

Complaint

IN THE MATTER OF

THE CLIMAX CLEANER MANUFACTURING COMPANY

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

Docket 4668. Complaint, Jan. 13, 1942—Decision, July 7, 1942

Where a corporation, engaged in the interstate sale and distribution of its
"Climax Wall Paper Cleaner"—

Represented that its said product would not crumble when used for cleaning all
types of wall paper, through the use particularly of the terms "Non-
Crumbling" and "Crumble-less" in statements in radio continuities, postal
cards, window and counter display cards, and other advertising matter
broadcast and distributed, and through labels on the containers thereof;

When, used for cleaning certain types and varieties, it would and did crumble;
With effect of misleading and deceiving a substantial portion of the purchasing
public into the mistaken belief that such statements were true, and into
purchase of substantial quantities of said product as a result of such mis-
taken belief:

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 decep-
tive acts and practices in commerce.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Maurice C. Pearce and *Mr. William M. King* for the Com-
mission.

Thompson, Hine & Flory, of Cleveland, Ohio, 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 Climax Cleaner
Manufacturing Co., a corporation, hereinafter referred to as respond-
ent, 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, The Climax Cleaner Manufacturing Co.,
is a corporation duly chartered, organized, and existing under and by
virtue of the laws of the State of Ohio, with its principal office and
place of business located at 2080 West 110th Street, Cleveland, State
of Ohio.

PAR. 2. Respondent is now and for many years last past has been
engaged in the sale and distribution of a product designated "Climax

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Wall Paper Cleaner." Respondent causes and has caused its said product when sold to be transported from its place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio and in the District of Columbia.

Respondent now maintains and at all times herein mentioned has maintained a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its product, the respondent has made false and misleading statements and representations with respect to its said product by means of radio continuities, postal cards, window and counter display cards and other advertising matter broadcast and distributed to and among prospective purchasers, and on labels on the container in which said product is sold and distributed. Among and typical of such false and misleading statements and representations are the following:

CLIMAX WALL PAPER CLEANER

Non-Crumbling

This is the New and Improved

Crumble-less

CLIMAX

the new, improved, non-crumbling Climax Wall paper Cleaner * * * Ask for Climax Crumble-less Wall Paper Cleaner—It cleans cleaner and makes no mess to sweep up.

Improved Climax Crumble-less Wall Paper Cleaner is non-crumbling. * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, and particularly through the use of the terms "Non-Crumbling" and "Crumble-less," respondent represents that its said product "Climax Wall Paper Cleaner" will not and does not crumble when used for cleaning all types of wall paper.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product "Climax Wall Paper Cleaner" will crumble and does crumble when used for cleaning certain types and varieties of wall paper.

PAR. 6. The use by the respondent of the foregoing false and misleading representations and statements with respect to its said

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wall paper cleaner 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 into the purchase of substantial quantities of respondent's product as a result of such mistaken belief so engendered.

PAR. 7. The aforesaid acts and practices of the respondent 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 January 13, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, The Climax Cleaner Manufacturing Co., a corporation, charging it 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 the form of a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent, was read into the record in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, before James A. Purcell, a trial examiner 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, the proceeding regularly came on for final hearing before the Commission upon said complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, 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, The Climax Cleaner Manufacturing Co., is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2080 West 110th Street, Cleveland, State of Ohio.

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PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution of a product designated "Climax Wall Paper Cleaner." Respondent causes and has caused its said product, when sold, to be transported from its place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio and in the District of Columbia.

Respondent now maintains, and at all times herein mentioned has maintained, a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its product, the respondent has made false and misleading statements and representations with respect to its said product, by means of radio continuities, postal cards, window and counter display cards and other advertising matter broadcast and distributed to and among prospective purchasers, and on labels on the container in which said product is sold and distributed. Among and typical of such false and misleading statements and representations are the following:

CLIMAX WALL PAPER CLEANER

Non-Crumbling

This is the New and Improved

Crumble-less

CLIMAX

the new, improved, non-crumbling Climax Wall paper Cleaner * * * Ask for Climax Crumble-less Wall Paper Cleaner—It cleans cleaner and makes no muss to sweep up.

Improved Climax Crumble-less Wall Paper Cleaner is non-crumbling. * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, and particularly through the use of the terms "Non-Crumbling" and "Crumble-less," respondent represents that its said product "Climax Wall Paper Cleaner" will not and does not crumble when used for cleaning all types of wall paper.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product "Climax Wall Paper Cleaner" will crumble and does crumble when used for cleaning certain types and varieties of wall paper.

PAR. 6. The use by the respondent of the foregoing false and misleading representations and statements with respect to its said wall paper cleaner 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 into the purchase of substantial quantities of respondent's product as a result of such mistaken belief so engendered.

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, answer of the respondent, testimony and other evidence taken before James A. Purcell, a trial examiner of the Commission, theretofore duly designated by it, which testimony consisted of a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record in lieu of testimony in support of the complaint and in opposition thereto, report of the trial examiner upon the evidence, 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 said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Climax Cleaner Manufacturing 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, and distribution of its product designated "Climax Wall Paper Cleaner," or any other product containing the same or similar ingredients, whether sold under the same name or any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that respondent's product will not crumble when used for cleaning all types of wall paper.
2. Using the words "non-crumbling" or "crumble-less" or any other words or combination of words of similar import or meaning to designate or describe a wall paper cleaner which will crumble when used on certain types of wall paper.

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

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IN THE MATTER OF

D. D. D. CORPORATION

MODIFIED ORDER TO CEASE AND DESIST

Docket 3972. Order, July 8, 1942

Modified order, pursuant to provisions of Section 5 (1) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on April 19, 1941, 32 F. T. C. 1227, 1235, and in which Circuit Court of Appeals for the Seventh Circuit, on February 12, 1942, in *D. D. D. Corporation v. Federal Trade Commission*, 125 F. (2d) 679, 34 F. T. C. 1821, rendered its opinion, and on April 4, 1942, issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming same in other particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., of respondent's "D. D. D. Prescription" or any other substantially similar medicinal preparation, to cease and desist from disseminating, etc., any advertisements, etc., as in said order set forth, which represent, directly or through inference, that said prescription is a cure or remedy or has therapeutic value in excess of affording relief from certain symptoms for eczema, pimples, or hives, skin disorders caused by internal or systemic conditions, blotches or rashes when due to such conditions, and athlete's foot, insect bites, and cases of ivy and oak poisoning; or which, through use of words "and other externally caused skin eruptions," etc., imply that certain diseases and conditions which may be of systemic or internal origin are solely of external origin, and that its said preparation has therapeutic value in the treatment thereof regardless of origin; or through use of the words "stops itching," etc., that it will either permanently or temporarily eliminate the disease or condition causing said symptom, or that it has any therapeutic value in excess of that afforded by alleviation thereof, etc., as in order in detail set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on April 19, 1941, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on February 12, 1942, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and on April 4, 1942, issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars:

Now therefore, Pursuant to the provisions of Subsection (i) of Section 5 of the Federal Trade Commission Act, the Commission issues