

Syllabus

IN THE MATTER OF

PHILIP R. PARK, INC., PHILIP R. PARK, HARRISON H.
HAVNER, JOHN S. HUNT, AND PHILIP E. IVERSEN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 4504. Complaint, May 15, 1941—Decision, Apr. 27, 1943

Where a corporation and four individuals, who as director and officers controlled its advertising policies and business activities, engaged in the mixing and competitive interstate sale and distribution, among other livestock and poultry feeds, of their "Cattle ManAmar" or "ManAmar," composed of ground dehydrated kelp and fish meal chiefly; in advertisements in magazines and other periodicals, and in pamphlets, folders, and other advertising literature, directly or by implication—

(a) Represented that said product had therapeutic value in the treatment of various diseases and disorders of cattle, would eliminate, cure, or prevent mastitis and breeding disorders, including Bang's disease, and prevent retained placenta; and that use thereof would eliminate the necessity of veterinary services;

The facts being that it had no medicinal quality or therapeutic value in the treatment of any germ or infectious disease—such as usually cause breeding troubles in cattle—or of any breeding disorder or mastitis, and had no value in preventing the same, including infectious abortion or Bang's disease, or retained placenta; and use thereof would not serve as a substitute for veterinary care or eliminate necessity of veterinary treatment, but on the contrary, reliance thereon in case of contagious diseases might cause their spread through failure to segregate or dispose of infected animals;

(b) Represented that its said product was a better feed supplement and constituted a better livestock feed than any other on the market;

The facts being that its value as a feed supplement was no greater than that of many others; while it would supply iodine when used in sections of the country where iodine deficiency exists, the amount thereof was insufficient to act as a germicide and was of no value whatsoever where any germ or infectious disease existed; and other minerals which might be supplied by it are readily obtainable in many other feeds, and likewise have no such therapeutic value;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of inducing it to purchase the product in question, whereby trade was diverted unfairly from competitors who truthfully represent their products:

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. John M. Russell and *Mr. Randolph W. Branch* for the Commission.

Mr. Daniel Dougherty, of San Francisco, Calif., for respondents.

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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 Philip R. Park, Inc., a corporation, Philip R. Park, Harrison H. Havner, John S. Hunt, and Philip E. Iversen, individually, and as officers of Philip R. Park, Inc., a corporation, 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Philip R. Park, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, and respondents, Philip R. Park, Harrison H. Havner, John S. Hunt, and Philip E. Iversen, individuals, are president, vice-president, treasurer, and secretary thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business is located in San Pedro in the State of California.

PAR. 2. Respondent, Philip R. Park, Inc., now is, and for over 8 years last past has been, under the control and direction of said individual respondents, engaged in the business of mixing and of selling and distributing two feeds for livestock called ManAmar and Cattle ManAmar, which are hereinafter designated ManAmar. Respondents cause said product ManAmar, when sold, to be transported from said place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product ManAmar 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 said business, respondents are in active and substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

Among such competitors there are many who do not make any misrepresentations or false statements concerning the qualities and properties of their respective products and of their effectiveness when used.

PAR. 4. In the course and conduct of the business aforesaid, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product ManAmar by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product ManAmar by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product 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, through The Holstein-Friesian World Guernsey Breeders Journal, Hoard's Dairyman, publications circulated among breeders and dairymen, in corporate respondent's booklets entitled "Results of ManAmar Feeding" and "The New Way to Feed Minerals," in its magazine called "ManAmar" and in other publications and advertising literature, are the following:

Mastitis can be prevented with feeds mixed with ManAmar.

Mr. Keeney Tops World in Milk Production.

Mr. Keeney will tell you something about the records made by the herd of which he is in charge, and how these records were accomplished. * * *

We have eliminated practically all breeding disorders and have solved the retained placenta (afterbirth) problem * * *.

All other factors in the herd have been the same as they were for several years before the feeding of ManAmar rations. We can only attribute these distinct benefits to this 40% protein and organic mineral supplement * * *.

* * * Improved breeding order, elimination of retained placenta and mastitis, which formerly caused considerable production loss. This feed factor, responsible for Health Improvement is * * * due to the use of * * * ManAmar.

* * * With the advent of ManAmar (10% in our grain ration) we discontinued veterinary treatments and left it up to ManAmar, a mixture containing fish meal, kelp, and ground oyster shells. Within about six months our troubles practically all disappeared.

During the past two and one half years we have had 400 calvings with only 3 retained placenta or any afterbirth trouble. Approximately two fifths of these calvings were from cows which were positive to Bang's bacillus test. * * * We have very good breeding order. * * * ManAmar is responsible.

Mr. Fanslow tops world in butterfat * * *.

Mr. Fanslow makes this statement * * *:

Within thirty days my calves had stopped eating dirt, and the last case of gottle had been dropped. I noticed a sudden tapering off in the number of retained placenta; it had previously been forty per cent * * *. I am firmly

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convinced that ManAmar has supplied the deficiency that caused all that trouble. I attribute the greatly improved health condition of the herd to the regular use of ManAmar * * *.

Where ManAmar is used serious reproduction troubles cease (disappear)—and cows show more profitable reproduction records.

Feeds not assimilated are wasted; harmful to livestock; ManAmar increases the appetite, digestion and profits.

* * * Tens of thousands of farmers, poultrymen and leading pure breed cattle dealers have found in ManAmar the factor lacking in other rations.

MANAMAR * * *

Improves: Health Growth Production Reproduction Use in all livestock and poultry feedings.

PAR. 5. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents represent, directly or indirectly, to customers and prospective customers that the product ManAmar, a feed or feed supplement, when consumed by cattle or other livestock will eliminate and prevent mastitis; that it will eliminate practically all breeding disorders; that it will absolutely eliminate and prevent retained placenta; that it will eliminate the necessity of veterinary services within 6 months; that it will cure Bang's disease; that it will eliminate goitre; that it will cause all serious reproduction troubles to disappear; that it will cause cows to show more profitable reproduction records; that it is a better feed for cattle and other livestock than any other feed on the market; that it contains beneficial ingredients that are lacking in all other livestock feeds; that it will improve the health, growth, production, and reproduction of all livestock and poultry.

PAR. 6. The statements and representations used and disseminated by the respondents in the manner above described are false, misleading, and deceptive. In truth and in fact, the use of the product ManAmar as a feed or a feed supplement for cattle or other livestock will not prevent or eliminate mastitis; it will not eliminate practically all breeding disorders; it will not eliminate or prevent retained placenta; it will not eliminate the necessity of veterinary services; it will not cure Bang's disease; it will not eliminate goitre; it will not cause serious reproduction troubles to disappear; it will not cause cows to show more profitable reproduction records; it is not a better feed for cattle and other livestock than any other livestock feed on the market; it does not contain beneficial ingredients that are lacking in any other livestock feeds; it will not improve the health, growth, production, or reproduction of any livestock or poultry.

The product ManAmar is practically the equivalent of linseed meal for its growth and milk-producing qualities and is a good feed

or feed supplement for cows, but its use causes no measurable health benefits. There are many other kinds of supplemental feeds which accomplish the same results and are far cheaper. It will not cure or relieve germ or infectious diseases in cattle or other livestock; and tuberculosis, mastitis, and Bang's disease are germ or infectious diseases. There is no bacteria-killing agent in the product. It is not beneficial in retained placenta and would have little or no effect on reproduction troubles. No beneficial results are obtained from the product commensurate with the high cost thereof. Ingredients in the product ManAmar are essential to a well-balanced diet for cattle, but they can be obtained from products available on the farm, except in those sections of the country where it is difficult to obtain a well-balanced diet. It is not a cure, remedy, or preventative for diseases in cattle.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, 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 all such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondents' livestock feed supplement ManAmar because of such erroneous and mistaken belief, engendered as above set forth, thereby unfairly diverting trade to the respondents from their competitors in said commerce who truthfully represent their products.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public, and of respondents' competitors, and constitute unfair methods of competition in commerce and 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 15, 1941, issued and subsequently served its complaint in this proceeding upon the respondents Philip R. Park, Inc., a corporation, and Philip R. Park, Harrison H. Havner, John S. Hunt, and Philip E. Iversen, individually, and as officers of Philip R. Park, Inc., a corporation, charging them with the use of unfair methods of competition in commerce and 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

respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, 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, Philip R. Park, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, having its principal office and place of business in San Pedro, Calif. Respondent, Harrison H. Havner, is a director, and respondents, Philip R. Park, John S. Hunt, and Philip E. Iversen, are president, treasurer, and secretary, respectively, of respondent corporation and have dominant control of the advertising policies and business activities of said corporate respondent. All of said respondents have acted in conjunction and cooperation with each other in doing the acts and practices hereinafter described.

PAR. 2. Respondents, for several years last past, have been engaged in the business of mixing and of selling and distributing certain feeds for livestock and poultry. Among the feeds so sold and distributed by the respondents is a concentrated food for cattle, composed chiefly of ground dehydrated kelp and fish meal, which has been designated as "Cattle ManAmar" or "ManAmar." Respondents cause said product ManAmar, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product ManAmar 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 said business, respondents are in active and substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of feeds for cattle in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product ManAmar by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product ManAmar by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product 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 insertions in magazines and other periodicals having a general circulation and also in pamphlets, folders, and other advertising literature are the following:

RETAINED AFTERBIRTH

Heavy losses are experienced year after year by dairymen as a result of retained afterbirth. Proper feeding helps eliminate this trouble.

MANAMAR FEEDS

ManAmar, Nature's Food Minerals from the Sea, supplement good grain feeds with essential minerals and high quality proteins in easily assimilated form. Aids in preventing, breeding and other troubles, and encourages heavy production. * * *

I have no breeding troubles nor any kind of disease in my cows since I began this feed.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, the respondents represent directly or by implication that the product ManAmar has therapeutic value in the treatment of various diseases and disorders of cattle and will eliminate or cure breeding disorders, prevent such disorders, and prevent retained placenta.

PAR. 6. In addition to the false advertisements disseminated as hereinabove described, the respondents have also made false, deceptive, and misleading statements and representations concerning their said product ManAmar by means of advertisements inserted in magazines and other periodicals and by circulars, pamphlets, and other adver-

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

"Mastitis" can be prevented with feeds mixed with ManAmar.

Where ManAmar is used, serious reproduction troubles cease (disappear)—and cows show better, and more profitable production records.

We had, for some time previous to 1930, been improving calving conditions somewhat through injections of abortion bacterins at regular intervals during the cow's pregnancy. With the advent of ManAmar (10% in our grain ration) we discontinued veterinary treatments and left it up to ManAmar, a mixture containing fish meal, kelp, and ground oyster shells. Within about six months our troubles practically all disappeared. * * * Approximately two-fifths of these calvings were from cows which are positive to Bang bacillus test * * * We have a very good breeding order and the retained placenta trouble has absolutely been eliminated. ManAmar is responsible.

ManAmar stands preeminent as a supplement to feeds. Because of its ocean origin and its ability to furnish in proper proportions valuable proteins, vitamins and mineral substances, ManAmar fits into the farm feeding picture better than any other single product available as a supplement to feeders and breeders today.

PAR. 7. Through the use of the false, deceptive, and misleading statements and representations hereinabove set forth in paragraph 6, and others of similar import not specifically set out herein, the respondents have represented that the product ManAmar has therapeutic value in the treatment of various diseases and disorders of cattle and will eliminate or cure mastitis and breeding disorders, including Bang's disease and retained placenta, and will prevent such disorders; that the use of this product will eliminate the necessity for veterinary services; and that said product is a better supplement to feeds and constitutes a better feed for cattle and other livestock than any other feed or feed supplement on the market.

PAR. 8. Breeding troubles in cattle are usually of an infectious nature caused by some germ disease. The principal breeding disorder is infectious abortion, known as Bang's disease. Retained placenta is largely due to infection resulting from infectious abortion. The product ManAmar has no medicinal qualities or therapeutic value in the treatment of any germ or infectious disease. Its use will have no therapeutic value or beneficial effect in the treatment of any breeding disorder or be of any value in preventing such disorder. Its use will have no effect whatsoever in the treatment of any infectious abortion condition or Bang's disease. Its use will not eliminate, cure, or prevent retained placenta or have any beneficial effect upon such condition. This product has no therapeutic value or beneficial effect in the treatment or prevention of mastitis. The use of this preparation will not serve as a substitute for veterinary care or eliminate the necessity of veterinary treatment. Instead, where con-

tagious diseases such as infectious abortion exist, reliance upon such representations on the part of purchasers of respondents' product might cause a spread of such disease among other animals in the herd because of a failure to segregate or dispose of infected animals.

Respondents' product ManAmar has value as a feed supplement but its value is no greater than that of many other kinds of feed supplements. Since the primary ingredients of respondents' product are fish meal and kelp, it will supply iodine when used in those sections of the country where an iodine deficiency exists. However, the amount of iodine supplied by this product is not sufficient to act as a germicide and is of no value whatsoever where any germ or infectious disease or condition exists among cattle. The other minerals which might be supplied by this product are readily obtainable in many other feeds and have no therapeutic value or beneficial effect upon any germ or infectious disease or disorder. While there are some deficiency areas of various minerals in this country, there are many feeds and feed supplements produced in nondeficient areas which will supply such deficiencies as effectively as respondents' product.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations 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 such statements and representations are true and induces a substantial portion of the purchasing public to purchase respondents' product ManAmar because of such erroneous and mistaken belief, thereby unfairly diverting trade to the respondents from their competitors in said commerce who truthfully represent their products.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 on the complaint of the Commission, answer of the respondents, testimony and other evidence in support of and in opposition to the

allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and briefs filed 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually, and as officers and directors of Philip R. Park, Inc., a corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of livestock feeds or feed supplements for cattle and other livestock known as "ManAmar" or "Cattle ManAmar," or any other product 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 directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference,

- (a) That respondents' product has any therapeutic value in the treatment of any germ or infectious disease of cattle or that its use is of any value in the prevention of any such disease or condition.

- (b) That respondents' product has any therapeutic value or beneficial effect in the treatment of any breeding disorder of cattle or is of any value in preventing such disorder.

- (c) That respondents' product has any therapeutic value or beneficial effect in the treatment of retained placenta or that its use will have any value in preventing such condition.

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" is defined in the Federal Trade Commission Act of respondents' product, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

It is further ordered, That the respondent, Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually, and as officers of Philip R. Park, Inc., a corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device in con-

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nection with the offering for sale, sale, and distribution of livestock feeds or feed supplements for cattle and other livestock known as "ManAmar" or "Cattle ManAmar," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That respondents' product will have any therapeutic value in the treatment of mastitis or that its use is of any value in the prevention of such condition.

2. That respondents' product has any therapeutic value in the treatment of any germ or infectious disease of cattle or that its use is of any value in the prevention of any such disease or condition.

3. That respondents' product has any therapeutic value or beneficial effect in the treatment of any breeding disorder of cattle or that its use is of any value in preventing such disorder.

4. That respondents' product has any therapeutic value in the treatment of retained placenta, infectious abortion, or Bang's disease, or that its use will have any beneficial effect upon such conditions or any value in preventing such conditions.

5. That respondents' product is a better supplement to feeds or constitutes a better feed for cattle than any other feed or feed supplement on the market.

6. That the use of respondents' product will eliminate the necessity of veterinary treatment.

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.