

IN THE MATTER OF

J. E. MILLER, DOING BUSINESS AS KONDI COMPANY

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

Docket 3217. Complaint, Aug. 27, 1937—Decision, Sept. 21, 1942

Where an individual, engaged in the competitive interstate sale and distribution of his "Kondi Worm Specific and Conditioner" for dogs; by means of advertisements in newspapers and periodicals, and by circulars, pamphlets, and other advertising literature—

- (a) Represented that his said preparation would expel or destroy all intestinal parasites in dogs, including hook, tape, and round worms, in from 5 to 30 minutes; the facts being that in the treatment of worms in dogs the anthelmintic used must be specific in action, as one drug will usually remove or destroy only one type of worm; and product in question, containing powdered areca nut and santonin, constituted a satisfactory anthelmintic only with reference to the taenia and dipylidium type of tapeworm, was only 50 percent effective for large roundworms, and 25 percent for hookworms, and had no value in the removal of whipworms;
- (b) Represented that his said product was effective in the treatment of distemper and running and barking fits; the facts being no ingredient in product in question, including the drug salol, has ever been recognized by the veterinary profession as having any value in the treatment of distemper, caused by a filterable virus, for treatment of which veterinary science has thus far been unable to find any effective drug or combination of drugs; and product in question would not correct any dietary deficiency with which said profession associates running and barking fits;
- (c) Represented that such product was effective in treating dogs that were out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc.; the facts being that dog's condition, which may be due to a large number of causes, may not be remedied by any one drug or combination thereof, and said product, with no ingredient indicating any tonic effect, was not a conditioner for dogs due to fact alone that it might remove tapeworms or partially remove roundworms; and was not effective in treating dogs out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc., which indicate anemia, possibly caused by hookworm, and for removal of which product had little value; and
- (d) Represented that product in question would antiseptically cleanse the intestinal tract, and was as harmless to dogs as castor oil; the facts being that ingredient salol is without value for treatment of intestinal infection; any drug or combination of drugs with sufficient strength to cleanse the digestive tract antiseptically would kill the dog before it would accomplish such purpose; ingredient areca nut is purgative in action and also produces depression and nausea; and product in question was not a harmless preparation or one that could be indiscriminately administered;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby

inducing it to purchase substantial quantities of product concerned in preference to those of competitors; whereby trade was diverted unfairly to him from them:

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

Before *Mr. W. W. Sheppard, Mr. Edward E. Reardon, Mr. John W. Addison and Mr. Arthur F. Thomas*, trial examiners.

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

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that J. E. Miller, an individual, doing business as Kondi Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, is an individual, doing business as Kondi Co., having his office and principal place of business at Atlanta, Ga. Respondent for more than 1 year last past has been and now is engaged in the sale of a certain worm medicine for dogs designated by him "Kondi Worm Specific and Conditioner," and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia, and causes and has caused said product when sold to be transported in interstate commerce from its place of business in the State of Georgia or from other States of the United States to purchasers thereof located in States other than the State of Georgia or the State of origin of the shipment and in the District of Columbia.

PAR. 2. The active ingredients of respondent's "Kondi Worm Specific and Conditioner" are powdered areca nut, milk sugar, and santonin.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been for more than 1 year last past, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with corporations, partnerships, firms, and other individuals engaged in the sale of products used and useful for the purposes for which the respondent recommends his said product.

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PAR. 4. In the course and conduct of his business as aforesaid, and in soliciting the sale of and selling said product in said commerce, respondent, through statements regarding the therapeutic value, efficacy and effect of said product, appearing on labels, order blanks and in booklets and pamphlets, and in advertisements appearing in newspapers and magazines, and through other media, makes the following representations regarding the product "Kondi Worm Specific and Conditioner":

- (a) That it is doing or has done wonders as a conditioner for dogs.
- (b) That it will positively expel or destroy all intestinal parasites in dogs, including hook, tape, and round worms, in 5 to 30 minutes.
- (c) That it causes a dog to condition by antiseptic cleansing of its digestive tract.
- (d) That it is effective and safe in treating dogs for distemper.
- (e) That it is as harmless to dogs as castor oil.
- (f) That it is effective in treating dogs for running, barking or fright fits and run-down state, which conditions respondent represents are indicated by dull eyes, pale mouth membranes, rough coat, etc.

In connection with the sale of its "Kondi Worm Specific and Conditioner" respondent has represented that 7 out of 10 dogs are infested with one or more kinds of intestinal worms.

PAR. 5. In truth and in fact respondent's representations as set out in paragraph 4 hereof, and respondent's advertisements on labels, pamphlets, order blanks, newspapers, magazines and otherwise are extravagant, false, misleading, and deceptive, in that "Kondi Worm Specific and Conditioner" when administered to dogs:

- (a) Will not operate as an effective conditioner.
- (b) Will not expel or destroy all intestinal parasites, including hook, tape, or round worms in 5 to 30 minutes nor in any time approximating such period.
- (c) Will not antiseptically clean the digestive tract and thereby condition the dog.
- (d) Will not be effective and safe in the treatment for distemper.
- (e) Is not as harmless as castor oil.
- (f) Is not effective in the treatment for running, barking or fright fits, nor are dull eyes, pale mouth membranes, rough coat, etc., true symptoms of such conditions,

nor will the administration of "Kondi Worm Specific and Conditioner" produce any results similar to those claimed for it by the respondent as hereinabove set forth. It is not true that 7 out of 10 dogs are infested with one or more kinds of intestinal worms.

PAR. 6. Respondent's advertising and representations hereinabove described have had and still have the tendency and capacity to and do mislead and deceive the purchasing public regarding the therapeutic value, efficacy and effect of "Kondi Worm Specific and Conditioner," and further, as a direct consequence of the deceptive actions and representations of the respondent and the erroneous and mistaken beliefs induced by said acts as herein set out, the purchasing public has purchased respondent's "Kondi Worm Specific and Conditioner" with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing or selling products designed for similar usage, who truthfully advertise and represent the properties of their respective products and the results that may be expected to be obtained from the use thereof. As a result thereof, substantial injury has been and is now being done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The acts, practices, and representations of respondent hereinabove set forth are all to the injury and prejudice of the public and to the competitors of respondent in interstate commerce within the intent and meaning of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 27, 1937, issued and subsequently served its complaint in this proceeding on the respondent, J. E. Miller, an individual, doing business as Kondi Co., charging him with the use of unfair methods of competition 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 said complaint were introduced 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 examiners 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

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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, J. E. Miller, is an individual, doing business as Kondi Co., having his office and principal place of business at Atlanta, Ga. Respondent, for several years last past, has been, and now is, engaged in the sale and distribution in commerce between and among the various States of the United States of a certain worm medicine for dogs designated "Kondi Worm Specific and Conditioner," and causes said product when sold, to be transported from his place of business in the State of Georgia to purchasers thereof located in various other States of the United States. 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 his said business, respondent is now, and for several years last past has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of medicinal preparations for dogs, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, for the purpose of inducing the purchase of his product "Kondi Worm Specific and Conditioner," respondent has disseminated false, deceptive, and misleading statements and representations with reference to said product, by means of advertisements inserted in newspapers and periodicals, and by circulars, pamphlets, and other advertising literature.

Among and typical of such false, deceptive, and misleading statements and representations are the following:

1. That respondent's preparation will expel or destroy all intestinal parasites in dogs, including hook, tape, and roundworms, in 5 to 30 minutes.

2. That respondent's preparation constitutes a conditioner for dogs and will antiseptically cleanse the intestinal tract of dogs.

3. That respondent's preparation is effective in the treatment of distemper and running and barking fits.

4. That respondent's preparation is as harmless to dogs as castor oil and is effective in treating dogs that are out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc.

PAR. 4. There are various types of worms which occur in the intestinal tract of dogs, the most common of which are hookworms, roundworms, whipworms, and tapeworms.

The hookworm (*ancylostoma canium*) sucks the blood and causes anemia. These worms are difficult to detect and cause a dog to be slow and sluggish and the membranes of the mouth to be pale, due to loss of blood.

The ascarids, or roundworms (*toxocara canis*), live on the contents of the intestinal tract, and feed, to some extent, on the epithelial cells. The harmful effect of these worms is thought to be due to the excretion they give off. They migrate in the intestine and may attack the bile duct, or group in the small intestine, leading to obstruction.

The whipworm (*trichuris vulpis*) usually occurs in the caecum, which is the blind duct where the small intestine unites with the colon.

The tapeworm attaches itself to the wall of the intestine by means of suckers and probably derives some nutriment from the intestinal wall. There are a number of types of these worms, but the ones most commonly found in dogs are taenia pisiformis and dipylidium canium. Another type sometimes found in dogs is the dipylidobothrium, the segments of which are not passed by the animal as in the case with the other types. This latter type is rare and occurs only in limited areas in this country.

There are other types of worms or parasites which sometimes inhabit the intestinal tract of dogs, but they are so rare as not to require consideration in the treatment of dogs.

PAR. 5. In the treatment of worms in dogs, it is necessary that the anthelmintic used be specific in its action, as only one drug will usually remove or destroy only one type of worm, and there is no known preparation which is effective in the treatment of all types of worms.

A test of respondent's preparation was conducted by the Food and Drug Administration at the Agricultural Research Center at Beltsville, Md. In the course of this test, 13 dogs of various sizes and ages were used, and respondent's product administered to them in accordance with the directions. Observation was made for a period of four days to determine the number and variety of worms passed. At the end of this 4-day period an autopsy was performed and a count made of the worm content of the intestinal tract. As a result of this test, it was determined that the preparation is effective against the dipylidium and taenia type of tapeworms, but is not a satisfactory anthelmintic for large roundworms, as its efficacy was limited to approximately 50 percent. As to whipworms, the test indicated no value what-

soever. This test further indicated that this preparation was only 20 to 25 percent effective for hookworms and consequently did not constitute a satisfactory anthelmintic for this type of worm.

PAR. 6. A microscopic examination was made of respondent's product, from which it was determined that respondent's preparation consisted of powdered areca nut, crystalline santonin, and crystalline corn sugar or milk sugar. Neither milk sugar nor corn sugar is an anthelmintic and consequently the active ingredients of this preparation are powdered areca nut and santonin. Areca nut has been used from early times to remove tapeworms and is particularly effective in the taenia type of tapeworm and also reasonable effective in the dipylidium type but has little or no effect in the removal of the dipylbothrium type of tapeworm. Santonin is also a very old anthelmintic. It has no effect on tapeworms or hookworms. It was at one time considered to be valuable for the roundworm type of parasite commonly called the ascarid but is now considered to be only approximately 50 percent effective as to this particular type of worm.

PAR. 7. The respondent, in the course of the hearing, refused to divulge the ingredients contained in his preparation but did state that this preparation contained at least 1 grain of salol. At one time salol was thought to be of some value as an intestinal antiseptic because of the break-down of the drug in the intestinal tract, liberating phenol, but it is now known that this drug has never accomplished anything worth while in treating any infection of the intestinal tract and that the small amount of phenol liberated in the intestinal tract would be without any therapeutic effect. The intestinal tract of a dog may harbor various species of germs, protozoan organisms, various species of bacteria, molds, and other organisms. Any drug or combination of drugs which has sufficient strength to antiseptically cleanse the digestive tract would kill the dog before it could accomplish such purpose.

PAR. 8. Distemper is caused by what is known as a filterable virus or ultramicroscopic virus. Up to the present time veterinary science has been unable to find any drug or combination of drugs that has any effect upon the course of that specific disease. There is no ingredient in respondent's preparation that has ever been recognized by the veterinary profession as having any value in the treatment of distemper, including the drug salol. Areca nut is a purgative in action and also produces depression and nausea. The use of any preparation containing areca nut may have harmful effects and is not a harmless preparation or one that can be indiscriminately administered. The use of such preparation in the treatment of distemper might be attended with harmful results.

PAR. 9. A dog may be off of condition due to a large number of causes and it is impossible for any one drug or combination of drugs to bring a dog back to normal condition. There is nothing in respondent's preparation which indicates that it has any tonic effect whatsoever and consequently does not constitute a conditioner for dogs. Running and barking fits are considered by the veterinary profession to be diseases or conditions associated with dietary deficiency. The fact that respondent's preparation may remove tapeworms or partially remove roundworms from a dog does not warrant the representation that said preparation constitutes a conditioner for dogs or that it is effective in the treatment of running or barking fits. This preparation will not correct any dietary deficiency.

PAR. 10. Based upon tests made with respondent's preparation and upon the testimony of the various expert witnesses, the Commission finds that respondent's preparation will not destroy or expel all intestinal parasites in dogs and constitutes a satisfactory anthelmintic only with reference to the taenia and dipylidium type of tapeworm and does not constitute a satisfactory anthelmintic for large roundworms or hookworms and has no value in the removal of whipworms; that respondent's preparation does not constitute a conditioner for dogs and will not antiseptically cleanse a dog's intestinal tract; that said preparation has no value in the treatment of distemper and is not effective in the treatment of running and barking fits; that respondent's preparation is not as harmless as castor oil, but, instead, that its use may be definitely harmful; that said preparation is not effective in treating dogs that are out of condition as indicated by dull eyes, pale mouth membrane, rough coat, poor appetite, etc., since these symptoms, particularly pale mouth membrane, indicate anemia, which may be caused by the hookworm, for the removal of which this preparation has little value.

PAR. 11. The use by the respondent of the foregoing false, deceptive, and misleading representations with respect to his preparation, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation in preference to that of his competitors. As a result, trade has been diverted unfairly to the respondent from his competitors who are engaged in the sale and distribution of various medicinal preparations for dogs, in commerce

among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondent as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition 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 in support of, and in opposition to, the allegations of the complaint, taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and briefs filed by counsel for the Commission and by the respondent; 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 respondent, J. E. Miller, an individual doing business as Kondi Company, or trading under any other name, his representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of his product "Kondi Worm Specific and Conditioner," 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:

1. Representing, directly or by implication, that respondent's preparation will expel or destroy all intestinal parasites or worms in dogs.

2. Representing, directly or by implication, that respondent's preparation constitutes an effective anthelmintic for hookworms or roundworms in dogs.

3. Representing, directly or by implication, that respondent's preparation has any therapeutic value, in the removal of whipworms or dipylbothrium type of tapeworm from dogs.

4. Representing, directly or by implication, that respondent's preparation has any value in the treatment of distemper in dogs.

5. Representing, directly or by implication, that respondent's preparation constitutes a competent or effective treatment for running or barking fits in dogs.

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6. Representing in any manner, either directly or by implication, that respondent's preparation constitutes a conditioner for dogs.

7. Representing, directly or by implication, that respondent's preparation is a harmless anthelmintic or that it can be safely used in the treatment of any condition associated with worms in dogs.

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

IN THE MATTER OF
MAURICE J. ENGEL

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

Docket 4490. Complaint, Apr. 19, 1941—Decision, Sept. 21, 1942

Where an individual, engaged in competitive interstate sale and distribution of knife blades used by the fur industry—

Represented that his said blades were made of finest-tungsten surgical steel, and highly tempered and capable of taking and holding a fine edge and of being resharpened, through such statements in pamphlets and advertising broadsides distributed by mail and otherwise as "Tri-Forged" and "Tungsten Surgical Steel";

The facts being they were made of rolled carbon steel, which in price and quality is much inferior to tungsten, and were not tri-forged;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of a substantial volume of said products, whereby trade was diverted unfairly to him from his competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

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

Mr. Hendy Braverman, 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 Maurice J. Engel, 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, Maurice J. Engel, is an individual, doing business under and by virtue of the laws of the State of New York with his office and principal place of business located at 146 West Twenty-ninth Street, New York, N. Y. Respondent is engaged in the sale and distribution to dealers located in the various States of the United States and in the District of Columbia of knife blades used by the fur industry.