

Complaint

IN THE MATTER OF
THE EMBALMERS' SUPPLY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3936. Complaint, Oct. 27, 1939—Decision, Nov. 2, 1943*

Where a corporation engaged in the manufacture and interstate sale and distribution of embalming fluids and chemicals including its "San-Velno Spray," for use on the remains of deceased persons—

Represented, directly or by implication, through statements in advertising circulars, folders and circular letters and in advertisements in magazines, that the formula for the chemical preparation used in connection with the exhumation of the remains of American soldiers buried in France during the first World War, was originated and developed by the United States Army or War Department; that it obtained said formula from the War Department and that its said "San-Velno Spray" was the same as that preparation;

The facts being that while a substitute for the more costly proprietary preparation used in said exhumations was developed by the War Department, such substitute was, in fact, never used; and while, at said corporation's request, the War Department did supply it with a statement showing the various ingredients of said substitute and the proportions thereof, its efforts to duplicate the preparation were unsuccessful, the War Department withholding information as to the method of mixing certain ingredients, as involving a process being patented by the discoverer thereof; and its said "San-Velno Spray," in addition, departed to some extent from the proportions specified in the War Department's statement and included at least one other ingredient;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said preparation, and to cause it to purchase substantial quantities thereof as a result of the mistaken belief so engendered:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. D. E. Hoopingarner and *Mr. R. P. Bellinger* for the Commission.

Mr. Earl H. Jagoe, of Westport, Conn., and *Tammany & Connery*, of South Norwalk, Conn., for respondent.

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Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

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Trade Commission having reason to believe that Embalmers' Supply Co., a corporation, hereinafter referred to as the 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. Embalmers' Supply Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at Westport, in the State of Connecticut.

PAR. 2. Respondent is, and for a number of years last past has been, engaged in the business of manufacturing embalming fluids and chemicals, including a product designated "San-Veino Spray", a disinfectant, deodorant, and preservative, for use on the remains of bodies, and in the sale of said products in commerce between and among the various States of the United States and in the District of Columbia. It causes, and has caused, the said products, including the San-Veino Spray, when sold, to be shipped from its place of business in the State of Connecticut, to purchasers thereof located in a State or States other than Connecticut and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said San-Veino Spray sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of said preparation, respondent has made, by means of advertising circulars, folders, and circular letters and by means of advertisements inserted in magazines, all of which are circulated generally throughout the United States, many representations concerning said product. Among said representations made by respondent are the following:

• San Veino Spray, (in a form adapted for convenient indoor use) is compounded solely and exclusively by Esco from the *official formula of the U. S. Government*, originally developed by the War Department for exhumation purposes on the battlefields of France.

Formula developed by the U. S. War Dept. for exhumations on the battlefields of France.

San Veino Spray is the only commercial adaptation of the official U. S. Army formula. This famous compound was originally developed by the Chemists of the War Department—for the dangerous task of exhumations and reburials, after the Great War, in France and Flanders. By great good fortune, we received the historic formula, officially and direct from the Adjutant-General's Office at Washington.

Headlines of War * * * We here recall the technical risks of handling those tragic, putrefied remains of gallant men. The risks were extremely high—and the "discomforts" of the work so overwhelming—that the task of

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exhumation was, for a time, almost impossible. Nor could the work have been properly completed * * * except at enormous cost of infection and disease * * * had it not been for an extremely effective disinfecting spray—specially developed by the Chemists of the U. S. Army, at Washington. The formula of that Spray was received by Esco, directly and officially, from the War Department. And it is this same Spray, now adapted for indoor use, which is today compounded under our trade-name of San-Veino Spray.

Through the aforesaid statements and representations herein set out appearing in all of its advertising literature and through other statements of similar import and effect, and through other means, respondent directly and by inference represents that the United States War Department or the United States Army or their respective chemists developed, originated and perfected the formula used for exhumation purposes on the battlefields of France; that the formula from which respondent now produces its San-Veino Spray made possible the work of exhumation of bodies of the United States soldiers buried in France without the spread of infection and diseases and that the United States Government has given the respondent the official and exclusive right to said formula.

PAR. 4. The representations thus made by respondent are grossly exaggerated, false, misleading and untrue. In truth and in fact, the formula used for exhumation purposes on the battlefields of France was not developed, originated or perfected by the United States War Department or the United States Army or their chemists. The formula from which respondent now produces its San-Veino Spray did not make possible the work of the exhumation of bodies of the United States soldiers buried in France during the World War without the spread of infection and disease. Neither the United State Government nor any agency thereof has given to respondent the exclusive use of said formula. The true facts are that the United States War Department used the fluid made from the formula now held by respondent only for experimental purposes in connection with the work of the exhumation of the bodies of United States soldiers buried in France. This formula was not originated or developed by the United States War Department, United States Army, or their chemists.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations in describing its product as hereinabove set out was and is calculated to, and 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 all of said representations are true and into the purchase of a substantial volume of respondent's product because of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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 October 27, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, The Embalmers' Supply Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such 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 complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, 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, 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. The respondent, The Embalmers' Supply Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at Westport, Conn. Respondent is now, and for a number of years last past has been, engaged in the manufacture, sale, and distribution of embalming fluids and chemicals, including a product designated by it as "San-Veino Spray," a disinfectant, deodorant, and preservative, for use on the remains of deceased persons.

PAR. 2. Respondent causes and has caused its products, including San-Veino Spray, when sold, to be shipped from its place of business in the State of Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its San-Veino Spray and other products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its preparation San-Veino Spray, respondent has made various representations concerning such preparation, such representations having been made by means of advertising 'circulars, folders, and circular letters and also by means of advertisements inserted in magazines, all of which advertising has been circulated generally throughout the United States. Among the representations so made by respondent are the following:

Formula developed by the U. S. War Dept. for exhumations on the battlefields of France.

Headlines of War * * * We here recall the technical risks of handling those tragic, putrefied remains of gallant men. The risks were extremely high—and the "discomforts" of the work so over-whelming—that the task of exhumation was, for a time, almost impossible. Nor could the work have been properly completed * * * except at enormous cost of infection and disease * * * had it not been for an extremely effective disinfecting spray—specially developed by the Chemists of the U. S. Army, at Washington. The formula of that Spray was received by Esco, directly and officially, from the War Department. And it is this same Spray, now adapted for indoor use, which is today compounded under our trade-name of San-Veino Spray.

PAR. 4. Through the use of these representations and others of similar import, respondent has represented, directly or by implication, that the formula for the chemical preparation used in connection with the exhumation of the remains of American soldiers who had been buried in France during the first World War was originated and developed by the United States Army or the War Department of the United States Government; that this formula was obtained by respondent from the War Department; and that respondent's preparation San-Veino Spray is the same as the preparation used by the United States Government in such exhumations.

PAR. 5. The evidence establishes, and the Commission finds, that these representations were erroneous and misleading. The preparation actually used in the exhumation work in question was not one which had been originated or developed by the War Department or any other agency of the United States Government, but was a proprietary preparation called "Necrosan," which was obtained by the Government from a private business concern in the United States. Because of the costliness of Necrosan, efforts were made by the chemists of the War Department to develop a substitute preparation, and such a preparation was in fact developed. This substitute preparation, frequently referred to in the record as "Necrosan Substitute," while differing substantially from Necrosan, was considered by the War Department as fairly satisfactory for the purpose, although it appears to have been somewhat less effective than the original preparation in some respects.

It further appears from the record that the actual use of Necrosan Substitute did not extend beyond the experimental stage. While the authorities in France who were in charge of the exhumation work were authorized by the War Department to use the substitute preparation, the record discloses that there was on hand at all times a sufficient quantity of the original preparation to perform the work and that this, rather than the substitute preparation, was used.

Upon respondent's request the War Department supplied it with a statement showing the various ingredients used in Necrosan Substitute and the proportion of each ingredient. This statement, however, did not include the directions for mixing or combining the several ingredients, and in consequence respondent's efforts to duplicate the preparation were unsuccessful. Respondent sought this additional information but was unable to obtain it, the War Department stating that the method of mixing certain of the ingredients was in process of being patented by the discoverer thereof and therefore could not be supplied. Moreover, in the preparation of its San-Veino Spray respondent has departed to some extent from the proportions specified in the War Department's statement, and at least one ingredient has been added which was not included in the statement.

The Commission therefore finds that the respondent did not obtain from the United States Government or any agency thereof the formula for the chemical preparation used in connection with the exhumation of the remains of American soldiers who had been buried in France during the first World War, and that San-Veino Spray is not the same as that preparation.

PAR. 6. The Commission finds further that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity, origin, and composition of respondent's preparation, and the tendency and capacity to cause such portions of the public to purchase substantial quantities of respondent's preparation as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice 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 taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Embalmers' Supply Co., a corporation, and its officers, 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 respondent's preparation designated "San-Veino Spray," or any other preparation of substantially similar composition whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That formula for the preparation used by the United States Government in the exhumation of the remains of American soldiers who died in France during the first World War was originated or developed by the United States Army or any agency or department of the United States Government.

2. That the formula for the preparation used in said exhumations was obtained by respondent from the United States Government or any agency thereof.

3. That respondent's preparation is the same as the preparation used in said exhumations.

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

IN THE MATTER OF
WILLIAM WHEELER, TRADING AS MIRACLE
MANUFACTURING COMPANY

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

Docket 4623. Complaint, Oct. 31, 1941—Decision, Nov. 2, 1943

Where an individual, engaged in the manufacture and interstate sale and distribution of his "Miracle Radio Control" and "Miracle Aerial Loop", attachments for radio receiving sets—

Represented directly or by implication that the use of his said devices would result in greatly improved radio reception, enable one to hear clearly and at all times radio broadcasts, otherwise unobtainable, both domestic and foreign and both long and short-wave, and that the results obtained through the use of such devices were "remarkable," "marvelous," and "unbelievable", through such statements in periodical advertisements and advertising circulars and leaflets as "World's Master of Airways—Miracle Radio Control. Marvelous—Unbelievable. For long and short wave amateur, police and ship calls, code, etc.—Gets them all! * * * Foreign stations every day clear and loud. Nothing like it on the market. * * * Gets stations the world over. * * * Adds many more stations you could not get before. * * * Radio's Old Reliable—Miracle Aerial Loop—Remarkable Reception—for local and foreign stations—attach direct to radio";

The facts being that examination and tests of said devices by the Bureau of Standards and the testimony of the expert by whom the examinations and tests were made disclosed that said "Miracle Radio Control" had no effect whatever upon a radio receiving set, and that said "Miracle Aerial Loop"—which was nothing more than a length of insulated copper wire attached to a wire loop—was no more effective than a length of ordinary copper wire, and aside from such value as it might have as an aerial or aerial extension, added nothing to the performance of a radio receiving set;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his products, and to cause it to purchase substantial quantities thereof as a result of the erroneous belief so engendered:

Held, That such acts and practices, as above set forth, were all to the prejudice of the public and constituted unfair acts and practices in commerce.

Before *Mr. John W. Addison*, trial examiner.

Mr. L. E. Creel, Jr., and *Mr. William L. Pencke* 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 William Wheeler, an individual, trading as Miracle Manufacturing Co., hereinafter