

Complaint

IN THE MATTER OF

THE SEAMLESS RUBBER COMPANY

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

Docket 4509. Complaint, May 27, 1941—Decision, June 2, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of electrical heating pads composed principally of flat, flexible networks of fine wire embedded in asbestos or rubber with one or more built-in automatic heating thermostats, a four-position switch labeled "Off," "L," "M," and "H," extension cord and plug; by means of advertisements disseminated through the mails, circulars, and leaflets, and in catalogues and other advertising literature, directly or by inference—

Represented that its said heating pads were capable of generating three different sustained levels of temperature, and that temperature thereof might be controlled and the desired uniform heat obtained simply by setting the switches at points marked "L," "M," or "H";

The facts being that temperature of said pads could not be thus controlled, but if connected and turned on, the pads eventually attained the maximum temperature and were thermostatically controlled at said level, regardless of how the switches were set, sole function of which was to regulate the wattage of electric current used by the pads and thus control to some extent the speed with which the maximum temperature would be attained;

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

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. James M. Hammond for the Commission.

Mr. William F. Davis, Jr. and *Mr. Benjamin H. Dorman*, of Boston, Mass., and *Mr. Richard A. Mahar*, of Washington, D. C., 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 The Seamless Rubber Co., 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Seamless Rubber Co., is a corporation, organized, existing, and doing business under and by virtue

Complaint

34 F. T. C.

of the laws of the State of Connecticut, with its office and principal place of business located in the city of New Haven and State of Connecticut.

Said respondent, is now, and for more than 1 year last past, has been, engaged in the manufacture and in the sale and distribution of electrical heating pads, which said pads are intended for use in the cure, mitigation, and treatment and prevention of diseases in man, and which constitute a "device" within the meaning of the Federal Trade Commission Act. Said pads are composed principally of flat, flexible net-works of fine wire embedded in asbestos or rubber, with one or more built-in automatic heat regulating devices called thermostats connected thereto and a four position through switch labeled "Off," "L," "M," and "H" attached, and each pad is equipped with an extension cord and a plug.

PAR. 2. Respondent causes and has caused said products, when sold, to be transported from place of business in the State of Connecticut to the 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 heating pads 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products by the 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 its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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 the United States mails, by circulars and leaflets and by advertisements in catalogs and other advertising literature, are the following:

Three heats with dual thermostatic control.

Turn the pointer to the desired heat, "L" meaning "low," "M" meaning "medium" and "H" meaning "high" heat.

By a mere flick of the thumb the user can set the switch, in a second, to "high," "medium," "low" or "off."

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly or through inference, that its said heating pads are capable of generating and maintaining three different sustained levels of temperature, and that the temperature of said pads may be controlled and the desired uniform heat obtained by simply setting the switches at the points marked "L," "M," or "H."

PAR. 5. Such representations on the part of the respondent are confusing, false, and misleading. In truth and in fact, respondent's said heating pads are not and have never been capable of generating and maintaining three different sustained levels of temperature. The temperature of said pads cannot be controlled, nor can the desired uniform heat be obtained, by setting the switches at the points marked "L," "M," or "H," or in any other manner, except by alternately attaching and detaching the connecting cords of said pads to the electric current outlets. Said pads, on the contrary, if connected to electric current and turned on, eventually attain their maximum levels of temperature and are thermostatically controlled at said levels regardless of whether the switches are set at "L," "M," or "H." The sole function of the switches attached to said pads is to regulate the input or wattage of electric current used by the pads and thus to some extent control the speed with which the maximum temperatures will be attained.

PAR. 6. The use by the respondent of said false advertisements with respect to its said products, 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 said advertisements are true, and has had, and now has, the tendency and capacity to, and does, induce such portion of the public to purchase substantial quantities of respondent's said products because of such erroneous and mistaken belief.

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 May 27, 1941, issued and on May 29, 1941, served its complaint in this proceeding upon respondent, The Seamless Rubber Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of

Findings

34 F. T. C.

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. The respondent, The Seamless Rubber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located in the city of New Haven, State of Connecticut.

Said respondent is now, and for more than one year last past has been engaged in the manufacture and in the sale and distribution of electrical heating pads, which are intended for use in the cure, mitigation, treatment, and prevention of diseases in man, and which constitute a "device" within the meaning of the Federal Trade Commission Act. Said pads are composed principally of flat, flexible networks of fine wire embedded in asbestos or rubber with one or more built-in automatic heat-regulating devices called thermostats connected thereto and a four-position switch labeled "Off," "L," "M," and "H" attached, and each pad is equipped with an extension cord and a plug.

PAR. 2. The respondent causes and has caused said products, when sold, to be transported from its place of business in the State of Connecticut to the 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 heating pads 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements con-

cerning its said products by the 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 its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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 the United States mails, by circulars and leaflets and by advertisements in catalogs and other advertising literature, are the following:

Three heats with dual thermostatic control.

Turn the pointer to the desired heat, "L" meaning "Low," "M" meaning "Medium," and "H" meaning "High" heat.

By a mere flick of the thumb the user can set the switch, in a second, to "High," "Medium," "Low" or "Off."

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly or through inference, that its said heating pads are capable of generating and maintaining three different sustained levels of temperature, and that the temperature of said pads may be controlled and the desired uniform heat obtained by simply setting the switches at the points marked "L," "M," or "H."

PAR. 5. Such representations on the part of the respondent are confusing, false, and misleading. In truth and in fact, respondent's said heating pads are not and have never been capable of generating and maintaining three different sustained levels of temperature. The temperature of said pads cannot be controlled, nor can the desired uniform heat be obtained by setting the switches at the points marked "L," "M," or "H" or in any other manner, except by alternately attaching and detaching the connecting cords of said pads to the electric current outlets. Said pads, on the contrary, if connected to electric current and turned on, eventually obtain the maximum level of temperature and are thermostatically controlled at said level regardless of whether the switches are set at "L," "M," or "H." The sole function of the switches attached to said pads is to regulate the input or wattage of electric current used by the pads and thus to some extent control the speed with which the maximum temperature will be attained.

Order

34 F. T. C.

PAR. 6. The use by the respondent of said false advertisements with respect to its said products, disseminated as aforesaid, has had, and now 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 said advertisements are true, and has had, and now has, the tendency and capacity to, and does, induce the purchase of substantial quantities of respondent's said products because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of 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 and the substitute answer of the respondent, in which substitute answer the respondent admits all the material allegation 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, The Seamless Rubber Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its electrical heating pads, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement:

(a) By means of the United States mails, or

(b) By any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that its electrical heating pads are each provided with a switch or other heat regulating apparatus which may be set in a manner which will provide for the maintenance of heat in said heating pads at more than one sustained level of temperature.

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"

1285

Order

is defined in the Federal Trade Commission Act, of said electrical heating pads, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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.

IN THE MATTER OF

W. A. HOUSTON, TRADING AS HOUSTON'S MINERAL
WELL

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

Docket 4567. Complaint, Aug. 14, 1941—Decision, June 2, 1942

Where an individual, engaged in interstate sale and distribution of a mineral water; by means of advertisements in newspapers and other periodicals, and by circular letters, pamphlets, and other advertising literature, directly and by implication—

- (a) Represented that his said "Houston's Mineral Water" constituted an effective treatment for and control of diabetes, use of which would enable person suffering therefrom to discontinue use of insulin;

The facts being his said water had no therapeutic value whatever in the treatment or control of said condition, and contained no ingredient which could in any way supply a deficiency of insulin, the only treatment for diabetes known to modern medicine; while use thereof by a sufferer would be exceedingly dangerous in that failure or delay in supplying insulin might increase the severity of the condition and result in diabetic coma or death;

- (b) Represented falsely that his said mineral water was an effective treatment for disorders of the kidneys, kidney stones, and gall bladder disorders;

When, in fact, it had no therapeutic value in treatment thereof, and its use in the large quantities recommended might be definitely harmful where a dropsical condition existed, in aggravating it to the point where circulation was impeded, with possibly fatal results:

- (c) Represented that its said water was an effective treatment for stomach disorders, indigestion, and ulcerated stomach;

The facts being it had no therapeutic value for such purposes and, as respects last named condition, lacked sufficient sodium, calcium, and magnesia to neutralize the acid of the stomach juices;

- (d) Represented that said water was an effective treatment for high blood pressure, general run-down condition and ailments of the prostate gland, aided in building up the blood, and would restore health and supply most of the minerals required by the body to sustain good health;

The facts being it contained no minerals in quantities sufficient to build up the blood or benefit any general run-down condition, and no ingredient which would have any therapeutic effect upon the prostate gland; and use thereof would not restore health or supply needed minerals, and it had no greater therapeutic value than ordinary potable water; and

- (e) Represented directly that his said water contained various minerals in quantities sufficient to be effective in the treatment of a large number of diseases, ailments, and conditions, listed with the minerals required therefor in parallel columns;

When in fact the minerals contained in said water were in too minute quantities to be of any therapeutic value;

With tendency and capacity of causing purchasing public to believe said water possessed therapeutic properties and values which it did not possess, there-