

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

engaged in the sale and distribution of a book entitled "The Complete Guide to Bust Culture."

In the course and conduct of his aforesaid business, respondent causes the said book, when sold, to be transported from his place of business in the State of New York to purchasers thereof, located in various other States of the United States and in the District of Columbia.

The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said book in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his said book, respondent has disseminated many false, misleading, and deceptive statements and representations with respect to the nature of and the results which may be obtained by following the directions therein set forth, such statements and representations being inserted in periodicals, magazines and advertising media having a general circulation throughout the United States. Among and typical of such false, misleading and deceptive statements and representations are the following:

Beautify Your FORM Contour

Don't be embarrassed by a flat, undeveloped, or sagging bust. Do as thousands of other women just like yourself are doing. They have learned how to bring out the loveliest contours of their figures, whatever their bust faults. Now, you too, can do the same—safely, easily, and positively.

Highly Endorsed by Many Doctors

Your flat bustline can be miraculously beautified into full and alluring contours. Or, if you are the pendulous type, it can be rounded into high and youthful loveliness. All you have to do is follow the easy directions on exercise, massage, brassieres, diet, etc., given in the great medically-endorsed book. "The Complete Guide to Bust Culture." Adopt these simple self-help measures at once, and your bust will positively appear full, firm and shapely . . . the proud glamorous curves which make you more desirable than ever. Amazing lifetime results.

Be admired by men. Stop being embarrassed by a flat, undeveloped bust or by a flabby, sagging bust . . . Thousands of women are learning how to attract men by bringing out the loveliest contours of their figures, whatever their bust faults. You can too. It's easy, safe, and costs so little. Results are quick. Your new bustline will delight you.

For the first time in America, all the practical advice on bust culture has been brought together into a great book—the knowledge and experiences of many foremost doctors and beauty specialists. It shows you how to help beautify your bust contour . . . All you do is follow these latest instructions on exercise, massage, and other bust methods—and soon your contours appear high, firm, and delicately rounded . . . become the center of all men's eyes.

. . . Nothing to compare with it in making unattractive busts, whatever their type, appear most charming and irresistible. If you long for that enticing contour which women with firm, well rounded, shapely busts naturally possess, you should follow this expert guidance on diets, creams and lotions, brassieres . . . and soon your lovely bust lines appear more alluring to all men and more desirable than ever.

You can't imagine the amazing results possible from this great, new book.

Beautify Your BUST Contour

Be admired by men. Stop being embarrassed by a flat, undeveloped bust . . . by a flabby, sagging bust . . . or by a heavy, oversized bust.

. . . and soon your contours become the focal center of all men's eyes. For what man

can resist the appeal of high, firm, and delicately rounded contours . . . such as you soon acquire . . . the lovely bust lines that attract men everywhere . . . the lovely bosom lines that attract men everywhere.

Turn your defects into permanent assets at once. Adopt these latest methods without delay . . . and you will appear more alluring to all men and more desirable than ever.

RECOMMENDED BY MANY DOCTORS

PAR. 4. By the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represents, directly and by implication, that by following the directions in said book the size, shape, and physical conformation of women's breasts can be changed; that flat, sagging, or undeveloped breasts can be developed so that the bustline will be made to appear full, firm, and shapely; that an undeveloped bustline can be beautified and converted into well rounded alluring contours; that a pendulous bust can be rounded into high, shapely, and youthful loveliness; that quick, amazing results can be achieved by following the directions in said book; that the said book embodies the knowledge and experience of many foremost doctors and is recommended by many doctors.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent as hereinabove described, are grossly exaggerated, false, and misleading. In truth and in fact, the size, shape and physical conformation of women's breasts cannot be significantly changed by following the directions outlined in said book. Flat, sagging, or undeveloped breasts cannot be developed so that the bustline will be made to appear full, firm and shapely. An unattractive bustline cannot be beautified and converted into well rounded, alluring contours. A pendulous bust cannot be rounded into high, shapely and youthful loveliness and quick, amazing results cannot be achieved by following the directions in said book. Said book does not embody the knowledge and experience of many foremost doctors and is not recommended by many doctors.

PAR. 6. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to his said book, disseminated as aforesaid, has had and now 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 said statements, representations, and advertisements are true, and because of such erroneous and mistaken belief, many members of the public are induced to purchase respondent's said book.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 18, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Benjamin H. Levine, an individual trading as Harvest House, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondent of his answer to the

complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner and the exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Benjamin H. Levine, is an individual trading under the name Harvest House, with his principal place of business located at 50 West 17th Street, New York, N. Y. Respondent is now and for a number of years last past has been engaged in the sale and distribution of a book entitled "The Complete Guide to Bust Culture."

PAR. 2. Respondent causes and has caused his book, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in his book 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 his business and for the purpose of inducing the purchase of his book respondent has disseminated numerous advertisements among prospective purchasers, such advertisements being inserted in periodicals and magazines having a general circulation throughout the United States. Among and typical of the statements appearing in such advertisements are the following:

BEAUTIFY YOUR FORM CONTOUR

Don't be embarrassed by a flat, undeveloped or sagging bust. Do as thousands of other women just like yourself are doing. They have learned how to bring out the loveliest contours of their figures, whatever their bust faults. Now you too can do the same—safely, easily and positively.

Highly Endorsed By Many Doctors

Your flat bustline can be miraculously beautified into full and alluring contours. Or, if you are the pendulous type, it can be rounded into high and youthful loveliness. All you have to do is follow the easy directions on exercise, massage, brassieres, diet, etc., given in the great medically-endorsed book, "The Complete Guide to Bust Culture." Adopt these simple, self-help measures at once and your bust will positively appear full, firm and shapely * * * the proud glamorous curves which make you more desirable than ever. Amazing Life-time Results.

(Commission Exhibit No. 3)

BEAUTIFY YOUR BUST CONTOUR

Be admired by men. Stop being embarrassed by a flat, undeveloped bust . . . by a flabby, sagging bust * * * or by a heavy, oversized bust. Hundreds of women are learning how to attract men by bringing out the loveliest contours of their figures, whatever their bust faults. You can, too! It's easy, safe and costs so little. Results are quick. Your new bust-line will delight you.

Endorsed By Many Doctors

For the first time in America all the practical advice on bust culture has been brought together into a great book—the knowledge and experiences of many foremost doctors and beauty specialists. It shows you how to help beautify your bust contour * * * in the privacy of your home * * * without any costly expense * * * and at your own convenience. All you do is follow these latest instructions on exercises, massage, and other bust methods—and soon your contours become the focal center of all men's eyes. For what man can resist the appeal of high, firm, and delicately rounded contours * * * such as you soon acquire * * * the lovely bust lines that attract men everywhere.

Amazing Lifetime Results

There is absolutely nothing like this complete guide to bust culture. Nothing to compare with it in making unattractive busts, whatever their type, appear most charming and irresistible. If you long for that enticing contour which women with firm, rounded, shapely busts naturally possess, you should follow this expert guidance on diets, creams and lotions, brassieres * * * plus simplified full-page illustrations which personify your individual type. Turn your defects into permanent assets at once. Adopt these latest methods without delay * * * and you will appear more alluring to all men and more desirable than ever.

(Commission Exhibit No. 11)

PAR. 4. Through the use of these advertisements, and others similar thereto, respondent has represented that by following the directions in his book the size, shape, and physical conformation of women's breasts can be changed; that flat, sagging, or undeveloped breasts can be developed so that the bustline will be made to appear full, firm, and shapely; that a pendulous bust can be rounded into high, shapely, and youthful loveliness; and that an unattractive bustline can be converted into well rounded, alluring contours.

While the specific word "breasts" does not appear in respondent's advertisements, there can be no doubt that the advertisements do in fact relate to the breasts and would be so understood by the public. The testimony establishes that the terms "breasts" and "bust" are used interchangeably by the public and such usage is recognized by respondent's book. On page fourteen the book, while criticizing such usage, states that " * * * the terms breast, bosom and bust are frequently employed interchangeably as if they were entirely synonymous."

PAR. 5. In addition to chapters dealing with such general subjects as the physiology and natural development of the breasts, and diseases and deformities of the breasts, the book also contains a number of chapters giving directions with respect to exercise, diet, posture, massage, the proper selection and fitting of brassieres, etc. These are the methods which are represented by respondent in his advertisements as being capable of improving the breasts.

The Commission finds from the evidence that respondent's advertisements are erroneous and misleading. No significant change in the size, shape, or physical conformation of the breasts can be effected by following the directions set forth in respondent's book. Flat, sagging, or undeveloped breasts cannot be developed by such methods. A pendulous bust cannot be rounded into high, shapely, or youthful loveliness by following the directions in respondent's book, nor can an unattractive bustline be converted into well rounded, alluring contours. In those cases where the lack of attractiveness of the bustline is due to improper posture or the failure to wear a properly selected and fitted brassiere, the appearance of

the bustline may be improved by following the directions in respondents book as to posture and the use of brassieres, but this is a matter of external effect only. It involves no change in the breasts themselves.

PAR. 6. The use by respondent of the erroneous and misleading advertisements herein referred to has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the results which may be accomplished by following the directions in respondent's book, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such book as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent 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, the answer of the respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner and the exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Benjamin H. Levine, individually and trading under the name Harvest House, or trading under any other name, and his agents, representatives, 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 respondent's book entitled "The Complete Guide to Bust Culture," do forthwith cease and desist from disseminating any advertisement or advertising material which represents, directly or by implication, that by following the directions in said book:

1. Any significant change in the size, shape, or physical conformation of women's breasts can be effected;
2. Flat, sagging, or undeveloped breasts can be developed;
3. A pendulous bust can be rounded into high, shapely, or youthful loveliness;
4. An unattractive bustline can be converted into well rounded, alluring contours.

Provided however, That this order shall not prohibit respondent from representing that in those cases where the lack of attractiveness of the bustline is due to improper posture or the failure to wear a properly selected and fitted brassiere, the appearance of the bustline may be improved by following the directions in said book as to posture and the use of brassieres.

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

Order

IN THE MATTER OF

RUCKER'S IMPERIAL BREEDING FARM, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 5117. Order, November 28, 1945

Modified order in proceeding in question, in which original order issued on October 21, 1944, 39 F.T.C. 386, making prohibitions of said original order requiring respondents, in connection with offer, etc. of baby chicks or other poultry, to cease representing that they are R.O.P. poultry breeders or that they operate a poultry plant under the supervision of an official State agency supervising United States Record of Performance Work; etc. as below set forth; subject to the proviso that said order's various provisions shall not be construed as prohibiting representations that respondents' baby chicks are R.O.P. sired when such chicks have actually been 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; or representations that the flocks supplying the eggs from which the baby chicks are hatched are headed by R.O.P. males when the flocks concerning which such representations are made are segregated and headed by such officially banded R.O.P. males; provided, however, that such representations are not made in such manner as to represent, directly or by implication, that the baby chicks so offered for sale are U.S. R.O.P. chicks, or that the respondents are participants in the National Poultry Improvement Plan.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Rice, Miller & Hyatt and *Mr. V. E. Phillips*, of Kansas City, Kans., and *Mr. James R. Quinn*, of Chicago, Ill., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into upon the record, which stipulation provided, among other things, that, without further evidence or other intervening procedure, the Commission might proceed upon the facts as stipulated to make its report, stating its findings as to the facts and its conclusions based thereon and enter its order disposing of the proceeding, the Commission, on October 21, 1944, made its findings as to the facts and its conclusion that respondents had violated the provisions of the Federal Trade Commission Act and issued its order to cease and desist. Thereafter, on November 3, 1944, the respondents filed a motion to modify the findings as to the facts, conclusion and order to cease and desist, and the Commission, having considered said motion and the record and being of the opinion that a modified order to cease and desist should be issued, on December 21, 1944, issued its modified order to cease and desist.

On October 31, 1945, Richard P. Whiteley, Assistant Chief Counsel of the Commission, and James R. Quinn, counsel for the respondents, executed a stipulation whereby it was agreed that said order to cease and desist issued in this proceeding on December 21, 1944, without notice or hearing, might be modified in the respects set out in said stipulation. The Commission having duly considered said stipulation and the record herein,