

Complaint

IN THE MATTER OF

C. H. STEMMONS MANUFACTURING COMPANY, ETC.

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

Docket 4882. Complaint, Dec. 30, 1942.—Decision, June 27, 1944

Where an individual engaged in the manufacture and interstate sale and distribution of his "Airflow Arch-Ezur" arch supports; through advertisements and depictions in newspapers and periodicals and by circulars, pamphlets, letters and other advertising media, directly and by implication—

- (a) Represented that his said device would relieve foot pains caused by weak arches, callouses, metatarsal troubles and other foot disabilities; create an air suction through the shoes sufficient to keep the feet dry, cool, healthy, and comfortable; and was adjustable for both the metatarsal and longitudinal arches of the foot and would provide proper support therefor; and
- (b) Represented that it would prevent the formation of and remove bunions on the big and little toes, and overriding the shoe by the foot and spreading feet; aid in the restoration of foot health and relieve foot and body fatigue; that use thereof made shoes fit better in the arch, exercising weak, flabby muscles and restoring their tone and rebuilding degenerated tissues; and that it stimulated and increased circulation of blood in the feet, eased and relieved tired, aching feet, and was so scientifically designed as to be adjustable to fit every individual foot;

The facts being that mechanical construction of said supports was not such as to give proper support to either arch and it was not adjustable to the extent of giving such support; while, being soft, it might give the sense of temporary comfort for tired feet, it had no corrective function; air suction created by the openings in it was not sufficient to have any effect upon the feet or keep them dry, cool, healthy or comfortable; no device so constructed could fit every individual, since foot structure varies, and other claims made therefor were likewise false and misleading;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such statements were true and thereby inducing it to purchase a substantial quantity of his said device:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Turpin, Behrendt & Searing, of Kansas City, 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 C. H. Stemmons, an individual, trading as C. H. Stemmons Manufacturing Company and AirFlow Arch-Ezur Company, 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, C. H. Stemmons, is an individual, trading as C. H. Stemmons Manufacturing Company and AirFlow Arch-Ezur Company, with his principal office and place of business located at 1024 McGee Street, Kansas City, Mo.

PAR. 2. Respondent is now, and for several years last past has been, engaged in manufacturing and offering for sale and selling arch supports designated AirFlow Arch-Ezur. Respondent causes his product when sold to be transported from his place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times herein mentioned has maintained a course of trade in said product 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 his aforesaid business, the respondent has disseminated, and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said device by United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating and has caused, and is now causing the dissemination of false advertisements concerning his said device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as aforesaid, by United States mails, by advertisements inserted in newspapers, magazines and periodicals and by means of circulars, pamphlets, letters and other advertising media, are the following:

FEET HURT?

Get Relief the Proven Way.

WEAR AIRFLOW ARCH-EZURS

HERE'S THE NEW ADJUSTABLE AIRFLOW ARCH-EZUR which offers new joy and new hope to foot sufferers * * *.

Helps foot sufferers to find joy and blessed relief from tortuous foot burning pains, caused by weak arches, callouses, metatarsal troubles and various forms of foot disabilities.

Outstanding AirFlow Arch-Ezur Features. * Ventilated for Health * Air Cushioned for Comfort * Adjustable Metatarsal Pillow * Flexible, Soft and Resilient * Washable and Durable * Will outwear any regular shoe * Both the Metatarsal and the Longitudinal Arches, Adjustable * Patented Arch-Wing, Scientifically Designed to Restore Tone to Flabby Muscles and Rebuild Degenerated Tissues. (Pictorial representation of a foot with a bunion on the big toe and bunion on the little toe. Pictorial representation of a foot with over-riding shoe at outside. Pictorial representation of a spready foot.)

AirFlow Arch-Ezurs will in many cases prevent these common foot ailments. In others aid in the restoration of foot health.

Relieve Foot and Body Fatigue.

The cushion Arch-Wing makes shoes fit better in Arch, exercises weak, flabby muscles, and stimulates circulation.

Ventilated For Health—Cushioned for Comfort.
To ease tired, aching feet.
Scientifically designed for individual foot comfort.

Revolutionizes

Mechanical

FOOT CORRECTION

AirFlow Arch-Ezurs are provided with pockets underneath, that makes the support adjustable to the peculiarities of each individual's feet, they are easily adjusted for * HIGH ARCHES * MEDIUM ARCHES * LOW ARCHES * AND FLAT ARCHES. NO SHOE OR SUPPORT, with one standard elevation, can fit them all, or take the place of AirFlow Arch-Ezurs.

PAR. 4. Through the use of the foregoing statements, representations and others of similar import and meaning, not specifically set out herein, respondent has represented and does now represent, directly and by implication, that his device AirFlow Arch-Ezur will relieve foot pains caused by weak arches, callouses, metatarsal troubles and other forms of foot disabilities; that his device creates an air suction through the shoes sufficient to keep the feet dry, cool, healthy and comfortable; that it is adjustable for both the metatarsal and longitudinal arches of the foot and will provide proper support for said arches; that it will prevent the formation of and remove bunions on the big and little toe; that its use will prevent over-riding the shoe by the foot and will prevent spready feet; that said device will aid in the restoration of foot health and relieve foot and body fatigue; that its use makes shoes fit better in the arch, exercises weak, flabby muscles, restores tone to flabby muscles and rebuilds degenerated tissues; that it stimulates and increases circulation of blood in the feet; that said device will ease and relieve tired aching feet and is so scientifically designed as to be adjustable to fit every individual foot.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's device cannot be depended upon to relieve foot pains caused by weak arches, callouses, metatarsal troubles and other forms of foot disabilities. Said device does not create an air suction through the shoes sufficient to keep the feet dry, cool, healthy and comfortable and is not adjustable for both the metatarsal and longitudinal arch of the foot. It will not provide a proper support for either the metatarsal or longitudinal arch of the foot and cannot be adjusted so as to provide such support. The use of said device will not prevent the formation of or remove bunions on the big or little toe, nor will it prevent over-riding the shoe by the foot in all cases. It will not prevent spreading of the feet in the shoe, nor aid in the restoration of foot health or relieve foot and body fatigue. It cannot be depended upon to make shoes fit better in the arch. It does not provide exercise for the foot, is not helpful to weak, flabby muscles, nor will its use restore tone to flabby muscles and rebuild degenerated tissues. It will not stimulate and increase circulation of the blood in the feet and will not ease and relieve aching and tired feet. Said device is not scientifically designed so as to fit every individual foot and cannot be adjusted so as to fit every individual foot.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to his device 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 to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said device.

PAR. 7. 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 December 30, 1942, issued and subsequently served its complaint in this proceeding on the respondent, C. H. Stemmons, an individual, trading as C. H. Stemmons Manufacturing Company and Airflow Arch-Ezur Company, charging him with the use of 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 respondent's 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, and brief filed in support of the complaint (no brief having been filed by 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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, C. H. Stemmons, is an individual, trading as C. H. Stemmons Manufacturing Company, with his principal office and place of business located at 1024 McGee Street, Kansas City, Mo. It does not appear from the record that said respondent, C. H. Stemmons, has ever traded as Airflow Arch-Ezur Company, as charged in the complaint.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture and in the sale and distribution of arch supports designated as "Airflow Arch-Ezur." Respondent causes his products, when sold, to be transported from his place of business in the State of Missouri 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 between and among the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act;

and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive, and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated, as aforesaid, by the United States mails, by advertisements inserted in newspapers, magazines, and periodicals, and by means of circulars, pamphlets, letters, and other advertising media, are the following:

FEET HURT?

Get Relief the Proven Way.

WEAR AIRFLOW ARCH-EZURS.

HERE'S THE NEW ADJUSTABLE AIRFLOW ARCH-EZUR which offers new joy and new hope to foot sufferers * * *

Helps foot sufferers to find joy and blessed relief from tortuous, burning foot pains, caused by weak arches, callouses, metatarsal troubles and various forms of foot disabilities.

Outstanding Airflow Arch-Ezur Features.

* Ventilated for Health—Air Cushioned for Comfort * Adjustable Metatarsal Pillow * Flexible, Soft and Resilient * Washable and Durable * Will outwear any regular shoe * Both the Metatarsal and Longitudinal Arches, Adjustable * Patented Arch-Wing. Scientifically Designed to Restore Tone to Flabby Muscles and Rebuild Degenerated Tissues. (Pictorial representations of a foot with bunion on the big toe and bunion on the little toe. Pictorial representation of a foot with over-riding shoe at outside. Pictorial representation of a spready foot.)

Airflow Arch-Ezurs will in many cases prevent these common foot ailments. In others aid in the restoration of foot health.

Relieve Foot and Body Fatigue.

The Cushion Arch-Wing makes shoes fit better in Arch, exercises weak, flabby muscles, and stimulates circulation.

Ventilated For Health—Cushioned for Comfort.

To ease tired, aching feet.

Scientifically designed for individual foot comfort.

Revolutionizes

Mechanical

FOOT CORRECTION

Airflow Arch-Ezurs are provided with pockets underneath, that makes the support adjustable to the peculiarities of each individual's feet, they are easily adjusted for * HIGH ARCHES * MEDIUM ARCHES * LOW ARCHES * AND FLAT ARCHES. NO SHOE OR SUPPORT, with one standard elevation, can fit them all, or take the place of Airflow Arch-Ezurs.

PAR. 4. Through the use of the foregoing statements, representations, and others of similar import and meaning not specifically set out herein, respondent has represented, directly and by implication, that his device, Airflow Arch-Ezur, will relieve foot pains caused by weak arches, cal-

louses, metatarsal troubles and other forms of foot disabilities; that his device creates an air suction through the shoes sufficient to keep the feet dry, cool, healthy, and comfortable; that it is adjustable for both the metatarsal and longitudinal arches of the foot and will provide proper support for said arches; that it will prevent the formation of and remove bunions on the big and little toes; that its use will prevent over-riding the shoe by the foot and will prevent spready feet; that said device will aid in the restoration of foot health and relieve foot and body fatigue; that its use makes shoes fit better in the arch, exercises weak, flabby muscles, restores tone to flabby muscles, and rebuilds degenerated tissues; that it stimulates and increases circulation of blood in the feet; that said device will ease and increases circulation of blood in the feet; that said device will ease and relieve tired, aching feet, and is so scientifically designed as to be adjustable to fit every individual foot.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. Respondent's device is not of such mechanical construction as to give proper support to either the metatarsal or the longitudinal arch of the foot and is not adjustable to the extent of giving such support. It has no benefit of a curative nature for relieving painful conditions caused by weak arches, callouses, metatarsal troubles, and other foot disabilities. Being soft, this device might give the sense of temporary comfort for tired feet, but it has no corrective function. This device does not provide exercise for the foot or have any value in restoring weak or flabby muscles or rebuilding degenerated tissues. The use of this device will not stimulate or increase the circulation of the blood in the feet, and has no effect upon the removal of bunions or callouses on the feet. This device will not prevent spreading of the feet in the shoe nor aid in the restoration of foot health or relieve foot and body fatigue. The air suction created by the openings in said device is not sufficient to have any effect upon the feet and will not keep the feet dry, cool, healthy, or comfortable. The structure of the foot varies with individuals, as does also the causes of foot conditions, and no device of a construction such as that of respondent's device could fit every individual foot.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his device has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial quantity of respondent's said device.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the purchasing 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, answer of the respondent, testimony and other evidence in support of and in opposition to the allega-

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• Order

tions 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 brief filed in support of the complaint (no brief having been filed by the 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, C. H. Stemmons, an individual, trading as C. H. Stemmons Manufacturing Company, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his certain device now designated as Air-flow Arch-Ezur, or any other device of substantially similar construction or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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 respondent's device performs any corrective function in the treatment of foot conditions, or that its use will relieve painful conditions caused by weak arches, callouses, metatarsal troubles or other forms of foot disabilities.

(b) That the use of respondent's device will provide exercise for the foot or have any value in exercising or restoring weak or flabby muscles.

(c) That the use of respondent's device will stimulate or increase circulation of the blood in the feet, remove bunions or callouses upon the feet, or rebuild degenerated tissue.

(d) That the use of respondent's device will prevent spreading of the foot in the shoe, aid in the restoration of foot health, or relieve foot or body fatigue.

(e) That respondent's device is so constructed that it will create an air suction through the shoes sufficient to keep the feet dry, cool, healthy, or comfortable.

(f) That respondent's device is so designed as to fit every individual foot.

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 respondent's device, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

J. H. CAMP, TRADING AS J. H. CAMP AND DRUG
PROFITS, INC.

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

Docket 4893. Complaint, Jan. 22, 1943—Decision, June 27, 1944

Where an individual engaged in interstate sale and distribution of his "Phalene" and "Burtone" preparation; through advertisements in radio continuities—

- (a) Represented falsely that his said products were competent and effective laxatives and that his "Burtone" could be taken with safety and without ill effects to the user under all conditions and that continued use of said product was safe and harmless;

The facts being that said latter product was an irritant laxative and potentially dangerous when taken by one suffering from abdominal pains, stomach ache, or other symptoms of appendicitis; frequent or continued use thereof might result in dependence on laxatives and continued administration thereof as recommended might result in severe gastro-intestinal irritation; and

- (b) Failed to reveal that said preparations contained the drugs aloin, cascarrin, phenolphthalein and bile salts, and were potentially dangerous as aforesaid;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false and misleading advertisements were true, and with tendency so to do and thereby induce it to purchase substantial quantities of his said preparations:

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. Jesse D. Kash 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 J. H. Camp, an individual, trading as J. H. Camp and as Drug Profits, Inc., 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. The respondent, J. H. Camp, is an individual, trading as J. H. Camp and as Drug Profits, Inc., with his office and principal place of business located at Ravenswood, W. Va.

PAR. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of certain preparations containing drugs, designated by him as "Phalene" and "Burtone," and recommended by him for use in treatment of various ailments and conditions of the human body.

Respondent causes the said preparations, when sold by him, to be transported from his aforesaid place of business in the State of West