

IN THE MATTER OF

FREDERICK J. SCHENCK AND MARY V. SCHENCK,
TRADING AS RUB-R-LYFE COMPANY

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

Docket 4775. Complaint, June 24, 1942—Decision, Aug. 26, 1944

Where two individuals engaged in the interstate sale and distribution of their "Rub-R-Lyfe" preparation for the treatment of rubber products; through statements in leaflets, circulars and other written or printed matter, directly and by implication—

Falsely represented that said preparation softened hardest rubber for commercial use; preserved and renovated rubber against atmospheric conditions; stopped checking, cracking, oxidation, or frictional heat; and restored the resiliency and original elasticity of rubber;

With tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous belief that said representations were true, whereby it was induced to purchase substantial quantities of their said product:

Held, That said 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. Carrel F. Rhodes for the Commission.

Ogden & Ogden, of Seattle, Wash., 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 Frederick J. Schenck and Mary V. Schenck, 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. Respondents, Frederick J. Schenck and Mary V. Schenck, jointly and severally, trading as Rub-R-Lyfe Co., have their principal office and place of business at 1025 Medical-Dental Building, Seattle, Wash.

PAR. 2. Respondents now are, and for more than three years last past, have been engaged in the business of selling a preparation under the trade name "Rub-R-Lyfe" for the treatment of rubber products. Respondents cause said product when sold to be shipped from their place of business in the State of Washington to the purchasers thereof at their respective points of location in States other than the State of Washington and in the District of Columbia. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the several States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said preparation by the purchasing public, respondents, in leaflets, circulars, and other written or printed matter, have made many false, misleading and deceptive statements and representations with reference to its said preparation. Among, and typical of, the statements and representations used and caused to be disseminated are the following:

- The scientific miracle for revitalizing rubber—old or new.
- Softens hardest rubber for commercial use.
- Tested and approved by leading chemists—.
- Preserves and renovates rubber against atmospheric conditions.
- Stops checking—cracking.
- Stops checking, oxidation and frictional heat, tires' worst enemies.
- Restores resiliency of rubber.
- Restores original elasticity.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents directly and by implication represent and have represented to customers and prospective customers that its preparation "Rub-R-Lyfe" preserves and renovates rubber against atmospheric conditions; stops checking, cracking, oxidation or frictional heat; restores resiliency of rubber; softens hardest rubber for commercial use; restores original elasticity of rubber; has been tested and approved by leading chemists; and that use of said preparation is a competent scientific method for revitalizing old or new rubber.

PAR. 5. The statements and representations so made and used by respondents are grossly exaggerated, false, deceptive and misleading. In truth and in fact, respondents' preparation "Rub-R-Lyfe" will not preserve and renovate rubber against atmospheric conditions, will not stop checking or cracking or oxidation or frictional heat, nor will it restore resiliency of rubber or soften hardest rubber for commercial use. Respondents' preparation will not restore the original elasticity to rubber, and its use does not constitute a competent scientific method for revitalizing old or new rubber. Said preparation has not been tested and approved by leading chemists.

PAR. 6. The acts and practices of the respondent as hereinabove set forth have had and now have the tendency and capacity to and do mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. As a result of such erroneous and mistaken belief engendered as herein set forth, the purchasing public has been induced to and has purchased substantial quantities of respondents' product.

PAR. 7. The aforesaid acts and practices of respondents, 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 24, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Frederick J. Schenck and Mary V. Schenck, trading as Rub-R-Lyfe Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequent thereto, on July 16, 1942, the respondents filed their answer to said complaint. Thereafter a stipulation, approved by the Commission on June 1, 1943, was entered into by the respondents and Richard P. Whiteley, Assistant Chief Counsel for the Commission, by which it was stipulated and agreed, subject to the approval of the Commission, that the facts stipulated may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of testimony in support of charges stated in the complaint or in opposition thereto; that the Commission may proceed upon said statement of facts to make its findings as to the facts (including inferences which it may draw from the said stipulated facts and its conclusion based thereon), and enter its order disposing of the proceeding without the presentation of oral arguments or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and the facts stipulated; 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. Respondents, Frederick J. Schenck and Mary V. Schenck, jointly and severally, trading as Rub-R-Lyfe Co., have their principal office and place of business at 1025 Medical-Dental Building, Seattle, Wash.

PAR. 2. Respondents now are and for more than three years last past have been engaged in the business of selling a preparation under the trade name "Rub-R-Lyfe" for the treatment of rubber products. Respondents cause said product, when sold, to be shipped from their place of business in the State of Washington to purchasers at their respective points of location in States other than the State of Washington and in the District of Columbia. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of said preparation by the purchasing public, respondents, in leaflets, circulars and other written or printed matter, have made various statements and representations with reference to their said preparation. Among and typical of such statements and representations were the following:

Softens hardest rubber for commercial use.
Preserves and renovates rubber against atmospheric conditions.
Stops checking—cracking.
Stops checking, oxidation and frictional heat, tires' worst enemies.
Restores resiliency of rubber.
Restores original elasticity.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents, directly and by implication, have represented to customers and prospective customers that said preparation softens hardest rubber for commercial use; that it preserves and renovates rubber against atmospheric conditions; that it stops checking, cracking, oxidation, or frictional heat; and that it restores the original resiliency or elasticity of rubber.

PAR. 5. The statements and representations so made and used by respondents are grossly exaggerated, deceptive, and misleading. In truth and in fact, respondents' preparation will not soften hardest rubber for commercial use; it will not preserve or renovate rubber against atmospheric conditions; it will not stop checking, cracking, oxidation, or frictional heat; nor will it restore the original resiliency or elasticity of rubber.

PAR. 6. The acts and practices of the respondents, as hereinabove set forth, have had the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations were true. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase substantial quantities of respondents' product "Rub-R-Lyfe."

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides among other things that, without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding; 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 respondents, Frederick J. Schenck and Mary V. Schenck, individually, and trading as Rub-R-Lyfe Co., or trading under any other name, and their agents, representatives, and employees, directly

or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' product designated "Rub-R-Lyfe," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or indirectly:

1. That said product softens hardest rubber for commercial use.
2. That said product preserves or renovates rubber against atmospheric conditions, or that it stops checking, cracking, oxidation, or frictional heat in rubber.
3. That said product restores the original resiliency or original elasticity of rubber.

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.

Syllabus

IN THE MATTER OF

GRATER-BODEY COMPANY, ET AL.¹

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

Docket 4799. Complaint, Aug. 6, 1942—Decision, Sept. 6, 1944

Where a corporation engaged in the interstate purchase, milling and sale of "mill-work and lumber," including, among other products, panelling, panels, trim, doors, sash, screens, cabinets, steps and stairs and parts thereof, and unmilled lumber, in competition with others except insofar as such competition had been lessened or forestalled as below set forth; and an individual, its president, who was instrumental in effecting such purchase and sale;

Following arrangements by the Navy with a shipbuilding company under which the company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate its shipyards, to be expanded under the general supervision of the Navy and subject to its approval, and (2) the company contracted for the reconstruction by a general contractor of certain office buildings on a cost-plus-a-fixed-fee basis, with the understanding that in securing materials or services, said contractor would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms and would award a contract to the firm quoting the minimum price; the bids to be opened by or in the presence of the Supervisor of the Shipbuilding of the Navy, or his representative, and to be subject to his approval before award of the sub-contract;

With intent and effect of deceiving and misleading buyers and prospective buyers into believing, considering and approving bids submitted as genuine bids of three competitive sellers of millwork and lumber—

Prepared and submitted to such buyers over a period of some fifteen months, fictitious and noncompetitive bids, which said individual prepared on stationery procured by him, bearing the letterheads of two firms considered to be in competition with aforesaid corporation, and which, over the false, but purported signatures of officials of said firms written by said individual or at his direction, tendered higher and noncompetitive bids than those he prepared in each comparable instance in the name and on the stationery of his aforesaid corporation;

With the result that said corporation enjoyed awards of numerous contracts to it by said contractor, his employees and agents, with the approval of officials of said shipbuilding company and representatives of the aforesaid Supervisor of Ship-

¹ This case is one of a group of eight complaints, findings and cease and desist orders in regard to the use of unfair and deceptive acts, practices and methods in violation of Section 5 of the Federal Trade Commission Act in connection with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids to the Cramp Shipbuilding Co. at Philadelphia, following arrangements and contracts made by the Navy with it looking to the construction by said company of naval vessels at its shipyards and the expenditure of funds in said connection for the rehabilitation of its facilities at said shipyards.

Said cases, in addition to the instant one, are reported in this volume as follows, namely: Grater-Bodey Co., et al., Docket 4804, September 6, 1944, p. 122; Delta Equipment Co., Docket 4803, September 25, 1944, p. 202; The O'Brien Machinery Co., Docket 4805, September 25, 1944, p. 211; Westinghouse Electric Supply Co., et al., Docket 4798, September 29, 1944, p. 258; J. P. Rainey & Co., Docket 4800, October 9, 1944, p. 309; Charles F. Rohleder, et al., Docket 4806, October 10, 1944, p. 332; and James A. Clancy, et al., Docket 4801, October 21, 1944, p. 374.