

Complaint

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IN THE MATTER OF

BURGESS SEED & PLANT COMPANY

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

Docket 5406. Complaint, Nov. 27, 1945—Decision, Apr. 26, 1946

Where a corporation engaged in packaging and selling seeds, including a species of soy or soya beans which it designated as "domestic coffee berry"; by means of such statements in its catalogs and other advertising as: "COFFEE one cent per lb." with drawing of a bush under which appeared to be coffee beans, along with a steaming coffee pot; "Grow your own coffee at an expense of less than one cent per lb. The domestic coffee berry makes a delicious, nourishing drink to take the place of injurious coffee . . . gives health and strength to the young and old. * * * Thousands pronounce it better than the best coffee. * * * Prepared like any other coffee," "DOMESTIC COFFEE BERRY"—

Represented falsely, directly and by implication, that the berries produced by the plants or bushes grown from its "domestic coffee berry" were coffee and a better variety of coffee than that obtainable through regular merchandise channels; that a person drinking a beverage made with such berries would obtain the same effect as that obtained from a beverage made with coffee; and that said beverage would give health and strength to the user;

The facts being that the berries in question were a variety of soybean and were not coffee, domestic or otherwise, and a person using a beverage made from them would not obtain the same effect as from the berry produced by the coffee plant; and such beverage would not give health or strength to the user;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public—which has a marked preference for coffee over soybeans for beverage purposes—into the erroneous belief that said representations were true, and thereby cause such public to purchase substantial quantities of its said product:

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. Charles S. Cox for the Commission.

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 Burgess Seed & Plant Co., a corporation, hereinafter referred to as the respondent, has 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

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interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Burgess Seed & Plant Co. is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with offices and a principal place of business located at Galesburg, Mich.

PAR. 2. Respondent is now and for more than 4 years last past has been, among other things engaged in packaging and selling seeds, among them being a species of soy or soya beans which it has designated as "domestic coffee berry."

Respondent causes the said product, when sold, to be transported from its place of business in the State of Michigan to purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product 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 advertisements concerning its said product by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent had disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce as "commerce" is defined in the 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 hereinabove set forth, by the United States mails, by advertisements inserted in it catalogs and by other advertising literature, are the following:

COFFEE
one cent
per lb.

[Drawing of a bush under which appears to be coffee beans, along with a steaming coffee pot on which is printed: Coffee for one cent per lb.]

Grow your own coffee at an expense of less than one cent per lb. The domestic coffee berry makes a delicious, nourishing drink to take the place of injurious coffee. It is a pure food drink that gives health and strength to the young and

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old. * * * Thousands pronounce it better than the best coffee. * * * Prepared like any other coffee.

Entire family wants to drink domestic coffee.

DOMESTIC COFFEE BERRY.

* * *

PAR. 4. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondent has represented, directly and by implication, that the berries produced by the plants or bushes grown from its "domestic coffee berry" is coffee and is a better variety of coffee than that obtainable through regular merchandise channels; that a person drinking a beverage made with berries grown by planting respondent's product will obtain the same effect as that obtained from the use of a beverage made with coffee; and that said beverage will give health and strength to the user.

PAR. 5. The foregoing representations, statements, and depictions are false, misleading, and deceptive and said advertisements constitute false advertisements as such term is defined in the Federal Trade Commission Act. In truth and in fact, coffee as generally known and accepted by the public is the berry produced by the coffee plant. The berries produced by the plant or bush resulting from the planting of respondent's seed is a variety of soybean and is not coffee, domestic or otherwise. There is a marked preference on the part of the public for coffee over a soybean, for beverage purposes. A person using a beverage made from soybeans will not obtain the same effect as that obtained from drinking a beverage made with coffee, and such beverage will not give health and strength to the user but serves only as a nutrient.

PAR. 6. The use by respondent of said false advertisements 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 the statements, representations, and depictions contained therein, as above set forth, are true. As a result of such erroneous and mistaken belief, so engendered, the purchasing public has been induced to purchase and has purchased, substantial quantities of respondent's product.

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 November 27, 1945, issued and thereafter served its complaint in this proceeding upon the respondent, Burgess Seed & Plant Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 20, 1945, respondent filed its answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by respondent and Richard P. Whiteley, Assistant Chief Counsel for the Commission, subject to the approval of the Commission, might 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 Commission might 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 presentation of argument or the filing of briefs. Thereafter, the 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 same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Burgess Seed & Plant Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with office and a principal place of business located at Galesburg, Mich.

PAR. 2. Respondent is now, and for more than 4 years last past has been, engaged in packaging and selling seeds, among them being a species of soy or soya beans which it has designated as "domestic coffee berry."

Respondent causes the said product, when sold, to be transported from its place of business in the State of Michigan to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between various States of the United States.

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PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product 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 disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the 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 hereinabove set forth, by the United States mails, by advertisements inserted in respondent's catalog and by other advertising literature, are the following:

COFFEE
one cent
per lb.

[Drawing of a bush under which appear to be coffee beans, along with a steaming coffee pot on which is printed "Coffee for one cent per lb."]

Grow your own coffee at an expense of less than one cent per lb. The domestic coffee berry makes a delicious, nourishing drink to take the place of injurious coffee. It is a pure food drink that gives health and strength to the young and old. * * * Thousands pronounce it better than the best coffee * * * Prepared like any other coffee.

Entire family wants to drink domestic coffee.

DOMESTIC COFFEE BERRY.

* * *

PAR. 4. Through the use of advertisements containing the statements and representations hereinabove set forth, and others similar thereto, respondent has represented, directly and by implication, that the berries produced by the plants or bushes grown from its "domestic coffee berry" are coffee and a better variety of coffee than that obtainable through regular merchandise channels; that a person drinking a beverage made with berries grown by planting respondent's product will obtain the same effect as that obtained from the use of a beverage made with coffee; and that said beverage will give health and strength to the user.

PAR. 5. The foregoing representations, statements, and depictions are false, misleading, and deceptive and said advertisements constitute

false advertisements as such term is defined in the Federal Trade Commission Act. In truth and in fact, coffee as generally known and accepted by the public is the berry produced by the coffee plant. The berries produced by the plant or bush resulting from the planting of respondent's seed are a variety of soybean and are not coffee, domestic or otherwise. There is a marked preference on the part of the public for coffee over soybeans, for beverage purposes. A person using a beverage made from the berries produced by the plants or bushes grown by the use of respondent's seed will not obtain the same effect as that obtained from drinking a beverage made with coffee, and such beverage will not give health or strength to the user.

PAR. 6. The use by respondent of these advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements, representations, and depictions contained therein are true, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's product 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 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, assistant chief counsel for the Commission, which stipulation provided, among other things, that without further evidence or other intervening procedure, the Commission might 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 conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Burgess Seed & Plant Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with

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the offering for sale, sale, or distribution of soy bean seed, heretofore designated by respondent as "domestic coffee berry," do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

a. That the berries produced by the plants or bushes resulting from the planting of respondent's product are coffee or coffee berries, domestic or otherwise.

b. That the beverage made from said berries will produce the same effect upon the user as a beverage brewed from coffee.

c. That the beverage made from said berries will give health or strength to the user.

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

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

LEE GOLDSTINE AND LILLIAN GOLDSTINE, TRADING AS
LILEE PRODUCTS COMPANY, AND PAUL GRANT, TRADING AS PAUL GRANT ADVERTISING AGENCYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5281. Complaint, Feb. 14, 1945—Decision, Apr. 29, 1946*

Where two individuals engaged in the interstate sale and distribution of calcium pantothenate medicinal products earlier designated "Lilee Brand Calcium Pantothenate Tablets," and later "Hygea Brand Calcium Pantothenate Products"; and an individual who was their advertising agent—

Falsely advertised the above-described calcium pantothenate products in newspapers, and by circulars and leaflets and otherwise, as being effective in restoring the original color to gray hair and as being an antigray-hair vitamin, through such statements as: "Gray Hair Vitamin No dyes—No drugs—Hair grew out in Natural Color in almost nine out of ten cases just taking one tablet Calcium Pantothenate Vitamin each day." "GRAY HAIR IS YOURS DUE TO LACK OF THIS AMAZING NEW VITAMIN?", "Experiments on men and women from 23 to 35 years of age conducted by Nationally famous women's magazine showed 22 out of 25 persons exhibited positive evidence of return of normal color to hair just taking these 10 Mg. Vitamin tablets," "CALCIUM PANTOTHENATE "The Anti-Gray Hair Vitamin," "

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 it to purchase their said products:

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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Welch & Hoffman, of Chicago, Ill., for respondents.

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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 Lee Goldstine and Lillian Goldstine, individuals trading as Lilee Products Co. and Paul Grant, an individual trading as Paul Grant Advertising Agency, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it