

Syllabus

IN THE MATTER OF

BLUE RIBBON HATCHERIES CORPORATION, TRADING
AS BOCKENSTETTE'S BLUE RIBBON FARMS, AND AS
SUBSTITUTED RESPONDENTS THEREFOR, J. A. BOCK-
ENSTETTE AND ROSE BOCKENSTETTE, TRADING AS
AFORESAIDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4537. Complaint, July 10, 1941—Decision, May 11, 1942*

Where two individuals, successors to the corporate business which they theretofore owned and conducted, engaged in breeding and hatching and in the interstate sale and distribution of baby chicks; by means of advertisements in newspapers and trade journals, folders, pamphlets, circular letters, and other advertising matter, directly or by implication—

- (a) Falsely represented that they were "R. O. P." poultry breeders, and operated a poultry farm under the supervision of an official from the agency supervising "U. S. Record of Performance" work of the Department of Agriculture; and
- (b) Represented that the average production of hens grown from their chicks exceeded that of hens generally, by 94 eggs per annum; that each hen grown from their chicks could be depended upon to lay an egg daily and produced eggs at from one-third to one-half the cost of producing them from birds of ordinary breeding; and
- (c) Represented that they would fully indemnify purchasers of baby chicks against all losses for 4 weeks from date of shipment;

The facts being the average egg production of such hens did not exceed by 94 per annum, or by any appreciable number, the average production of hens generally; such hens would not lay for any considerable period of time, nor were their eggs produced at appreciably less cost than average cost of eggs laid by hens of so-called ordinary breeding; and said individuals did not replace, without charge, chicks which died after 3 days after shipment, but beyond that time and up to 4 weeks made replacement only if buyer paid half the purchase price;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such advertisements were true, thereby inducing it, because of such belief, to purchase substantial quantities of said poultry products:

Held, That such acts and practices, under the circumstances set forth, were all to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Wheeler, Brewster, Hunt & Goodell, of Topeka, Kans., for respondents.

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COMPLAINT¹

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 Blue Ribbon Hatcheries Corporation, a corporation trading as Bockenstette's Blue Ribbon Farms, 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, Blue Ribbon Hatcheries Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas with its office and principal place of business located at Sabetha, Kans. Respondent also trades under the name Bockenstette's Blue Ribbon Farms.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of hatching, breeding, and selling chickens, especially baby chicks. Respondent causes its said baby chicks and chickens when sold by it to be transported from its afore-said place of business in the State of Kansas to purchasers thereof located in the various other States of the United States and in the District of Columbia.

¹ The Commission by order of September 9, 1941, approved stipulation, substituting parties respondent and permitting withdrawal of answer and filing of substitute answer, as follows:

This matter coming on for consideration by the Commission upon the motion of J. A. Bockenstette and Rose M. Bockenstette, that they be substituted as parties respondent in this proceeding in lieu and instead of Blue Ribbon Hatcheries Corporation, a corporation, and a stipulation by and between counsel for the Commission and said individuals whereby it is agreed that they may be substituted as parties respondent in this proceeding, and the motion of said individuals that they be permitted to withdraw the answer heretofore filed and to file a substitute answer in lieu thereof, and it appearing to the Commission that said Blue Ribbon Hatcheries Corporation, a corporation, named as respondent in this proceeding, has been dissolved and is no longer in existence, and that said individuals were the principal stockholders in, and directed and controlled the business of, said corporation, and were served with a copy of the complaint in this proceeding, and that said individuals have conducted, since the dissolution of said corporation, and are now conducting the business formerly operated by said corporation, and the Commission having considered said motions and stipulation and the record herein, and being now fully advised in the premises.

It is ordered, That J. A. Bockenstette and Rose M. Bockenstette, individuals trading and doing business under the name Bockenstette's Blue Ribbon Farms, be, and they hereby are, substituted as parties respondent in this proceeding in lieu and instead of Blue Ribbon Hatcheries Corporation, the respondent named in the complaint in this proceeding.

It is further ordered, That the stipulation entered into by counsel for the Commission and counsel for said individuals on August 14, 1941, be, and the same hereby is, approved and made a part of the record herein.

It is further ordered, That the respondents be permitted to withdraw the answer filed herein on August 4, 1941, and file in lieu thereof answer submitted to the Commission on August 27, 1941.

It is further ordered, That the title of this proceeding be changed to reflect the change in parties respondent.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said baby chicks and chickens 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 the aforesaid business and for the purpose of inducing the purchase of its baby chicks and chickens, respondent has circulated and is now circulating among prospective purchasers throughout the United States, by United States mails, by advertisements in newspapers and trade journals, and by advertising folders, pamphlets, circular letters, and other advertising matter, many false statements and representations concerning its said products.

Among and typical of such false statements and representations disseminated as aforesaid are the following:

Each female has made her egg record in a previous year in an egg-laying contest under the R. O. P. supervision, or has our home-trapped record.

They are a choice group of individually wing banded females from a select group of R. O. P. Rhode Island Whites and individually pedigreed hens produced by our Contest Pen Mating.

Individually pedigreed males from R. O. P. trap nested Dams head these matings.

9400 More Eggs Per Year From Each 100 Hens!

These Gratifying Results Are Being Obtained By Our Customers, With Blue Ribbon Chicks!

Every Hen In These Flocks Lay An Egg Daily.

Based on Actual Unsolicited Letters, We Don't Believe There Is a Breeding Farm or Hatchery Anywhere That Can Duplicate Our Record For Customer Results. Figures taken from these customers' letters prove that Blue Ribbon Breeding is enabling our customers to produce eggs at from $\frac{1}{4}$ to $\frac{1}{2}$ the cost of producing them with birds of ordinary breeding. Our 1940 chicks will do even better.

4 Weeks Insurance Chick Buyers' Protection against Losses up to 4 weeks.

Through the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented directly or by implication that it is a United States record of performance poultry breeder and that it operates a poultry plant under the supervision of an official from the agency supervising United States record of performance work; that the average egg production from chicks sold by it exceeds an average egg production of hens generally by 94 eggs per annum; that each hen in flocks of hens grown from chicks sold by it can be depended upon to lay an egg daily; that eggs laid by hens grown from chicks sold by it generally have been or will be produced at a cost of from one-third to one-half the average cost of eggs laid by hens of ordinary breeding;

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and that respondent will fully indemnify purchasers of baby chicks against all losses up to and including a period of 4 weeks from date of purchase.

PAR. 4. A United States record of performance breeder is understood by members of the poultry industry to be one operating a poultry breeding plant under the official state agency cooperating with the Bureau of Animal Industry, U. S. Department of Agriculture. United States record of performance embraces records of egg production and body weight made on the breeders' premises under official supervision and similar records made at officially conducted egg-laying contests, when such records are passed upon by the official state inspector or official state supervisor and when the individual birds meet other United States record of performance requirements.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, the respondent is not a United States record of performance poultry breeder and does not operate a poultry breeding plant under the supervision of an official for the agency supervising United States record of performance work. The average egg production of hens grown from chicks sold by respondent does not exceed the average egg production of hens generally by 94 eggs per annum or by any appreciable number of eggs. Not all hens in flocks of hens grown from chicks sold by respondent will lay an egg daily for any considerable duration of time. Eggs laid by respondent's hens are not generally produced at a cost of from one-third to one-half or any appreciable less cost than the average cost of eggs laid by hens of so-called ordinary breeding. Respondent does not provide 4 weeks' insurance for the protection of chick-buyers. Respondent in fact replaces without charge those chicks which died within 3 days after being placed in the brooder, and if there is further loss after the 3-day period and up to 4 weeks, replacement is made only if the buyer pays half the purchase price for additional ones.

PAR. 6. The use by respondent of the foregoing false and misleading advertising disseminated as aforesaid has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true and do induce the purchasing public to purchase substantial quantities of respondents' products as a result of such belief.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the injury and 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 10 A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondent, Blue Ribbon Hatcheries Corporation, a corporation, trading as Bockenstette's Blue Ribbon Farms, charging it with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act.

After the issuance and service of the complaint a stipulation was entered into between counsel for the Commission and counsel for J. A. Bockenstette and Rose M. Bockenstette. Said stipulation recites that respondent, Blue Ribbon Hatcheries Corporation, ceased to be a corporation in the latter part of 1940; that J. A. Bockenstette and Rose M. Bockenstette, were the owners of the stock of said corporation; that said individuals have been and now are operating the business conducted under the name "Bockenstette's Blue Ribbon Farms," and, by the terms of said stipulation it was agreed that the answer filed by respondent, Blue Ribbon Hatcheries Corporation, be withdrawn and a substitute answer be filed by J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, and that said individuals be substituted as parties respondent in this proceeding for all purposes, in lieu of the Blue Ribbon Hatcheries Corporation; and the said J. A. Bockenstette and Rose M. Bockenstette, waived issuance and service of an amended complaint naming them as individual respondents herein.

By order of the Commission issued on September 9, 1941, the said stipulation was approved and made part of the record herein, and J. A. Bockenstette and Rose M. Bockenstette, individuals, trading and doing business under the name Bockenstette's Blue Ribbon Farms, were substituted as parties respondent in this proceeding in lieu and stead of Blue Ribbon Hatcheries Corporation, and leave was granted to withdraw the answer filed herein by Blue Ribbon Hatcheries Corporation, and to file the answer submitted to the Commission on August 27, 1941, by J. A. Bockenstette and Rose M. Bockenstette.

After issuance of the Commission's said order, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced by the attorney for the Commission and the attorneys for respondents before W. W. Sheppard, a duly appointed trial examiner of the Commission theretofore designated by it to serve in this proceeding, and the said testimony and other evidence were duly recorded and filed in the office of the Commission.

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Thereafter, the proceedings regularly came on for final hearing before the Commission on the complaint, the stipulation approved by the Commission on September 9, 1941, the joint answer of respondents, J. A. Bockenstette and Rose M. Bockenstette, individuals, trading and doing business under the name "Bockenstette's Blue Ribbon Farms," the testimony and other evidence, the report of the trial examiner upon the evidence and exceptions thereto, and briefs in support of the complaint and in opposition thereto: And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, J. A. Bockenstette and Rose M. Bockenstette, are individuals, trading and doing business under the name "Bockenstette's Blue Ribbon Farms"; their principal place of business adjoins the city of Sabetha, in the State of Kansas. For some time prior to December 1940 the business now conducted by respondents was conducted by Blue Ribbon Hatcheries Corporation, a corporation, trading as "Bockenstette's Blue Ribbon Farms." The stock of this corporation was owned by respondents, J. A. Bockenstette and Rose M. Bockenstette, who, since the dissolution of the corporation in December 1940 have continued the business under the name "Bockenstette's Blue Ribbon Farms." The original respondent was, and the substituted respondents, since December 1940 have been and are, engaged in the business of breeding, hatching and selling chickens, especially baby chicks. Respondents cause and have caused their baby chicks and chickens, when sold by them, to be transported from their principal place of business in the State of Kansas to purchasers thereof located in various States of the United States and in the District of Columbia. The substituted respondents, who will hereafter be called the respondents, maintain and have maintained a course of trade in said baby chicks and chickens in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. Respondents, in the course and conduct of their business, and for the purpose of inducing the purchase of their baby chicks and chickens, have circulated and are now circulating among prospective purchasers throughout the United States, by means of the United States mails, by advertisements in newspapers and trade jour-

nals, and by advertising folders, pamphlets, circular letters, and other advertising matter, many false statements and representations concerning their said products. Among and typical of such false statements and representations disseminated as aforesaid, are the following:

Each female has made her egg record in a previous year in an egg-laying contest under the R.O.P. supervision, or has our home trapped record.

They are a choice group of individually wing banded females from a select group of R.O.P. Rhode Island Whites and individually pedigreed hens produced by our Contest Pen Matling.

Individually pedigreed males from R.O.P. trap nested dams head these matings.

9400 More Eggs Per Year from Each 100 Hens.

These Gratifying Results Are Being Obtained by Our Customers with Blue Ribbon Chicks.

Every Hen in These Flocks Lay An Egg Daily.

Based on Actual Unsolicited Letters, We Don't Believe There Is a Breeding Farm or Hatchery Anywhere That Can Duplicate Our Record for Customer Results. Figures Taken from These Customers' Letters Prove That Blue Ribbon Breeding Is Enabling Our Customers to Produce Eggs at from $\frac{1}{3}$ to $\frac{1}{2}$ the Cost of Producing Them with Birds of Ordinary Breeding. Our 1940 Chicks Will Do Even Better.

4 Weeks' Insurance Chick Buyers' Protection against Losses Up to 4 Weeks.

PAR. 3. A plan for the administration of regulations for the improvement of poultry, poultry products and hatcheries, known as the "National Poultry Improvement Plan," has been administered by the Bureau of Animal Industry of the Department of Agriculture for a number of years, in cooperation with State authorities. In Kansas this cooperation authority is known as Kansas Poultry Improvement Association. Included in this plan is what is known as "United States Record of Performance," which is usually referred to as "U.S. R.O.P.," or "R.O.P.," and such designations are known generally to those engaged in the business of hatching, breeding and selling chicks. R.O.P. breeders are understood by the poultry industry to be those operating a poultry breeding plant under the official State agency cooperating with the Bureau of Animal Industry of the Department of Agriculture. The following are among the numerous requirements imposed upon an R.O.P. breeder.

The hens must be trap nested at regular intervals each day throughout the year.

R.O.P. Official State Inspectors make at least seven unannounced visits to R.O.P. Hatchery plants every year.

Poultry Plants are required to be kept open at all times, to permit such unannounced inspections.

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During these inspections, the inspector takes charge of the trapping and checking, and records the individuals who have met the requirements of R.O.P. poultry breeders.

The hens are required to lay 200 or more eggs a year in a trap nest, the eggs to average 24 ounces or more to the dozen in weight throughout the year. Records of egg production, egg weight and body weight, under official supervision, must be kept, and must be open to inspection at all times. Except in 2 enumerated instances, R. O. P. eggs and chicks must be produced on R. O. P. breeder's premises. Any chicken not meeting the standards of the R. O. P. may be removed from the R. O. P. flock by the official State inspector at any time. The term "Record of Performance," or "R. O. P.," has an advertising value which is national in its scope.

PAR. 4. Respondents, by their statements set forth in paragraph 2 hereof, have represented, either directly or by implication, that they are R. O. P. poultry breeders, and that they operate a poultry plant under the supervision of an official from the agency supervising U. S. record of performance work; when, in truth, respondents are not R. O. P. poultry breeders and do not operate a poultry plant under such supervision. Respondents, by means of the statements set forth in paragraph 2 hereof, represent that the average production of hens grown from chicks sold by them exceeds an average production of hens generally, by 94 eggs per annum; that each hen in flocks of hens grown from chicks sold by them can be depended upon to lay an egg daily; that hens grown from chicks purchased from respondents enable respondents' customers to produce eggs at from one-third to one-half the cost of producing them from birds of ordinary breeding; and that respondents will fully indemnify purchasers of baby chicks against all losses, up to and including a period of four weeks from date of shipment.

The average egg production of hens grown from chicks sold by respondent does not exceed 94 eggs per annum, or by any appreciable number of eggs, the average egg production of hens generally; nor will all hens in flocks grown from chicks sold by respondents lay an egg daily for any considerable period of time. Eggs laid by respondents' hens are not generally produced at a cost of from one-third to one-half the cost, or at any appreciably less cost, than the average cost of eggs laid by hens of so-called ordinary breeding. Respondents do not provide four weeks' insurance for the protection of chick buyers; respondents, in fact, replace without charge those chicks which die within three days after being shipped, and

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if there is further loss after the three days period, and up to four weeks, replacement is made only if the buyer pay half the purchase price for the additional chicks.

PAR. 5. The use by respondents of the foregoing false and misleading advertising, disseminated as aforesaid, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true, and the purchasing public, because of such belief, has been induced to purchase substantial quantities of respondent's poultry products.

CONCLUSION

The acts and practices of the respondent, as set forth in the foregoing findings as to the facts, are to the injury and 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 joint answer of the substituted respondents, J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, the testimony and other evidence, the report of the trial examiner thereon and exceptions to said report, and briefs in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that the substituted respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the substituted respondents, J. A. Bockenstette and Rose M. Bockenstette, trading as Bockenstette's Blue Ribbon Farms, or trading under any other name or designation, their representatives, agents and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of chicks or chickens, do forthwith cease and desist from directly or indirectly:

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

- (a) That respondents are R. O. P. poultry breeders, or that they operate a poultry plant under the supervision of an official from the agency supervising United States Record of Performance work.

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(b) That the average egg production of hens grown from chicks sold by respondents exceeds the average egg production from an equal number of hens generally, by 94 eggs each, per annum, or by any other appreciable amount.

(c) That hens in respondents' flocks lay an egg daily.

(d) That purchasers of respondents' products are enabled to produce eggs at from one-third to one-half the cost of producing them with birds of ordinary breeding.

(e) That respondents protect purchasers of their chicks against losses, up to 4 weeks.

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 respondents' product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the substituted respondents, J. A. Bockenstette and Rose M. Bockenstette, 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.

Complaint

IN THE MATTER OF

CHARLES OF THE RITZ DISTRIBUTORS CORPORATION

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

Docket 3923. Complaint, Oct. 12, 1939—Decision, May 12, 1942

Where a corporation, engaged in interstate sale and distribution of a cosmetic preparation which it designated "Charles of the Ritz Rejuvenescence Cream" or "Rejuvenescence Cream Ritz"—

Falsely represented, through use of term "Rejuvenescence Cream" and statements in advertisements, directly or by implication, that its said preparation would rejuvenate the skin and restore youth of the appearance thereof to skin to which applied, regardless of the condition thereof or user's age;

The facts being that a skin which has become dry or harsh because of external conditions can be improved by the application of an emollient or lubricant, but not skin conditions due to systemic causes; and there is no treatment known to medical science by which skin changes due to the passage of time can be erased or an aged skin rejuvenated or restored to youthful condition;

With capacity and tendency of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby causing it to purchase said preparation because of such mistaken 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. John W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

Mock & Blum, of New York City, 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 Charles of the Ritz Distributors 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, Charles of the Ritz Distributors Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office and place of business at 9 University Place, city of New York, State of New York.