

Syllabus

IN THE MATTER OF

PERFECT VOICE INSTITUTE, ET AL.

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

Docket 4047. Complaint, Mar. 5, 1940—Decision, Sept. 18, 1941

Where a corporation and three individuals, including its president in charge of its teaching activities, the chairman of its board of directors and its principal stockholder, who directed and controlled its business activities and policies, and its secretary and treasurer; engaged in interstate sale and distribution of a correspondence course of instruction for the development of the voice, based on the theory that the development and control of the muscles of the tongue is the key to voice culture, and accordingly prescribing numerous physical exercises for the tongue muscles, involving frequent use of certain mechanical aids supplied by them in addition to the series of lessons, including a mirror, an electric torch or flashlight, a pitch pipe, certain tongue supports and depressors, a tape measure and a so-called mouth gauge;

In advertisements of its said courses in periodicals of general circulation and in booklets outlining them and including testimonials from those who had taken it—

Represented that the voice might be greatly improved through the development and control of the muscles of the tongue, and that use of their course brought out a new and improved quality to the voice, and that by such use stammering might be overcome and physical defects of the vocal organs corrected;

The facts being that there is no relation between the development and control of the tongue muscles and the culture of the voice and while the physical exercises prescribed by them might result in strengthening said muscles and, in consequence, in the voice becoming louder or stronger, the quality and tone of the latter are not thereby improved, the voice on the contrary almost invariably becoming harsh and unmusical; there was danger also that use of such exercises might result in injury rather than a benefit to the voice, due to strain of the vocal organs through excessive exercising (ordinarily pursued by correspondence and without supervision of a teacher), notwithstanding caution as to moderation, since moderation for one student may be excess for another; and use of said course could not correct physical defects of the vocal organs or overcome stammering;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their course possessed values and benefits which it did not possess, and to cause it to purchase their course as a result of said 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.

As respects the theory, underlying a course in voice culture, that the development and control of the muscles of the tongue is the key to the culture

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and development of the voice, testimony to the effect that they had found the course of substantial benefit and that their voices had been improved by it on the part of a teacher of singing who had sung in opera and in motion pictures, formerly studied said course, and used said method in teaching his own pupils, and testimony of some 10 lay witnesses, students of such course, it appearing, among other things, that some of them had pursued studies with other teachers, was insufficient to overcome testimony to the effect that said theory did not reflect the facts, by various expert witnesses, including an assistant dean of the school of speech of a prominent university in Chicago, a specialist in the field of experimental psychology in speech problems who had devoted many years to the study of the vocal mechanism and the physics of voice production, and a number of teachers of standing in the educational field concerned and of long experience as singers themselves.

Before *Mr. Edward E. Reardon* and *Mr. William C. Reeves*, trial examiners.

Mr. Maurice C. Pearce, for the Commission.

Petit, Olin & Overmyer, 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 Perfect Voice Institute, a corporation, Eugene Feuchtinger, individually and as president of Perfect Voice Institute, Walter A. Jordan, individually and as chairman of the board of directors of Perfect Voice Institute, and Mary E. Murphy, individually and as secretary and treasurer of Perfect Voice Institute, hereinafter referred to as respondents, have 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, Perfect Voice Institute, is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 64 East Lake Street, Chicago, State of Illinois.

Respondent, Eugene Feuchtinger, an individual, is president of Perfect Voice Institute, with his principal office and place of business located at 64 East Lake Street, Chicago, State of Illinois.

Respondents, Walter A. Jordan and Mary E. Murphy, are each individuals, the former being chairman of the board of directors of Perfect Voice Institute, and the latter secretary and treasurer of Perfect Voice Institute, with their principal office and place of business located at 307 North Michigan Avenue, in Room 1600, Chicago, State of Illinois.

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Said respondent, Walter A. Jordan, owns a controlling interest in respondent corporation and controls and directs the business activities and policies of said corporation, including its advertising. Respondents Feuchtinger and Murphy act in conjunction and cooperation with said respondent Jordan and with each other in connection with the acts and practices hereinafter alleged.

PAR. 2. The individual respondents, acting in conjunction and cooperation with each other as aforesaid, and said respondent Perfect Voice Institute, are now and for more than 1 year last past have been, engaged in the business of offering for sale, selling, and distributing, a course of instruction for the development of the voice, designated "Physical Voice Culture." Such course of instruction consists of 30 lessons, contained in 15 printed and bound volumes, entitled "A Manual for the Perfection of the Human Voice." Along with the course of instruction, and as a part of the same, respondents supply to purchasers thereof a so-called "outfit consisting of mirror, electric torch, tongue depressors, thyhedron tongue support, breath measure and special chromatic pitch pipe" to be used in connection with said course of instruction in the development of the voice.

PAR. 3. Said respondents have, through the medium of said corporate respondent, Perfect Voice Institute, placed certain advertisements in various publications, offering a "wonderful voice book free." When a reply to such advertisements is received by corporate respondent, said respondents then contact the party so answering the advertisements. The book referred to in said advertisements is forwarded to such prospective purchaser and contemporaneously therewith there is also forwarded application for enrollment blank, together with a form letter urging such prospective purchaser to enroll and become a student for such course of instruction. Upon receipt by respondents of the application for enrollment duly signed by the purchaser, and in consideration of the payment of the agreed tuition in cash or by installments, as set forth and provided in said application for enrollment, respondents deliver to such purchaser, through the United States mail or otherwise, the course of instruction, together with the "outfit," hereinabove described.

Respondents cause said course of instruction, when sold, to be transported from their said place of business in the State of Illinois to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said course of instruction sold and distributed by them in commerce, between and among the various States of the United States and in the District of Columbia.

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PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their said course of instruction, respondents by means of advertisements inserted in newspapers and magazines having a general circulation, and also by advertising circulars and other printed or written matter, have made and are now making various false, misleading, and deceptive statements and representations concerning the character and nature of their said course of instruction and as to the results that have been and may be obtained from the training and instruction provided therein. Among and typical of such representations and statements made by respondents are the following:

We build, strengthen the vocal organs—not with singing lessons, but by fundamentally sound and scientifically correct silent exercises—and absolutely guarantee to improve any singing or speaking voice at least 100%.

The key to perfect voice production is strong tongue muscles under perfect control.

This famous method of physical voice culture is based upon the elementary principle of strengthening the throat and tongue muscles by silent, physical exercise.

We can bring out a new quality, a new power and force to your voice.

People who used to laugh at me because I stammered are the ones I laugh at now.

Yes—this is an astonishing guarantee, but it is justified by our twenty years of success not only in developing fine voices for thousands of students, but in overcoming positive physical defects * * *

PAR. 5. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented and do now represent that by the use of respondents' said course of instruction, the exercises outlined therein and the "outfit" supplied therewith, any person can build and strengthen vocal organs and thereby improve the singing and speaking voice by at least 100 percent; that by using respondents' method of instruction strong tongue muscles can be developed and controlled; that control of strong tongue muscles results in perfect voice production; that the strengthening of the throat and tongue muscles by silent physical exercises is a method of physical voice culture; that respondents' course of instruction brings out a new quality, new power and force to the voice; that respondents' course of instruction cures stammering; and that respondents' course of instruction has developed fine voices for students and overcomes positive physical defects.

PAR. 6. The aforesaid representations and claims, cooperatively used and disseminated by the respondents, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact, the singing and speaking voice cannot be improved at least 100 percent by building and strengthening the vocal organs by use of respondents'

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said course of instruction, the exercises outlined therein, or the "outfit" supplied therewith; strong tongue muscles cannot be developed nor controlled by the use of respondents' method of instruction; control of strong tongue muscles does not result in perfect voice production; the strengthening of the throat and tongue muscles by silent physical exercises is not a method of physical voice culture; the course of instruction will not bring out new quality, new power and force to the voice; respondents' course of instruction is not a cure for stammering; and respondents' course of instruction will not develop fine voices or overcome positive physical defects.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to the course of instruction, has had and now has the capacity and tendency to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true; and also has a tendency and capacity to induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase said course of instruction.

PAR. 8. The aforesaid acts and practices of respondents 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 March 5, 1940, issued and thereafter served its complaint in this proceeding upon the respondents, Perfect Voice Institute, a corporation; Eugene Feuchtinger, individually and as president of Perfect Voice Institute; Walter A. Jordan, individually and as chairman of the board of directors of Perfect Voice Institute; and Mary E. Murphy, individually and as secretary and treasurer of Perfect Voice Institute, charging them 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 and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Maurice C. Pearce, attorney for the Commission, and in opposition thereto by Gustav E. Beerly, attorney for 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 Commis-

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sion. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony, and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (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, Perfect Voice Institute, is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 64 East Lake Street, Chicago, Ill.

Respondent, Eugene Feuchtinger, an individual, is president of the corporate respondent. He formulates the course of instruction hereinafter referred to, and is in general charge of the corporation's teaching activities. He has his office at 64 East Lake Street, Chicago, Ill.

Respondent, Walter A. Jordan, an individual, is chairman of the board of directors of the corporate respondent and is the principal stockholder therein. He directs and controls the business activities and policies of the corporation, including its activities and policies with respect to advertising. He has his office at 307 North Michigan Avenue, Chicago, Ill.

Respondent, Mary E. Murphy, an individual, is secretary and treasurer of the corporate respondent, her mailing address being 307 North Michigan Avenue, Chicago, Ill.

All of the respondents act in conjunction and cooperation in carrying out the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for a number of years last past have been, engaged in the sale and distribution of a course of instruction in the development of the human voice. Respondents cause their course of instruction, 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 at all times referred to herein have maintained, a course of trade in their course of instruction in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents' course of instruction consists of a series of lessons, approximately 30 in number, to be pursued by correspond-

ence, and certain mechanical aids supplied by respondents for use in connection with such lessons. These mechanical aids include a mirror, an electric torch or flashlight, a pitch pipe, certain tongue supports and depressors, a tape measure, and an article designated as a mouth gauge.

For the purpose of bringing their course of instruction to the attention of the public and obtaining students, the respondents insert advertisements in periodicals having general circulation throughout the United States. To those making inquiry in response to such advertisements, respondents forward an advertising booklet outlining the course of instruction and containing numerous statements with respect to the value and effectiveness of the course. This booklet contains also a number of testimonials from persons who have taken the course. Along with this advertising booklet respondents forward to the prospective purchaser an application blank or form of contract to be executed by the prospect.

Among and typical of the statements and representations appearing in respondents' newspaper advertisements and other advertising material are the following:

We build, strengthen the vocal organs—not with singing lessons, but by fundamentally sound and scientifically correct silent exercises—and absolutely guarantee to improve any singing or speaking voice at least 100%.

The key to perfect voice production is strong tongue muscles under perfect control.

This famous method of physical voice culture is based upon the elementary principle of strengthening the throat and tongue muscles by silent, physical exercises.

We can bring out a new quality, a new power and force to your voice.

People who used to laugh at me because I stammered are the ones I laugh at now.

Yes—this is an astonishing guarantee, but it is justified by our twenty years of success not only in developing fine voices for thousands of students, but in overcoming positive physical defects * * *.

PAR. 4. Through the use of these statements and representations and others of similar import, the respondents represent that the voice may be greatly improved through the development and control of the muscles of the tongue; that the use of respondents' course of instruction brings out a new and improved quality to the voice; that by the use of such course stammering may be overcome; and that physical defects of the vocal organs may be corrected through the use of such course of instruction.

PAR. 5. The theory upon which respondents' course of instruction is based is that the development and control of the muscles of the

tongue is the key to the culture and development of the voice. This theory is set forth in the first lesson of the course as follows:

Carry this important fact in your mind throughout your course of study, for it is the basic principle of my method and marks the vital difference between my system of vocal culture and all others:

In this course we consider the tongue muscles to be the key of all the muscles used to produce voice—that they are the most necessary factor in the desired control of the vocal organ as a whole.

In pursuance of this theory, respondents prescribe varied and numerous physical exercises for the tongue muscles, and in these exercises frequent use is made of the mechanical aids supplied by respondents. The purpose of these exercises is to develop and strengthen the muscles of the tongue, and to give the student a greater degree of control over the position and action of the tongue.

PAR. 6. The experts introduced as witnesses at the instance of the Commission included:

1. An assistant dean of the school of speech of a prominent university in Chicago, who is also director of the speech clinic of the university. This witness holds degrees from three universities, including a doctor's degree, and is a specialist in the field of experimental psychology and speech problems. He has devoted 20 years to the study of the anatomy and physiology of the vocal mechanism and the physics of voice production. His services with the speech clinic have extended over a period of 12 years, during which time some 3,000 speech and voice cases have come under his observation.

2. A teacher of singing who, in addition to giving private lessons, directs choirs and choruses and is choir master of a prominent church. He has studied voice in a number of leading schools, and his experience in teaching extends over a period of some 25 years.

3. A teacher who has for 21 years conducted a school of singing in Chicago. He is a graduate of one of the leading conservatories of music in Chicago, and has spent some 15 years studying with teachers both in the United States and in Europe. He has specialized in the development of the voice and in preparing students for the singing profession.

4. A professor of voice in the school of music of one of the leading universities in Chicago, who has studied both in the United States and abroad, being a graduate of the university in which he is now teaching. His teaching experience covers a period of some 35 years.

5. An official of a conservatory of music in Chicago who has studied both in America and abroad, and who sang professionally for some 12 or 14 years. His work has included singing in opera as well as on the concert stage and in musical comedies.

6. A teacher of speech in a prominent university who has studied in several accredited schools of speech.

7. A teacher of singing, who sang in opera for some 12 years, including several years with the Chicago Civic Opera Co. This witness is connected officially with a prominent conservatory of music in Chicago and also with the Chicago Civic Opera Co.

The testimony of these witnesses shows that there is no relation between the development and control of the tongue muscles and the culture of the voice. The physical exercises prescribed by respondents may result in the strengthening of the tongue muscles, and in consequence the voice may become louder or stronger. The quality and tone of the voice, however, are not improved; on the contrary the voice almost invariably becomes harsh and unmusical. Certain of the Commission's witnesses have had occasion to observe the voices of persons taking respondents' course, and the opinions of these witnesses as to the value of the course are based not only upon their general knowledge and experience but also upon their observation of these students.

The testimony further shows that in many instances the use of the physical exercises prescribed by the course may result in injury to the voice rather than benefit, one reason for this being that the exercises may be carried to excess and the vocal organs strained. This danger is increased by reason of the fact that the course is pursued by correspondence and without the supervision and guidance of a teacher. Respondents' students are free to come to the school for advice and instruction, and a number of students living fairly close to Chicago do go to the school for that purpose. In the usual case, however, the course is pursued entirely by correspondence. Even a caution as to moderation in the use of the exercises is insufficient, because exercises which may be moderate in the case of one student may easily become excessive in another case.

PAR. 7. In support of their claims for their course of instruction, respondents introduced only one expert witness, a teacher of singing who has also sung in opera and in motion pictures. This witness formerly studied respondents' course and now uses the method in teaching his own pupils. He testified that he had found the course of substantial benefit in his own case and also that he had obtained favorable results from the use of the method in his teaching.

Aside from the testimony of this witness, respondents relied principally upon the testimony of some 10 members of the public who had pursued respondents' course of instruction and some of whom are still numbered among respondents' students. The testimony of these

witnesses, in substance, was that they had found the course to be of substantial benefit and that their voices had been improved as a result of taking the course.

In some of these cases the witnesses had pursued studies with other teachers, and it is questionable as to how much of the improvement testified to by the witnesses was due to respondents' method. Moreover, the record discloses that it is questionable whether an individual is a capable judge of the quality and tone of his own voice, there being certain physiological and psychological reasons why one's voice does not sound to him as it does to other persons. After careful consideration of the testimony offered by respondents, including the testimony of these lay witnesses and of the expert referred to, the Commission is of the opinion, and finds, that it is insufficient to overcome the expert testimony introduced at the instance of the Commission.

PAR. 8. The Commission therefore finds that the representations of respondents with respect to their course of instruction and the benefits to be derived therefrom are misleading and deceptive. The use of respondents' course of instruction is incapable of improving the quality or tone of the voice. Neither the course of instruction nor the physical exercises prescribed therein has any beneficial effect upon the voice, other than to make it louder or stronger. Nor can physical defects in the vocal organs be corrected or stammering overcome through the use of respondents' course.

PAR. 9. The Commission further finds that the use by respondents of these misleading and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' course of instruction possesses values and benefits which it does not in fact possess, and the tendency and capacity to cause such portion of the public to purchase respondents' course of instruction as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondents 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, the answer of respond-

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ents, testimony and other evidence taken before trial examiners 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 briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Perfect Voice Institute, a corporation, and its officers, and Eugene Feuchtinger, Walter A. Jordan, and Mary E. Murphy, individually and as officers of said corporation, and respondents' representatives, agents, and employees, 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 their course of instruction in the development of the human voice, do forthwith cease and desist from:

1. Representing that the development and control of the muscles of the tongue has any beneficial effect upon the voice other than to make it louder or stronger.

2. Representing that the use of respondents' course of instruction has any beneficial effect upon the voice other than to make it louder or stronger.

3. Representing that by the use of respondents' course of instruction physical defects of the vocal organs may be corrected, or stammering overcome.

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
FEDERAL YEAST CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3926. Complaint, Oct. 13, 1939—Decision, Sept. 22, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution of bakers' yeast, in substantial competition with others similarly engaged—

- (a) Discriminated in price by selling yeast of like grade and quality and in like quantities to customers competitively engaged with one another in sale and distribution of bread and allied products, at differentials amounting to 7 percent and upwards, thereby affording to the beneficiaries substantial savings in price which constituted material and vital factors in competition;
- (b) Discriminated in price by delivering large quantities of its yeast without charge to certain purchasers in addition to its yeast actually sold to them, thereby substantially reducing average cost of its yeast to said purchasers, while concurrently selling it to others without so delivering yeast for which no charge was made, so that while both classes might be charged the same price for yeast sold and billed, the actual cost to the former was less by 5 percent or more than that to the nonfavored customers, thereby affording substantial savings to the beneficiaries which constituted material and vital factors in competition; and
- (c) Discriminated in price by granting to certain of its purchasers cash discounts of 1 to 2 percent not granted to others who paid in the same manner and within the same time;

Effect of which discriminations had been and might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy, or prevent competition in the sale and distribution of bread and allied products between its purchasers who received the benefits of such discriminations and those who did not:

Held, That said discriminations in price, as hereinabove set out, violated subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Mr. Simon E. Sobeloff, of Baltimore, Md., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of section 2 of the Clayton Act, as amended by the Robinson-Patman Act approved June 19,