

IN THE MATTER OF
STROMBERG HATCHERY

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

Docket 5162. Complaint, May 20, 1944—Decision, Oct. 3, 1945

A United States Record of Performance breeder is understood by the poultry industry to be one operating a poultry breeding plant or hatchery in accordance with the provisions of the United States Record of Performance breeding stage, under the National Poultry Improvement Plan administered by the United States Department of Agriculture through the Bureau of Animal Industry, and under which, in addition to maintaining United States Record of Performance matings, all other mated birds supplying hatching eggs to said person or to any hatchery owned or operated by him must be under the supervision of the plan in one of the breeding stages.

Where four individuals engaged in the hatching, breeding, and interstate sale and distribution of chickens and baby chicks; through advertising in newspapers, folders, pamphlets, circulars, and other advertising matter—

- (a) Falsely represented, directly or by implication, that they were United States Record of Performance poultry breeders, and that they operated a poultry hatchery under the supervision and in accordance with the rules and regulations of the National Poultry Improvement Plan administered by the Bureau of Animal Industry of the Department of Agriculture;
- (b) Falsely represented that United States Record of Performance males headed their best flocks; that their "extra special grade" chickens and baby chicks were produced from Record of Performance males; and that their White Leghorn and White Rock chickens and baby chicks were sired by Record of Performance males;

When in fact their flocks were not headed or their baby chicks sired by males that had been approved, leg-banded, and registered by official Record of Performance inspectors and did not otherwise comply with the requirements for United States Record of Performance males in accordance with the National Poultry Improvement Plan, under the rules and regulations of which, chicks and hatching eggs, although produced in hatcheries complying with the plan, lose their identity when purchased for resale by a person or firm not participating therein; and

- (c) Falsely represented that all their flock inspection work was done by authorized licensed inspectors and testers; and that their baby chicks were double blood tested for pullorum and fowl typhoid;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby to induce such public to purchase substantial quantities of their products:

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.

Complaint

Before *Mr. Randolph Preston*, trial examiner.
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 Ernest Stromberg, Josephine Stromberg, Betty Snyder, and Loyl Stromberg, individuals trading as Stromberg Hatchery, hereinafter referred to as respondents, have 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. Respondents Ernest Stromberg, Josephine Stromberg, Betty Snyder, and Loyl Stromberg are individuals trading as Stromberg Hatchery, with their principal place of business located at Fort Dodge, Iowa. Respondents also maintain a branch office in Minneapolis, Minn., and retail sales offices at St. Paul, Minn., Madison City, Marshalltown, and Boone, Iowa.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the business of hatching, breeding and selling chickens and baby chicks. Respondents cause their chickens and baby chicks when sold by them to be transported from their aforesaid place of business in the States of Iowa and Minnesota 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 their said chickens and baby chicks in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their chickens and baby chicks, respondents have circulated and are now circulating among prospective purchasers throughout the United States by United States mails, by advertisements in newspapers and by advertising folders, pamphlets, circulars and other advertising matter many false statements and representations concerning their said products.

Among and typical of such false statements and representations disseminated as aforesaid are the following:

U. S. R. O. P. Sires head our best flocks.

STROMBERG EXTRA SPECIAL R. O. P. Sired Matings

Your "E" for Effort With Stromberg Big, Strong R.O.P. Sired Baby Chicks

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Stromberg R.O.P. Sired White Leghorns

Stromberg R.O.P. Sired White Rocks

All flock inspection work done by authorized licensed Inspectors and Testers.

Super Quality Grade: * * * Also, all breeders are bloodtested for Pullorum (B.W.D.) and Fowl Typhoid.

Special Super Quality: * * * Double Bloodtested for Pullorum and Fowl Typhoid.

Extra Special R.O.P. Sired Matings: * * * Double Bloodtesting for Pullorum (B.W.D.) and Fowl Typhoid.

Through the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented directly or by implication that they are U. S. Record of Performance poultry breeders and that they operate a poultry hatchery under the supervision and in accordance with the rules and regulations of the National Poultry Improvement Plan administered by the Bureau of Animal Industry of the Department of Agriculture; that United States Record of Performance (males) head their best flocks; their their extra special grade chickens and baby chicks are produced from R.O.P. males; that their White Leghorn and White Rock chickens and baby chicks are sired by Record of Performance males; that all their flock inspection work is done by authorized licensed inspectors and testers; that their super quality grade chickens and baby chicks and all breeders are blood tested for Pullorum (B.W.D) and Fowl Typhoid; that their special super quality and extra special R.O.P. chickens and baby chicks are double blood tested for Pullorum and Fowl Typhoid.

PAR. 4. A United States Record of Performance breeder is understood by members of the poultry industry to be one operating a poultry breeding plant or hatchery in accordance with the provisions of the U. S. Record of Performance breeding stage, under the National Poultry Improvement Plan administered by the U. S. Department of Agriculture through the Bureau of Animal Industry. In addition to maintaining United States Record of Performance matings, all other mated birds supplying hatching eggs to said person or to any hatchery owned or operated by him must be under the supervision of the plan in one of the breeding stages.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact the respondents are not United States Record of Performance breeders and do not own or operate a poultry breeding plant or hatchery under the supervision and in accordance with the rules and regulations of the National Poultry Improvement Plan, administered by the United States Department of Agriculture through the Bureau of Animal Industry.

Respondents' chickens and baby chicks are not headed or sired by males that have been approved, leg-banded and registered by official R.O.P. inspectors and do not otherwise comply with the requirements for United States Record of Performance males in accordance with the National Poultry Improvement Plan. Under the rules and regulations of the National Poultry Improvement Plan, chicks and hatching eggs, although produced in hatcheries complying with the National Poultry Improvement Plan, lose their identity when they are purchased for resale by a person or firm not participating in the National Poultry Improvement Plan.

The respondents are not members of, nor are they participating under the plan in any particular. The inspectors and testers doing flock inspection for the respondents are not authorized or licensed inspectors or testers. Respondents' so-called "Super Quality" grade chickens and baby chicks and breeders are not blood tested for Pullorum and Fowl Typhoid. Their so-called "Super Special" quality and "Extra Special" chickens and baby chicks are not double blood tested for Pullorum and Fowl Typhoid.

PAR. 6. The use by the respondents of the foregoing false and misleading advertisements disseminated as aforesaid has a tendency and a capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true and to induce the purchasing public to purchase substantial quantities of the respondents' products as a result of such belief.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged are all to the injury and 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 20, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Ernest Stromberg, Josephine Stromberg, Betty Snyder and Loyl Stromberg, individuals trading as Stromberg Hatchery, 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 thereto, a stipulation as to the facts was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents and Richard P. Whiteley, Assistant Chief Counsel, for the Commission, subject to the approval of the Commission, may be

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taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, and in opposition thereto, and that said Commission may proceed upon said complaint and 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 this proceeding without the presentation of argument or the filing of briefs. The respondents expressly waived the filing of the Trial Examiner's Report upon the Evidence. Thereafter, said stipulation having been approved, this proceeding regularly came on for final hearing before the Commission upon said complaint and said stipulation as to the facts, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Ernest Stromberg, Josephine Stromberg, Betty Snyder, and Loyl Stromberg are individuals trading as Stromberg Hatchery, with their principal place of business located at Fort Dodge, Iowa. Respondents also maintain a branch office in Minneapolis, Minn., and retail sales offices at St. Paul, Minn., Madison City, Marshalltown, and Boone, Iowa.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the business of hatching, breeding, and selling chickens and baby chicks. Respondents cause their chickens and baby chicks, when sold by them, to be transported from their aforesaid places of business in the States of Iowa and Minnesota 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 their said chickens and baby chicks in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their chickens and baby chicks, respondents have circulated, and are now circulating, among prospective purchasers throughout the United States, by United States mails, by advertisements in newspapers, and by advertising folders, pamphlets, circulars, and other advertising matter, many statements and representations concerning their said products. Among and typical of such statements and representations disseminated as aforesaid are the following:

U. S. R.O.P. Sires head our best flocks.

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Stromberg Extra Special R.O.P. Sired Matings.

Your "E" for Effort with Stromberg Big, Strong R.O.P. Sired Baby Chicks.

Stromberg R.O.P. Sired White Leghorns.

Stromberg R.O.P. Sired White Rocks.

All flock inspection work done by authorized licensed Inspectors and Testers.

Super Quality Grade: * * * Also, all breeders are bloodtested for Pullorum (B.W.D.) and Fowl Typhoid.

Special Super Quality: Not merely another grade at a higher price. Chicks in this grade are from excellent high egg production stock including bloodlines from our R.O.P. Sired Matings. In addition to being from breeders that are culled for type, size, color and egg production, they are Double Blood-tested for Pullorum and Fowl Typhoid.

Extra Special R.O.P. Sired Matings: * * * Double Bloodtesting for Pullorum (B.W.D.) and Fowl Typhoid.

PAR. 4. Through the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly or by implication, that they are United States Record of Performance poultry breeders and that they operate a poultry hatchery under the supervision and in accordance with the rules and regulations of the National Poultry Improvement Plan administered by the Bureau of Animal Industry of the Department of Agriculture; that United States Record of Performance males head their best flocks; that their "extra special grade" chickens and baby chicks are produced from Record of Performance males; that their White Leghorn and White Rock chickens and baby chicks are sired by Record of Performance males; that all their flock inspection work is done by authorized licensed inspectors and testers; that their baby chicks are double blood tested for Pullorum and Fowl Typhoid.

PAR. 5. A United States Record of Performance breeder is understood by members of the poultry industry to be one operating a poultry breeding plant or hatchery in accordance with the provisions of the United States Record of Performance breeding stage, under the National Poultry Improvement Plan administered by the United States Department of Agriculture through the Bureau of Animal Industry. In addition to maintaining United States Record of Performance matings, all other mated birds supplying hatching eggs to said person or to any hatchery owned or operated by him must be under the supervision of the plan in one of the breeding stages.

PAR. 6. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the respondents are not United States Record of Performance breeders and do not own or operate a poultry breeding plant or hatchery under the supervision and in accordance with the rules and regulations of the National

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Poultry Improvement Plan, administered by the United States Department of Agriculture through the Bureau of Animal Industry.

Respondents' flocks are not headed or their baby chicks sired by males that have been approved, leg-banded and registered by official Record of Performance inspectors and do not otherwise comply with the requirements for United States Record of Performance males in accordance with the National Poultry Improvement Plan. Under the rules and regulations of the National Poultry Improvement Plan, chicks and hatching eggs, although produced in hatcheries complying with the National Poultry Improvement Plan, lose their identity when they are purchased for resale by a person or firm not participating in the National Poultry Improvement Plan.

The respondents are not members of, nor are they participating under the plan in any particular. The inspectors and testers doing flock inspection for the respondents are not authorized or licensed inspectors or testers. Respondents' baby chicks are not blood tested for Pullorum (B.W.D.) and Fowl Typhoid.

PAR. 7. The use by the respondents of the foregoing false and misleading representations disseminated as aforesaid has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and to induce the purchasing public to purchase substantial quantities of the respondents' products as a result of such belief.

CONCLUSION

The foregoing 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 and a stipulation as to the facts entered into between the respondents and Richard P. Whiteley, Assistant Chief Counsel, for the Federal Trade Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue its 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Ernest Stromberg, Josephine

Stromberg, Betty Snyder, and Loyl Stromberg, individually or trading as Stromberg Hatchery 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 baby chicks or other poultry in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondents are United States Record of Performance Poultry breeders or that they operate a poultry breeding plant under the supervision of an official State agency supervising United States Record of Performance work.

2. Representing that United States Record of Performance males head any of their flocks unless the flocks concerning which such representations are made are segregated and headed by males which have been officially banded with U. S. R.O.P. sealed and numbered official leg bands and duly registered as such.

3. Representing that their chickens or baby chicks are produced from or sired by, United States Record of Performance males unless the chickens or baby chicks concerning which such representations are made have been actually sired by males which have been officially banded with U. S. R.O.P. sealed and numbered leg bands and duly registered as such.

4. Using the term "R.O.P. Sired" or any other term of similar import or meaning to designate or describe respondents' chicks in such a manner as to represent directly or by implication that the chicks so designated are U. S. R.O.P. chicks or that respondents are participants in the National Poultry Improvement Plan.

5. Representing that all of their flock inspection work is done by authorized, licensed inspectors and testers.

6. Representing that their baby chicks are blood tested for pullo-rum (B.W.D.) or fowl typhoid.

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

MORT DUFF, BERT L. FRANCE AND MRS. PEARLE
FRANCE, TRADING AS INTERSTATE HATCHERIES
AND CORNHUSKER STATE HATCHERYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5204. Complaint, Aug. 12, 1944—Decision, Oct. 3, 1945*

A United States Record of Performance breeder or hatchery is understood by the poultry industry to be one operating under an official state agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the National Poultry Improvement Plan, which, as approved by the Secretary of Agriculture, has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs, and chicks with respect to quality, by describing them in terms uniformly accepted in all parts of the United States.

Certain official terminology prescribed by the National Poultry Improvement Plan, such as "U. S. Record of Performance" or "Record of Performance" and the abbreviations thereof, "U.S.R.O.P." and "R.O.P." has acquired definite meaning throughout the industry and trade, and when used to describe specified fowls indicates that each has an official performance or lineage record. Said terms and symbols, however, are not applicable to all poultry produced by a National Poultry Improvement Plan participant, and are misnomers for any fowl that has not been duly certified and registered as such, so that a cockerel cannot become a U.S.R.O.P. or an R.O.P. male in the accepted meaning of said term until the passing of certain official tests when it has reached six months of age, failing which, no record of performance has been established or is recognized, notwithstanding pedigree, and regulations of the plan provide that the use of the term "R.O.P. sired" is permissible only when the males siring the chicks so described have been officially leg banded as U.S.R.O.P. males and registered as such, the progeny of mere wing-banded cockerels not being "R.O.P. sired."

Where three individuals engaged in interstate sale and distribution of baby chicks and two of them, for a time, in the operation of a hatchery; through statements in newspapers, trade journals, and in advertising folders, pamphlets, circulars, radio continuities and other advertising media—

- (a) Falsely represented, directly or by implication, that they were United States Record of Performance breeders and operated poultry breeding plants or hatcheries under the supervision of an official state agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with official state agencies;

The facts being that the eggs used in their hatchery were obtained from approximately thirty-three suppliers, of whom only three operated U.S. approved hatcheries under the National Poultry Improvement Plan;

- (b) Falsely represented that the chicks they sold were sired by United States