

Syllabus

IN THE MATTER OF

FANNIE P. FOX, TRADING AS SURE LABORATORIES.

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

Docket 3948. Complaint, Nov. 13, 1939—Decision, Jan. 26, 1942

Where an individual engaged in the manufacture and interstate sale of her "Sure" drug-containing preparation for use as a breath purifier; by advertisements in newspapers and periodicals and circulars, leaflets, pamphlets, and other advertising literature—

(a) Represented directly and indirectly that her said product was not a perfume but was a neutralizing agent which would neutralize all odors and remove every trace of offensive breath including odors from liquor, tobacco, onions, garlic, and other foods; and that by its use unpleasant breath odors, regardless of the cause, would be instantly destroyed and the user given a clean, sweet, unobjectionable breath;

The facts being that her said preparation would not affect or remove the cause of conditions responsible for unpleasant breath but action thereof was limited to temporarily covering up or masking the same; it had negligible antiseptic properties and would not inhibit the growth of bacteria in the mouth or be effective in destroying them; its essential quality was that of a perfume by reason of its content of aromatic volatile oils; and it was not a neutralizing agent or a breath purifier; and

(b) Represented that salesmen and distributors of her said preparation could establish a permanent and profitable business, setting forth, among other things, in her advertisements that "One man has averaged over \$300 profit weekly for the last sixty days";

The facts being that the maximum net earnings made by her salesmen in the ordinary course of business was \$7.50 a day or \$45.00 a week, they paying \$1.00 for a two-dozen container assortment on display cards and selling them to jobbers or wholesalers at \$1.28 and to retailers at \$1.60 each, and she based her estimate of the earnings of the particular salesman, upon whose performance aforesaid claim was based, upon the difference between the cost and resale price, with no consideration of expense incurred in making sales, and conceded that no other salesman or distributor had ever earned any comparable amount;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true and of inducing it, by reason thereof, to purchase substantial quantities of the preparation in question:

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.

Before *Mr. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

Mr. Randolph W. Branch for the Commission.

Bussian & DeBolt, of Chicago, Ill., for respondent.

Complaint

34 F. T. C.

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 Fannie P. Fox, an individual, trading and doing business under the name of "Sure Laboratories," 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, Fannie P. Fox, is an individual, trading and doing business under the name of "Sure Laboratories," with her office and principal place of business at 841 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than two years last past, has been, engaged in the business of manufacturing, selling, and distributing a certain preparation containing drugs known as "Sure" and recommended for use as a breath purifier. Respondent causes said preparation when sold, to be transported from her aforesaid 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning said preparations by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning her said product by various means for the purpose of inducing, and

which are likely to induce, directly or indirectly, the purchase of her said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as foresaid, are the following:

Just put a drop of "Sure" on your tongue, swirl it around in your mouth * * * and every trace of offensive breath is gone instantly! That's because "Sure" is a patented concentrated formula easy to use and pleasant to taste that scientifically neutralizes all odors.

"Sure" is different from any breath purifier you ever heard of * * * it is not a perfume * * * it works every time.

"Sure" is the new breath purifier that does away with breath odors from liquor, tobacco, garlic or other foods.

Removes offensive breath odors from onions, garlic, tobacco, cocktails, etc. Just one drop on your tongue and your breath will be sweet. Also removes odors from hands.

It is not only a breath purifier—it goes even further. It neutralizes food odors—not merely disguising them—leaving the mouth and breath sweet and clean and thus acting as a highly efficient oral hygiene.

You and we have always wanted something that sells to anyone and everyone at sight * * * we have found that very thing in the SURE formula * * *.

Anyone can make money with "Sure".

It is a sure seller and a big repeater * * *.

Start your big earnings the first day.

Big cash profits every day.

You can build a route of 50, 100, 200 stores almost overnight * * * enjoy a big income that is assured—week after week, all year round. It's the kind of business you can have * * *.

A permanent business with steady repeat sales is yours * * *.

One man has averaged over \$300 profit weekly for the last 60 days.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of said preparation, the effectiveness of its use, the ease with which it may be sold and the earnings or profits which may be attained by those who purchase it for resale, the respondent has represented and does now represent directly and indirectly, that her preparation "Sure" is not a perfume but is a neutralizing agent which will neutralize all odors and remove every trace of offensive breath; that it is a breath purifier that removes and does away with all breath odors, including odors from liquor, tobacco, onions, garlic, and other goods; that by its use unpleasant breath odors, regardless of cause, will be instantly removed and destroyed and the user given a clean, sweet, unobjectionable breath; that it will remove all odors from the hands; that those who purchase "Sure" for resale are assured of making big earnings or profits from the first day and every day, and of being able to establish a perma-

Findings

34 F. T. C.

nent and profitable business, and that profits or earnings of \$300 per week or sums approximating said sum could be earned by ordinary salesmen or distributors of "Sure" under normal and usual business conditions.

PAR. 5. In truth and in fact, respondent's preparation "Sure" contains a mixture of aromatic volatile oils having a definite odor of its own and acts primarily as a perfume. This preparation does not act as a neutralizing agent and will not neutralize odors of the breath but instead its effect upon unpleasant breath is limited to masking breath odors to a greater or less degree. "Sure" is not a breath purifier and has no appreciable effect in destroying, counteracting or arresting the causes of unpleasant breath. It will not remove or destroy unpleasant breath odors or in all cases give the user of such preparation a clean, sweet, unobjectionable breath. This preparation when used on the hands will to some extent mask certain odors but has no other effect in removing such odors. Those who purchase "Sure" for resale are not assured of big earnings or profits from the very first day or every day; neither are they assured of establishing a permanent profitable business. Ordinary salesmen and distributors under normal and usual conditions of business cannot earn \$300 per week or sums reasonably approximating said sum, or sums which could be characterized as representing large earnings.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparation has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and induces a portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of said preparation.

PAR. 7. The aforesaid acts and practices of the respondent, 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 November 13 A. D. 1939, issued and subsequently served its complaint upon the respondent, Fannie P. Fox, an individual, trading as Sure Laboratories, charging her 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 respondent's answer thereto, testimony and other evidence in support of said complaint were introduced by Randolph W. Branch, attorney for the Commission, and in opposition to the allegations of the complaint by John A. Bussian and Robert A. Bussian, attorneys 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 upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs in support of the complaint and in opposition thereto (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, Fannie P. Fox, is an individual, trading and doing business under the name of Sure Laboratories, with her office and principal place of business at 841 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture and in the sale and distribution of a certain preparation containing drugs, known as "Sure" and recommended for use as a breath purifier. Respondent causes said preparation, when sold, to be transported from her 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said preparation, by various means, for the purpose of inducing and which are likely to induce,

Findings

34 F. T. C.

directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Just put a drop of "Sure" on your tongue, swirl it around in your mouth * * * and every trace of offensive breath is gone instantly! That's because "Sure" is a patented concentrated formula easy to use and pleasant to taste that scientifically neutralizes all odors.

"Sure" is different from any breath purifier you ever heard of * * * it is not a perfume * * * It works every time.

"Sure" is the new breath purifier that does away with breath odors from liquor, tobacco, garlic, or other foods.

Removes offensive breath odors from onions, garlic, tobacco, cocktails, etc. Just one drop on your tongue and your breath will be sweet. Also removes odors from hands.

It is not only a breath purifier—it goes even further. It neutralizes food odors—not merely disguising them—leaving the mouth and breath sweet and clean and thus acting as a highly efficient oral hygiene.

You and we have always wanted something that sells to anyone and everyone at sight * * * we have found that very thing in the SURE formula * * *.

Anyone can make money with "Sure."

It is a sure seller and a big repeater * * *.

Start your big earnings the first day.

Big cash profits every day.

You can build a route of 50, 100, 200 stores almost overnight * * * enjoy a big income that is assured—week after week, all year round. It's the kind of business you can have * * *.

A permanent business with steady repeat sales is yours * * *.

One man has averaged over \$300 profit weekly for the last 60 days.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, which purport to be descriptive of said preparation and the effectiveness of its use, the respondent has represented, and does now represent, directly and indirectly, that her preparation "Sure" is not a perfume but is a neutralizing agent which will neutralize all odors and remove every trace of offensive breath; that it is a breath purifier that removes and does away with all breath odors, including odors from liquor, tobacco, onions, garlic, and other foods; and that by its use unpleasant breath odors, regardless of the cause, will be instantly removed and destroyed and the user given a clean, sweet, unobjectionable breath.

PAR. 5. There are various causes of unpleasant breath, some of which have their origin in the mouth. Those which are particularly associated with the mouth are odors from foods which have been eaten, particles of which, or the oils from which, lodge in the teeth and gums, and also odors caused from infection of the teeth or gums. In addition, there are many causes of unpleasant breath which are not directly connected with conditions of the mouth but which are due to nasal, sinus, or throat infections, stomach disorders, or odors given off through the lungs. The use of respondent's preparation will not affect or remove the cause of any of the above-described conditions of unpleasant breath, but, instead, its action is limited to temporarily covering up or masking such odors. Under conditions of use, this preparation has negligible antiseptic properties and will not inhibit the growth of bacteria or be effective in destroying bacteria in the mouth. The essential quality of respondent's preparation is that of a perfume, by reason of the existence of various aromatic volatile oils in the preparation, and its effectiveness upon unpleasant breath or breath odors is limited to covering up or masking such odors. This preparation is not a neutralizing agent or breath purifier and will not destroy or arrest the causes of unpleasant breath.

PAR. 6. Through the use of the statements and representations hereinabove set forth with reference to the possible earnings of salesmen and distributors, the respondent represents that such salesmen can establish a permanent and profitable business, with average net earnings of as high as \$300 per week.

Respondent's preparation is sold by agents and distributors to wholesalers, jobbers, and retailers, on display cards or in other assortments containing two dozen containers of respondent's product, which cards or assortments are sold to jobbers or wholesalers at the price of \$1.28 per assortment, and to retailers at the price of \$1.60 per assortment. The salesman or distributor pays \$1 for such assortment, which gives him a profit of 60 cents on each assortment when sold to retailers, and 28 cents profit when sold to jobbers or wholesalers.

PAR. 7. The respondent testified that one distributor who sold her preparation for a period of five months, averaged \$300 per week for the last two months of this period; that most of these orders were taken from wholesalers and jobbers; that respondent knew nothing of his method of doing business or whether or not he operated through salesmen employed by him; that such estimate of earnings was based upon the difference between the cost and resale price and did not take into consideration the expense of the representative in connection with the sales made; that no other salesman or distributor had ever earned

Order

34 F. T. C.

any comparable amount; and that the sum of \$7.50 per day would be considered the best that might be expected by the average salesman.

PAR. 8. Based upon the testimony of the respondent, the Commission finds that the maximum net earnings made by respondent's salesmen in the ordinary course of business is approximately \$7.50 per day, or \$45 per week, and that the use of earnings of an isolated salesman, without information as to his methods of doing business or his expenses in connection with making of sales, is misleading, and has a tendency and capacity to cause prospective salesmen and distributors to believe that such amounts could be earned, net, by the average salesman in the ordinary and usual course of business.

PAR. 9. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations in advertisements disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead, and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said preparation.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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.

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 trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; 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 Fannie P. Fox, an individual, trading and doing business under the name of Sure Laboratories, or trading under any other name, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of her prepara-

tion known as "Sure," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from, directly or indirectly,

1. Disseminating, or causing to be disseminated, any advertisement by means of United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(a) That respondent's preparation is a neutralizing agent or a breath purifier.

(b) That respondent's preparation will destroy or arrest the causes of unpleasant breath, or have any effect upon such causes.

(c) That respondent's preparation has any effect upon unpleasant breath odors other than that of a perfume in temporarily masking such breath odors.

(d) That the possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time is any specified sum of money which is not a true representation of the average net earnings or profits consistently made by a substantial number of respondent's full-time active agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

(e) That the earnings or profits of any agent, salesman, representative, or distributor for any given period of time is any specified sum of money which has not, in fact, been consistently earned, net, by such agent, salesman, representative, or distributor in the ordinary course of business and under normal conditions and circumstances.

(f) That any specified sum of money greatly in excess of the average earnings of other agents, salesmen, representatives, or distributors of respondent has been earned by any specified representative, unless such representation is immediately accompanied by a statement to the effect that such earnings are exceptional and unusual.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of respondent's preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

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

Complaint

34 F. T. C.

IN THE MATTER OF
VICTOR HAT COMPANY

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

Docket 4629. Complaint, Nov. 12, 1941—Decision, Jan. 26, 1942

Where an individual engaged in the manufacture of women's hats from materials obtained from old and worn felt hats purchased by him, and which, after being cleaned, shaped and fitted with new trimmings had the appearance of new; and in the interstate sale and distribution of said products—

Sold his said hats with no label, marking or designation stamped thereon or attached thereto to indicate that they were in reality made from old and used hat bodies, to wholesale and retail dealers by whom they were resold to the purchasing public without disclosure of aforesaid fact;

With result that a substantial portion of such public was misled into believing that the products in question were manufactured entirely from new materials, and into purchase of substantial quantities thereof; and there was thereby placed in the hands of dealers means whereby they might similarly deceive the purchasing public:

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. L. E. Creel, Jr., for the Commission.

Mr. Irving Block, of Chicago, Ill., 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 Frank Gorr, individually and trading as Victor Hat Co., 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, Frank Gorr, is an individual, trading as Victor Hat Co., and has his principal office and place of business at 153 North Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past, has been, engaged in the business of manufacturing women's hats from felt and other materials obtained from old, used, and second-hand hats, and of selling the same to retailers, jobbers, or wholesale dealers in the various States of the United States. Respondent causes said hats, when sold, to be transported from his place of business in the State of Illinois to