We also teach you a business plan that is successful, and brings customers without waiting for them to hear of your ability. Years of experience of other operators have shown how to get trade without soliciting, expense or delay.

You can have MORE INCOME.

* * * a new business that will earn you more than a good living anywhere * * *

There are no "ifs" about this business paying, it does it.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and indirectly, among other things, that the structure of the foot is simple; that anyone of ordinary intelligence who can read and write can readily master respondents' courses of instruction in arch support making and foot culture and become proficient therein; that by reason of such mastery and the use of respondents' system of foot culture and arch supports made by respondents' method, the student will be able to determine whether or not a person requires arch supports, prescribe design and fabricate the proper supports, diagnose as surgical or nonsurgical all foot ailments or conditions and correct, overcome and cure all foot troubles other than those requiring operative surgery, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toes, stretched ligaments, enlarged joints, and bunions and prevent the growth of corns and bunions; that respondents' treatment is, to all practical intents and purposes, infallible; that this instruction can be given by mail and the necessary knowledge and proficiency acquired in ten weeks or less; that the student will learn how to obtain trade without solicitation, delay or expense and is assured, by the mastery of the course, of a paying business and a large income.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact the structure of the foot is not simple. The

adequate correction of arch troubles, diseases and ailments of the feet, and the proper designing of arch supports, require, as a preliminary, a diagnosis which can be properly made only by one familiar not only with the structure and physiology of the feet but of the rest of the body. The knowledge necessary for the proper diagnosis of all foot troubles as surgical or nonsurgical, and the application of adequate corrective or curative methods to nonsurgical conditions by arch supports, exercises, or otherwise, cannot be imparted by mail in the short time indicated by respondent to the ordinary literate person, and cannot be acquired from respondents' courses of instruction. A proper arch support cannot be made by one without substantial practical experience and training. Those mastering the course cannot be assured in all cases of nonsurgical foot conditions or diseases, of successful results from the use of the corrective system as taught either with or without the use of exercisers of respondents' design or arch supports made and fitted in accordance with respondents' instructions. The student is not assured of a profitable business by completing the course, nor of a big income; neither is he assured that he will be able to obtain trade without solicitation, delay or expense.

PAR. 6. The use by respondents of the foregoing false and misleading representations as set forth herein, in connection with the offering for sale and sale of their said courses of instruction, has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce a substantial part of the public, because of such erroneous and mistaken belief, to purchase respondents' courses.

CONCLUSION

The aforesaid acts and practices of the respondents, Spencer System, a Massachusetts trust, John L. Shea and William J. Hagerty, individually, and as trustees of said trust, and Jean G. Mitchie and Glenna S. Hills, individually, 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 and the answer of respondents, in which answer respondents admit all the material al-

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legations of fact set forth in said complaint, except the allegations that Jean G. Mitchie and Glenna S. Hills are trustees of respondent Spencer System, and waive all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Spencer System, a Massachusetts trust, its trustees, officers, agents, representatives, and employees, and John L. Shea and William J. Hagerty, individually and as trustees of said trust, and Jean G. Mitchie and Glenna S. Hills individually, directly or through any corporate or other device in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of instruction in the fabrication of foot supports and foot exercisers and in the treatment and correction of foot troubles, do forthwith cease and desist from directly or by implication:

1. Representing that respondents' course of instruction, or any substantially similar course of instruction, will equip any one with learning and proficiency adequate to:

(a) Diagnose and determine whether or not foot troubles require surgical treatment.

(b) Effectively and successfully treat non-surgical foot troubles, regardless of origin or cause thereof.

(c) Effectively and successfully treat substantially all cases of foot troubles, conditions, or diseases, including flat foot, distorted toes, weak feet, painful heel, aching, sweaty, or too dry feet, callouses, chilblains, foot neuralgia, hammer or Morton's toe, stretched ligaments, enlarged joints, and bunions.

2. Representing that any purchaser who masters respondents' correspondence course is assured of a profitable business or will be able to obtain trade without solicitation, delay, or expense.

It is further ordered, That 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

ROBERT E. OVERELL, TRADING AS COPINOL COMPANY

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

Docket 4431. Complaint, Dec. 21, 1940—Decision, Sept. 12, 1941

Where an individual engaged in interstate sale and distribution of his "Copinol" or "Copinol Nasal Medicine"; by advertisements through the mails and otherwise, including purported testimonials, directly or by implication—

- (a) Represented that his said preparation was a cure and remedy for head colds, catarrh-choked nose or throat, nasal catarrh, and sinus congestion, and constituted a competent and effective treatment for such conditions, and that it would rid the nose and throat of, and protect nose from, germ-laden mucus and instantly clear the head, and would afford relief to congested nasal passages more quickly and for a longer period of time than other similar preparations;

Facts being said product, which was a mild, soothing, and cooling emollient and local constrictor of the small blood vessels, was not a cure or remedy for aforesaid conditions and had no therapeutic value in the treatment thereof in excess of furnishing temporary relief to congested nasal mucous membranes; it would not rid the nose and throat of, or protect nose from, germ-laden mucus, nor clear the head instantly; and had no special properties which would afford quicker or longer relief than other similar preparations; and

- (b) Failed to reveal material facts and that use of said product, as prescribed, might result in injury to health, in that he included neither on the paste-board container of said "Copinol," or in said advertisements, a warning statement to the effect that said preparation, which contained the drug ephedrine alkaloid, should not be used by persons suffering from heart trouble, high blood pressure, diabetes, or thyroid trouble except on competent advice, and that its use over a long period of time was likely to produce prolonged nasal constriction so as to cause tissue damage from anoxemia, with secondary inflammatory reaction, or a cautionary statement to the effect that said preparation should be used only as directed on the label, and failed on the cautionary statement in the circular which it enclosed with its said product to which label referred user, to set forth the full danger in use of said preparation over a long period of time, and sufficiently to warn persons suffering from aforesaid diseases that they should not use the product except on competent advice;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and that his said preparation was harmless and would accomplish the results claimed for it, and of inducing it, because of such belief, to purchase his said "Copinol" medicinal preparation:

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. John W. Carter, Jr., for the Commission.