

Complaint

IN THE MATTER OF

CHARLES OF THE RITZ DISTRIBUTORS CORPORATION

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

Docket 5293. Complaint, Mar. 10, 1945—Decision, Mar. 21, 1946

Where a corporation engaged in the interstate sale and distribution of a cosmetic preparation designated "Charles of the Ritz Throat Cream"; through advertisements in newspapers and periodicals, and circulars, leaflets, and other advertising material—

Falsely represented that said preparation would keep the throat smooth, firm, and young looking;

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

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

Mr. Jesse D. Kash for the Commission.

Mock & Blum, 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 Charles of the Ritz Distributors Corp., 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 Charles of the Ritz Distributors Corp., is a corporation organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business at 9 University Place, New York, N. Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of a cosmetic preparation designated Charles of the Ritz Throat Cream. Said respondent causes said cosmetic preparation, when sold, to be transported from the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said

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preparation 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertising concerning said preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements by various means for the purpose of inducing, and which are likely to induce directly or indirectly, the purchase of said preparation in commerce as commerce is defined in the said Federal Trade Commission Act. Among the typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated as herein set forth by the United States mails, by advertisements inserted in newspapers and periodicals and by means of circulars, leaflets, and other advertising material are the following:

Fashion designers forecast low necklines. Keep your throat smooth, firm and young-looking with CHARLES of the RITZ Throat Cream—rich in lubricating oils and ingredients. Well worth the few minutes daily care.

The new necklines demand a smooth, firm throat. Throat cream is a specialized blend of oils prepared for lubrication and proper massage of neck and throat. Make your throat a proud setting for fashion's favorite necklines.

PAR. 4. Through the use of the forgoing statements and representations, and others of the same import not specifically set out herein, respondent represents that the preparation Charles of the Ritz Throat Cream will keep the throat smooth, firm and young-looking.

PAR. 5. The foregoing statements and representations are false and deceptive. In truth and in fact, respondent's said preparation will not keep the throat smooth, firm, and young-looking.

PAR. 6. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said preparation.

PAR. 7. The aforesaid acts and practices of the 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 March 10, 1945, issued and thereafter served its complaint in this proceeding upon respondent, Charles of The Ritz Distributors Corp., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent filed its answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for respondent and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; 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

PAR. 1. Respondent, Charles of the Ritz Distributors Corp, is a corporation organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business at 9 University Place, New York, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a cosmetic preparation designated "Charles of the Ritz Throat Cream." Said respondent causes said cosmetic preparation, when sold, to be transported from the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said preparation 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused

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and is now causing the dissemination of, false advertisements concerning its said preparation by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the said Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, and by means of circulars, leaflets, and other advertising material are the following:

Fashion designers forecast low necklines. Keep your throat smooth, firm and young-looking with CHARLES of the RITZ Throat Cream—rich in lubricating oils and ingredients. Well worth the few minutes daily care.

* * * * *

The new necklines demand a smooth, firm throat. Throat cream is a specialized blend of oils prepared for lubrication and proper massage of neck and throat. Make your throat a proud setting for fashion's favorite necklines.

PAR. 4. By means of the foregoing statements and representations, and others of similar import not specifically set out herein, respondent represents that the preparation "Charles of the Ritz Throat Cream" will keep the throat smooth, firm, and young looking. In truth and in fact, however, the use of respondent's said preparation will not keep the throat smooth, firm, or young looking.

PAR. 5. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This matter having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts entered into between the respondent and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Charles of the Ritz Distributors Corp., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Charles of the Ritz Throat Cream, or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference, that the use of Charles of the Ritz Throat Cream will cause the throat of the user to remain smooth, firm, or young looking.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of Charles of the Ritz Throat Cream in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 above.

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.

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IN THE MATTER OF

JIM S. PORTER, TRADING AS J. T. JARRELL COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4547. Complaint, Sept. 16, 1942¹—Decision, Mar. 25, 1946

Where an individual engaged, (1) as a broker in the sale of food products, particularly canned fish, fruits, and vegetables, and, (2) in the interstate purchase and sale of such products for his own account—

Received and accepted from sellers, brokerage fees or allowances, or discounts in lieu thereof, on many of said purchases for his own account by purchases from sellers at prices lower than those accorded by the sellers to others; by obtaining such commodities at lower prices which reflected all or part of the brokerage fees currently paid by the sellers to brokers for the sale of such commodities in sellers' behalf; by making deductions in lieu of brokerage from the invoices of certain sellers; and by receiving from certain sellers rebate checks representing the customary brokerage fees of the latter:

Held, That such receipt and acceptance by said individual of brokerage fees or commissions, or allowances and discounts in lieu thereof, upon purchases of food products for his own account, under the circumstances set forth, was violative of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Owens, Ehrman & McHaney, of Little Rock, Ark., and *Mr. William F. Smith*, of Washington, D. C., for respondent.

SUPPLEMENTAL COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues a supplemental complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jim S. Porter is an individual trading and doing business as the J. T. Jarrell Co. with his principal office and place of business located at No. 7 Commercial Warehouse Building, Little Rock, Ark.

J. T. Jarrell Co., subsequent to the issuance of the original complaint herein, was a corporation organized and existing under and

¹ Supplemental.