

Complaint

IN THE MATTER OF

OTTO A. KOHL, CLARKE VAN METER AND MARVIN M.
COBB, TRADING AS CHICK BED COMPANY

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

Docket 5181. Complaint, June 17, 1944—Decision, Mar. 8, 1945

Where three individuals engaged in the interstate sale and distribution of a litter or floor covering for poultry and brooder houses designated as "Chick Bed"; through advertisements in newspapers and periodicals, circulars, leaflets and other advertising material —

Represented that their product constituted an effective preventive of poultry diseases; that use thereof in poultry and brooder houses would cause chicks or poultry to be healthy and free from disease; that said product was an effective germicide when used as directed, and would prevent the growth of disease germs; and that its use was a competent and effective treatment for coccidiosis, saved disease losses and increased egg production;

The facts being that, while said product was absorptive and tended to dry conditions in poultry houses, thereby aiding in the control of diseases, it was not a preventive thereof; and other aforesaid claims were similarly false and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and to induce said public, because of such belief, to purchase 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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Elliott, Shuttleworth & Ingersoll, of Cedar Rapids, Ia., 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 Otto A. Kohl, an individual, Clarke Van Meter and Marvin M. Cobb, individuals and trustees, are copartners, trading as Chick Bed Company, 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. Otto A. Kohl, is an individual, Clarke Van Meter and Marvin M. Cobb, are individuals and are trustees, under trust agreement between Otto A. Kohl dated April 21, 1941. The said Otto A. Kohl, Clarke Van Meter, trustee, and Marvin M. Cobb, trustee, are copartners, trading as Chick Bed Company with their office and principal place of business located at 96 B Avenue, N. E., in the city of Cedar Rapids, State of Iowa.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a litter or floor covering for poultry and brooder houses designated as Chick Bed. In the course and conduct of the aforesaid business, respondents cause said product when sold to be transported from their source of supply in Fernley, Nev., and from their place of business in the State of Iowa to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false and misleading advertisements, concerning their said product by the United States mails and various other means in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements, concerning their said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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 herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by means of circulars, leaflets and other advertising material, are the following:

CHICK BED is not a cure for diseased chickens but an economically preventative for diseases. Grow your chicks free from Disease.

Let the MAGIC OF CHICK BED Keep Your Flock Healthy and Save you Labor.

CHICK BED . . . prevents disease . . . free your FLOCK FROM COCCIDIOSIS.

CHICK BED assures you a dryer chicken house. This in turn reduces bacterial multiplication to a minimum.

CHICK BED helps to prevent coccidiosis and other poultry diseases. Bacterial germs will not multiply in CHICK BED.

You would gladly pay twice the price of CHICK BED for its disease preventive values alone.

This year, save labor, disease losses, and at the same time get more eggs by using Chick-Bed—indorsed by leading poultry authorities from coast to coast.

In connection with their advertising claims, respondents have made use of testimonial letters containing representations of which the following is typical:

We have had 200 chicks on Chick Bed for the past two weeks and have found that it will do everything that you advertised it to do.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, respondents represent that their product constitutes an effective preventative of poultry diseases; that the use thereof as a litter or floor covering in poultry and brooder houses will cause chicks or poultry occupying such houses to be healthy and free from disease; that its use is a competent and effective

treatment for coccidiosis; that said product is an effective germicide when used as directed and will prevent the growth of disease germs; that its use saves labor, disease losses and increases egg production and that said product has been indorsed and approved by the leading poultry authorities throughout the United States.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, respondents' product Chick Bed is not a preventative of poultry diseases and its use as a litter or floor covering in poultry or brooder houses will not cause chickens or poultry enclosed in said houses to be healthy and free from disease. It is not a competent or effective treatment for coccidiosis. Said product is not an effective germicide in use. The use of said product will not save labor, disease losses or increase egg production. It has not been indorsed and approved by the recognized leaders of the poultry industry all over the United States.

PAR. 6. The use by respondents of the aforesaid false, misleading and deceptive statements, representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public through the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief, to purchase respondents' said product.

PAR. 7. The aforesaid acts and practices of the 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 the 17th day of June, 1944, issued and subsequently served its complaint in this proceeding upon the respondents Otto A. Kohl, an individual, Clarke Van Meter and Marvin M. Cobb, individuals and trustees, copartners, trading as Chick Bed Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 27, 1944, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and Tyrrel M. Ingersoll, counsel for respondents, and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondents specifically waived the filing of a trial examiner's report upon the evidence. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Otto A. Kohl, is an individual; Clarke Van Meter and Marvin M. Cobb, are individuals and are trustees, under trust agreement with Otto A. Kohl dated April 21, 1941. The said Otto A. Kohl, Clarke Van Meter, trustee, and Marvin M. Cobb, trustee, are copartners, trading as Chick Bed Company with their office and principal place of business located at 96 B Avenue, N. E., in the city of Cedar Rapids, State of Iowa.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a litter or floor covering for poultry and brooder houses designated as Chick Bed. In the course and conduct of the aforesaid business, respondents cause said product, when sold, to be transported from their source of supply in Fernley, Nev., and from their place of business in the State of Iowa to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false and misleading advertisements concerning their said product by the United States mails and various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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 herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals and by means of circulars, leaflets and other advertising material, are the following:

CHICK BED is not a cure for diseased chickens but an economical preventative for diseases. Grow your chicks free from Disease.

Let the MAGIC OF CHICK BED Keep Your Flock Healthy and Save you Labor.

CHICK BED . . . prevents disease . . . free your FLOCK FROM COCCIDIOSIS.

CHICK BED assures you a dryer chicken house. This in turn reduces bacterial multiplication to a minimum.

CHICK BED helps to prevent Coccidiosis and other poultry diseases. Bacterial germs will not multiply in CHICK BED.

You would gladly pay twice the price of CHICK BED for its disease preventive values alone.

This year, save labor, disease losses, and at the same time get more eggs by using Chick-Bed—indorsed by leading poultry authorities from coast to coast.

In connection with their advertising claims, respondents have made use of testimonial letters containing representations of which the following is typical:

We have had 200 chicks on Chick Bed for the past two weeks and have found that it will do everything that you advertised it to do.

PAR. 4. Through the use of the foregoing statements and representations and others of a similar import not specifically set out herein, respondents represented that their product constituted an effective preventive of poultry diseases; that the use thereof as a litter or floor covering in poultry and brooder houses would cause chicks or poultry occupying such houses to be healthy and free from disease; that its use was a competent and effective treatment for coccidiosis; that said product was an effective germicide when used as directed and would prevent the growth of disease germs; that its use saved disease losses and increased egg production.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact respondents' product, Chick Bed, is not a preventive of poultry disease, although said product is absorptive and tends to dry conditions in poultry houses, thereby aiding in the control of diseases. Its use as a litter in poultry or brooder houses will not cause chickens or poultry enclosed in said houses to be healthy and free from diseases. It is not a competent or effective treatment for coccidiosis, and the use of said product will not save disease losses or increase egg production. Said product does not have specific or effective germicidal or antiseptic properties in use.

PAR. 6. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said product.

CONCLUSION

The acts and practices of 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 the respondents, and a stipulation as to the facts entered into between the respondents and counsel for 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Otto A. Kohl, Clarke Van Meter, and Marvin M. Cobb, jointly or severally, trading as Chick Bed Company or under any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their product, Chick

Bed, 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 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;

(1) That said product constitutes a preventive of poultry diseases; provided however, this paragraph shall not be construed as preventing respondents from representing that said product used as a floor litter is absorptive, and tends to dry conditions in poultry houses, thereby aiding in the control of poultry diseases;

(2) That the use of said product as a litter or floor covering in poultry or brooder houses will cause chicks or poultry occupying such houses to be healthy or free from disease;

(3) That the use of said product is a competent and effective treatment for coccidiosis;

(4) That said product is an effective germicide in use;

(5) That the use of said product will prevent poultry disease losses or increase egg production.

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 of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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.

Order

IN THE MATTER OF
AURINE COMPANY, INC.

MODIFIED ORDER TO CEASE AND DESIST

Docket 3993. Order, March 12, 1945

Modified order in proceeding in question in which original order issued on June 26, 1940, 31 F.T.C. 292, requiring respondent, its officers, etc., in connection with the offering, etc., of its preparation "Aurine," to cease and desist from disseminating advertisements which represent said preparation as a cure or remedy for deafness or partial deafness or as having any therapeutic value in the treatment thereof, or as a competent or effective treatment for said condition or for ringing or buzzing head noises due to hardened wax in the ear, etc., and from representing that it makes refunds to dissatisfied purchasers, etc., as in order set forth.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Frank E. Gettleman, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and the answer of respondent, and the matter having been set for hearing, a stipulation of facts was dictated into the record in lieu of the taking of testimony in support of the charges stated in the complaint and in opposition thereto, the filing of briefs and the filing of a trial examiner's report having been expressly waived, and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated June 26, 1940, and the Commission having further considered said order to cease and desist heretofore issued and being of the opinion that the public interest requires that a modified order to cease and desist should be issued in said cause, and the Commission having given due notice to the respondent to show cause on December 21, 1944, why this case should not be reopened for the purpose of modifying said order to cease and desist, and the Commission having considered the matter and the record herein and having issued its order modifying said order in certain respects, issues this its modified order to cease and desist.

It is ordered, That the respondent, Aurine Company, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of its medicinal preparation designated Aurine, or any other medicinal preparation composed of substantially similar properties whether sold under the same name or 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 said preparation is a cure or remedy for or has any therapeutic value in the treatment of deafness or partial deafness;