

IN THE MATTER OF

EARL H. SNOW AND PERSHING R. SNOW, TRADING AS
SNOW'S HATCHERIES

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

Docket 5339. Complaint, June 25, 1945—Decision, Aug. 12, 1946

A United States Record of Performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the National Poultry Improvement Plan.

The National Poultry Improvement Plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs and chicks with respect to the quality, by describing them in terms uniformly accepted in all parts of the United States.

Certain official terminology prescribed by the Plan, such as "United States Record of Performance", "Record of Performance" and their abbreviations, "U. S. R. O. P." and "R. O. P.", has acquired definite meaning throughout the industry and trade and when used to describe specified fowls, indicates that each thereof has an official performance or lineage record.

The terms, as respects the National Poultry Improvement Plan, "United States Record of Performance", and "Record of Performance" and the symbols "U. S. R. O. P." or "R. O. P." are not applicable to all poultry produced by a participant therein, and are misnomers for any fowl that has not been duly certified and registered as such. Thus a cockerel cannot become a "U. S. R. O. P." or an "R. O. P." male in the accepted meaning of said term until the passing of certain official tests when it has reached 6 months of age; the cockerel's condition and qualities at the end of the 6-months' period being essential items in its record of performance, which is not kept until after said official inspection and certification. Should such inspection not be officially made, or should the cockerel fail to pass the test when made, no record of performance has been established or is recognized, notwithstanding pedigree; and regulations of the plan provide that the use of the term "R. O. P. Sired" is permissible only when the males siring the chicks so described have been officially leg-banded as "U. S. R. O. P." males and registered as such. Accordingly, the progeny of mere wing-banded cockerels are not "R. O. P. Sired".

Where two partners, engaged in the interstate sale and distribution of chickens and baby chicks—

- (a) Falsely represented, directly or by implication, through statements in newspapers and trade journals, and in advertising folders, catalogs, price lists

72 Complaint

and otherwise, that they were United States Record of Performance breeders and operated poultry breeding plants or hatcheries under the supervision of an official for the agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with the official State agency in charge of the plan in the State of Minnesota; and

- (b) Represented falsely that their sired chicks were obtained from flocks headed by pedigreed males from the most outstanding breeder in the United States, and met all requirements of the United States Record of Performance program;

The facts being that their principal business was operating a commercial hatchery in which chicks were hatched from eggs largely purchased by them from outside sources;

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

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

Mr. Jesse D. Kash for the Commission.

Mr. R. F. Mack, of Sleepy Eye, Minn., for respondents.

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 Earl H. Snow and Pershing R. Snow, individually and trading as Snow's Hatcheries, hereinafter referred to as respondents, have 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 interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Earl H. Snow and Pershing R. Snow are individuals and doing business as Snow's Hatcheries, with their office and principal place of business located at Sleepy Eye, Minn. Respondents also operate various breeding and trapnesting farms in various locations in the State of Minnesota.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of baby chicks. Respondents cause their baby chicks, when sold by them, to be transported from their aforesaid places of business in the State of Minnesota to purchasers thereof located in various other States of the United States.

Complaint

43 F. T. C.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said baby chicks in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their baby chicks, respondents have circulated and are now circulating among prospective purchasers throughout the United States, by United States mails, advertisements in newspapers and trade journals, and by advertising folders, catalogs, price lists and other means in commerce, many false statements and representations concerning their product. Among and typical of such false statements and representations disseminated as aforesaid are the following:

Plan now for next year's egg and meat profits by trying out pullorum-tested R. O. P. large type Leghorns.

Snow's R. O. P. breeding.

Big type Leghorns bred from Hanson's strain R. O. P. Pedigree Bloodlines.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that they are United States Record of Performance breeders and operate poultry-breeding plants or hatcheries under the supervision of an official for the agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with the official State agency in charge of the plan in the State of Minnesota; that their sired chicks are obtained from flocks headed by wing-banded pedigreed males from the most outstanding breeder in the United States, and meet all requirements of the United States Record of Performance program.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents are not United States Record of Performance breeders and do not operate poultry-breeding plants or hatcheries under the supervision of an official for the agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with the official State agency in charge of said plan in the State of Minnesota, and their sired chicks are not obtained from flocks headed by wing-banded pedigreed males from the most outstanding breeder in the United States, and do not meet all the requirements of United States Record of Performance program. Respondents' principal business is oper-

ating a commercial hatchery in which chicks are hatched from eggs largely purchased by them from outside sources.

PAR. 6. A United States Record of Performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the National Poultry Improvement Plan. The National Poultry Improvement Plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs, and chicks with respect to the quality, by describing them in terms uniformly accepted in all parts of the United States. Certain official terminology prescribed by the plan, such as "United States Record of Performance," "Record of Performance" and their abbreviations, "U. S. R. O. P." and "R. O. P.," has acquired definite meaning throughout the industry and trade and when used to describe specified fowls, indicates that each thereof has an official performance or lineage record. The terms "United States Record of Performance" and "Record of Performance" and the symbols "U. S. R. O. P." or "R. O. P." are not applicable to all poultry produced by a National Poultry Improvement Plan participant, and are misnomers for any fowl that has not been duly certified and registered as such. A cockerel cannot become a U. S. R. O. P. or an R. O. P. male in the accepted meaning of said term until the passing of certain official tests when it has reached 6 months of age. The cockerel's condition and qualities at the end of the 6-months' period are essential items in its record of performance, which is not kept until after said official inspection and certification. If such inspection is not officially made, or if the cockerel fails to pass the test when made, no record of performance has been established or is recognized, notwithstanding pedigree. Regulations of the plan provide that the use of the term "R. O. P. Sired" is permissible only when the males siring the chicks so described have been officially leg-banded as U. S. R. O. P. males and registered as such. Accordingly, the progeny of mere wing-banded cockerels are not "R. O. P. Sired."

PAR. 7. The use by the respondents of the acts and practices herein set forth has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents baby chicks.

Findings

43 F. T. C.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the injury and 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 25, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Earl H. Snow and Pershing R. Snow, individually and trading as Snow's Hatcheries, charging them with the use of 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 respondents' answer thereto, a stipulation as to the facts was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents and Richard P. Whiteley, Assistant Chief Counsel, for the Commission, subject to the approval of the Commission, may be taken as to the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, and in opposition thereto, and that said Commission may proceed upon said complaint and 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 this proceeding without the presentation of argument or the filing of briefs. The respondents expressly waived the filing of the trial examiner's report upon the evidence. Thereafter, said stipulation, having been approved, this proceeding regularly came on for final hearing before the Commission upon said complaint and said stipulation as to the facts, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Earl H. Snow and Pershing R. Snow are individuals and doing business as Snow's Hatcheries, with their office and principal place of business located at Sleepy Eye, Minn. Respondents also operate various breeding and trapnesting farms in various locations in the State of Minnesota.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of baby chicks. Respondents cause their baby chicks, when sold by them, to be transported from their aforesaid places of business in the State of Minnesota to

purchasers thereof located in various other States of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said baby chicks in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their baby chicks, respondents have circulated and are now circulating among prospective purchasers throughout the United States, by United States mails, advertisements in newspapers and trade journals, and by advertising folders, catalogs, price lists, and other means in commerce, many false statements and representations concerning their product. Among and typical of such statements and representations disseminated as aforesaid are the following:

Plan now for next year's egg and meat profits by trying out pullorum tested R. O. P. large type Leghorns.

Snow's R. O. P. breeding.

Big type Leghorns bred from Hanson's strain R O. P. Pedigree Bloodlines.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that they are United States Record of Performance breeders and operate poultry breeding plants or hatcheries under the supervision of an official for the agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with the official State agency in charge of the Plan in the State of Minnesota; that their sired chicks are obtained from flocks headed by pedigreed males from the most outstanding breeder in the United States, and meet all requirements of the United States Record of Performance program.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondents are not United States Record of Performance breeders and do not operate poultry-breeding plants or hatcheries under the supervision of an official for the agency supervising the National Poultry Improvement Plan administered by the Bureau of Animal Industry, United States Department of Agriculture, in cooperation with the official State agency in charge of said plan in the State of Minnesota, and their sired chicks are not obtained from flocks headed by pedigreed males from the most outstanding breeder in the United States, and do not meet all the requirements of United States Record of Performance program. Respondents' principal business is operating a commercial

hatchery in which chicks are hatched from eggs largely purchased by them from outside sources.

PAR. 6. A United States Record of Performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the National Poultry Improvement Plan. The National Poultry Improvement Plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs and chicks with respect to the quality, by describing them in terms uniformly accepted in all parts of the United States. Certain official terminology prescribed by the plan, such as "United States Record of Performance," "Record of Performance" and their abbreviations, "U. S. R. O. P." and "R. O. P.," has acquired definite meaning throughout the industry and trade and when used to describe specified fowls, indicates that each thereof has an official performance or lineage record. The terms "United States Record of Performance," and "Record of Performance" and the symbols "U. S. R. O. P." or "R. O. P." are not applicable to all poultry produced by a National Poultry Improvement Plan participant, and are misnomers for any fowl that has not been duly certified and registered as such. A cockerel cannot become a U. S. R. O. P. or an R. O. P. male in the accepted meaning of said term until the passing of certain official tests when it has reached 6 months of age. The cockerel's condition and qualities at the end of the 6-months' period are essential items in its record of performance, which is not kept until after said official inspection and certification. If such inspection is not officially made, or if the cockerel fails to pass the test when made, no record of performance has been established or is recognized, notwithstanding pedigree. Regulations of the plan provide that the use of the term "R. O. P. Sired" is permissible only when the males siring the chicks so described have been officially leg-banded as U. S. R. O. P. males and registered as such. Accordingly, the progeny of mere wing-banded cockerels are not "R. O. P. Sired."

PAR. 7. The use by the respondents of the acts and practices hereinabove set forth 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 such statements, representations, and claims are true and causes a substantial portion of the purchasing public, because of such mistaken belief to purchase substantial quantities of respondents' baby chicks.

CONCLUSION

The acts and practices of the respondents as herein found are all to the injury and 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 complaint of the Commission, the answer of the respondents, and a stipulation as to the facts, in which stipulation the respondents waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and conclusion that respondents Earl H. Snow and Pershing R. Snow, individually and trading as Snow's Hatcheries, have violated the provisions of the Federal Trade Commission Act:

It is ordered, that the respondents, Earl H. Snow and Pershing R. Snow, individually and trading as Snow's Hatcheries, or trading under any other trade name, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of baby chicks or other poultry 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 respondents 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.

2. Representing directly or by implication that respondents' baby chicks are produced from, or sired by, United States Record of Performance males unless the chicks so offered for sale have been actually 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.

3. Representing directly or by implication that respondents' baby chicks are produced from flocks headed by United States Record of Performance males when the flocks concerning which such representations are made are not segregated and headed by males which have been officially banded with U. S. R. O. P. sealed and numbered official leg bands and duly registered as such.

4. Representing directly or by implication that chicks produced from eggs purchased from other suppliers are in fact produced by respondents' flocks.

It is further ordered, that the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

KRAUPNER AND KRAUPNER, INC. AND DIENER &
DORSKIND, INC.

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

Docket 5380. Complaint, Sept. 13, 1945—Decision, Aug. 12, 1946

Where a corporation engaged in the interstate sale and distribution of its "Kay's Medicated Ointment," together with its advertising agency; in advertising in newspapers, periodicals, circulars, leaflets, pamphlets and other advertising literature—

Represented falsely, directly and by implication, that said preparation was a competent and effective treatment and remedy for leg sores, ulcers, old sores, open legs, varicose ulcers and other ulcers, and that it promoted and speeded healing generally;

The facts being that the only value of said preparation was that in some of said conditions it would, through its emollient and local anesthetic action, bring some temporary relief of pain; although in many old, chronic ulcerous conditions use of said preparation would not even relieve pain since the portion of the lesion giving rise to pain would in such instances not be accessible to a local application;

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, because of such belief, to purchase said medicinal preparation:

Held, That such acts and practices 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.

Mr. Meyer Press, of New York City, for respondents.

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 Kraupner & Kraupner, Inc., a corporation, and Diener & Dorskind, Inc., a corporation, hereinafter referred to as respondents, have 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 interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kraupner & Kraupner, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1375 Myrtle Avenue, Brooklyn, New York.