

Complaint

IN THE MATTER OF

GEORGE W. COUGHLAN TRADING AS NATIONAL
ELECTRIC MANUFACTURERS COMPANY

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

Docket 5192. Complaint, July 18, 1944—Decision, Nov. 28, 1945

Where an individual engaged in competitive interstate sale and distribution of flexible shafting for the remote control of valves in ships and naval vessels —

- (a) Represented through statements in circulars, pamphlets and other advertising material, that such use of flexible shafting was originated, designed and developed by him and his engineers; and
- (b) In furtherance of such representations and for the purpose of indicating the skill and knowledge of himself and his employees, used drawings of flexible shafting and its component parts which were so presented as to represent that such drawings were the originals of, or reproductions of, drawings made by him or by his employees, and certain of which bore his name with initials of the purported drawer thereof, initials of the checker, and date upon which they were purported to have been made by his employees;

When in fact the idea of using flexible shafting for the aforesaid purpose originated with a firm of naval architectural and marine engineers, and the Bureau of Ships of the Navy Department; the designing of such shafting to make it adaptable for the purpose of remote control of valves was developed by the engineers of a manufacturing company in cooperation with them; and the drawings and designs which he included in various pamphlets and circulars as original, were in fact tracings and copies of the drawings previously prepared and used by the said manufacturing company, of which during time involved herein, he had been a sales representative and, as such, participant in conferences on the aforesaid matters;

With the effect of misleading and deceiving purchasers by creating the erroneous belief that he originated, designed, and developed flexible shafting for use in the remote control of valves in ships and naval vessels, thereby causing a substantial number of them to buy his flexible shafting, and unfairly diverting trade in commerce to him from his competitors who did not so misrepresent their accomplishments:

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. John York for the Commission.

Mr. John A. Blake, 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 George W. Coughlan, an individual trading as National Electric Manufacturers Company, 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, George W. Coughlan, is an individual trading and doing business under the name and style of National Electric Manufacturers Company and having his office and principal place of business at 60 East 42d Street, in the city and State of New York.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the assembly of flexible shafting for the remote control of valves in ships and naval vessels and in its sale and distribution to purchasers and users thereof located in the various States of the United States and in the District of Columbia. Such flexible shafting extends from the valve to be controlled to the point from which it is desired to control it and consists principally of a metal core made of steel wires wound and arranged in the form of a cable, enclosed and operating within a flexible metal tube or case, together with fittings and attachments for connecting the device to the valve, for supporting and holding it in place, for anchoring it at the point of remote control and for operating the device manually. When force is applied to the core in a twisting or rotating motion, at the point of remote control, such force is transmitted along the core to the valve, thus opening, closing, or otherwise controlling it. Where appropriate for the control of the particular valve, gears are provided to change the operating speed of the device and "stuffing boxes" are provided where flexible shafting passes through decks or bulkheads and water tightness or air pressure is a factor.

Respondent causes and has caused said flexible shafting and its separate parts, when so sold, to be transported from his principal place of business in New York City to the receiving points and places of installation of the purchasers and users thereof in the various States of the United States other than the State of New York, and in the District of Columbia. There is now, and has been for more than one year last past, a course of trade and commerce by said respondent in such flexible shafting and the separate parts thereof between and among the States of the United States and in the District of Columbia. In the course and conduct of his business respondent is, and was at all times herein referred to, in substantial competition with corporations, individuals, firms and partnerships likewise engaged in the sale and distribution of said flexible shafting and separate parts in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of his business, as aforesaid, solicits the purchase of said flexible shafting and separate parts by means of leaflets, circulars, booklets and other advertising material which are disseminated throughout the various States of the United States and in the District of Columbia. In all of said advertising material respondent seeks and has sought to induce the purchase of his flexible shafting and the separate parts thereof by representing and implying in substance as follows:

(1) That respondent and his engineers alone are responsible for designing and developing flexible shafting for the remote control of valves on ships and naval vessels and for adapting it to such purpose.

(2) That respondent manufactures the flexible shafting so designed, developed and adapted by him and his engineers; and the same has been sold to and is used extensively by ship builders throughout the United States.

(3) That the drawings of flexible shafting contained in respondent's booklet entitled "Nemco Remote Control Flexible Shaft Data" and the instructions contained in respondent's booklet entitled "Instructions in the Use of Flexible Shafting for Remote Control" are the original work and composition of respondent and his engineers, and indicate their skill and knowledge with respect to designing, developing and adapting flexible shafting to the remote control of said valves and concerning its installation and use.

PAR. 4. In truth and in fact, the foregoing representations and implications made by respondent are false, deceptive, and misleading in the following respects:

(1) Neither respondent nor his alleged engineers designed or developed flexible shafting for the remote control of valves on ships and naval vessels, or adapted it to such purpose, but the same was the work of engineers of Stow Manufacturing Company, officers and employees of the United States Navy, Gibbs & Cox, naval architects, and in minor part of respondent. The only work done by respondent or his employees in said designing, developing, and adapting flexible shafting to this purpose was such as is incident to acting as sales agent for Stow Manufacturing Company.

(2) The flexible shafting for this purpose, sold by respondent, was not designed, developed, or adapted by him or by engineers in his employ, but was designed, developed, and adapted by the persons, firms, and corporations above named. Likewise the flexible shafting sold by respondent was not and is not manufactured by him or his employees but the same was and is manufactured by others and is assembled by respondent and his employees.

(3) The drawings of flexible shafting contained in respondent's booklet entitled "Nemco Remote Control Flexible Shaft Data" and the instructions contained in respondent's booklet entitled "Instructions in the Use of Flexible Shafting for Remote Control" are not the original work or composition of respondent, or of anyone employed by him, but they were copied extensively by respondent from original drawings and instructions prepared by Stow Manufacturing Company and hence do not properly represent or indicate the skill and knowledge of respondent and his employees concerning the subject matter.

PAR. 5. The aforesaid representations and implications made by respondent have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondent's flexible shafting by creating the erroneous and mistaken belief that said representations and implications are true; and cause a substantial number of such purchasers and prospective purchasers, acting on such erroneous and mistaken belief, to buy said flexible shafting of respondent and its separate parts, thereby unfairly diverting trade in said commerce to respondent from his competitors who do not misrepresent their accomplishments in designing and developing new products, or in adapting them to new uses, and who do not misrepresent their skill and knowledge concerning the subject matter, or the source of manufacture of their products. By such representations and implications respondent is doing and has done serious injury to substantial competition in said commerce.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 18, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, George W. Coughlan, trading as National Electric Manufacturers Company, charging him 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 the answer of the respondent 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 exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto (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. Respondent, George W. Coughlan, is an individual trading and doing business under the name and style of National Electric Manufacturers Company and having his office and principal place of business at 60 East 42nd Street, in the city and State of New York.

PAR. 2. For several years prior to the filing of the complaint herein the respondent has been engaged in the sale and distribution of flexible shafting for the remote control of valves in ships and naval vessels in commerce among and between the various States of the United States and in the District of Columbia. Such flexible shafting extends from the valve to be controlled to the point from which it is desired to control such valve. When force is applied to the shafting in a twisting or rotating motion at the point of remote control, such force is transmitted along the shafting to the valve, thus opening, closing, or otherwise controlling it.

Respondent caused said flexible shafting and its separate parts, when sold, to be transported from his principal place of business in New York City to the receiving points and places of installation of the purchasers and users thereof in the various States of the United States other than the State of New York. During the times mentioned herein the respondent has maintained a course of trade in commerce in such flexible shafting and the separate parts thereof between and among the States of the United States and in the District of Columbia. In the course and conduct of his said business respondent has been engaged in competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of said flexible shafting and separate parts 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 flexible shafting, the respondent has repre-

sented that the use of flexible shafting in the remote control of valves in ships and naval vessels was originated, designed, and developed by the respondent and his engineers. Such representations were made in circulars, pamphlets, and other advertising material, which were disseminated by the respondent to purchasers and prospective purchasers located in various States of the United States.

Among and typical of such representations contained in respondent's circulars, pamphlets, and other advertising material are the following:

FLEXIBLE SHAFTS FOR REMOTE CONTROL—Were developed by National Electric Mfrs. Co. Engineers as a substitute for hydraulic and reach rod remote control of vital valves * * *

NATIONAL ELECTRIC MFRS. CO. ENGINEERS pioneered in the development of this special type of flexible shafting that is now being used generally on combat and non-combat ships, with considerable saving in cost, weight, and man hours of installation time, etc.

In furtherance of such representations and for the purpose of indicating the skill and knowledge of the respondent and his employees with respect to the designing, developing, and adapting of flexible shafting to the remote control of valves on naval vessels and concerning its installation and use, the respondent has used drawings of flexible shafting and its component parts which are so presented as to represent that such drawings are the originals of, or reproductions of, drawings made by the respondent or by his employees. Certain of such drawings bear the name of the respondent with initials of the purported drawer thereof, initials of the checker of such drawing, and date upon which such drawings were purported to have been made by employees of the respondent.

PAR. 4. The Commission finds that the respondent did not originate, design, or develop flexible shafting for use in the remote control of valves in ships and naval vessels but that the idea of using flexible shafting for such purpose originated with representatives of Gibbs & Cox, Inc., naval architectural and marine engineers, and representatives of the Bureau of Ships of the Navy Department. The designing of such shafting to make it adaptable for the purpose of remote control of valves was developed by the engineers of Stow Manufacturing Co. of Binghamton, N. Y., in cooperation with the technical staff of Gibbs & Cox, Inc., and the Navy Department.

The plan of using flexible shafting for the remote control of valves in ships and naval vessels in place of stiff operating gears was an innovation, the idea for which was first developed by representatives of Gibbs & Cox, Inc., and the Bureau of Ships. As a result of conferences with reference to overcoming the difficulties due to stiff operating gears on ships when movement of decks or bulkheads resulted from shifting loads or combat damage, it was decided to determine the feasibility of flexible shafting for the remote control of valves.

The Stow Manufacturing Co. was contacted as a possible source of manufacture, and this company placed the matter in the hands of its engineering department, with the result that a sample flexible shafting was made and submitted to the Navy Department for testing. After such flexible shafting was tested and adopted by the Navy Department as regular equipment, drawings were prepared by the Stow Manufacturing Co. in order to have working drawings available for the shop from which to manufacture the component parts of the shafting.

The flexible shafting as adopted by the Navy Department as regular equipment consisted of a flexible metal core made of steel wires wound and arranged in the form of a cable enclosed and operating within a flexible metal tube or case, together with fittings and attachments for supporting and connecting the device to the valve and remote control point and for operating the device manually. At the request of the Bureau of Ships and with the collaboration of Gibbs & Cox, Inc., the Stow Manufacturing Co. designed a quick disconnect terminal for attachment at each end of the flexible shafting.

During the time that this flexible shafting was being developed for use on ships and naval vessels, the respondent was a sales representative for Stow Manufacturing Co. and, as such, participated in a number of the conferences, but the technical matters of development and construction were handled by the engineering department of Stow Manufacturing Co. in cooperation with the technical staff of Gibbs & Cox, Inc., and the Navy Department. For a period of time after the flexible shafting so designed was adopted by the Navy Department as regular equipment, respondent continued to act as sales representative for Stow Manufacturing Co. Later, however, the respondent discontinued his connection with said company, obtained the services of another manufacturer to supply the metal core, and proceeded to sell flexible shafting of the same design for his own account and to accept bids for furnishing such flexible shafting in the construction of naval vessels in competition with Stow Manufacturing Co. and other suppliers of such equipment.

In connection with the offering for sale and sale of flexible shafting for the remote control of valves in ships and naval vessels, the respondent published various pamphlets and circulars describing such flexible shafting and its component parts. The drawings and designs included in such circulars as being original drawings made by the respondent or by engineers or draftsmen in his employ were, in fact, tracings and copies of the drawings previously prepared and used by the Stow Manufacturing Co.

PAR. 5. The aforesaid representations made by respondent have the capacity and tendency to, and did, mislead and deceive purchasers and prospective purchasers of respondent's flexible shafting by creating the erroneous and mistaken belief that respondent originated, designed, and developed flexible shafting for use in the remote control of valves in ships and naval vessels, and caused a substantial number of such purchasers and prospective purchasers, acting on such erroneous and mistaken belief, to buy such flexible shafting of respondent, thereby unfairly diverting trade in said commerce to respondent from his competitors who do not misrepresent their accomplishments in designing and developing new products or in adapting them to new uses.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury 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, answer of the respondent, testi-

mony and other evidence in support of the complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; 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, George W. Coughlan, an individual, doing business under the trade name of National Electric Manufacturers Company or doing business under any other name, and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of flexible shafting or any similar product 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 the use of flexible shafting in the remote control of valves in ships and naval vessels was originated, designed, or developed by the respondent or by persons employed by him.

2. The use of drawing or reproductions of drawings of flexible shafting or of any of its component parts or accessories in circulars, pamphlets, or other advertising material in such a manner as to indicate or imply to purchasers or prospective purchasers that such drawings or the originals thereof were made by the respondent or by persons in his employ, when, in fact, such drawings have been traced, copied, or reproduced from drawings made by his competitors or by persons not connected with the respondent.

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.

IN THE MATTER OF
REJUVE NE MANUFACTURING CO.

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

Docket 5355. Complaint, July 18, 1945—Decision, Nov. 28, 1945

Where two individuals engaged in the compounding and interstate sale and distribution of a cosmetic preparation designated "Rejuvene"—

- (a) Falsely represented, directly and by implication, through statements in advertising thereof, that by the use of said preparation lines, wrinkles, moles, and blackheads would be removed from the skin; that the skin would be rendered taut and smooth, and a youthful appearance and the original facial contour restored; and that such effects were permanent; and
- (b) Falsely represented, directly and by implication, through the use of the word "Rejuvene" in their trade name and as the name of said product, that said preparation possessed qualities which would rejuvenate the skin of persons of advancing years and restore to such skin the qualities and appearance of youth;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and into the purchase of substantial quantities of their said product because of such belief:

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

Mr. Randolph W. Branch for the Commission.

Mr. Crozier C. Culp, of Oakland, Calif., 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 James Lloyd Cayne, also known as James Lloyd Cayce, and Herbert W. Cayne, also known as Herbert W. Cayce, individually and as partners trading under the name Rejuvene Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents James Lloyd Cayne and Herbert W. Cayne, are individuals, trading as partners under the name Rejuvene Manufacturing Co., and having a principal place of business at 2511 Prince Street, Berkeley, Calif. Respondents are now, and have been for more than two years last past, engaged in the business of compounding and selling "Rejuvene," a cosmetic preparation as defined in the Federal Trade Commission Act.

Respondents cause said preparation, when sold, to be transported from their aforesaid place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce