

IN THE MATTER OF

GUS H. COHN, TRADING AS
KOL-TONE 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 4515. Complaint, June 5, 1941—Decision, Jan. 13, 1944

Where an individual engaged in the preparation and interstate sale to coal dealers at wholesale of his "Kol-Tone" chemical spray for use on bituminous coal; in advertisements in newspapers of general interstate circulation—

Represented that the application of his said product to coal served to increase substantially the efficiency of the coal so treated, that such coal produced more heat as a result, and that use thereof resulted in substantial savings in fuel costs;

Facts being that tests by competent experts of his said product—composed of some 87 percent sodium chloride or common salt, and small quantities of impure iron oxide, copper sulphate and zinc sulphate, mixed with a designated amount of water—established that the product was incapable of accomplishing the results claimed therefor;

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the effectiveness and value of his said product, and thereby cause them to purchase same, or coal treated therewith;

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

As respects the validity of seller's claims that application of a certain chemical spray to bituminous coal resulted in the coal which was so treated producing more heat, and in substantial savings in fuel costs; results of tests of the product by competent experts, and testimony of experts in the heating field, which established that the product was incapable of accomplishing the results claimed therefor, as above indicated, were in harmony with the conclusions reached by the United States Bureau of Mines after extensive study and testing of a number of similar chemical preparations, to the effect that the use of such preparations does not affect to any measurable extent the efficiency or heat-producing value of coal, and while some evidence controverting such conclusions was introduced by the seller, the Commission was of the opinion that it was insufficient to overcome the evidence that such claims were erroneous and misleading.

Before *Mr. James A. Purcell* and *Mr. Randolph Preston*, trial examiners.
Mr. B. G. Wilson for the Commission.

Mr. Jerome F. Duggan, of St. Louis, Mo., 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 Gus H. Cohn, an individual, trading and doing business under the name Kol-Tone Manufacturing Company, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in

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respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Gus H. Cohn, is an individual, trading and doing business under the name "Kol-Tone Manufacturing Company," with his office and principal place of business at 7516 Delmar Boulevard, in the city of St. Louis, State of Missouri. The respondent is now, and for more than three years last past has been, engaged in the business of mixing and preparing for sale certain chemicals to form respondent's product originally called "Koltreat" and now called "Kol-Tone," designed to be used, when mixed with water, as a treatment for bituminous coal and bituminous coal products, and in selling and distributing said product and a bituminous coal product treated with said "Koltreat" or "Kol-Tone" at wholesale to dealers and at retail to the purchasing public. Respondent has caused and now causes his said products, when sold, to be transported from his present place of business, and from his prior place of business at 6103 Delmar Boulevard, in the State of Missouri to the purchasers thereof located in various States of the United States other than the State of Missouri and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said product "Koltreat" or "Kol-Tone," respondent has inserted, or caused to be inserted, advertisements in newspapers and magazines having a wide circulation, and has distributed, or caused to be distributed, to purchasers and prospective purchasers of respondent's said product in various States of the United States and in the District of Columbia, circulars and letters. In said advertisements, circulars and letters, many false and misleading statements and representations are made by respondent in describing his said product and the properties thereof. Among and typical of said statements and representations so made and circulated by respondent and his dealers, under his direction, are the following:

KOL-TONE

CUTS COAL BILLS

KOL-TONE is a process that has passed a rigid test, conducted personally by Osborn Monnett, Engineer of the Commercial Testing and Engineering Co.-----
Osborn Monnett's Test on KOL-TONE shows:

1. SMOKE REDUCTION.....	24.8%
2. SAVING IN FUEL.....	11.3%
3. INCREASED EFFICIENCY.....	10.9%
4. LESS COMBUSTIBLES IN ASH.....	17.8%

Order Your KOL-TONE COAL Now While Summer Prices Prevail.

MORE HEAT—LESS COST.

Buy stoker coal processed with

KOL-TONE

For Greater Efficiency—More Heat—
Less Ultimate Cost

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Abate Smoke
at
Painless Cost

KOL-TONE has stood the TEST With the uniform result that coal treated with Kol-Tone burns hotter and produces a minimum smoke ----- LESS SMOKE--LESS SOOT--LESS COST--MORE HEAT--MORE FOR YOUR MONEY.

PAR. 3. The foregoing statements and representations, together with similar statements and representations not herein set out, purport to be descriptive of respondent's said product, and of its efficiency and of the benefits to be derived from its use. By means thereof, respondent represents and implies, and has represented and implied, that the use of his said product, "Kol-Tone" or "Koltreat," in treating or processing bituminous coal or bituminous coal products results in or accomplishes a material reduction in soot and smoke, a saving in fuel, and increased efficiency with less combustibles remaining in the ash, and gives the purchaser more for his money than would be received through the use of bituminous coal or bituminous coal products not so treated or processed. Respondent also represents that his said bituminous coal product treated with "Kol-Tone" or "Koltreat" sold by him in said commerce as aforesaid produces less soot and smoke and leaves less combustibles in the ash and will give the purchaser more fuel for his money than will untreated bituminous coal or untreated bituminous coal products.

PAR. 4. In truth and in fact, the use of respondent's said product "Koltreat" or "Kol-Tone" in treating or processing bituminous coal products does not effectuate or result in any appreciable reduction in smoke, or in the amount of combustibles remaining in the ash, it does not accomplish any conservation of fuel or any increased efficiency of operation, and does not give the purchaser more for his money. Respondent's said product, in fact, is a chemical mixture consisting largely of common salt, with a small percentage of metallic salts, and has no material or appreciable beneficial effect when used in treating or processing bituminous coal and bituminous coal products. In truth and in fact, respondent's said bituminous coal product treated with said "Koltreat" or "Kol-Tone" does not produce less soot and smoke and leave less combustibles in the ash than untreated bituminous coal and bituminous coal products, or does it give the purchaser more fuel for his money than such untreated products.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such statements and representations are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 5, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Gus H. Cohn, an individual, trading under the name Kol-Tone Manufacturing Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Subsequently, respondent tendered to the Commission an answer to the complaint, but because of the fact that such answer contained matter which the Commission regarded as improper, the Commission declined to file the answer and respondent was notified to that effect. No further answer was tendered by respondent. On February 1, 1943, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, and at this hearing testimony and other evidence in support of the complaint were introduced. It subsequently appearing that respondent had not received due notice of this hearing, a second hearing was held on July 8, 1943, before another trial examiner of the Commission theretofore duly designated by it. At this second hearing both respondent and his attorney were present, and testimony and other evidence in support of and in opposition to the complaint were introduced. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed on behalf of respondent and 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, such findings and conclusion being based entirely on the testimony and other evidence introduced at the hearing on July 8, 1943.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Gus H. Cohn, is an individual, whose present place of residence is 6621 University Drive, University City, Mo. For some three years immediately preceding the latter part of 1940, respondent traded under the name Kol-Tone Manufacturing Company, with his office and principal place of business located at 6103 Delmar Boulevard, St. Louis, Mo. Respondent was engaged in the preparation and sale of a product designated by him as "Kol-Tone," a chemical spray designed for use on bituminous coal. The product was sold by respondent at wholesale to coal dealers, who used it to treat quantities of coal, and the coal so treated was then sold to the purchasing public.

PAR. 2. During the period of time in question, respondent sold his product to various purchasers located in the State of Illinois and caused the product, when sold, to be transported from his place of business in the State of Missouri to such purchasers at their respective locations in the State of Illinois. Respondent maintained a course of trade in his product in commerce between these two States.

PAR. 3. In the course and conduct of his business respondent advertised his product by means of advertisements inserted in newspapers having general circulation among the purchasing public in portions of both Illi-

nois and Missouri. Among the statements and representations appearing in these advertisements were the following:

ORDER YOUR KOL-TONE COAL NOW

While Summer Prices Prevail

MORE HEAT—LESS COST

Call Your Nearest Kol-Tone Dealer for Prices

(Com. Ex. No. 15)

STOKER OWNERS... ATTENTION!

BUY STOKER COAL PROCESSED WITH

K O L - T O N E

For Greater Efficiency—More Heat—Less Ultimate Cost

(Com. Ex. No. 18)

PAR. 4. Through the use of these statements and others of a similar nature respondent represented, directly or by implication, that the application of his product Kol-Tone to coal served to increase substantially the efficiency of the coal so treated, that such coal produced more heat as a result of such treatment, and that the use of coal so treated resulted in substantial savings in fuel costs to the consumer.

PAR. 5. The directions for the use of the product provided for the mixing of a certain amount thereof with a designated quantity of water. The resulting mixture was then sprayed or poured on the coal. The product was composed of some 87% sodium chloride (common salt) and small quantities of impure iron oxide, copper sulphate, and zinc sulphate. The record discloses that tests of the product were made by competent experts, and the results of these tests, as well as the testimony of experts in the heating field, establish that the product was incapable of accomplishing the results claimed for it by respondent. Its use did not increase or improve the efficiency of coal nor increase the heat output, nor effect any saving in fuel costs to the consumer.

It further appears from the record that these conclusions are in harmony with the conclusions reached by the United States Bureau of Mines after extensive study and testing of a number of chemical preparations similar to that sold by respondent. The opinion of the Bureau is that the use of such preparations does not affect to any measurable extent the efficiency or heat-producing value of coal.

While some evidence controverting these conclusions was introduced by respondent, the Commission is of the opinion that such evidence is insufficient to overcome the evidence offered in support of the complaint. The Commission therefore finds that respondent's representations with respect to his product were erroneous and misleading.

PAR. 6. The Commission finds further that the use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the effectiveness and value of respondent's product, and the tendency and capacity to cause such dealers and members of the public to purchase such product, or to purchase coal treated with such product, 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, 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 brief in support of the complaint (no brief having been filed on behalf of respondent and 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, Gus H. Cohn, individually, and trading as Kol-Tone Manufacturing Company, or trading under any other name, and his 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 product designated "Kol-Tone," or any other product of substantially similar composition, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication:

That the use of respondent's product increases the efficiency of coal, causes coal to produce more heat, or results in any saving in fuel costs.

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

HOME DIATHERMY COMPANY, INC. ET AL.

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

Docket 4901. Complaint, Feb. 6, 1943—Decision, Jan. 13, 1944

Where two corporations and the two individuals who were president and secretary-treasurer, respectively, of both and formulated, controlled and directed their policies and practices; engaged in interstate sale, distribution and servicing of an electrical device designated as "Home Diathermy," recommended by them for the treatment of various ailments and diseases; for the purpose of inducing owners of their diathermy machines to send said machines to their factory for calibration—

Represented in letters and by oral statements to owners of said machines that in order to comply with the Federal Communications Commission's Order No. 96 requiring registration of diathermy apparatus, it was necessary that all diathermy machines be given a thorough calibration, and that machines purchased from them must be sent to their factory in New York City for such purpose, and they be paid the sum of \$7.50 per machine plus delivery charges, and that unless this was done it was impossible properly and legally to complete the required forms and register the instrument as required by said order, and comply therewith, failing which the owner of a machine was subject to a penalty of \$10,000 or confiscation of his machine;

Facts being it was not necessary that diathermy machines be calibrated or any servicing or adjustment made to permit full compliance with the requirements of said order, or that machines be sent to the factory, or to pay or compensate anyone, as a prerequisite for compliance therewith;

With tendency and capacity to mislead and deceive a substantial portion of the owners of diathermy machines, and particularly of those sold by them, into the mistaken belief that such representations were true, thereby inducing many of such persons to enter into agreements with them for the calibration of their machines and the payment of money to them by reason thereof:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Zeitz & Harris, of New York City, for respondents.

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 the Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania corporation; Arnold Steindler and Isadore Teitelbaum, individually, and as officials of Home Diathermy Company, Inc., a New York corporation, and Home Diathermy Company, Inc., a Pennsylvania corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by