

## IN THE MATTER OF

## FOOD DISPLAY MACHINE CORPORATION, AND A. H. KULIKOWSKI, MRS. A. H. KULIKOWSKI, AND GEORGE H. HARDT

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

*Docket 4122. Complaint, May 1, 1940—Decision, Sept. 23, 1941*

Where a corporation and two individuals, who were its general officers and stockholders and in active charge of its business, engaged in interstate sale and distribution of machines designed for preparing and cooking potato chips, doughnuts, and, until discontinuance of sale of such machine in early 1940, corn chips, conducting their business under various trade names and doing much of their advertising under name of one of said individual officers; by advertisements in periodicals of general circulation, and advertising circulars, leaflets, and pamphlets, and circular letters, directly or by implication—

Represented that amazing profits or earnings might be made and fortunes acquired through the operation of their said machines, that profits of as much as \$21.60 and \$40 per day might be so obtained, and that the minimum profit on operation of certain machines would amount to \$100 a week;

Facts being earnings and profits so represented were far in excess of any amounts which had been earned by persons operating their machines, or which might reasonably be expected from operation thereof; in exceptional cases in which purchasers had been able to derive a profit from their operation, such profits were far below the amounts represented; and in no event could amazing profits or earnings be thus derived, or fortunes thus acquired;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that much greater earnings and profits might be made from the operation of their said machines than was actually the fact, and to cause it to purchase substantial quantities of their machines, 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. William C. Reeves*, trial examiner.

*Mr. R. P. Bellinger* for the Commission.

*Bussian & DeBolt*, 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 Food Display Ma-

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chine Corporation, a corporation, M. J. Kulikowski, Mrs. M. J. Kulikowski, and George H. Hardt, individuals, 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 corporate respondent, Food Display Machine Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 620 North Michigan Avenue, Chicago, Ill. The respondents, M. J. Kulikowski, Mrs. M. J. Kulikowski, and George H. Hardt, of the same address, are the officers and principal stockholders of the said corporate respondent above named, and as such manage, control, and direct the policies and operation thereof, particularly in the acts and practices herein alleged. All of said respondents have acted in concert in conducting the business hereinafter described and in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of machines designed for cooking potato chips, corn chips, and doughnuts. Respondents cause said machines, when sold, to be shipped from their place of business in Chicago, Ill., to the purchasers thereof located in States of the United States other than Illinois and in the District of Columbia, and there is and has been a course of trade in said machines sold by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their business as aforesaid, respondents employ or use the trade names, Vita-Seald with respect to and in connection with their potato chip machines King Korn Co. and King K Co. with respect to and in connection with their corn chip machines, and Brown Bobby Co. with respect to and in connection with their doughnut machines.

PAR. 3. In the course and conduct of their business in said commerce as aforesaid, in soliciting the sale of and selling their machines, respondent's have made various and sundry representations in form letters, pamphlets and other circulars distributed among prospective purchasers, and by statements published in magazines and periodicals of national circulation concerning the opportunities afforded purchasers of such machines to start a profitable, independent business, and concerning the earnings or income which are likely to result from the purchase of any of said machines. Among

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and typical of the statements and representations so made and used by the respondents are the following:

Only \$2.50 investment in raw materials brings back \$10 in cash at whole sale.

Your machine is capable of turning out 10 lbs. of chips every hour—80 lbs. in an 8 hour day. If sold in 5¢ size bags \* \* \* that should give you a total profit of \$21.60 on your 80 lbs. of chips.

You can get back \$40 in cash receipts from one day's production of the machine.

Big daily profits from the start without overhead expense.

Sensational New Business That May Sweep You To Riches.

This is undoubtedly the most amazing money-making opportunity ever offered to the readers of this—or any other—magazine. It tells how any ambitious level-headed man can quickly establish a remarkable new kind of business that can pay a steady net cash profit of \$40.00 a day—a business that offers unlimited opportunity, rapid expansion—a business in which you can employ others to work for you and run your daily profits up as high as you want them to go—a business that may make many men independently wealthy within the next few years.

Your whole investment will be less than your first week's potential income. This is truth; not fiction—fact; not theory. To the best of our knowledge no other business in America offers one-tenth the opportunity for profit and independence.

Experts estimate and tests show that the first year's requirements should be about 12,000,000 lbs. You make 32¢ net profit on every pound that passes through your hands.

**\$100 A WEEK NET TO START.**

According to accurate figures the very minimum of the first operation would produce a net cash profit of at least \$100 a week \* \* \*. This we figure to be a minimum.

Anyone—anywhere—can make big profits on this surprising new product.

No wonder so many people without one bit of experience are literally cleaning up fortunes with this new money-maker.

Said statements, together with other statements similar thereto not herein set out, represent that tremendous incomes and profits may reasonably be expected by the purchasers and users of respondents' machines as aforesaid; that with little effort and small investment or expense, one can purchase respondents' machines and therewith start a business that will rapidly accumulate riches for himself; that respondents' said machines present in themselves the most amazing money-making opportunity offered by any business in America; that the demand for the products of respondents' machines is so great that with one or more of said machines a person can quickly amass fabulous profits; that anybody anywhere can make large profits by the operation of one of respondents' machines and the minimum net weekly profit to be derived therefrom as a starter is \$100; that with the purchase and operation of one of respondents' machines a man can quickly establish a business in which he will realize a net cash

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profit of \$40 a day, and which offers unlimited opportunities for mounting profits as high as he might wish; that the first week's income from the operation of one of respondents' machines will exceed the entire purchase price thereof and investment in the business; that many people without experience are reaping fortunes by the use of respondents' machines.

PAR. 4. In truth and in fact, respondents' claims and representations as to the actual or potential markets available for the sale of the products produced by such machines and the claims and representations made as to the earnings to be made or the income produced by the operation of such machines are grossly exaggerated, misleading, and deceptive, for the actual and potential markets available for such products are not as great as represented by respondents and the actual market is supplied by strong, well-financed, experienced operators from whom an inexperienced operator with one or more of respondents' said machines would be unable to acquire or divert substantial trade and custom. Only a few, if any, operators of such machines are able to find markets which will justify or require the operation of such machines at full capacity for any extended period of time. To accumulate the profits or earnings at the rate and in the amounts represented by respondents would require the steady operation of such machines at full capacity.

In truth and in fact, one cannot buy respondents' machines and therewith start a business that will rapidly accumulate riches for himself; respondents' machines do not present in themselves the most amazing money-making opportunity offered by any business in America; the demand for the products of respondents' machines is not sufficient to enable the operator of one or more of said machines quickly to amass fabulous profits; not everyone can make large profits through the operation of one of respondents' machines and the minimum net weekly profit to be derived therefrom when the operation thereof is first started is not \$100 per week or any approximate sum; a man cannot, by the purchase and operation of one of respondents' machines, quickly establish a business in which he will realize a net cash profit of \$40 a day, or which offers unlimited opportunities for mounting profits as high as he might wish; the first week's income from the operation of one of respondents' machines will not exceed the total investment in the business; many people without experience are not reaping fortunes by the use of respondents' machines; the actual and probable earnings or profits of operators of respondents' machines are, on the average, much less than the amounts set out above, and said amounts set out above are far in excess of the earnings and profits that can reasonably be expected by operators of said machines.

PAR. 5. The use by respondents of the representations set out herein have had and now have the capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that such representations are true and to purchase a substantial quantity of such machines from respondents by reason of such erroneous belief.

PAR. 6. The aforesaid acts and practices 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 May 1, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Food Display Machine Corporation, a corporation, and A. H. Kulikowski (referred to in the complaint as M. J. Kulikowski), Mrs. A. H. Kulikowski (referred to in the complaint as Mrs. M. J. Kulikowski), and George H. Hardt, individuals, 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 R. P. Bellingier, attorney for the Commission, and in opposition thereto by Messrs. Bussian & DeBolt, attorneys for respondents, before William C. Reeves, 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, answer, testimony and other evidence, report of the trial examiner upon the evidence and exceptions thereto, 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, Food Display Machine Corporation, 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 620 North Michigan Avenue, Chicago, Ill.

Respondent, A. H. Kulikowski (referred to in the complaint as M. J. Kulikowski), is president and treasurer of the corporate respondent. Respondent, Mrs. A. H. Kulikowski (referred to in the complaint as Mrs. M. J. Kulikowski), is secretary of the corporate respondent. Respondent George H. Hardt is vice president and assistant secretary of the corporate respondent. The mailing address of the individual respondents is the same as that of the corporate respondent.

The individual respondents, together with L. T. Kulikowski, a son of respondents A. H. Kulikowski and Mrs. A. H. Kulikowski, are the owners of all of the outstanding capital stock of the corporate respondent. Respondents, A. H. Kulikowski and George H. Hardt, are in active charge of the business of the corporation and formulate, direct and control the corporation's policies, practices and methods, including its advertising policies and practices. Respondent, Mrs. A. H. Kulikowski, does not participate actively in the operation of the business nor in the formulation, direction or control of the corporation's policies or practices.

The corporate respondent and respondents A. H. Kulikowski and George H. Hardt have acted in conjunction and cooperation each with the others in carrying out the acts and practices hereinafter set forth. As used hereinafter, the word "respondents" will refer to these three respondents alone and not to Mrs. A. H. Kulikowski.

PAR. 2. The respondents are now, and for more than three years last past have been, engaged in the sale and distribution of certain machines designed for preparing and cooking potato chips and doughnuts. Respondents were formerly engaged also in the sale and distribution of a machine designed for the preparation and cooking of corn chips, but the sale of this machine was discontinued in the early part of 1940. Respondents cause, and have caused, their machines, 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 have maintained, a course of trade in their machines 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 employ, in addition to the corporate name Food Display Machine Corporation, various other trade names. In connection with their corn chip machine the names "King Korn Co." and "King K Co." have been used, and in connection with their doughnut machine the name "Brown Bobby Co." is used. Much of the respondents' adver-

tising is done also under the name of the individual respondent, George H. Hardt.

PAR. 4. In the course and conduct of their business and for the purpose of promoting the sale of their machines, the respondents have inserted advertisements in periodicals having a general circulation throughout the United States. They have also made use of numerous advertising circulars, leaflets, and pamphlets as well as various circular letters, all of such advertising material being sent to prospective purchasers of their machines. Among and typical of the statements and representations appearing in respondents' advertisements and advertising material are the following:

Only \$2.50 investment in raw materials brings back \$10 in cash at wholesale.

Your machine is capable of turning out 10 lbs. of chips every hour—80 lbs. in an 8 hour day. If sold in 5¢ size bags \* \* \* that should give you a total profit of \$21.60 on your 80 lbs. of chips.

You can get back \$40 in cash receipts from one day's production of the machine.

Big daily profits from the start without overhead expense.

This is undoubtedly the most amazing money-making opportunity ever offered to the readers of this—or any other—magazine. It tells how any ambitious level-headed man can quickly establish a remarkable new kind of business that can pay a steady net cash profit of \$40.00 a day—a business that offers unlimited opportunity, rapid expansion—a business in which you can employ others to work for you and run your daily profits up as high as you want them to go—a business that may make many men independently wealthy within the next few years.

Your whole investment will be less than your first week's potential income. This is truth; not fiction—fact; not theory. To the best of our knowledge no other business in America offers one-tenth the opportunity for profit and independence.

#### \$100 A WEEK NET TO START

According to accurate figures the very minimum of the first operation would produce a net cash profit of at least \$100 a week \* \* \*. This we figure to be a minimum.

Anyone—anywhere—can make big profits on this surprising new product.

#### AMAZING NEW BUSINESS

#### Work at Home

#### Pays

#### BIG DAILY PROFITS

A SURPRISING new profit opportunity is now offered to every ambitious man and woman! A sensational new kind of food business has been invented that can be operated with no previous experience in either full or spare time—a business that pays you big daily profits selling production of one machine at wholesale only.

EVERYTHING SUPPLIED. We supply equipment and plans for making and selling a delicious new greaseless doughnut that is cooked in a remarkable electrical device. Easy to digest and more toothsome than old style doughnuts ever were. This delicious new dainty—Brown Bobby—costs less to make and sells faster. No

## Findings

wonder so many people without one bit of experience are literally cleaning up "fortunes" with this new money-maker!

PAR. 5. Through the use of these statements and representations and others of similar import, the respondents have represented, directly or by implication, that amazing profits or earnings may be made and fortunes acquired through the operation of respondents' machines; that profits of as much as \$21.60 per day and \$40 per day may be obtained from the operation of such machines, and that the minimum profit on the operation of certain of the machines will amount to \$100 per week.

PAR. 6. In order to ascertain the amount of the earnings or profits which may reasonably be expected to accrue to persons operating respondents' machines, there were introduced as witnesses on behalf of the Commission a number of persons who had actually purchased and operated the machines. These witnesses resided in some six different States and were representative of the members of the public who purchase the machines. The testimony of these witnesses shows, and the Commission finds, that the earnings and profits represented by respondents are far in excess of any amounts which have been earned by persons operating respondents' machines, or which may reasonably be expected to accrue from the operation of the machines. In most of the instances testified to by the witnesses the machines were found to be unprofitable, and the business was abandoned and the machines discarded entirely. In those exceptional cases in which purchasers had been able to derive a profit from the operation of the machines such profits were far below the amounts represented by respondents. In no event can "amazing" profits or earnings be derived from the operation of respondents' machines, nor can "fortunes" be acquired from the operation of the machines. Profits of \$21.60 per day, \$40 per day and \$100 per week, as represented by respondents in their advertising, are wholly impossible from a practical viewpoint.

PAR. 7. The Commission therefore finds that respondents' representations with respect to the earnings or profits which may be derived from the operation of their machines are grossly exaggerated, false, and misleading.

PAR. 8. The Commission further finds that the use by respondents of these false and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that much greater earnings and profits may be made from the operation of respondents' machines than is actually the fact, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' machines as a result of such erroneous and mistaken belief.

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## CONCLUSION

The acts and practices of respondents, Food Display Machine Corporation, A. H. Kulikowski and George H. Hardt, 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 respondents, testimony and other evidence taken before William C. Reeves, 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 exceptions thereto, 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 certain of the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That respondents Food Display Machine Corporation, a corporation, its officers, and A. H. Kulikowski and George H. Hardt, trading under the names King Korn Co., King K Co. and Brown Bobby Co., or trading under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' potato chip machines, corn chip machines, and doughnut machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that amazing earnings or profits may be made or fortunes acquired through the operation of respondents' machines.
2. Representing as possible or maximum earnings or profits which may be made during any specified period through the use of respondents' machines, any amounts in excess of those which have actually been earned during such specified period by users of respondents' machines under normal conditions in due course of business.
3. Representing as usual or customary earnings or profits which may be made during any specified period through the use of respondents' machines, any amounts in excess of the average, usual and customary amounts which have actually been earned by users of respondents' machines under normal conditions in due course of business.

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*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.

*It is further ordered,* That this proceeding be, and it hereby is, dismissed as to respondent Mrs. A. H. Kulikowski.

## IN THE MATTER OF

W. K. STERLINE, AND MUMM, ROMER, ROBBINS &  
PEARSON, INC.

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

*Docket 4485. Complaint, Apr. 8, 1941—Decision, Sept. 23, 1941*

Where an individual engaged in interstate sale and distribution of his "Hay Fever Compound" also known as "W. K. Sterline's compound," and his "Asthma Treatment," the latter including said "Compound," "Bronchial Elixir," and "Korana Powder"; together with his corporate advertising agency, by advertisements sent through the mails and through form letters, leaflets, pamphlets, and other advertising media, and including purported testimonial quotations, directly and by implication—

- (a) Represented that his said "Hay Fever Treatment" was a cure and remedy for hay fever, and a competent and effective treatment therefor, which would fortify one's system against it, enabling one to avoid it, and would check sneezing and nasal discharge; facts being said treatment had no therapeutic value in the treatment of such condition;
- (b) Represented that said "Asthma Treatment" constituted a cure and remedy for asthma and a competent and effective treatment therefor, and also for bronchitis when associated with asthma, and would restore one to health and prevent return of said condition; facts being neither said treatments nor the preparations of which it was composed, whether used separately or in any combination, constituted a cure or effective treatment for either ailment, or had any therapeutic value in the treatment of asthma in excess of affording mild temporary relief from its paroxysms, or any such value in the treatment of bronchitis when associated with asthma in excess of that furnished by a mild expectorant;
- (c) Represented that his said "Elixir" constituted a cure and remedy and a competent and effective treatment for bronchitis; facts being it had no therapeutic value in treatment thereof, in excess of that furnished, as aforesaid, by a mild expectorant; and
- (d) Failed to reveal facts material in light of representations contained in said advertisements as respects his said "Compound," and that use thereof under usual or prescribed conditions might result in serious injury to health, in that its content of potassium iodide and fluid extract of lobelia might be harmful to those suffering from active or latent tuberculosis, and its sodium bromide content, when used over long period of time, was likely to cause mental derangement and rash; and failed to apprise the reader that use of product in question might be harmful for such reasons, in note on label of said "Compound" advising prospective user, in event of having tuberculosis, to see a physician first;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing a substantial portion of said public, because of such belief, to purchase his "Treatments":

*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.