

IN THE MATTER OF
WILLIAM H. HOWE

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

Docket 5089. Complaint, Nov. 30, 1943—Decision, Mar. 13, 1945

Where an individual engaged in the interstate sale and distribution of his "Lady Ashton Foot Ease," active ingredients of which were saponified coconut and palm oils and sodium carbonate, added to the mixture in the form of soap flakes and soap powder, along with 1 1/10 percent pine oil, with water as a carrier for the active ingredients; through advertisements on cards, folders, circulars and by means of radio continuities, directly and by implication—

Represented falsely that his said product, when used as directed, would completely remove foot callouses and relieve all painful conditions of the feet; the facts being that said product would not dissolve or remove callouses; its effect, when used as directed with a warm foot bath, was temporarily to soften the outer layers of callouses, some of which might be removed when followed by massage as directed, and while such use might result in temporary relief for tired and aching feet, or temporarily relieve foot discomfort, such results were in substantial part due to the warm foot bath and massage;

With tendency and capacity to mislead and deceive a substantial number of the purchasing public into the mistaken belief that such false representations were true and thereby induce their purchase thereof:

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. Miles J. Furnas*, trial examiner.

Mr. B. G. Wilson 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 H. Howe, an individual, 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 respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, William H. Howe, is an individual, having his office and principal place of business at 122 Jewett Street, Lowell, Mass.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a preparation designated as "Lady Ashton Foot Ease," in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes his said preparation, when sold, to be shipped from his said place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in his said preparation 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 said business and for the purpose of inducing the purchase of his said preparation, respondent has disseminated and is disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by United States mails and by various other 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 preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation 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 hereinabove set forth, by United States mails, by means of cards, folders, circulars and radio continuities, are the following:

Do you have painful callouses on your feet? Try LADY ASHTON FOOT EASE! It's beneficial in removing callouses without making feet sore. * * * Relief assured after three nights' treatment.

If your feet hurt or you have callouses, try LADY ASHTON FOOT EASE! It's guaranteed! Three nights' treatment must give relief.

Thousands of women have found relief from tired, aching feet with LADY ASHTON FOOT EASE!

Try today's modern remedy for tired, aching feet... LADY ASHTON FOOT EASE! * * * effective cream * * * is also an effective, painless way of removing callouses.

Weary, overworked feet respond like magic to Lady Ashton Foot Ease... a modern, effective remedy * * *.

Banish foot discomfort from your life! Get welcome relief from foot fatigue and painful callouses with LADY ASIHTON FOOT EASE.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly and by implication, that said preparation, used as directed, will completely remove foot callouses and prevent their recurrence and will relieve all painful conditions of the feet.

PAR. 5. The foregoing statements and representations disseminated by the respondent in the manner aforesaid, are false, misleading and deceptive. In truth and in fact, while the use of said preparation will tend to temporarily soften the outer layers of foot callouses, it will not be effective in removing callouses or preventing their recurrence. Respondent's preparation will have a soothing effect upon tired feet, but will not relieve or otherwise affect many painful foot conditions. Various types of pain in the feet are caused by structural defects in which cases no benefit of any nature will be derived through the use of said preparation.

PAR. 6. The use by respondent of the foregoing false, deceptive and misleading statements 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 said statements, representations and advertisements 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 preparation.

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 November 30, 1943, issued and subsequently served its complaint in this proceeding upon William H. Howe, an individual, 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 (respondent not having filed answer thereto) testimony and other evidence in support of the allegations of said complaint were introduced before an 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, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief 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 make this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent William H. Howe is an individual having his office and principal place of business at 122 Jewett Street, Lowell, Mass.

PAR. 2. Respondent is now, and for more than two years last past has been engaged in the sale and distribution of a preparation designated "Lady Ashton Foot Ease." He causes his said preparation, when sold, to be shipped from his place of business in the State of Massachusetts to purchasers thereof at their points of location in States other than the State of Massachusetts, and has maintained a course of trade in his said preparation in commerce between and among various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated and has caused the dissemination of false advertisements concerning his said preparation by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and caused the dissemination of false advertisements concerning his said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparation 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 above set forth by means of cards, folders, circulars, and radio continuities, are the following:

Do you have painful callouses on your feet? Try LADY ASHTON FOOT EASE! It's beneficial in removing callouses without making feet sore * * * Relief assured after three nights' treatment (Comm. Ex. 2).

* * * * *

If your feet hurt or you have callouses, try LADY ASHTON FOOT EASE! It's guaranteed! Three night's treatment must give relief (Comm. Ex. 3).

* * * * *

Thousands of women have found relief from tired, aching feet with LADY ASHTON FOOT EASE! (Comm. Ex. 4).

* * * * *

Try today's modern remedy for tired, aching feet... LADY ASHTON FOOT EASE! * * * effective cream, * * * is also an effective, painless way of removing callouses (Comm. Ex. 5).

* * * * *

Weary, overworked feet respond like magic to Lady Ashton Foot Ease... a modern, effective remedy * * * (Comm. Ex. 11-A).

* * * * *

Banish foot discomfort from your life! Get welcome relief from foot fatigue and painful callouses with LADY ASHTON FOOT EASE * * * (Comm. Ex. 6).

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning, respondent has represented, directly and by implication, that Lady Ashton Foot Ease, when used as directed, will completely remove foot callouses and relieve all painful conditions of the feet. The Commission does not find, however, that respondent's preparation is represented as relieving structural defects in the feet, as charged in the complaint.

PAR. 5. The aforesaid advertisements and representations concerning callouses and painful conditions of the feet are grossly exaggerated, false, misleading, and untrue. Respondent's preparation, Lady Ashton Foot Ease, has as active ingredients about $3\frac{1}{2}$ percent coconut oil, $3\frac{1}{2}$ percent palm oil, $1\frac{1}{2}$ percent sodium carbonate, and $1\frac{1}{16}$ percent pine oil. The coconut and palm oils and the sodium carbonate are saponified, being added to the mixture in the form of soap flakes and soap powder. The carrier for the active ingredients is water. This product, when applied to the feet, will not dissolve or remove callouses. Its effect, when used as directed with a warm foot bath, is to temporarily soften the outer layers of any callouses, and when followed by massage as directed, some of the outer layers of the callouses may be removed. The use of respondent's product as directed may result in temporary relief for tired and aching feet, or may temporarily relieve foot discomfort. These results, however, are in substantial part due to the warm foot bath and massage directed to be used in connection with respondent's preparation.

PAR. 6. The use by respondent of the aforesaid false, deceptive and misleading statements and representations, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said preparation.

CONCLUSION

The aforesaid acts and practices of the respondent 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, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, William H. Howe, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Lady Ashton Foot Ease, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly.

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That respondent's said preparation will remove callouses, or assist in their removal in excess of temporarily softening the outer layers of such callouses.

(b) That respondent's said preparation will relieve foot discomforts or tired, aching feet in excess of possibly affording temporary relief from such symptoms when used with foot bath and massage.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 above.

It is further ordered, That respondent shall, within 60 days after the 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.

Complaint

IN THE MATTER OF

H. BOKER & CO., 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 4121. Complaint, Apr. 26, 1940—Decision, Mar. 14, 1945*

Where the words "Boy Scout," "Scout" and "Scouting" had long since acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America, which had devised and sponsored, among their articles, a pocket knife suitable for the outdoor activities of the boy members of the organization, referred to as a "Scout Knife" and marked in some form or manner with the words "Scout" or "Boy Scout"; and thereafter a corporation and its subsidiary, engaged, respectively, in the interstate sale and distribution, and the manufacture of pocket knives—including certain knives originally made by a concern eventually merged with said manufacturing subsidiary—

Sold said knives bearing the inscription "Scout Knife" or "Junior Scout," and originally "Boy Scout," notwithstanding the fact that aforesaid products had not been and were not manufactured or distributed under the supervision of the Boy Scouts of America and had not been, and were not, products approved, endorsed, or sponsored by that organization, and were not a part of its standard equipment;

With capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous belief that said knives were sponsored by the Boy Scouts of America, and were a part of their standard equipment and thereby induce their purchase thereof;

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.

Dwight, Harris, Koegel & Caskey, of New York City, for respondents.

COMPLAINT ¹

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 Com-

¹ Complaint is published as amended by order of the Commission dated June 21, 1944, as follows:

This proceeding coming on to be considered by the Federal Trade Commission upon a stipulation as to the facts dated May 1, 1941, entered into by counsel for the respondent H. Boker & Co., Inc., a New York corporation, and H. Boker & Co., Inc., a New Jersey corporation, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that the complaint heretofore issued in this matter may be amended by changing the complaint, which alleges the name of the New York corporation as H. Boker & Company, Inc., to show the correct name of the New York corporation, which is H. Boker & Co., Inc., and to show H. Boker & Co., Inc., a New Jersey corporation, as a party respondent and that H. Boker & Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, may be made and named a party respondent in this proceeding; and the Commission having duly considered said stipulation and the record herein and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, amended by striking out the word "company" in the name of the New York corporation wherever it appears in the name of said corporation in said complaint and by substituting for the word "company" the abbreviation "Co.," and by adding after the name of the New York corporation, H. Boker & Co., Inc., the phrase "a New York corporation";

It is further ordered, That H. Boker & Co., Inc., a New Jersey corporation, be, and it hereby is, made and named a party respondent in this proceeding and the complaint herein is amended and supplemented by