

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

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Record of Performance leg-banded males of dams with an egg production record of 223 to 345 eggs per year; and that each of their chicks was from a dam with a known record of 275 eggs or better; and received and accepted orders for R.O.P. chicks which they filled by their regular stock of alleged R.O.P. sired chicks, but invoiced as R.O.P. chicks;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby of causing it to purchase substantial quantities of their said baby chicks:

Held, That such acts and practices, under the circumstances set forth, were all to the injury and prejudice 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.

Mr. Mort Duff, Mr. Bert L. France and Sifford, Wadden & Jepson, of Sioux City, 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 Mort Duff, Bert L. France and Mrs. Pearle France, individuals trading and doing business as Interstate Hatcheries and Cornhusker State Hatchery, 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 Mort Duff, Bert L. France, and Mrs. Pearle France are individuals trading and doing business as Interstate Hatcheries and Cornhusker State Hatchery, with their office and principal place of business located at 1929 Fourth St., Sioux City, Iowa, with a retail establishment located at 2419 N St., Omaha, Nebr.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of baby chicks. Respondents cause their baby chicks, when sold by them, to be transported from their aforesaid place of business in the States of Iowa and Nebraska 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 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 baby chicks, respondents have circulated and are now circulating among prospective

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purchasers throughout the United States, by United States mails, advertisements in newspapers and trade journals, and by advertising folders, pamphlets, circular letters, radio continuities, and other advertising media, many false statements and representations concerning their product. Among and typical of such false statements and representations disseminated as aforesaid are the following:

Big Sioux R.O.P. Sired Chicks
223 to 345 egg pedigree sires.

A 10 to 30% increase in egg production over ordinary chicks—that's what you can reasonably expect from Big Sioux R.O.P. sired chicks according to United States Department of Agriculture estimates of the benefits of mating breeder flocks with U.S.R.O.P. males. It's your assurance of a heavier laying, much more profitable flock of layers if you start right with Big Sioux 223 to 345 egg R.O.P. sired chicks.

* * * We want you to know that Big Sioux chicks are hatched entirely from breeders individually blood-tested for pullorum and that all reactors have been eliminated.

No matter what Big Sioux "mating" you choose, you get strong, healthy chicks from individually selected 100% Pullorum Tested breeding stock.

Big Sioux 275 to 345 egg R.O.P. sired large English White Leghorns * * * Each is an R.O.P. male with official dam's egg record from 275 to 343 eggs. Average egg production 292 eggs. Average egg weight over 25¾ ounces per dozen. Average body weight nearly 5 pounds. All are choice layers bred for generations from high egg record R.O.P. parentage. Largely they are daughters of R.O.P. males with dams' egg records of 275 eggs and up.

Big Sioux 223 to 281 egg R.O.P. sired White Rocks.

Big Sioux chicks this week and next at big season discounts * * * Chick prices as low as \$4.80 per hundred. 223 to 345 egg R.O.P. sired chicks. Healthy hatched from pullorum tested flocks * * *

Interstate Hatcheries are producers of Big Sioux chicks profit bred from the nation's finest blood lines. Their R.O.P. sired chicks are obtained from flocks headed by wing-banded pedigreed males from the most outstanding breeders in the United States. Write Interstate Hatcheries c/o WNAX for catalog of Big Sioux chicks triple A * * * Special mating and * * * R.O.P. sired and receive also free booklets on laying house management and chick raising.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that their Big Sioux sired chicks are progeny of United States Record of Performance sires of dams with an egg production of 223 to 345 eggs per year; that a 10 to 30% increase can be expected in egg production from their Big Sioux R.O.P. sired chicks; that their Big Sioux chicks are hatched entirely from breeders individually blood tested for pullorum and that all reactors have been eliminated; that all of their Big Sioux chicks of every mating are produced from in-

dividually selected 100% Pullorum tested breeding stock; that their Big Sioux English White Leghorn chicks are progeny of sires of dams with an egg production of 275 to 345 eggs per year; that each Record of Performance male has an official dam's egg record of 275 to 343 eggs per year; that the average egg production is 292 eggs per year; that the average egg weight is over $25\frac{3}{4}$ ounces per dozen; that the average body weight is nearly 5 pounds; that their Big Sioux White Rock chicks are progeny of sires of dams with 223 to 281 egg production per year; that their chicks are sold at a price of \$4.80 per hundred; that respondents are United States Record of Performance breeders and operate poultry breeding plants or hatcheries under the supervision of an official for the 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; that their sired chicks are obtained from flocks headed by wing-banded pedigreed males from the most outstanding breeders in the United States, and meet all the requirements of the United States Record of Performance program.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' Big Sioux sired chicks are not progeny of United States Record of Performance sires of dams with an egg production of 223 to 345 eggs per year, or any other specified egg production; neither a 10 to 30% increase, nor any other specified percentage of increase, can be expected in egg production from their Big Sioux sired chicks; their Big Sioux chicks are not hatched entirely, or to any appreciable percent, from breeders individually blood tested for pullorum and reactors in such breeding stock have not been eliminated; their Big Sioux chicks of every mating are not produced from individually selected 100% pullorum tested breeding stock; their Big Sioux English White Leghorn chicks are not progeny of sires of dams with an egg production of 275 to 345 eggs per year; each so-called Record of Performance male does not have an official dam's egg record of 275 to 343, or any other specified number, eggs per year; the average egg production is not 292 eggs per year, or any other specified number; the average egg weight is not over $25\frac{3}{4}$ ounces per dozen; the average body weight is not nearly 5 pounds; respondents' Big Sioux White Rock chicks are not progeny of sires of dams with 223 to 281 egg production per year; their so-called Record of Performance chicks sold at a price of \$4.80 per hundred are not United States Record of Performance chicks; respondents are not United States Record of Performance breeders and do not operate poultry breeding plants or hatcheries under the supervision of an official for the

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; respondents' so-called Record of Performance sired chicks are not obtained from flocks headed by wing-banded pedigreed males from the most outstanding breeders in the United States; and do not meet all the requirements of the United States Record of Performance program. Respondents' principal business is operating a commercial hatchery in which chicks are hatched from eggs purchased by them from outside sources. The standard price for Record of Performance baby chicks is considerably more than \$4.80 per hundred. The average price for Record of Performance chicks is between \$50.00 and \$75.00 per hundred. The average for United States certified chicks which are Record of Performance sired is around \$18.00 per hundred.

PAR. 6. A United States Record of Performance breeder or hatchery is understood by members of the poultry industry to be one operating a poultry breeding plant under the official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture. The United States Record of Performance embraces records of egg production and body weight made on the breeder's premises under official supervision and similar records made at officially conducted egg-laying contests when such records are passed upon by the official State inspector or official State supervisor, and when the individual birds meet other United States Record of Performance requirements. Chicks and hatching eggs produced under said plan lose their identity as provided by the rules and regulations of said plan whenever purchased for resale by one not participating in the plan.

PAR. 7. The use by the respondents of the acts and practices herein set forth has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' baby chicks.

PAR. 8. 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 August 12, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Mort Duff, Bert L. France, and Mrs. Pearle France, individually and trading as Interstate Hatcheries and Cornhusker State 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, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken before a trial 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 this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (respondents not having filed brief or requested oral argument); 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. The respondents, Mort Duff, Bert L. France, and Mrs. Pearle France, are individuals trading and doing business as Interstate Hatcheries, with their office and principal place of business located at 1929 Fourth St., Sioux City, Iowa. The respondents Mort Duff and Bert L. France also operated a hatchery known as Cornhusker State Hatchery, which was located in Omaha, Nebr., and which was discontinued about July 1, 1944.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale and distribution of baby chicks. Respondents cause their baby chicks, when sold by them, to be transported 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 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 baby chicks, respondents circulated among prospective purchasers throughout the United States by United States mails, advertisements in newspapers and trade journals, and by advertising folders, pamphlets, circular letters, radio continuities, and other advertising media, many false

statements and representations concerning their products. Among and typical of such false statements and representations disseminated as aforesaid are the following:

Big Sioux R.O.P. Sired Chicks

223 to 345 Egg Pedigree Sires!

R.O.P. BREEDING IS THE ANSWER

Last year the national hen-housed average egg production for the United States was only 113 eggs per bird, whereas the average R.O.P. candidate pullets was 170 eggs per bird. The greater production of these R.O.P. candidates was the direct result of U.S.R.O.P. or U. S. Record of Performance breeding, which means breeding from official 200-egg and up, individually-pedigreed breeders.

* * * * *

A 10 to 30% INCREASE in Egg Production over ordinary chicks, that's what you can reasonably expect from Big Sioux R.O.P. Sired Chicks, according to U. S. Dept. of Agriculture estimates of the benefits of mating breeder flocks with U.S.R.O.P. males. It's your assurance of a heavier laying, much more profitable flock of layers if you start right with Big Sioux 223 to 345-egg R.O.P. Sired Chicks.

It is not even practicable for many hatcherymen to attempt trapnesting or pedigree breeding and as far as Interstate Hatcheries is concerned, we will always purchase our pedigreed cockerels from reliable and long established breeders. We do plan on going further than just buying pedigreed males, however, and that will be to purchase pullet chicks from flocks also headed by pedigreed males so that we can establish key flocks in which the ancestry of both females and males is a matter of official record. As a matter of fact, we do have this year one group of our R.O.P. Sired chicks that are from flocks where the hens are from flocks of last year headed by Ghostley pedigreed males of 275 to 341 egg ancestry, and these hens are mated to males this year from Ghostley and from dams of 275 to 345 egg ancestry.

Every R. O. P. Sired White Leghorn chick sold by Interstate Hatcheries in 1944 will be produced from flocks which are wing banded and each one is from a dam with a known record of 275 eggs or better. So, we have no hesitancy in saying that our R.O.P. sired White Leghorn chicks will be equal to any that can be purchased anywhere.

BIG SIOUX 275 to 345 EGG R.O.P. SIRED

SIREs. Each is a R.O.P. male with official dam's egg record from 275 to 343 eggs. Average egg production 292 eggs.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents represent, directly or by implication, that they are United States Record of Performance breeders and operate 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; that the chicks sold by respondents were sired by United States Record of Performance leg-banded males of dams with an

egg production record of 223 to 345 eggs per year; and that each of respondents' chicks is from a dam with a known record of 275 eggs or better. Furthermore, in the course and conduct of their business the respondents have received and accepted orders for R.O.P. chicks which have been filled by respondents' regular stock of alleged R.O.P. sired chicks, but invoiced as R.O.P. chicks.

PAR. 5. In truth and in fact, respondents are not United States Record of Performance poultry breeders and do not operate poultry breeding plants under the National Poultry Improvement Plan. The respondents do not own any flocks of chickens from which hatching eggs are produced and used in their hatchery. Instead, the eggs so used in their hatchery are obtained from approximately thirty-three suppliers, twenty-four of whom are located in the vicinity of Sioux City, Iowa. Of these suppliers there are only three who operate U. S. Approved hatcheries under the National Poultry Improvement Plan. All of respondents' chicks which were represented as being R.O.P. sired were not in fact sired by officially leg-banded R.O.P. males, and in fact many were sired by cockerels which had not been qualified as R.O.P. males. The chicks sold by the respondent were not from dams with known records of 275 eggs or better, nor were the sires in many instances from dams with egg production records of 223 to 345 eggs per year.

PAR. 6. A United States Record of Performance breeder or hatchery is understood by members of 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. The National Poultry Improvement Plan, 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 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 thereof has an official performance or lineage record.

The terms "U. S. Record of Performance" or "Record of Performance" and the symbols, "U.S.R.O.P." or "R.O.P.," 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. 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. The cockerel's condition and qualities at the end of the six-months' period are essential items in its record of performance, which is not kept until after said official inspection and certification. If such inspection is not officially made or if the cockerel fails to pass the tests when made, no record of performance has been established or is recognized, notwithstanding pedigree. 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. Accordingly, the progeny of mere wing-banded cockerels are not "R.O.P. sired."

PAR. 7. The use by the respondents of the acts and practices hereinabove set forth has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims are true and causes a substantial portion of the purchasing public, because of such mistaken belief, to purchase substantial quantities of respondents' baby chicks.

CONCLUSION

The acts and practices of the respondents as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, and brief filed in support of the complaint (respondents not having filed brief or requested oral argument); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mort Duff, Bert L. France, and Mrs. Pearle France, individually and trading as Interstate Hatcheries or trading under any other trade name, and their re-

spective 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, directly or by implication, that respondents are R.O.P. poultry breeders or that they operate a poultry plant under the supervision of an official from the agency supervising United States Record of Performance work.

2. Representing, directly or by implication, that respondents' baby chicks are produced from, or sired by, United States Record of Performance males unless the chicks so offered for sale have been actually sired 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. 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.

4. Misrepresenting the egg production records of the dams of the baby chicks offered for sale or sold by the respondents, or the egg production records of the dams of the sires of such baby chicks, or in any other manner misrepresenting the egg production record or the strain from which respondents' baby chicks are hatched.

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.

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IN THE MATTER OF

CHARLES W. HAYSSSEN, TRADING AS
H. H. HAYSSSEN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4402. Complaint, Dec. 5, 1940—Decision, Oct. 8, 1945*

Where an individual engaged in the interstate sale and distribution of certain preparations designated as "Dr. Hayssen's Eureka Goitre Balsam," "Dr. Hayssen's Eureka Goitre Ointment," and "Hayssen's Supreme Rheumatism Tablets"—

- (a) Falsely represented in advertisements of said "Balsam" and said "Ointment," directly and by implication, that his said preparations constituted cures or competent treatments for tonsillitis, rheumatism, tumors, wens, and cysts, and were safe and harmless for use;

The facts being that little if any of the active ingredient of said ointment, which consisted essentially of a petrolatum base containing 10 percent iodide of potassium, was absorbed by the skin; and said "Balsam," which contained 10 percent iodide of potassium, was not safe and harmless for use under prescribed or usual conditions, in that the potassium iodide content was sufficient to cause serious injury to health: its use might unduly activate a goitre, with harmful results, and might convert a nontoxic goitre into a toxic goitre; and, if taken by a person having arrested tuberculosis, it might dissolve the fibrous tissues about the healed lesions and, in cases of active tuberculosis, might prevent or retard the healing process; and

- (b) Failed to reveal in said advertisements facts material with respect to the aforesaid consequences which might result from prescribed or customary use of the preparation;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false and misleading advertisements were true, and as a result to induce members of such public to purchase substantial quantities of his said preparations:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. William C. Taylor, of Mobile, Ala., 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 Charles W. Hayssen, an individual trading as H. H. Hayssen Company, hereinafter referred to as respondent, has violated the provisions of said act, and