

Complaint

IN THE MATTER OF

FRANK M. CONKLIN, TRADING AS BEAU PEEP
PRODUCTS

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

Docket 5435. Complaint, Apr. 22, 1946—Decision, Oct. 8, 1946

Where an individual engaged in the interstate sale and distribution of a product designed for the cleaning of babies' white shoes; through advertisements in periodicals or newspapers and in other advertising media, directly and by implication—

Represented that his said product would not rub off and was safe; that no dust particles or powder would rub off or result from shoes treated with the product, so as to create an allergic reaction or condition affecting human beings; that it had been subjected to heat treatment sufficient to destroy all bacteria, and that even were a baby to chew or put into its mouth shoes treated with its said cleaner there would be no danger of infection; and that such sterility or freedom from bacteria remained unchanged in the product even after it had been subjected to use in the customary manner;

The facts being that said product, when applied to baby shoes, would absorb any harmful bacteria present on the dauber, cloth or leather of the shoe; it was not nonallergic, in that it was not a substance to which no individuals would or could exhibit allergy; it would rub off after having been applied to leather or cloth and subjected to a rubbing action; and it was not pasteurized in the sense that it was completely sterile, or free from harmful bacteria since it lost any condition of sterility after it had been subjected to customary use;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby to induce purchase of substantial quantities of 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. Morton Nesmith for the Commission.

O'Hara, Junge & Lehman, of Chicago, Ill., 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 Frank M. Conklin, individually and trading as Beau Peep Products, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

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PARAGRAPH 1. The office and principal place of business of the respondent, Frank M. Conklin, individually and trading as Beau Peep Products, is located at 5642 Lake Park Avenue in the city of Chicago, State of Illinois. The respondent is now and has for several years last past been engaged in the sale and distribution of a product designated for the cleaning of babies' white shoes. Respondent causes said product when sold to be shipped from his place of business in Illinois to dealers located in various other States of the United States and the District of Columbia. Said dealers in turn sell said product to the general public.

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

PAR. 2. In the course and conduct of the aforesaid business and for the purpose of inducing the purchase of his products, respondent has published and circulated, or caused to be published and circulated among purchasers or prospective purchasers in other States of the United States and in the District of Columbia many false and deceptive statements and representations with respect to his product. Such statements and representations have been and are being published and circulated by means of advertisements in magazines or newspapers and in other advertising media, all of general circulation, by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the aforesaid false, misleading and deceptive statements and representations are the following:

Now Mommy does not worry when I chew my little shoes!

It's Pasteurized For Your Child's Safety

(Picture of baby reaching for shoes)

Beau-Peep Pure White Baby Shoe Cleaner is scientifically prepared and pasteurized for your child's safety . . . and you needn't worry when your toddling tot begins to chew his little shoes * * *.

Will not rub off * * *.

Non-allergic type.

Safe.

Contains no harmful ingredients.

PAR. 3. Through the use of the aforesaid statements and representations and others similar thereto but not specifically set out herein, respondent has represented and represents, directly and by implication, that his said product will not rub off; that it is safe; that no dust

particles or powder will rub off or result from shoes treated with the product so as to create an allergic reaction or condition affecting human beings; that said product has been subjected to heat treatment sufficient to destroy all bacteria that might have been present therein, and that even were a baby to chew or put into its mouth shoes that have been treated with respondent's said cleaner there would be no danger of infection, all bacteria having been killed in the scientific preparation of the cleaner, and that the condition and quality of sterility or freedom from bacteria remain unchanged in the product even after it has been subjected to use in the customary manner.

PAR. 4. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact respondent's said product is not absolutely safe and when applied to baby shoes it will absorb any harmful bacteria present on the dauber, cloth or leather of the shoe. Said product is not nonallergic, that is, the product is not a substance to which no individuals would or could exhibit allergy. The product will rub off after having been applied to leather and subjected to a rubbing action. Respondent's product is not pasteurized in the sense that it is completely sterile, that is, free from unsafe and harmful bacteria, for the product loses any condition of sterility after it has been subjected to use in the customary manner.

PAR. 5. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations with respect to said product, published and distributed as aforesaid has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and thereby induces the purchase by the public of substantial quantities of respondent's said product.

PAR. 6. 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 April 22, 1946, issued and subsequently served its complaint in this proceeding upon the respondent, Frank M. Conklin, individually and trading as Beau Peep Products, charging him 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 respondent's answer, the Commission, by order entered herein, granted respondent's request

for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The office and principal place of business of the respondent, Frank M. Conklin, individually and trading as Beau Peep Products, is located at 5642 Lake Park Avenue in the city of Chicago, State of Illinois. The respondent is now and has for several years last past been engaged in the sale and distribution of a product designed for the cleaning of babies' white shoes. Respondent causes said product when sold to be shipped from his place of business in Illinois to dealers located in various other states of the United States and the District of Columbia. Said dealers in turn sell said product to the general public.

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

PAR. 2. In the course and conduct of the aforesaid business and for the purpose of inducing the purchase of his product, respondent has published and circulated, or caused to be published and circulated among purchasers or prospective purchasers in other states of the United States and in the District of Columbia, many statements and representations with respect to his product. Such statements and representations have been and are being published and circulated by means of advertisements in magazines or newspapers and in other advertising media, all of general circulation, by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the aforesaid statements and representations are the following:

Now Mommy does not worry when I chew my little shoes:

It's Pasteurized For Your Child's Safety

(Picture of baby reaching for shoes)

Findings

Beau-Peep Pure White Baby Shoe Cleaner is scientifically prepared and pasteurized for your child's safety * * * and you needn't worry when your toddling tot begins to chew his little shoe * * *.

Will not rub off * * *.

Non-allergic type.

Safe.

Contains no harmful ingredients.

PAR. 3. Through the use of the aforesaid statements and representations and others similar thereto but not specifically set out herein, respondent has represented and represents, directly and by implication, that his said product will not rub off; that it is safe; that no dust particles or powder will rub off or result from shoes treated with the product so as to create an allergic reaction or condition affecting human beings; that said product has been subjected to heat treatment sufficient to destroy all bacteria that might have been present therein, and that even were a baby to chew or put into its mouth shoes that have been treated with respondent's said cleaner there would be no danger of infection, all bacteria having been killed in the scientific preparation of the cleaner, and that the condition and quality of sterility or freedom from bacteria remain unchanged in the product even after it has been subjected to use in the customary manner.

PAR. 4. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact respondent's said product is not absolutely safe and when applied to baby shoes it will absorb any harmful bacteria present on the dauber, cloth, or leather of the shoe. Said product is not nonallergic, that is, the product is not a substance to which no individuals would or could exhibit allergy. The product will rub off after having been applied to leather or cloth and subjected to a rubbing action. Respondent's product will rub off after having been applied to leather or cloth and subjected to a rubbing action. Respondent's product is not pasteurized in the sense that it is completely sterile, that is, free from unsafe and harmful bacteria, for the product loses any condition of sterility after it has been subjected to use in the customary manner.

PAR. 5. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations with respect to said product, published and distributed as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and thereby induces and has induced the purchase by the public of substantial quantities of respondent's said product.

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CONCLUSION

The aforesaid 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 and the substitute answer of the respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Frank M. Conklin, individually and trading as Beau Peep Products or trading 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 his Beau Peep Baby Shoe Cleaner or any other preparation of substantially similar composition in commerce as "commerce" is defined in the Federal Trade Commission Act, whether sold under the same or any other name, do forthwith cease and desist from:

1. The use of the term "Non-allergic," either alone or in connection with the word "type," or the use of any other word or term of similar import or meaning to designate or describe respondent's preparation Beau Peep Baby Shoe Cleaner or any other preparation of substantially similar composition, or representing in any other manner, either directly or by implication, that said preparation is a substance to which no individuals exhibit allergy.
2. Representing, directly or by implication, that respondent's preparation Beau Peep Baby Shoe Cleaner or any other preparation of substantially similar composition will not rub off when applied to leather or cloth or that it will not give off a white powder when subjected to a rubbing action.
3. Representing, directly or by implication, either through the use of the word "Pasteurized" or any other word of similar import or meaning to designate or describe said preparation, or in any other manner, that respondent's preparation Beau Peep Baby Shoe Cleaner or any other preparation of substantially similar composition is sterile and free from unsafe and harmful bacteria under conditions of use

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or that it will retain a sterile condition when subjected to use in the usual and customary manner or will afford protection from germs or bacteria with which it may come in contact.

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.

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IN THE MATTER OF
GERALD A. RICE DOING BUSINESS AS OFFICE OF
CIVIL PREPARATION

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

Docket 5321. Complaint, May 19, 1945—Decision, Oct. 10, 1946

Where an individual engaged in the interstate sale and distribution of correspondence courses of study for examinations for United States civil service positions—

- (a) Falsely represented through use of the trade-name "Office of Civil Preparation" and the designations "Chief Special Agent," "Director," and "Assistant Director" "in correspondence with prospective purchasers, and through the use of a spread eagle design which simulated the Great Seal of the United States, and other emblems of the United States Government, on his letter-heads, advertising material and application blanks, that his so-called Office of Civil Preparation was a branch of or connected with the United States Civil Service Commission or some agency of the United States Government;
- (b) Represented inaccurately and misleadingly in advertisements distributed to prospective students throughout the northwestern states that thousands of positions were then available in hundreds of branches of the United States Civil Service and that vacancies existed in the specific positions he listed; that a common school education was usually sufficient to fill positions in the civil service, including such listed positions; and that said positions were available because of vacancies due to death, retirements and normal Government expansion and might be obtained through his "Office of Civil Preparation";

The facts being that most of the positions listed by him require special training and qualifications; the number of vacancies does not run into thousands, and many conditions other than death, age, and retirement govern the placement of new employees in civil service; no examinations were contemplated in the near future for a number of the positions listed for the reason that the registers therefor contained sufficient names to fill all vacancies; and announcements for many examinations are made for which only persons having veteran preference are eligible;

With tendency and capacity to confuse, mislead, and deceive members of the public into the erroneous belief that such representations were true, and of inducing them to purchase his courses of study and instruction on account 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.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. William M. Pencke 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