

Complaint

IN THE MATTER OF
DRI-KLEEN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5103. Complaint, Dec. 17, 1943—Decision, Mar. 19, 1945*

Where two individuals engaged in the interstate sale and distribution of their "Dri-Kleen" powder, recommended for use, after addition of water thereto by the user, in the cleaning of all fabrics, including dresses, suits, drapes, hats, rugs and upholstery—

Represented through the use of the word "Dri-Kleen" in their trade name and the words "dry cleaner" in their advertising in newspapers and periodicals of national distribution, pamphlets, form letters and other advertising matter, directly and by implication, that their said product, or the solution made in accordance with the directions for its use, was a dry cleaning agent with solvents other than water, and would effectively clean and remove dirt, grease and stains from all fabrics and wearing apparel;

When in fact the product in question, or the solution made therewith, was not a dry cleaning agent as understood from the words "dry cleaning," and "dry cleaner," as well as the phonetic term "Dri-Kleen"—long used in the trade and understood by the public as referring to a method of cleaning fabrics with solvents other than water—but was a wet cleaner, being an alkaline detergent or water soluble product, which would not effectively clean and remove grease spots and many other stains from all fabrics;

With the effect of placing in the hands of dealers a means whereby they were enabled to mislead and deceive members of the purchasing public, and of misleading prospective purchasers into the erroneous belief that such representations and designations were true, and with tendency and capacity to induce the purchase of said product by reason thereof:

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

Mr. S. F. Rose for the Commission.

Kegan & Kegan, of Chicago, Ill., 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 Walter Belinky and Samuel Barth, individuals and copartners, trading as Dri-Kleen 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. Respondents, Walter Belinky and Samuel Barth, are individuals and copartners, trading as Dri-Kleen Company with their office and principal place of business located at 325 West Huron Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of a powder product, to which water is added by the user, designated "dr-kleen," recommended for use in the cleaning of all fabrics, including, among other things, dresses, suits, drapes, hats, rugs and upholstery. Respondents sell their product to dealers for resale to the purchasing public. They cause their said product, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times herein mentioned, have maintained a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have adopted and used as a trade name, the name "Dri-Kleen Company." Under this name respondents conduct their business and offer for sale and sell said product.

The words "dry clean," "dry cleaning" and "dry cleaner," as well as the phonetic term "dri-clean," have long been used in the trade and are understood by a substantial portion of the purchasing public to designate, describe and refer to a method of cleaning fabrics or textiles with solvents other than water.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said product, respondents have made false and misleading statements and representations with respect to their said product by means of newspaper and nationally distributed magazine advertising, by pamphlets, form letters and other advertising matter distributed among prospective purchasers, and on the labels placed on the containers in which said product is sold and distributed. Among and typical of such false and misleading representations are the following:

Genuine dri-kleen for all fabrics

The improved scientific home cleaner that cleans all fabrics safely, easily, economically!

This amazingly effective, scientific, soluble-crystal dry cleaner magically and almost instantly cleans dresses, suits, ties, hats, drapes, rugs, upholstery—ALL FABRICS...

PAR. 5. Through the use of the words "dri-kleen" in their trade name and the use of the words "dry cleaner" in their advertising, respondents have represented and now represent, directly and by inference, that their said product, or the solution made in accordance with the directions for use of said product, is a dry cleaning agent with solvents other than water and that it will effectively clean and remove dirt, grease and stains from all fabrics and wearing apparel.

PAR. 6. Such representations on the part of the respondents are false and misleading. In truth and in fact, the respondents' product, or the solution made in accordance with the directions for its use, is a wet cleaner, being an alkaline detergent or water soluble product. Said product will not effectively clean and remove grease spots and many other stains from all fabrics.

Through the use of the word "Dri-Kleen" in their trade name and otherwise, and the use of the words "dry cleaner" in their advertising matter

as above alleged, the respondents have placed in the hands of dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive the members of the purchasing public.

PAR. 7. The use by the respondents of their said trade name and the designations and representations, as set forth herein, in connection with the offering for sale and selling their said product, has had, and now has, the tendency and capacity to, and does mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations and designations are true, and to induce the purchase in said commerce of said product on account thereof.

PAR. 8. 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 December, A.D., 1943, issued, and subsequently served its complaint in this proceeding upon respondents, Walter Belinky and Samuel Barth, individually and as copartners, trading as Dri-Kleen Company, charging them 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 respondents' answer, the Commission by order entered herein, granted respondents' request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Walter Belinky and Samuel Barth, are individuals and copartners, trading as Dri-Kleen Company with their office and principal place of business located at 325 West Huron Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of a powder product, to which water is added by the user, designated "dri-kleen," recommended for use in the cleaning of all fabrics, including, among other things, dresses, suits, drapes, hats, rugs and upholstery. Respondents sell their product to dealers for resale to the purchasing public. They cause their said product when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have adopted and used as a trade name, the name "Dri-Kleen Company." Under this name respondents conduct their business and offer for sale and sell said product.

The words "dry clean," "dry cleaning" and "dry cleaner," as well as the phonetic term "dri-kleen," have long been used in the trade and are understood by a substantial portion of the purchasing public to designate, describe and refer to a method of cleaning fabrics or textiles with solvents other than water.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said product, respondents have made false and misleading statements and representations with respect to their said product by means of newspaper and nationally distributed magazine advertising, by pamphlets, form letters and other advertising matter distributed among prospective purchasers, and on the labels placed on the containers in which said product is sold and distributed. Among and typical of such false and misleading representations are the following:

Genuine dri-kleen for all fabrics.

The improved scientific home cleaner that cleans all fabrics safely, easily, economically!

This amazingly effective, scientific, soluble-crystal dry cleaner magically and almost instantly cleans dresses, suits, ties, hats, drapes, rugs, upholstery—ALL FABRICS

PAR. 5. Through the use of the words "dri-kleen" in their trade name and the use of the words "dry cleaner" in their advertising, respondents have represented and now represent, directly and by inference, that their said product, or the solution made in accordance with the directions for use of said product, is a dry cleaning agent with solvents other than water and that it will effectively clean and remove dirt, grease and stains from all fabrics and wearing apparel.

PAR. 6. Such representations on the part of the respondents are false and misleading. In truth and in fact, the respondents' product, or the solution made in accordance with the directions for its use, is a wet cleaner, being an alkaline detergent or water soluble product. Said product will not effectively clean and remove grease spots and many other stains from all fabrics.

Through the use of the word "Dri-Kleen" in their trade name and otherwise, and the use of the words "dry cleaner" in their advertising matter as above set forth, the respondents have placed in the hands of dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive the members of the purchasing public.

PAR. 7. The use by the respondents of their said trade name and the designations and representations, as set forth herein, in connection with the offering for sale and sale of their said product, has had, and now has, the tendency and capacity to and does mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations and designations are true, and the tendency and capacity to induce the purchase of said product on account thereof.

CONCLUSION

The acts and practices of the respondents, 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 and the answer of respondents, in which answer respondents admit all of the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Walter Belinky and Samuel Barth, individually, and trading as Dri-Kleen Company, or trading under any other name, and their representatives, agents, 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' cleaning preparation now designated Dri-Kleen, or any other preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Using the term "dry clean" or the simulation "dri-kleen," or any other term of similar import, as a part of respondents' trade name, or to designate, describe, or refer to respondents' preparation; or otherwise representing, directly or by implication, that said preparation is a dry cleaner or that the use of said preparation constitutes dry cleaning.

2. Representing, directly or by implication, that respondents' preparation will remove stains or grease spots from all fabrics or all wearing apparel.

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.

IN THE MATTER OF
CALLIE E. MORRIS, DOING BUSINESS AS CONTROL
PRODUCTS COMPANY

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

Docket 3340. Complaint, Mar. 18, 1941¹—Decision, Mar. 20, 1945

Where an individual engaged in the interstate sale and distribution of his "Control Flow and Adjuster" device for colonic and vaginal irrigations, consisting of a long rubber hose to be attached directly to the water faucet and with attachments for the two uses above indicated, but with no provision for regulating intake; along with which he supplied for use therewith medicated tablets designated "Clentol Antiseptic Nodules," containing sodium borate, sodium bicarbonate, sodium chloride, D. C. aluminum phosphate, and aromatic antiseptics; through advertisements in newspapers and periodicals and circulars, leaflets, pamphlets and other advertising literature—

- (a) Represented that use of said device constituted a cure or remedy for constipation, piles, fistula, proctitis, colitis and all intestinal and rectal diseases, gallstones, kidney and bladder trouble, cystitis, Bright's disease, consumption, cancer, appendicitis, rheumatism, lumbago, varicose veins, swollen legs and ankles, yellow jaundice, gastric ulcers, and enlarged prostate gland; and
- (b) Represented that use thereof constituted a cure and competent treatment for various vaginal disorders, that it was safe to use in colonic and vaginal irrigations, and that aforesaid tablets used in conjunction with said device had bactericidal effects;

The facts being that said device had no therapeutic value other than the temporary relief from constipation afforded by an ordinary enema, but did not constitute a competent or proper treatment therefor due to inability to regulate intake and because of high pressure of water direct from the faucet, by reason of which use thereof would be dangerous and might result in bursting the upper part of the colon when used for colonic irrigation; in the case of appendicitis or any ulcerous condition, the use of undue pressure within the colon might be sufficient to perforate the intestine and cause peritonitis, with resulting death; while use thereof for vaginal irrigation or douche would tend to force fluid and possible infection into the womb and Fallopian tubes, resulting in an infectious condition which might be dangerous to life; and tablets in question under conditions of use of said device would be of no value whatsoever; and

- (c) Failed to reveal facts material in the light of aforesaid representations in that use of said device for colonic or vaginal irrigation might result in serious and irreparable injury when used as aforesaid;

With capacity and tendency to mislead and deceive, and with effect of misleading and deceiving, a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce its 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. John W. Addison and Mr. Miles J. Furnas, trial examiners.
Mr. Carrel F. Rhodes for the Commission.

¹ Amended.