

Complaint

IN THE MATTER OF

G. J. TRITICO, DOING BUSINESS AS KAS-MO REMEDY CO.

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

Docket 3536. Complaint, Aug. 15, 1938—Decision, Dec. 23, 1941

Where an individual engaged in the manufacture of his "Kas-Mo Salve," and in the competitive interstate sale and distribution thereof; through radio broadcasts and circulars and pamphlets distributed among prospective purchasers in various States—

Represented that his said product had antiseptic qualities and was an antiseptic, and a cure or remedy for pimples, boils, carbuncles, skin risings, skin eruptions, cuts, chronic sores, irritations caused by bad blood, bites of insects, and rectal irritations, and constituted a competent and effective treatment for such conditions, and that use thereof would prevent the spread of infection, assist nature in rapid healing of all skin troubles, and give relief from pain;

Facts being that preparation in question, which was a mild astringent and counterirritant ointment possessing negligible antiseptic or healing qualities, was not a cure or remedy, and did not constitute a competent or effective treatment, for any of the conditions named, and in treatment of rectal irritations its therapeutic value was limited to furnishing temporary relief only;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that all of such representations were true, and with result that a number of the consuming public purchased a substantial volume of his said preparation, and trade was thus unfairly diverted to him from his competitors who did not misrepresent the quality, character, or effectiveness of their products:

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.

Before *Mr. Arthur F. Thomas*, *Mr. John J. Keenan*, and *Mr. Miles J. Furnas*, trial examiners.

Mr. John R. Phillips, Jr., for the Commission.

Mr. Quentin Keith, of Port Arthur, Tex., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that G. J. Tritico, doing business under the trade name of "Kas-Mo Remedy Co.," 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

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thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. G. J. Tritico is an individual, doing business under the trade name of "Kas-Mo Remedy Co.," with his office and place of business located at 949 Seventh St., Port Arthur, Tex. Respondent is now and has been for many years last past engaged in the business of manufacturing, selling, and distributing a medical product designated as "Kas-Mo Salve."

PAR. 2. Respondent causes his said medical preparation when sold, to be transported from his place of business in the State of Texas, to the purchasers thereof, located in the various States of the United States other than Texas, and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said medical preparation sold and distributed by him 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 his said business, respondent is now and has been in substantial competition with other individuals and with partnerships, firms, and corporations likewise engaged in the business of selling and distributing similar preparations and preparations used for the same and similar purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his medical preparation, has made many statements and representations by means of radio broadcasts, and by bulletins and pamphlets circulated among prospective purchasers in the various States of the United States and in the District of Columbia. All of said statements purport to be descriptive of the therapeutic and antiseptic values of respondent's aforesaid preparation.

Among other statements appearing in the advertisements and descriptive literature and the radio broadcasts, as aforesaid, are the following:

Kas-Mo treatment will prevent the spread of infection and relieve you of further worries.

Kas-Mo is doubly guaranteed to do just exactly as the manufacturers say. Kas-Mo leads the league in healing, antiseptic qualities.

Famous antiseptic salve. * * * Use it if you are suffering with boils, carbuncles, cuts, or burns, or bothered with those obstinate sores that have not healed for many years. The effectiveness of this Kas-Mo Salve can be proven by you in a very short time.

Take a small portion of Kas-Mo and touch that pimple with it * * * keeping it covered until it heals.

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Kas-Mo will render to you an invaluable aid if you are suffering from painful boils, sores, or other irritations that seem incurable.

Will bring you the same remarkably satisfactory results that it has brought to thousands of people.

Give Kas-Mo a fair chance to relieve your pain and the results will be gratifying.

You can enjoy the freedom from pain, cuts, bruises, or sores that are supposedly incurable, or any other irritation caused by bad blood.

Found reliable by thousands—for more than thirty years.

Is a painless treatment for boils and other external eruptions of the skin.

A soothing application for painful risings, superficial cuts, slight burns, small wounds, bites of insects, and recommended to relieve rectal irritations.

Continue the treatment until desired results are obtained.

Kas-Mo medication assists nature in making rapid healing of skin troubles as indicated.

All of said statements, together with similar statements appearing in the respondent's literature, and radio broadcasts, purport to be descriptive of respondent's preparation and of its effectiveness in use. Through such statements, respondent represents, directly and by inference, that the preparation "Kas-Mo Salve" is doubly guaranteed; that it will prevent the spread of infection; that it leads in healing and the relief from pain; that it has antiseptic qualities and is an antiseptic; that it constitutes a cure and remedy for the treatment of pimples, boils, carbuncles, skin risings, external eruptions of the skin, cuts, burns, chronic sores, irritations caused by bad blood, bites of insects, relief of rectal irritations; and that it assists nature in the rapid healing of all skin troubles.

PAR. 5. The representations made by respondent with respect to the nature and effect of his preparation when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, "Kas-Mo Salve" is not doubly guaranteed. It is not an antiseptic and does not possess antiseptic or healing qualities. It will not prevent the spread of infection. It is not a cure or remedy for the treatment of pimples, boils, carbuncles, skin risings, external eruptions of the skin, wounds, chronic sores, irritations caused by bad blood, bites of insects, and relief of rectal irritations. It has no healing properties and will not relieve pain. It will not assist nature in the rapid healing of skin troubles.

The true facts are, that the ingredients of "Kas-Mo Salve" have no therapeutic value in healing, nor in relieving pain, nor as a cure or remedy for the treatment of the various conditions and disorders as claimed in respondent's advertising literature and radio broadcasts. Respondent's preparation is only a mild astringent and counterirritant ointment.

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PAR. 6. There are, among the respondent's competitors, many who distribute and sell similar medical preparations or other preparations designed, intended, and sold for similar usage, who do not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing his product and its effectiveness when used, as hereinabove set out, were and are calculated to have, and have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's product, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing similar medical preparations, and who truthfully advertise their respective products and the effectiveness thereof when used. As a consequence thereof, injury has been done and is now 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. 8. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice 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 August 15 A. D. 1938, issued and subsequently served its complaint on the respondent, G. J. Tritico, doing business under the name of "Kas-Mo Remedy Co.," charging him 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 thereto, testimony and other evidence in support of said complaint were introduced by Edward W. Thomerson, D. T. Puckett, and G. A. Rault, attorneys for the Commission, and in opposition to the allegations of the complaint by Quentin Keith, attorney for the respondent, before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came

on for final hearing before the Commission on said complaint, answer thereto, testimony, and other evidence, report of the trial examiners upon the evidence, and brief in support of the complaint, filed by John R. Phillips, Jr., attorney for the Commission (no brief having been filed by the respondent or oral argument 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, G. J. Tritico, is an individual doing business under the trade name of Kas-Mo Remedy Co., with his office and place of business located at 949 Seventh Street, Port Arthur, Tex. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, selling, and distributing a medicinal preparation designated as "Kas-Mo Salve." Respondent causes said preparation, when sold, to be transported from his place of business in the State of Texas to the purchasers thereof located in various other States of the United States. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his said business respondent is now, and has been, in substantial competition with other individuals and with partnerships, firms, and corporations likewise engaged in the sale and distribution, in commerce, between and among the various States of the United States, of preparations used in the treatment of the various diseases and conditions for which respondent recommends his preparation.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his medicinal preparation, "Kas-Mo Salve," the respondent has made false and deceptive statements and representations by means of radio broadcasts and by circulars and pamphlets distributed among prospective purchasers located in various States of the United States.

Among the false and deceptive statements and representations appearing in advertisements, descriptive literature, and radio broadcasts, are the following:

Kas-Mo treatment will prevent the spread of infection and relieve you of further worries.

Kas-Mo leads the league in healing, antiseptic qualities.

Famous antiseptic salve * * * Use it if you are suffering with boils, carbuncles, cuts, or burns, or bothered with those obstinate sores that have not

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healed for many years. The effectiveness of this Kas-Mo Salve can be proven by you in a very short time.

Take a small portion of Kas-Mo and touch that pimple with it * * * keeping it covered until it heals.

Kas-Mo will render to you an invaluable aid if you are suffering from painful boils, sores, or other irritations that seem incurable.

Will bring you the same remarkably satisfactory results that it has brought to thousands of people.

Give Kas-Mo a fair chance to relieve your pain and the results will be gratifying.

You can enjoy the freedom from pain, cuts, bruises, or sores that are supposedly incurable or any other irritation caused by bad blood.

Is a painless treatment for boils and other external eruptions of the skin. A soothing application for painful risings, superficial cuts, slight burns, small wounds, bites of insects, and recommended to relieve rectal irritations.

Continue the treatment until desired results are obtained.

Kas-Mo medication assists nature in making rapid healing of skin troubles as indicated.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents that his preparation, "Kas-Mo Salve," has antiseptic qualities and is an antiseptic; that it is a cure or remedy for pimples, boils, carbuncles, skin risings, external eruptions of the skin, cuts, chronic sores, irritations caused by bad blood, bites of insects, and rectal irritations, and constitutes a competent and effective treatment for such conditions; and that its use will prevent the spread of infection, assist nature in rapid healing of all skin troubles, and give relief from pain.

PAR. 5. The formula for respondent's preparation, "Kas-Mo Salve," is as follows:

- 1 gallon alcohol.
- 3 ounces rosin (yellow).
- 8 ounces solid extract of stramonium leaves (Lilly).
- 24 ounces beeswax.
- 4 ounces copper acetate (merck).
- Vaseline Q. S.
- M. F. T. Ungt.

Respondent's preparation is a mild astringent and counterirritant ointment possessing negligible antiseptic or healing qualities. The use of this preparation will not prevent the spread of infection. Said preparation is not a cure or remedy for pimples, boils, carbuncles, skin risings, external eruptions of the skin, cuts, chronic sores, irritations caused by bad blood, or insect bites, and does not constitute a

competent or effective treatment for any of these conditions. The therapeutic value of this preparation in the treatment of rectal irritations is limited to the furnishing of temporary relief only.

PAR. 6. The false and misleading statements and representations made by the respondent in designating or describing his product and its effectiveness when used, have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparation, with the result that trade has been diverted unfairly to the respondent from his competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States, of preparations used in the treatment of the various diseases and conditions for which respondent recommends his preparation and who do not in any way misrepresent the quality or character of their preparations, or their effectiveness in use.

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, the answer of the respondent, testimony, and other evidence taken before the trial examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiners upon the evidence, and brief filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, G. J. Tritico, doing business under the trade name of "Kas-Mo Remedy Co.," his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his medicinal preparation designated "Kas-Mo Salve," or any other preparation of substantially similar composition or possessing substantially

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similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from representing:

1. That respondent's preparation, "Kas-Mo Salve," is a cure or remedy for pimples, boils, carbuncles, skin risings, external eruptions of the skin, cuts, chronic sores, irritations caused by bad blood, or insect bites, or that said preparation constitutes a competent or effective treatment for any of such conditions.

2. That said preparation has any therapeutic value in the treatment of rectal irritations in excess of furnishing temporary relief.

3. That the use of respondent's preparation will prevent the spread of infection.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

BEHO RUBBER CO., INC., AND BERNARD HOLTZMAN, MAE MURRAY AND MILTON M. HOLTZMAN, INDIVIDUALLY AND AS OFFICERS AND DIRECTORS OF BEHO RUBBER CO., INC., ALSO TRADING AS THE BEST TIRE HOUSE, THE MODERN IMPROVED RETREAD OUTLET, AND THE ASSURED REMODED TIRE DISTRIBUTORS

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

Docket 3973. Complaint, Dec. 14, 1939—Decision, Dec. 23, 1941

Where a corporation and two individuals, general officers thereof, engaged, under corporate and various other trade names, in competitive interstate sale and distribution of retreaded or recapped tires for automobiles, trucks, and buses; in seeking to induce salesmen to accept employment with them through advertisements in newspapers and other publications of general circulation, and through their "crew managers" whom they employed to travel in the various States seeking salesmen and purchasers for their products—

- (a) Represented that they paid their salesmen a salary of \$40.00 a week and commission, and all expenses while being trained; and
- (b) Represented that they manufactured the retreaded or recapped tires which they sold, and used only the best carcasses, i. e., best quality of used tires, in their said products;

Notwithstanding fact they did not pay their salesmen aforesaid salary, or any other sum per week, and a commission, or any of the expenses of beginners employed by them, did not manufacture their said products, and the carcasses used by them were only of average quality and in many instances inferior to the average used in such tires; and

Where said corporation and individuals, engaged as aforesaid; through their salesmen whom they supplied with sales kits, order blanks and literature bearing various trade names made use of by them, and with cross-cut sections of tires to display to customers; as typical of many similar claims—

- (c) Represented that the tires purchased from them would be identical in quality with the samples displayed by salesman taking an order, and of the size ordered by the purchaser, that carcasses used by them were less than 1 year old, that their tires would be free from boots or patches, were suitable for the purpose for which they were purchased, and would give many miles of service in normal course of usage at a fraction of the cost of new tires;

The facts being they did not ship to purchasers tires of the same quality as the sample displayed by their salesman, but made a practice of shipping shoddy and in many cases worthless tires; they had no way of knowing the age of the carcasses they used, which, in some instances, were old and useless; said products in most instances did contain boots and patches, and, furthermore, were not suitable for purposes for which purchased, and in many instances were serviceable for a few days only, if as much;

- (d) Falsely represented that the tires would be shipped to the purchaser from points in his vicinity, and that they would ship tires on consignment, and