

Syllabus

IN THE MATTER OF

J. FREIDSON SHOE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4632. Complaint, Nov. 13, 1941—Decision, Aug. 18, 1942

Where a corporation, engaged at wholesale in the interstate sale and distribution of shoes, particularly children's shoes—

- (a) Stamped "Dr. Chase's Cushion Comfort" on the soles of said line of shoes, and in 1939 added a period to the die so that the designation, while modified to read "D. R. Chase's Cushion Comfort," had appearance of the original due to the impossibility of discerning separation between the "D" and "R";
- (b) Furnished to the manufacturer labels which were attached to the lining of certain of its said shoes bearing the unaltered original designation;
- (c) Set forth said original designation on heel pads of certain shoes and, beginning in 1939 modified it to "D Chases Health Shoes";
- (d) Set forth prior to 1939 on boxes enclosing said children's shoes aforesaid original designation and such statements as "Dr. Chase's Health Shoes—Designed and built for growing feet," "Dr. Chase's Shoes are scientifically designed with wide treads, narrow heels, and sturdy, flexible soles that will develop your children's foot muscles as Nature dictates," "Genuine Dr. Chase's shoes carry the diamond trade-mark. Look for it"; and subsequent to 1939 modified said designation to "The Chase's Cushion Comfort" and said statements to "Chase's Health Shoes designed and built for growing feet," "Chase's Cushion Comfort Shoes are scientifically designed," etc., and "Genuine Chase's Cushion Comfort Shoes carry the diamond trade-mark. Look for it," referring, through aforesaid invitation "to look for" said trade-mark, to the imprints on soles and lining label above referred to; and
- (e) Made use in its catalogues of illustrations of its said shoes which frequently showed label "Dr. Chase's" notwithstanding frequent reference thereto in said catalogues as "D. R. Chase's"; and made use of original designation "Dr. Chase's Cushion Comfort" on invoices and letterheads;

Notwithstanding fact shoes thus marked, labeled, designated, and described were not designed or approved by any doctor or orthopedic specialist, nor was their design or construction supervised or approved by any such person; they had no special health or orthopedic features, but were made precisely as were shoes of similar grade and quality made by the manufacturer for its other customers;

With the result of placing in the hands of dealers an instrumentality whereby they might mislead and deceive the purchasing public with respect to the design and corrective features of said products; and with capacity and tendency to divert business from those who do not mark, label, designate, and describe their shoes in such manner, and to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, whereby it was induced to purchase substantial quantities of said shoes:

Complaint

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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. John P. Bramhall*, trial examiner.

Mr. J. R. Phillips, Jr., and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Albert E. Steinem and *Mr. Herbert J. Jacobi*, of Washington, D. C., and *Nathanson & Rudofsky*, of Boston, Mass., 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 J. Freidson Shoe Co., a corporation, 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, J. Freidson Shoe Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 200 Essex Street, Boston, Mass. Said respondent is now, and since its incorporation in 1924 has been, engaged as a wholesaler and jobber of shoes. Respondent causes its said product, when sold by it, to be transported from its place of business in Boston, Mass., to purchasers thereof located in various States of the United States other than the point of origin of the shipments. Respondent sells its product branded and labeled as hereafter described to retailers who, in turn, resell the same to members of the purchasing public.

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

PAR. 2. In the course and conduct of its said business and for the purpose of inducing the purchase of its shoes, the respondent variously designates such shoes as follows:

"DR. CHASE'S CUSHION COMFORT," "DR. CHASE'S HEALTH SHOES," "D. CHASE'S HEALTH SHOES," "D. R. CHASE'S CUSHION COMFORT," "DR. CHASE."

The aforesaid designations of such shoes appear extensively in circulars, pamphlets, catalogs, and letterheads disseminated by the respondent to customers and prospective customers. The aforesaid designations are also stamped on respondent's shoes and on the boxes

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in which such shoes are packed. In addition, display cards furnished to dealers for advertising purpose carry the same designations of respondent's shoes.

Through the use of the foregoing statements and representations, respondent represents or implies that its shoes are manufactured, fashioned, or designed under the supervision of a doctor technically educated and skilled in the care and treatment of the feet, and that they contain special, scientific or orthopedic features for the purpose of correcting or alleviating foot troubles or weaknesses not found generally in other modern footwear.

PAR. 3. The said statements and representations are grossly exaggerated, false and misleading. In truth and in fact the shoes so marked, stamped, branded, labeled, advertised, and sold as described herein are not made in accordance with the design or under the supervision of a doctor technically educated and skilled in the care and treatment of the feet. Such footwear does not contain any special, scientific or orthopedic features for the purpose of correcting or alleviating foot troubles or weaknesses not generally common to other modern footwear.

PAR. 4. The practices of the respondent as above alleged places in the hands of dealers an instrumentality whereby such dealers may mislead and deceive the purchasing public with respect to the design and correction features of said product.

PAR. 5. The use by the respondent of the foregoing false and misleading designations for its shoes 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 belief that said statements and representations are true and that such shoes are manufactured, fashioned, or designed under the supervision of a doctor technically educated and skilled in the care and treatment of the feet and that such shoes contain special, scientific, or orthopedic features not found generally in other modern footwear. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's product.

PAR. 6. The aforesaid acts and practices of 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, 1941, issued and

subsequently served its complaint in this proceeding upon respondent J. Freidson Shoe 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 support of and in opposition to the allegations of the complaint were introduced before an 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 on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. Freidson Shoe Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 200 Essex Street, Boston, Mass. Respondent is now, and for a number of years last past has been, engaged in the sale and distribution at wholesale of shoes, particularly children's shoes.

PAR. 2. In the course and conduct of the aforesaid business respondent causes its shoes, when sold, to be transported from its place of business in Massachusetts to purchasers at their various points of location in States of the United States, other than the point of origin of the shipments, and has maintained a course of trade in said shoes in commerce among and between various States of the United States.

PAR. 3. For the purpose of inducing purchase of its shoes, respondent, J. Freidson Shoe Co., causes certain representations to be made in catalogs distributed by it and on the boxes or containers in which its shoes are packaged for sale to the public, and causes to be placed upon the shoes certain labels, stamps, and markings. Said statements, labels, stamps, and markings represent and imply that the shoes offered for sale and sold by respondent are designed, fashioned, and manufactured under the supervision of a doctor skilled in the care and treatment of the feet, and that such shoes are "health" shoes containing special orthopedic features for the correction and

alleviation of foot troubles or weaknesses, which special features are not present in the shoes generally offered for sale to the public.

The line of children's shoes sold by respondent was known and designated for a number of years as "DR. CHASE'S CUSHION COMFORT." Beginning in 1939 and subsequent thereto, respondent made certain modifications in some of its uses of the said brand name. It is respondent's present practice to have stamped into the soles of its shoes numerous repetitions of the mark:

D. R. CHASE'S CUSHION COMFORT

Prior to 1939 these markings read "DR. CHASE'S CUSHION COMFORT." In 1939 a period between the "D" and the "R" in the aforesaid designation was added to the die used in so marking its shoes. It is substantially impossible, however, to tell from an examination of the markings on the soles of respondent's shoes made from such die that there is any separation between the "D" and "R," and these letters appear to form the abbreviation for the word "Doctor."

There is a label attached to the lining of certain shoes in respondent's said line of children's shoes, which label is furnished by respondent to the manufacturer and which bears the following inscription:

DR. CHASE'S CUSHION COMFORT

Prior to 1939 the heel pads in certain shoes in said line of children's shoes sold by respondent bore the imprint:

DR. CHASE'S HEALTH SHOES

In 1939 the die used to make the imprint was changed by striking the letter "R" from the designation "DR." and since that time the heel pads have been marked:

D CHASES HEALTH SHOES

Prior to 1939 the boxes in which respondent's line of children's shoes were packaged for sale to the public carried the following inscription on the tops thereof:

DR. CHASE'S CUSHION COMFORT
Trade Mark

Dr. Chase's health shoes
Designed and built for growing feet.

Carefree Feet

Dr. Chase's Shoes are scientifically designed with wide treads, narrow heels, and sturdy flexible soles that will develop your child's foot muscles as Nature dictates.

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Dr. Chase's Shoes are made in all sizes and widths to assure proper fitting; very essential for comfort and wear.

Genuine Dr. Chase's Shoes carry the diamond trade-mark. Look for it.

CRADLE TO COLLEGE

Since 1939 the boxes used for packaging respondent's said shoes have had the following inscription upon the tops thereof:

THE CHASE'S CUSHION COMFORT

Chase's health shoes

Trade Mark

Designed and built for growing feet.

Carefree Feet

Chase's Cushion Comfort Shoes are scientifically designed with wide treads narrow heels, and sturdy flexible soles that will develop your child's foot muscles as Nature dictates.

Chase's Cushion Comfort Shoes are made in all sizes and widths to assure proper fitting; very essential for comfort wear.

Genuine Chase's Cushion Comfort Shoes carry the diamond trade-mark. Look for it.

CRADLE TO COLLEGE

The direction contained in this inscription reading, "Genuine Chase's Cushion Comfort Shoes carry the diamond trade-mark. Look for it" refers to the above-mentioned imprints on the soles of such shoes and the labels attached to the linings thereof.

The catalogs distributed by respondent to purchasers and prospective purchasers of its shoes frequently refer to its shoes as "D. R. Chase's," but the illustrations of shoes appearing in said catalog frequently show the label "Dr. Chase's." Respondent's invoices of said shoes to purchasers thereof bear on the heading thereof the inscription:

DR. CHASE'S CUSHION COMFORT

and respondent's letterheads also bear the same inscription.

PAR. 4. Many of the shoes sold by respondent which are marked, labeled, designated, described, and referred to in the manner set forth in the preceding paragraph, are manufactured for respondent by the Ephrata Shoe Co., of Ephrata, Pa. In fact, for a number of years respondent has purchased approximately 5,000 pairs of such shoes monthly from the Ephrata Shoe Co. The shoes so purchased were not, and are not, designed or approved by any doctor or orthopedic specialist, nor is their design or construction supervised or approved by any doctor or orthopedic specialist. Such shoes do not have any special "health" features or any orthopedic features intended to correct or alleviate foot troubles or weaknesses. On the contrary, the shoes so

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purchased are manufactured in precisely the same manner and according to the same designs as are shoes of similar grade and quality manufactured by the Ephrata Shoe Co. for its other customers and, except for the markings and designations placed thereon at the direction of respondent, do not differ in any material respect from shoes sold to other purchasers by the Ephrata Shoe Co. for which no claims of health or orthopedic value are made. In fact, they are substantially the same as shoes of similar quality made by other manufacturers and ordinarily and generally offered to members of the purchasing public who do not wish or seek shoes having special features for the correction or alleviation of foot troubles.

PAR. 5. The acts and practices of respondent in marking, labeling, designating, and describing its shoes in the manner set out above place in the hands of dealers an instrumentality whereby they may mislead and deceive the purchasing public with respect to the design and corrective feature of such shoes, and have the capacity and tendency to divert business from those who do not mark, label, designate, and describe their shoes in such manner.

The use by respondent of the aforesaid false and misleading designations for its shoes has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said statements and representations are true and that such shoes are manufactured, fashioned, or designed under the supervision of a doctor technically educated and skilled in the care and treatment of the feet and contain special scientific or orthopedic features not generally found in other footwear. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase substantial quantities of respondent's shoes.

CONCLUSION

The aforesaid acts and practices of 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner,

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and briefs in support of and in opposition to 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 J. Freidson Shoe 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 shoes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Doctor," or the abbreviation "Dr.," or any colorable simulation thereof, to designate, describe, or refer to shoes not designed or approved by a doctor; or otherwise representing, directly or by implication in any manner, that shoes not designed or approved by a doctor have been so designed or approved or have special features which are the result of medical advice;

2. Using the word "Health," or any other word or words of similar import or meaning, to designate, describe, or refer to shoes which have no special scientific or orthopedic features; or otherwise representing, directly or by implication, that shoes of customary and usual construction have special health or corrective features.

It is further ordered, That respondent shall, within 60 days after the 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.

Order

IN THE MATTER OF
MORETRENCH CORPORATION

MODIFIED CEASE AND DESIST ORDER

Docket 3262. August 25, 1942.

Modified order, pursuant to provisions of Sec. 5 (1) of Federal Trade Commission Act, and in accordance with decree below referred to in proceeding in question, in which original order issued on Feb. 6, 1939, 28 F. T. C. 297, and in which Circuit Court of Appeals for Second Circuit on May 4, 1942, in *Moretrench Corporation v. Federal Trade Commission*, 127 F. (2d) 792, 34 F. T. C. 1849, rendered its opinion and on May 21, 1942, issued its decree modifying aforesaid order of the Commission and affirming the same as so modified—

Requiring respondent, its officers, etc., in connection with offer, etc., in interstate commerce, or in the District of Columbia, of wellpoints and wellpoint systems, to cease and desist from (1) misrepresenting the amount of unobstructed water-passing screen area of a competitive wellpoint, as there set forth; (2) representing that wellpoints made by its competitors have only a limited use as jetting points, etc., or are otherwise inefficient, etc., as therein stated; (3) representing that one of its wellpoints is equal or superior to five of any other wellpoints; (4) representing that its wellpoints never clog up; and (5) representing that contractors all over the world testify that operating costs of its system are always 50 percent or any other constant percentage lower than those of competitive wellpoint systems.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on February 6, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondent had violated certain provisions of the Federal Trade Commission Act and thereupon issued and caused to be served on the respondent its order requiring respondent to cease and desist from such violations; and it further appearing that on April 6, 1939, the respondent filed with the United States Circuit Court of Appeals for the Second Circuit its petition to review and set aside said order to cease and desist, and that on May 4, 1942, the United States Circuit Court of Appeals for the Second Circuit rendered its opinion and on May 21, 1942, issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order as so modified.

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