

IN THE MATTER OF

R. L. SWAIN TOBACCO COMPANY, INC.

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

Docket 4981. Complaint, June 18, 1943—Decision, Nov. 28, 1945

Where a corporation engaged in the manufacture and processing, and in the competitive interstate sale and distribution of tobacco products, including particularly its "Pinehurst Cigarettes": through statements in advertisements, directly and impliedly—

- (a) Falsely represented that Pinehurst cigarettes had been endorsed or approved by a substantial number of the members of the medical profession;
- (b) Falsely represented that said cigarettes saved and soothed the throat, nose, and mouth; did not and could not irritate delicate throat tissues and contained no irritating properties; and that, through use thereof, irritation of the throat would completely disappear or improve, and a person would have no cough, no wheeze, and no throat irritation;
- (c) Falsely represented that use of many Pinehurst cigarettes in a room lacking fresh air would not create a sour, stale, and disagreeable odor; and that, due to use thereof, the stain on fingers and teeth was considerably less than from brands previously used; and
- (d) Falsely represented that the substitution of ginseng for glycerine in processing Pinehurst cigarettes removed the irritating properties in the smoke and kept the tobacco moist longer; and that the processing method eliminated the harsh irritants in the tobacco, and that such cigarettes contained no harsh irritants;

With capacity and tendency to mislead and deceive the purchasing public into the belief that such representations were true and to induce it to purchase its said Pinehurst cigarettes in such erroneous belief, and of thereby causing substantial injury to competition in the sale and distribution of cigarettes in commerce:

Held, That such acts and practices were all to the prejudice of the public and its competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. John L. Hornor*, trial examiner.

Mr. J. R. Phillips, Jr. for the Commission.

Mr. Archibald M. Aiken, of Danville, Va., and *Colladay, Colladay & Wallace*, of Washington, D. C., 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 R. L. Swain Tobacco Company, Inc., a corporation, 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, R. L. Swain Tobacco Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of

business at Danville, Va. It is engaged in the manufacture and processing of certain tobacco products, particularly of cigarettes branded "Pinehurst" and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. It causes such cigarettes, when sold by it, to be transported from its place of business in the State of Virginia to the purchasers thereof, some located in said State and others located in various other States of the United States and in the District of Columbia, and there is a constant current of trade in commerce conducted by said respondent in such cigarettes between and among the various States of the United States and in the District of Columbia. Respondent is in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of cigarettes in interstate commerce.

PAR. 2. In the course and conduct of its said business and for the purpose of aiding and promoting the sale of its said "Pinehurst" brand of cigarettes, respondent has disseminated by various means in commerce advertisements containing the following representations:

THE CIGARETTE THE DOCTOR SMOKES;

* * * that saves your throat, * * *;

* * * the only cigarette in the world which actually soothes your throat, nose and mouth * * *;

Smoke a cigarette that first of all does not irritate delicate throat tissues * * *:
—they can't irritate the throat because of their exclusive Panax process which eliminates harsh irritants;

That throat irritation of yours will completely disappear or improve if you smoke Pinehurst—the soothing cigarette;

Yes, sir, no cough, no wheeze, no throat irritation when you smoke Pinehurst Cigarettes * * *;

Everyone has at times forgotten to air out a room in which many cigarettes were smoked during a party or meeting. Remember how sour and disagreeable it smelled when later you re-entered that room? That never occurs when Pinehursts are smoked!;

Many regular cigarette smokers show definite stains on teeth and fingers. Numerous persons who now smoke Pinehursts regularly say that Pinehursts cause considerably less stain than their previous brands;

Pinehursts cannot irritate the throat, as they contain no irritating properties, because of the Panax process;

Countless experiments indicated that it wasn't the tars or oils in tobaccos which caused throat and nose irritation, but rather some outside element which was added to the tobaccos during the manufacture of the cigarette. And by process of elimination it was finally decided that the Glycerine, used to retain necessary moisture, was the real "biting" culprit. * * * Our problem therefore was to find a new conditioning agent without this irritating quality. * * * The important point is that we finally found the perfect natural conditioning agent for cigarette tobaccos—not a chemical, not an animal fat, but a natural root called "Panax Quinquifolium." * * * After we had tested "Panax" in every conceivable way . . . after independent laboratories and thousands of actual smokers had proved its mollifying effect on tobacco * * *. Then came the perfecting of a cigarette blend which would give you all the flavor and aroma of high-grade imported and domestic tobaccos plus this exclusive soothing effect of our exclusive Panax Process.

PAR. 3. By disseminating the foregoing advertising matter, statements, claims, and representations the respondent has directly and impliedly represented that Pinehurst cigarettes have been endorsed or approved by

a substantial number of the members of the medical profession; Pinehurst cigarettes save and soothe the throat, nose and mouth; Pinehurst cigarettes do not and cannot irritate delicate throat tissues and contain no irritating properties; through the use of Pinehurst cigarettes irritation of the throat will completely disappear or improve; through the use of Pinehurst cigarettes a person will have no cough, no wheeze and no throat irritation; the use of many Pinehurst cigarettes in a room lacking fresh air will not create a sour, stale and disagreeable odor; through the use of Pinehurst cigarettes the stain on fingers and teeth is considerably lessened; the substitution of panax quinquefolium (ginseng) for glycerine removes the irritating properties in the smoke of Pinehurst cigarettes and keeps the tobacco moist longer; the method through which the tobacco in Pinehurst cigarettes is processed eliminates harsh irritants and that Pinehurst cigarettes contain no harsh irritants.

PAR. 4. In truth and in fact Pinehurst cigarettes are not approved or endorsed by physicians; Pinehurst cigarettes do not save and soothe the throat, nose or mouth; Pinehurst cigarettes do and can irritate delicate throat tissues and contain irritating properties; through the use of Pinehurst cigarettes irritation of the throat will not completely disappear or improve; the use of Pinehurst cigarettes will have no effect on a cough, wheeze or throat irritation; the use of many Pinehurst cigarettes in a room lacking fresh air will create a sour, stale or disagreeable odor; through the use of Pinehurst cigarettes the stain on fingers and teeth is not considerably lessened; the substitution of ginseng for glycerine does not remove the irritating properties in the smoke of Pinehurst cigarettes and does not keep the tobacco moist longer; the method through which the tobacco in Pinehurst cigarettes is processed does not eliminate harsh irritants; and Pinehurst cigarettes do contain harsh irritants.

PAR. 5. The aforesaid representations as made by respondent in its advertising matter have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true and to induce said public to purchase respondent's said Pinehurst cigarettes in the erroneous belief that such representations are true. By the use of such means respondent has caused substantial injury to competition in the sale and distribution of cigarettes in interstate commerce.

PAR. 6. The aforesaid acts and practices of the respondent as hereinabove alleged are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition and 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 June 18, 1943, issued and subsequently served its complaint in this proceeding upon respondent, R. L. Swain Tobacco Company, Inc., charging it with the use of unfair methods of competition in commerce and 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 respondent's answer, certain testimony and other evidence were taken at a single hearing before an examiner of the Commission theretofore duly designated by it. Thereafter the Commission, by order entered herein, granted a motion by respondent for permis-

sion to withdraw its previous answer and 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. This proceeding then regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, 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. Respondent, R. L. Swain Tobacco Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business at Danville, Va. It is engaged in the manufacture, processing, sale, and distribution of certain tobacco products, particularly of cigarettes branded "Pinehurst," and is in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of cigarettes in interstate commerce.

PAR. 2. Respondent causes its aforesaid cigarettes, when sold by it, to be transported from its place of business in the State of Virginia to the purchasers thereof, some located in said State and others located in various other States of the United States and in the District of Columbia, and maintains and has maintained a constant current of trade in commerce in said cigarettes between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business and for the purpose of aiding and promoting the sale of its said Pinehurst brand of cigarettes, respondent has disseminated, by various means in commerce, advertisements containing, among others, the following representations:

THE CIGARETTE THE DOCTOR SMOKES.

* * * * *

* * * that saves your throat, * * *

* * * * *

* * * the only cigarette in the world which actually soothes your throat, nose and mouth * * *

* * * * *

Smoke a cigarette that first of all does not irritate delicate throat tissues * * *

* * * * *

—they can't irritate the throat because of their exclusive Panax process which eliminates harsh irritants.

* * * * *

That throat irritation of yours will completely disappear or improve if you smoke Pinehurst—the soothing cigarette.

* * * * *

Yes, sir, no cough, no wheeze, no throat irritation when you smoke Pinehurst Cigarettes * * *.

* * * * *

Everyone has at times forgotten to air out a room in which many cigarettes were smoked during a party or meeting. Remember how sour and disagreeable it smelled

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when later you re-entered that room? That never occurs when Pinehurst are smoked.

* * * * *

Many regular cigarette smokers show definite stains on teeth and fingers. Numerous persons who now smoke Pinehursts regularly say that Pinehursts cause considerably less stain than their previous brands.

* * * * *

Pinehursts cannot irritate the throat, as they contain no irritating properties, because of the Panax process.

* * * * *

Countless experiments indicated that it wasn't the tars or oils in tobaccos which caused throat and nose irritation, but rather some outside element which was added to the tobaccos during the manufacture of the cigarette. And by process of elimination it was finally decided that the Glycerine, used to retain necessary moisture, was the real "Biting" culprit. * * *

Our problem therefore was to find a new conditioning agent without this irritating quality. * * * The important point is that we finally found the perfect natural conditioning agent for cigarette tobaccos—not a chemical, not an animal fat, but a natural root called "Panax Quinquifolium." * * *

After we had tested "Panax" in every conceivable way . . . after independent laboratories and thousands of actual smokers had proved its mollifying effect on tobacco * * *. Then came the perfecting of a cigarette blend which would give you all the flavor and aroma of high grade imported and domestic tobaccos plus this exclusive smoothing effect of our exclusive Panax Process. * * *

* * * * *

* * * this new Panax process, which not only improves the taste of the cigarette, but keeps it fresh days longer, * * *

* * * * *

An additional advantage of the Panax process which we have not claimed, but which has been reported by many smokers, is that Pinehurst burns slower and stays fresh longer than ordinary cigarettes.

PAR. 4. By disseminating the foregoing advertising matter, statements, claims, and representations, the respondent has directly and impliedly represented that Pinehurst cigarettes have been endorsed or approved by a substantial number of the members of the medical profession; that said cigarettes save and soothe the throat, nose, and mouth; that said cigarettes do not and cannot irritate delicate throat tissues and contain no irritating properties; that, through the use of said cigarettes, irritation of the throat will completely disappear or improve; that, through the use of Pinehurst cigarettes, a person will have no cough, no wheeze, and no throat irritation; that the use of many Pinehurst cigarettes in a room lacking fresh air will not create a sour, stale, and disagreeable odor; that, through the use of said cigarettes, the stain on fingers and teeth is considerably lessened; that the substitution of Panax Quinquifolium (ginseng) for glycerine removes the irritating properties in the smoke of Pinehurst cigarettes and keeps the tobacco moist longer; and that the method through which the tobacco in said cigarettes is processed eliminates the harsh irritants, and that such cigarettes contain no harsh irritants.

PAR. 5. In truth and in fact, Pinehurst cigarettes are not approved or endorsed by physicians; said cigarettes do not save and soothe the throat, nose, or mouth; said cigarettes do and can irritate delicate throat tissues and contain irritating properties; the use of said cigarettes will not cause

irritation of the throat to completely disappear or improve; the use of said cigarettes will have no effect on a cough, wheeze, or throat irritation; the use of many Pinehurst cigarettes in a room lacking fresh air will create a sour, stale, or disagreeable odor; through the use of said cigarettes, the stain on fingers and teeth is not considerably lessened; the substitution of ginseng for glycerine does not remove the irritating properties in the smoke of Pinehurst cigarettes and does not keep the tobacco moist longer; the method through which the tobacco in Pinehurst cigarettes is processed does not eliminate harsh irritants and said cigarettes do contain harsh irritants.

PAR. 6. The aforesaid representations, as made by respondent in its advertising matter, have the capacity and tendency to mislead and deceive the purchasing public into the belief that such representations are true and to induce said public to purchase respondent's said Pinehurst cigarettes in the erroneous belief that such representations are true. By the use of such means, respondent has caused substantial injury to competition in the sale and distribution of cigarettes in commerce between and among the several States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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, certain testimony and other evidence taken at a single hearing before an examiner of the Commission theretofore duly designated by it, and the substitute answer of respondent thereafter filed, in which answer respondent admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, R. L. Swain Tobacco Company, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cigarettes now designated and sold under the name "Pinehurst," whether sold under that name or any other brand or trade name, do forthwith cease and desist from representing, directly or by implication:

1. That its said cigarettes are endorsed or approved by the medical profession.

2. That its said cigarettes will save or soothe the nose, throat, or mouth; contain no irritating properties; will not irritate delicate throat tissues.

3. That the use of its said cigarettes will not produce a cough, a wheeze, or throat irritation, or that as a result of such use any irritation of the throat will be reduced or completely disappear.

4. That its said cigarettes may be used in a room lacking fresh air without creating a sour, stale, or disagreeable odor.

5. That the use of its said cigarettes will result in a lessening of the stain on the fingers or teeth resulting from cigarette smoking.

6. That the use of *Panax Quinquefolium* (ginseng) as a substitute for glycerine in the manufacture of its said cigarettes removes irritating properties from the smoke of such cigarettes or keeps such cigarettes moist and fresh longer than ordinary cigarettes.

7. That respondent's method of processing the tobacco used in the manufacture of its said cigarettes eliminates harsh irritants and that respondent's cigarettes contain no harsh irritants.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF

BENJAMIN H. LEVINE, TRADING AS HARVEST HOUSE

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

Docket 5028. Complaint, Aug. 18, 1943—Decision, Nov. 28, 1945

Where an individual engaged in the interstate sale and distribution of a book entitled "The Complete Guide to Bust Culture," in which there were included a number of chapters giving directions with respect to exercise, diet, posture, massage, the proper selection and fitting of brassieres, etc.; through statements in advertisements in periodicals of general circulation—

Represented that by following the directions in his book the size, shape, and physical conformation of women's breasts could be changed; that flat, sagging, or undeveloped breasts could be developed so that the bustline would be made to appear full, firm, and shapely; that a pendulous bust could be rounded into high, shapely, and youthful loveliness; and that an unattractive bustline could be converted into well rounded, alluring contours;

Facts being that said representations were erroneous and misleading; and that while in those cases where the lack of attractiveness of the bustline was due to improper posture or the failure to wear a properly selected and fitted brassiere, the appearance of the bustline might be improved by following the directions in said book as to posture and the use of brassieres, such was a matter of external effect only, involving no change in the breasts themselves; and no significant change in the size, shape or physical conformation of the breasts could be effected by following the directions set forth in said book;

With tendency and capacity to mislead a substantial portion of the purchasing public with respect to the results which might be accomplished by following the directions therein, and as a result to cause it to purchase substantial quantities 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.

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

Mr. R. P. Bellinger for the Commission.

Mr. Harry A. Lieb and *Mr. Jacob W. Friedman*, of New York City, 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 Benjamin H. Levine, an individual trading as Harvest House, hereinafter referred to as the 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. The respondent, Benjamin H. Levine, is an individual, trading as Harvest House, with his principal place of business located at 50 West 17th Street, New York, N. Y.

PAR. 2. The respondent is now and for several years last past has been