

Syllabus

IN THE MATTER OF

MINERAL WELLS CRYSTAL PRODUCERS, INC.

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

Docket 4512. Complaint, May 29, 1941—Decision, Nov. 14, 1941

Where a corporation engaged in the processing and in the competitive interstate sale and distribution of mineral crystals for the treatment of certain ailments; in statements and legends on leaflets, letterheads, billheads, sales invoices, display cards and other advertising material, and on the labels and outer wrappings of the product's containers, directly or by implication—

- (a) Represented through inclusion of words "Mineral Wells" as a part of its corporate name and through such use of them in aforesaid statements as "Mineral Wells Crystals," "Made in Mineral Wells, Tex.," and "Made from Texas mineral water," that its mineral crystals were produced exclusively from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex.;

The facts being its said product was not processed from mineral water thus obtained at or in the vicinity of said city,—which for a long period had been well and favorably known for its mineral water containing certain constituents, and name of which had long been associated by a substantial portion of the purchasing public with the wells located in its vicinity—and was not made directly from any natural mineral water, but was prepared through mixing ordinary water from the mains of aforesaid city with commercial chemicals purchased by said corporation from chemical companies obtaining their raw materials hundreds of miles distant, and thereafter heating and processing the solution; and

- (b) Represented that its said product had been endorsed or tested as to quality and fitness by some governmental, scientific or other recognized agency empowered and qualified to certify as to the attributes thereof, through use of such words and legends as "CERTIFIED Mineral Wells Crystals," "Use Certified Mineral Crystals," and "Certified Mineral Crystals";

The facts being its said product was not properly described as "Certified" inasmuch as it had never been endorsed or tested as to quality or fitness by any recognized agency whatever;

With effect of misleading and deceiving a substantial portion of the purchasing public as to its product and the place of origin thereof, and of thereby inducing it to purchase substantial quantities of said product whereby trade was diverted unfairly to it from its competitors, including many who do not misrepresent their products or the places of origin thereof; 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.

Mr. J. V. Buffington for the Commission.

Mr. A. E. Brooks, of Fort Worth, Tex., for respondent.

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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 Mineral Wells Crystal Producers, Inc., a corporation, hereinafter referred to as respondent, 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, Mineral Wells Crystal Producers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located in Mineral Wells, Tex.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the processing and in the sale and distribution of certain mineral crystals intended for use in the treatment of certain ailments of the human body. Respondent causes and has caused said mineral crystals, when sold, to be transported from its place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals, firms, and partnerships also engaged in the processing and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of mineral crystals and other medicinal preparations intended for the same or substantially the same uses as those for which respondent's product is intended.

PAR. 4. In the course and conduct of its aforesaid business, respondent has made and is now making false and misleading representations with respect to its said product and the source and origin thereof. Such representations have taken the form of statements and legends imprinted on leaflets, letterheads, billheads, sales invoices, display cards, and other advertising material, which respondent has caused and is causing to be distributed among purchasers and prospective purchasers, and on the labels and outer wrappings of the containers in which respondent's product is packed, displayed and sold. Among

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and typical of, the false, misleading, and deceptive statements and representations so made and distributed are the following:

MINERAL WELLS CRYSTAL PRODUCERS, INC.

Manufacturers

CERTIFIED

Mineral Wells

Crystals

Made in Mineral Wells, Tex.

Made from Texas mineral water.

Here's to Health

Use Certified Mineral Crystals

Certified Mineral Crystals

Processed and distributed by

Mineral Wells Crystal Producers, Inc.

Mineral Wells, Texas.

PAR. 5. Through the use of the aforesaid representations, and others of similar import not specifically set out herein, the respondent represents and has represented, directly or through inference that its mineral crystals are produced exclusively from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex., and that said product has been endorsed or attested as to quality and fitness by some governmental, scientific or other recognized agency empowered and qualified to certify as to the attributes of said product.

PAR. 6. Such representations on the part of the respondent are false and misleading. In truth and in fact, respondent's product is not and has not been processed from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex., nor is it or has it been made directly from Texas mineral water or from any other natural mineral water as it is taken from the earth. The preparation of said product, on the contrary, consists of mixing ordinary water from the city water mains of Mineral Wells, Tex., with commercial chemicals purchased by respondent from one or more chemical companies operating and obtaining their raw materials hundreds of miles from the city of Mineral Wells, Tex., heating the solution thus obtained until it reaches a proper gravity, and then cooling the concentrate in refrigerated compartments. Respondent's product is not properly described as "Certified," inasmuch as said product has never been endorsed or attested as to quality or fitness by any governmental, scientific, or any other recognized agency whatever.

PAR. 7. The city of Mineral Wells, Tex., has over a long period of time become well and favorably known for its mineral water containing certain constituents. The words "Mineral Wells," when used in connection with mineral water or a derivative thereof, have been for many years last past, and are now, associated in the minds of a substantial portion of the purchasing public with the wells located at or in the vicinity of the city of Mineral Wells, Tex. The use by the respondent of the words "Mineral Wells" in connection with its product constitutes a representation to the public that said product is processed from water obtained from such wells.

PAR. 8. The use by the respondent of the words "Mineral Wells" as a part of its corporate name constitutes within itself a false and misleading representation that respondent's product is produced from mineral water obtained from wells at Mineral Wells, Tex.

PAR. 9. Among the competitors of respondent referred to in paragraph Three hereof are many who do not misrepresent their said products or the places of origin thereof.

PAR. 10. The use by the respondent of the acts and practices herein set forth has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into an erroneous and mistaken belief as to respondent's product and the place of origin thereof, and to induce such portion of the public to purchase substantial quantities of said product as the result of such erroneous and mistaken belief. In consequence, trade has been diverted unfairly to respondent from its competitors, with the result that substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 29, 1941, issued, and on June 2, 1941, served its complaint in this proceeding upon respondent, Mineral Wells Crystal Producers, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the

filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint 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 the 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. Respondent, Mineral Wells Crystal Producers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located in Mineral Wells, Tex.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the processing and in the sale and distribution of certain mineral crystals intended for use in the treatment of certain ailments of the human body. Respondent causes and has caused said mineral crystals, when sold, to be transported from its place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals, firms, and partnerships also engaged in the processing and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of mineral crystals and other medicinal preparations intended for the same or substantially the same uses as those for which respondent's product is intended.

PAR. 4. In the course and conduct of its aforesaid business, respondent has made and is now making false and misleading representations with respect to its said product and the source and origin thereof. Such representations have taken the form of statements and legends imprinted on leaflets, letterheads, billheads, sales in-

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voices, display cards and other advertising material which respondent has caused and is causing to be distributed among purchasers and prospective purchasers, and on the labels and outer wrappings of the containers in which respondent's product is packed, displayed and sold. Among, and typical of, the false, misleading and deceptive statements and representations so made and distributed are the following:

MINERAL WELLS CRYSTAL PRODUCERS, INC.,

Manufacturers

CERTIFIED

Mineral Wells

Crystals

Made in Mineral Wells, Tex.

Made from Texas mineral water.

Here's to Health

Use Certified Mineral Crystals

Certified Mineral Crystals

Processed and distributed by

Mineral Wells Crystal Producers, Inc.

Mineral Wells, Tex.

PAR. 5. Through the use of the aforesaid representations, and others of similar import not specifically set out herein, the respondent represents and has represented, directly or through inference that its mineral crystals are produced exclusively from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex., and that said product has been endorsed or attested as to quality and fitness by some governmental, scientific or other recognized agency empowered and qualified to certify as to the attributes of said product.

PAR. 6. Such representations on the part of the respondent are false and misleading. In truth and in fact, respondent's product is not and has not been processed from mineral water obtained in its natural state from the earth at or in the vicinity of Mineral Wells, Tex., nor is it or has it been made directly from Texas mineral water or from any other natural mineral water as it is taken from the earth. The preparation of said product, on the contrary, consists of mixing ordinary water from the city water mains of Mineral Wells, Tex., with commercial chemicals purchased by respondent from one or more chemical companies operating and obtaining their raw materials hundreds of miles from the city of Mineral Wells, Tex., heating the solution thus obtained until it reaches a proper gravity, and then cooling the concentrate in refrigerated compartments. Respondent's

product is not properly described as "Certified," inasmuch as said product has never been endorsed or attested as to quality or fitness by any governmental, scientific, or any other recognized agency whatever.

PAR. 7. The city of Mineral Wells, Tex., has over a long period of time become well and favorably known for its mineral water containing certain constituents. The words "Mineral Wells," when used in connection with mineral water or a derivative thereof, have been for many years last past, and are now, associated in the minds of a substantial portion of the purchasing public with the wells located at or in the vicinity of the city of Mineral Wells, Tex. The use by the respondent of the words "Mineral Wells" in connection with its product constitutes a representation to the public that said product is processed from water obtained from such wells.

PAR. 8. The use by the respondent of the words "Mineral Wells" as a part of its corporate name constitutes within itself a false and misleading representation that respondent's product is produced from mineral water obtained from wells at Mineral Wells, Tex.

PAR. 9. Among the competitors of respondent referred to in paragraph 3 hereof are many who do not misrepresent their said products or the places of origin thereof.

PAR. 10. The use by the respondent of the acts and practices herein set forth has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into an erroneous and mistaken belief as to respondent's product and the place of origin thereof, and to induce such portion of the public to purchase substantial quantities of said product as the result of such erroneous and mistaken belief. In consequence, trade has been diverted unfairly to respondent from its competitors, with the result that substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respond-

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ent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives 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 respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Mineral Wells Crystal Producers, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of mineral crystals in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the statement or legend, "Made in Mineral Wells, Tex.," or any statement or legend of similar import or meaning, on its leaflets, billheads, sales invoices, display cards, or other advertising material, in connection with the sale or the offering for sale of any mineral crystals not produced exclusively from mineral water obtained in its natural state from the earth within the city of Mineral Wells, Tex., or from the vicinity thereof.

2. Using the statement or legend, "Made from Texas Mineral Water," or any other statement or legend of similar import or meaning, on its leaflets, billheads, sales invoices, display cards, or other advertising material in connection with the sale or the offering for sale of any mineral crystals not produced exclusively from mineral water obtained in its natural state from the earth within the State of Texas.

3. Using the words "Mineral Wells," or any simulation thereof, in its corporate or trade name, or in any manner to designate, describe, or refer to its business in connection with the sale or the offering for sale of any mineral crystals not produced exclusively from mineral water obtained in its natural state from the earth within the city of Mineral Wells, Tex., or from the vicinity thereof.

4. Using the word "Certified," or any other word or words of similar import or meaning, on its advertising material, or otherwise, to represent or to imply that respondent's product has been endorsed or attested as to quality or fitness by some governmental, scientific, or other recognized agency empowered and qualified to certify to such facts, when such an endorsement or attestation has not been obtained.

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.

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IN THE MATTER OF

CHARLES CAMPBELL BUTTENFIELD, SR., TRADING AS
DEAN CABOT

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

Docket 4494. Complaint, Apr. 26, 1941—Decision, Nov. 17, 1941

Where an individual engaged in interstate sale and distribution of its "Caboteks" medicinal preparation for women; in advertisements disseminated through the mails, newspapers and other advertising literature—

- (a) Represented, directly and by implication, that its said "Caboteks" was a cure or remedy for delayed menstruation and a competent and effective treatment therefor, and was safe for use, the facts being that it was not such a cure or treatment; it contained certain drugs in sufficient quantity to cause serious and irreparable injury to health if used under prescribed or usual conditions; might result in serious gastrointestinal disturbances and, where used to interfere with the normal course of pregnancy, in infection of the uterus and blood poisoning, and might also produce a severe circulatory condition tending to produce abortion; and severe toxic effects and even a gangrenous condition in the limbs, or other serious or irreparable injury to health; and
- (b) Failed to reveal facts material in the light of the aforesaid representations and that the use of said preparation under prescribed or usual conditions, might have aforesaid dangerous results;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby to induce purchase thereof by it:

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. William L. Taggart 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 Charles Campbell Buttenfield, Sr., an individual, trading as Dean Cabot, hereinafter referred to as respondent, has 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. Respondent, Charles Campbell Buttenfield, Sr., is an individual trading as Dean Cabot, with his office and principal place