

Complaint

43 F. T. C.

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.

PAR. 2. This respondent is, and for more than 1 year last past has been, engaged in selling and distributing a medical preparation designated "Kay's Medicated Ointment." In the course and conduct of its business said respondent causes and has caused said medical preparation, when sold, to be shipped or transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in its said medical preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Diener & Dorskind, Inc., is a corporation 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 147 West Forty-second Street, New York, N. Y.

PAR. 4. This respondent operates an advertising agency, and as such is engaged in formulating, editing, selling, and distributing advertising matter, and is the advertising representative or agent of respondent Kraupner & Kraupner, Inc., and prepares and assists in preparation of advertising material used by respondent Kraupner & Kraupner, Inc., and disseminates and aids in the dissemination of such advertising material, including the advertising material hereinafter set forth, in connection with the sale and distribution of the medical preparation hereinabove designated.

PAR. 5. Respondents act in conjunction and in cooperation with each other in the performance of the acts and practices hereinafter alleged.

PAR. 6. In furtherance of the sale and distribution of the medical preparation sold and distributed by respondent Kraupner & Kraupner, Inc., a corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medical preparation by the United States mails, and by various other means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by and through the United States mails, by

advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

FOR HARD TO HEAL LEG SORES

Ulcer—Old Sores—Open Legs

Apply soothing KAY'S MEDICATED OINTMENT to sores caused by varicose veins. Promptly relieves pain and brings glorious palliative relief. Amazingly successful for over 20 years.

FOR HARD TO HEAL LEGS

For ulcers, old sores and varicose ulcers caused by varicose veins apply soothing KAY'S MEDICATED OINTMENT. Promptly relieves pain and brings glorious palliative relief. Amazingly successful for over 20 years.

KAY'S MEDICATED OINTMENT Contains Wondrously Soothing Ingredient Alleviates Discomfort, Promotes Healing.

Kay's Relieves Discomfort Speeds Healing of Skin Irritations.

PAR. 7. Through the use of the statements and representations hereinabove set forth and others of similar import but not set out herein, all of which purport to be descriptive of the therapeutic properties of said medical preparation, respondents represent, directly and by implication, that said preparation is a competent and effective treatment and remedy for leg sores, ulcers, old sores, open legs, varicose ulcers and other ulcers, and that it promotes and speeds healing.

PAR. 8. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, said preparation is not an effective treatment or remedy for and will have no therapeutic effect or value in the treatment of leg sores, varicose ulcers, or other ulcers, old sores, or open legs, its only value being that in some of these conditions it will, through its emollient and local anesthetic action, bring some degree of temporary relief of pain; but in old, chronic ulcerous conditions, the portion of the lesion which gives rise to the pain will in many instances not be accessible to a local application, and in such instances the use of said preparation will not even relieve pain. Said preparation does not promote or speed healing but, in truth and in fact, some of the ingredients in said preparation because, of their irritant properties, may actually prevent healing.

PAR. 9. The use by the respondents of the foregoing 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 medical preparation.

Findings

PAR. 10. The aforesaid acts and practices of respondents, 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 September 13, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Kraupner & Kraupner, Inc., a corporation, and Diener & Dorskind, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After Kraupner & Kraupner, Inc., filed answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and Richard P. Whiteley, Assistant Chief Counsel for the 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 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. The respondents expressly waived the filing of a trial examiner's report upon the evidence. Thereafter, this proceeding regularly came on for final hearing before the Commission upon 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

PARAGRAPH 1. (a) 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. It is, and for more than 1 year last past has been, engaged in selling and distributing a medicinal preparation designated "Kay's Medicated Ointment."

(b) Respondent Diener & Dorskind, 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 147

Findings

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West Forty-second Street, New York, N. Y. It operates an advertising agency, and as such is engaged in formulating, editing, selling, and distributing advertising matter, and is the advertising representative or agent of respondent Kraupner & Kraupner, Inc. It prepares and assists in the preparation of advertising material used by respondent Kraupner & Kraupner, Inc., including that hereinafter set forth, and disseminates and aids in the dissemination of such advertising material in connection with the sale and distribution of the medicinal preparation designated "Kay's Medicated Ointment."

PAR. 2. In the course and conduct of its aforesaid business, respondent Kraupner & Kraupner, Inc., causes, and has caused, its said medicinal preparation, when sold, to be shipped or transported from its 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, and maintains, and at all times herein mentioned has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the furtherance of the sale and distribution of the aforesaid medicinal preparation respondents, acting in conjunction and in cooperation with each other, have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal preparation by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by and through the United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

FOR HARD TO HEAL LEG SORES

Ulcer—Old Sores—Open Legs

Apply soothing KAY'S MEDICATED OINTMENT to sores caused by varicose veins. Promptly relieves pain and brings glorious palliative relief. Amazingly successful for over 20 years.

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Conclusion

FOR HARD TO HEAL LEGS

For ulcers, old sores and varicose ulcers caused by varicose veins apply soothing KAY'S MEDICATED OINTMENT. Promptly relieves pain and brings glorious palliative relief. Amazingly successful for over 20 years.

* * * * *

KAY'S MEDICATED OINTMENT Contains Wondrously Soothing Ingredient Alleviates Discomfort, Promotes Healing.

* * * * *

Kay's Relieves Discomfort Speeds Healing of Skin Irritations.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import not set out herein, all of which purport to be descriptive of the therapeutic properties of said medicinal preparation, respondents represent, directly and by implication, that said preparation is a competent and effective treatment and remedy for leg sores, ulcers, old sores, open legs, varicose ulcers and other ulcers, and that it promotes and speeds healing generally.

PAR. 5. Respondent's said statements and representations are false, misleading, and deceptive. In truth and in fact, Kay's Medicated Ointment is not an effective treatment or remedy for, and will have no therapeutic effect or value in the treatment of, leg sores, varicose ulcers or other ulcers, old sores, or open legs, its only value being that in some of these conditions it will, through its emollient and local anesthetic action, bring some degree of temporary relief of pain. However, in old, chronic ulcerous conditions the portion of the lesion which gives rise to the pain will in many instances not be accessible to a local application, and in such instances the use of said preparation will not even relieve pain. Said preparation will not promote or speed healing.

PAR. 6. The use by the respondents of the foregoing 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 medicinal preparation.

CONCLUSION

The aforesaid acts and practices of the respondents 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 respondent Kraupner & Kraupner, Inc., and a stipulation as to the facts entered into by and between the respondents 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 respondents 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 the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, that the respondents, Kraupner & Kraupner, Inc., a corporation, and Diener & Dorskind, Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the medicinal preparation designated as "Kay's Medicated Ointment," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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:

(a) That said preparation is a competent or effective remedy for legs sores, varicose ulcers or other ulcers, old sores, or open legs, or has any therapeutic value in the treatment of these conditions in excess of the temporary alleviation of pain when the source of such pain is accessible to local application of said preparation.

(b) That said preparation promotes or speeds healing.

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation, any advertisement which contains any representations prohibited in paragraph (1) hereof.

It is further ordered, that 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.

Complaint

IN THE MATTER OF
BOLGER BROTHERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914 AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5378. Complaint, Sept. 5, 1945—Decision, Aug. 26, 1946

Where a corporation engaged in the introduction into commerce of garnetted or reclaimed wool waste material, composed of spun, woven, knitted, or felted yarns or fabrics which it purchased and garnetted, sold and distributed in commerce for its own account, and also garnetted for other concerns on a commission basis and shipped as directed by the owners thereof, and which was a wool product under the terms of the Wool Products Labeling Act of 1939,—

Caused to be misbranded, and misbranded, said products in violation of said act and the rules and regulations promulgate thereunder, in that they did not have on or affixed thereto a stamp, tag, label, or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool, nonwool fiber and aggregate thereof, including filler or adulterating matter, and proper identification of the manufacturer or seller:

Held, That such acts, practices and methods, 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 within the intent and meaning of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Before *Mr. James A. Purcell*, trial examiner.

Mr. J. W. Brookfield, Jr. and *Mr. George M. Martin* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Bolger Brothers, a corporation, herein-after referred to as respondent, has violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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, Bolger Brothers, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania and has its principal office and