

Complaint

IN THE MATTER OF

FRED B. PEAKE AND WILLIAM H. ROOSE, DOING
BUSINESS AS MARVEL LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4838. Complaint, Sept. 23, 1942—Decision, Nov. 30, 1942*

Where two individuals, engaged in manufacture and interstate sale and distribution of their "Marvel Coal-Pep" or "Economy Coal Saver" treatment for coal; by means of advertisements in newspapers and periodicals, circulars, pamphlets, cards and testimonials, and other advertising media, and by advertising matter supplied to their salesmen and distributors—

- (a) Falsely represented that their said product created oxygen and aided in burning coal gases; that its use would save up to one-third of the cost of coal and make it burn better, create a steadier, more even heat, reduce ashes, soot, smoke and dirt, and aid in purifying the air from coal gases; and
- (b) Falsely represented that it would save labor in handling coal and ashes, reduce evaporation and help preserve the heating elements in coal; and that it was the newest, greatest money making specialty ever offered sales people;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said product:

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.

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 Fred B. Peake and William H. Roose, co-partners, trading as Marvel Laboratories, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondents, Fred B. Peake and William H. Roose, are copartners, trading and doing business under the trade name of Marvel Laboratories, and maintain their office and principal place of business at 1205 Market Street, Louisville, Ky. Respondents are now and for some time last past have been engaged in the business

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of manufacturing and selling a product designated as "Marvel Coal-Pep" advertised and recommended as a treatment for coal. Respondents prior to late in 1940 advertised and sold the same product under the name "Economy Coal-Saver."

Respondents cause their said product, when sold, to be shipped from their place of business in the State of Kentucky to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said product in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their said product, respondents have made many false, deceptive, and misleading statements and representations with respect to the character and effectiveness of their said product, such representations being made by means of advertisements inserted in newspapers and periodicals, by means of circulars, pamphlets, cards, and testimonials and other advertising media circulated generally among the purchasing public and by supplying to its salesmen and distributors advertising matter to be used in soliciting the sale of their product. Among and typical of the statements and representations so used and circulated are the following:

Every shovelful of coal you burn represents so much cash. In ordinary heating much of the coal gases is wasted in the chimney. Economy Coal-Saver creates oxygen and aids in burning these gases * * *. It is equally effective as a soot destroyer and smoke reducer. It helps burn the soot and carbon. Save up to one-third with Economy Coal-Saver.

Economy Coal-Saver, when used as directed, is guaranteed to make coal burn better, create a steadier, more even heat, less ash. * * *

* * * makes more heat; saves labor, shoveling coal and ashes; keeps your heating plant clear of soot; * * *

It causes no odors or gases whatever, but aids in purifying the air. * * *

By treating the coal when it is first put in the bin, it aids in reducing evaporation and helps to preserve its heating elements.

Marvel Coal-Pep; Chemical Coal Treatment for More Heat, Less Soot, Less Smoke, Less Ash, Less Dirt; For Soft Coal—Hard Coal, Coke or Lignite.

The newest and biggest money making specialty ever offered sales people.

PAR. 3. By and through the use of the foregoing statements and representations the respondents represent that their said product creates oxygen and aids in burning coal gases created in the combustion of coal; that its use will save up to one-third in the cost of coal; that it makes coal burn better, creates a steadier, more even heat; that it reduces ashes, soot, smoke, dirt, and aids in purifying the air of gases arising in the use of coal; that it will save labor in handling coal and ashes; that it reduces evaporation and helps preserve the heating ele-

ments in coal and that it is the newest and biggest money making specialty ever offered sales people.

PAR. 4. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact the use of respondents' said product will not create an amount of oxygen sufficient to affect in any manner the combustion qualities of coal. It will not aid in burning gases created in the combustion of coal. It will not save one-third or any other appreciable amount of the cost of coal. It will not make coal burn better and create a steadier, more even heat. It will not reduce ashes, soot, smoke, and dirt in appreciable or measurable quantities and it will not save labor in handling coal and ashes. It will not purify the air of gases resulting in the combustion of coal. It will not reduce evaporation and help preserve the heating elements in coal, and it is not the newest and biggest money making specialty ever offered sales people.

PAR. 5. The use by the respondents of the foregoing false statements, representations, and advertisements, disseminated as aforesaid, with respect to said product designated as "Economy Gas-Saver" and "Marvel Coal-Pep," 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 such false statements, representations, and advertisements are true and into the purchase of substantial quantities of respondents' said product.

PAR. 6. The aforesaid acts and practices of respondents, as hereinabove 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 September 23, 1942, issued and thereafter served its complaint in this proceeding upon respondents, Fred B. Peake and William H. Roose, individually, and as copartners, doing business under the trade name of Marvel Laboratories, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On October 28, 1942, Fred B. Peake, one of the respondents herein, filed his answer, in which answer he admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. On October 7, 1942, respondent, William H. Roose, filed his answer to the complaint herein, and thereafter the Commission, by order entered herein,

granted his motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint, which substitute answer likewise waived all intervening procedure and further hearing as to said facts, and was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer of respondent, Fred B. Peake, and substitute answer of respondent, William H. Roose, individually, and as copartners, doing business under the trade name of Marvel Laboratories; 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Fred B. Peake and William H. Roose, are copartners, trading and doing business under the trade name of Marvel Laboratories, and maintain their office and principal place of business at 1205 Market Street, Louisville, Ky. Respondents are now and for some time last past have been engaged in the business of manufacturing and selling a product designated as "Marvel Coal-Pep," advertised and recommended as a treatment for coal. Respondents prior to late in 1940 advertised and sold the said product under the name "Economy Coal-Saver." Respondents cause their said product, when sold, to be shipped from their place of business in the State of Kentucky to purchasers thereof located in various other States of the United States. Respondents maintain and all times mentioned herein have maintained a course of trade in said product in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the sale of their said product, respondents have made many false, deceptive, and misleading statements and representations with respect to the character and effectiveness of their said product, such representations being made by means of advertisements inserted in newspapers and periodicals, by means of circulars, pamphlets, cards and testimonials, and other advertising media circulated generally among the purchasing public, and by supplying to their salesmen and distributors advertising matter to be used in soliciting the sale of their product. Among and typical of the statements and representations so used and circulated are the following:

Every shovelful of coal you burn represents so much cash. In ordinary heating much of the coal gases is wasted in the chimney. Economy Coal-Saver creates oxygen and aids in burning these gases * * *. It is equally effective as a soot destroyer and smoke reducer. It helps burn the soot and carbon. Save up to one-third with Economy Coal-Saver.

Economy Coal-Saver, when used as directed, is guaranteed to make coal burn better, create a steadier, more even heat, less ash. * * *

* * * makes more heat; saves labor, shoveling coal and ashes; keeps your heating plant clear of soot; * * *

It causes no odors or gases whatever, but aids in purifying the air. * * *

By treating the coal when it is first put in the bin, it aids in reducing evaporation and helps to preserve its heating elements.

Marvel Coal-Pep; Chemical Coal Treatment for More Heat, Less Soot, Less Smoke, Less Ash, Less Dirt; For Soft Coal—Hard Coal, Coke or Lignite.

The newest and biggest money making specialty ever offered sales people.

PAR. 3. By and through the use of the foregoing statements and representations the respondents represent that their said product creates oxygen and aids in burning coal gases created in the combustion of coal; that its use will save up to one-third in the cost of coal; that it makes coal burn better, creates a steadier, more even heat; that it reduces ashes, soot, smoke, dirt, and aids in purifying the air of gases arising in the use of coal; that it will save labor in handling coal and ashes; that it reduces evaporation and helps preserve the heating elements in coal, and that it is the newest and biggest money making specialty ever offered sales people.

PAR. 4. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, the use of respondent's said product will not create an amount of oxygen sufficient to affect in any manner the combustion qualities of coal. It will not aid in burning gases created in the combustion of coal. It will not save one-third or any other appreciable amount of the cost of coal. It will not make coal burn better and create a steadier, more even heat. It will not reduce ashes, soot, smoke, and dirt in appreciable or measurable quantities, and it will not save labor in handling coal and ashes. It will not purify the air of gases resulting from the combustion of coal. It will not reduce evaporation and help preserve the heating elements in coal, and it is not the newest and biggest money making specialty ever offered sales people.

PAR. 5. The use by the respondents of the foregoing false statements, representations, and advertisements, disseminated as aforesaid, with respect to said product designated as "Economy Gas-Saver" and "Marvel Coal-Pep," 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

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such false statements, representations, and advertisements are true, and into the purchase of substantial quantities of respondents' said product.

CONCLUSION

The acts and practices of respondents 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, the answer of respondent, Fred B. Peake, and the substitute answer of respondent, William H. Roose, individually, and as copartners, doing business under the trade name of Marvel Laboratories, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Fred B. Peake and William H. Roose, individually, and as copartners, trading under the name Marvel Laboratories, or trading under any other name, and their agents, representatives, and 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 respondents' product designated "Marvel Coal-Pep" and "Economy Coal-Saver," or any other product of substantially similar composition, whether sold under the same names or under any other name, do forthwith cease and desist from:

Representing in any manner whatsoever that said product will aid in the combustion of coal so as to produce more heat therefrom; that it will, when added to coal, save one-third or any other appreciable amount in the cost of coal; that it will make coal burn better or create a steadier, more even heat; that it will reduce or eliminate ashes, soot, smoke, or dirt; that it will create or produce an amount of oxygen sufficient to affect the burning or heating qualities of coal; that it will save labor in handling coal or ashes; that it will purify the air of gases resulting from the combustion of coal; that it will reduce evaporation and help preserve the heating elements in coal; or

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that said product is the biggest money making specialty ever offered sales people.

It is further ordered, That the respondents 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.

IN THE MATTER OF
THE BRUNSWICK-BALKE-COLLENDER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3604. Complaint, Sept. 23, 1938—Decision, Dec. 7, 1942

Where a corporation which (1) had long been engaged in the manufacture and competitive offer and sale, among other commodities, of bowling pins and bowling supplies to, principally, owners and operators of bowling alleys; (2) produced from 65 to 80 percent of all of said products sold and distributed in the United States; (3) installed the alleys and furnished the pins and supplies on a lease basis for many years for the annual tournament for tenpin bowlers of the American Bowling Congress at a saving thereto of many thousands of dollars as compared with what it would otherwise have to pay for the alley installations and pins, without considering the cost of supplies and servicing; and (4) was the only manufacturer allowed to advertise bowling equipment at the tournaments in question, its said advertisements being forwarded to all participants;

In connection with a sales promotion plan which it inaugurated and carried on for several years as "The Brunswick \$34,000 Red Crown Bowling Sweepstakes," and under which it awarded substantial prizes in money and merchandise to the winning bowling teams and members thereof (required under conditions laid down by it to play for 7 consecutive weeks three games a week "Qualifying Round Play" and to engage under a similar weekly schedule in 6 weeks of so-called "Prize Play"), organized in five classes composed of teams of relatively equal skill, with prizes of equal value provided for all of the five classes, awarded both on weekly basis and on the basis of the best performance for the six weeks of "Prize Play"; and in connection with which it furnished to qualifying proprietors advertising material, entry blanks, and banners as official "Brunswick Sweepstakes Bowling Alleys"—

- (a) Made it a condition, in order for alleys to qualify for the sweepstakes contest, that their owners and operators must purchase four sets of their "King" pins or two sets of "King" pins and three sets of their "Queen" pins, and not less than \$15 worth of supplies for each alley in their establishments—quantities sufficient to supply the full requirements of the average alley for the full bowling season;
- (b) Engaged in an extensive advertising plan through advertisements in various periodicals distributed among such proprietors, and through advertising cartoons played upon the fear of losing business, through stressing the alleged reaction of customers of those alleys which had qualified and the dissatisfaction of customers of those who had not done so; and issued various advertising calculated to arouse the interest of bowlers in the sweepstakes for the purpose of inducing them to demand that the proprietors of the alleys in which they bowled qualify their establishments for the sweepstakes, and instructed their salesmen to call proprietors' attention to