

Syllabus

IN THE MATTER OF

CHARLES W. SCHUTTE AND JANET M. SCHUTTE, TRADING AS SCHUTTE LABORATORIES AND SCHUTTE CO.

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

Docket 5382. Complaint, Sept. 14, 1945—Decision, Apr. 22, 1947

Where two partners engaged in the interstate sale and distribution of certain preparations intended for use in exterminating rats and mice and other animals and designated as "Rat Deth," "Schutte's Liquid Red Squill," "Mouse and Mole Deth," "Schutte's Red Squill," and "Rat Nip", through advertisements in newspapers and periodicals and through circulars, leaflets, display cards, and other advertising media—

(a) Represented that their "Rat-Deth" was an effective killing agent for mice and rats;

The facts being that while red squill, active ingredient of said preparation, is an effective raticide, it is not usually effective as to mice, particularly in concentrations of about ten percent, mice being relatively more resistant to poison than rats and differing from the latter in their eating habits;

(b) Represented that rats and mice, after consuming said product, go outside to die as do mice and moles after consuming their "Mouse and Mole Deth";

The fact being that while red squill affects the respiration and causes thirst, the animal is as likely to seek air and water inside the building as outside; since red squill is slow in its action, said effects also usually do not come on until after the animal has become incapacitated and is unable to move about to any substantial extent; and as respects the "Mouse and Mole Deth," toxic ingredient of which is strychnine, moles live almost entirely underground, and the product is not effective as to them, principally due to its basis of cereal, which they rarely eat;

(c) Represented that use of their "Red Squill" and their "Rat Nip" would result in the extermination of all rats on the premises;

The facts being that no raticide yet developed is one hundred percent effective; and,

(d) Represented that their "Rat Deth" and "Schutte's Liquid Red Squill" were harmless to humans and domestic animals;

The facts being that while the emetic, red squill, when taken by humans and domestic animals, usually causes vomiting and so brings relief, instances have occurred in which it caused death to domestic animals; so that, while relatively harmless, it cannot be considered entirely so;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products and thereby induce its purchase of substantial quantities thereof:

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

Complaint

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In a proceeding in which the Commission found that certain representations made by respondents in connection with the offer, sale, and distribution of their rodenticides were inaccurate and misleading, the Commission was of the opinion and found, however, that certain other charges were not sustained by the record; namely, that respondents, through the use of the word "laboratories" in the aforesaid connection and in their advertising matter and as a part of their trade name under which they operated, falsely, misleadingly, and deceptively represented that they owned, operated, or controlled a laboratory and made use thereof in connection with their said business, when in fact they did not own, operate, or control a laboratory, as the word is commonly understood when used in connection with such a business.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. William F. Schutte, of Beaver Falls, Pa., 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 Charles W. Schutte and Janet M. Schutte, copartners, trading as Schutte Laboratories, and Schutte Co., hereinafter referred to as respondents, have 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. Respondents, Charles W. Schutte and Janet M. Schutte, are copartners trading and doing business as Schutte Laboratories and Schutte Co., with their principal place of business located at Beaver Falls, Pa.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of products designated by them as "Rat-Deth," "Schutte's Liquid Red Squill," "Mouse and Mole Deth," "Schutte's Red Squill," and "Rat Nip."

Respondents cause said products, when sold, to be transported from their place of business in the State of Pennsylvania, to purchasers thereof, located in various other States of the United States and in the District of Columbia and maintain, and at all times mentioned herein have maintained, a course of trade in said products 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 their business and for the purpose of inducing the purchase of their said products, respondents have made, and now make, false and misleading statements and rep-

representations with respect to said products by means of advertisements inserted in newspapers and periodicals, circulars, leaflets, display cards, and other advertising material. Among and typical of such false and misleading statements and representations are the following:

Rat-Deth to rats and mice * * * after eating they run for air and die outside.

Rat-Deth drives them outside to die.

Rat-Deth * * * harmless to Dogs, Cats, Poultry, and Humans.

Schutte's Liquid Red Squill for rats and mice.

Schutte's Liquid Red Squill * * * Harmless to poultry, livestock, pets, and humans.

Mouse and Mole Deth * * * Sure Killer for mice and moles. After eating they run for air and die outside.

Schutte's Red Squill kills all rats.

Rat nip never misses. It gets them all.

PAR. 4. Through the use of the foregoing statements and representations and others of the same import not specifically set out herein, respondents represent that their product Rat-Deth is an effective killing agent for mice and rats, and that mice and rats, after consuming said product, go outside to die; that the use of Rat-Deth is completely safe and will not cause harm to humans, domestic animals, or poultry; that their product Schutte's Liquid Red Squill is an effective killing agent for mice and rats and is completely safe and will not cause harm to humans, domestic animals, and poultry; that mice and moles, after consuming Mouse and Mole Deth, go to the outside to die and that the use of their products, Schutte's Red Squill and Rat Nip, will completely exterminate all rats on the premises.

PAR. 5. In truth and in fact, respondents' products Rat-Deth and Schutte's Liquid Red Squill are not effective killing agents for mice and there is no assurance that mice or rats will go outside to die after eating said product. Both of said products may be harmful to humans, domestic animals and poultry, if consumed by them. Moles, seldom if ever, frequent enclosures but if respondents' product, Mouse and Mole Deth, is consumed by either moles or mice in an enclosure, there is no assurance that either will go outside to die. The use of neither Schutte's Red Squill nor Rat Nip will assure complete extermination of rats on the premises.

PAR. 6. In connection with the offering for sale, sale, and distribution and in advertising matter used by respondents, in connection with their aforesaid products and as a part of the trade name under which they operate, respondents make use of the word "laboratories." By and through such use, respondents represent that they own, operate, or control a laboratory and that the same is used by them in connection with their said business. Such representation is false, misleading,

Findings

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and deceptive for, in truth and in fact, respondents do not own, operate, or control a laboratory, as such word is commonly understood when used in connection with a business such as that operated by respondents.

PAR. 7. The use by the respondents 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 products.

PAR. 8. 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 September 14, 1945, issued and subsequently served its complaint in this proceeding upon the respondents, Charles W. Schutte and Janet M. Schutte, copartners trading as Schutte Laboratories and as Schutte Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, testimony, and other evidence in support of and in opposition to the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint, answer, testimony, and other evidence, report of the trial examiner and the exceptions thereto, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); 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. The respondents, Charles W. Schutte and Janet W. Schutte, are copartners trading as Schutte Laboratories and as

Schutte Co., with their principal place of business located at 910 Seventh Avenue, Beaver Falls, Pa. They are engaged in the sale and distribution of certain preparations intended for use in exterminating rats and mice and other animals, the preparations being designated as "Rat-Deth," "Schutte's Liquid Red Squill," "Mouse and Mole Deth," "Schutte's Red Squill," and "Rat Nip."

PAR. 2. Respondents cause their products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their products 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 their business and for the purpose of inducing the purchase of their products, respondents have made various representations in connection therewith to prospective purchasers, such representations being disseminated by means of advertisements inserted in newspapers and periodicals and also by means of circulars, leaflets, display cards, and other advertising media. Among and typical of such representations are the following:

Rat-Deth to rats and mice * * * after eating they run for air and die outside.

Rat-Deth drives them outside to die.

Rat-Deth * * * harmless to Dogs, Cats, Poultry, and Humans.

Schutte's Liquid Red Squill * * * Harmless to poultry, livestock, pets, and humans.

Mouse and Mole Deth * * * Sure killer for mice and moles. After eating they run for air and die outside.

Schutte's Red Squill kills all rats.

Rat Nip never misses. It gets them all.

PAR. 4. Through the use of these statements, and others of similar import, respondents have represented that their product Rat-Deth is an effective killing agent for mice and rats, and that mice and rats after consuming such product go outside to die; that this product and the product Schutte's Liquid Red Squill are harmless to humans and domestic animals; that mice and moles, after consuming the product Mouse and Mole Deth, go outside to die; and that the use of the products Schutte's Red Squill and Rat Nip will result in the extermination of all rats on the premises.

PAR. 5. The active ingredient (killing agent) in the products Rat-Deth, Schutte's Red Squill, and Schutte's Liquid Red Squill is red squill. This ingredient is derived from a plant of the same name found in Mediterranean countries. Rat-Deth contains 10 percent red

squill and Schutte's Liquid Red Squill 35 percent. The percentage of the ingredient in Schutte's Red Squill is not disclosed by the record.

While red squill is an effective raticide, it usually is not effective as to mice, particularly in concentrations of approximately 10 percent. Mice are relatively more resistant to poisons than are rats. Moreover, mice differ from rats in their feeding habits. Rats usually eat a substantial portion of the first palatable food available to them. This means that when a bait (food treated with rat poison) is exposed to them they usually will eat enough of it to cause death. Mice, on the other hand, are inclined merely to nibble at the bait and to seek other food elsewhere. For this reason they usually do not get enough of the poison to kill them. Even as to rats, red squill is not 100 percent effective; that is, it cannot be relied upon to exterminate all of the rats on the premises. No raticide has yet been developed which is 100 percent effective.

The killing agent in the product Rat Nip is phosphorus, the product containing about 2 percent of this ingredient. As in the case of red squill, this product, generally speaking, is an effective raticide. It is not, however, 100 percent effective and will not kill all of the rats on the premises.

In the product Mouse and Mole Deth the toxic ingredient is strychnine in the amount of approximately 1 percent. This product is not effective for moles, the principal reason being that the product has a cereal base and moles rarely eat cereals. They live almost entirely on insects.

It cannot properly be said that after consuming the products Rat-Deth and Mouse and Mole Deth, rats, mice, and moles go outside to die. While red squill affects the respiration and causes thirst, the animal is as likely to seek air and water inside the building as outside. Moreover, red squill is slow in its action and the effects mentioned usually do not come on until after the animal has become incapacitated and is unable to move about to any substantial extent. As for moles, they live almost entirely underground and seldom leave their burrows.

Nor can it properly be said that the products Rat-Deth and Schutte's Liquid Red Squill are harmless to humans and domestic animals. Red Squill is an emetic; that is, when taken by humans and domestic animals it usually causes vomiting, and the vomiting usually brings relief. Instances have occurred, however, in which red squill caused death to domestic animals. It cannot, therefore, be considered entirely harmless, although it is relatively so.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their products, as set forth in paragraphs 3 and 4 hereof, are inaccurate and misleading.

PAR. 7. While the complaint contained certain other charges against respondents, the Commission is of the opinion and finds that such charges are not sustained by the record.

PAR. 8. The use by respondents of the inaccurate and misleading representations herein set forth has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found are all to the 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 the complaint of the Commission, the answer of respondents, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner and the exceptions thereto, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); 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, Charles W. Schutte and Janet M. Schutte, individually and trading as Schutte Laboratories and as Schutte Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' products designated Rat-Deth, Schutte's Liquid Red Squill, Mouse and Mole Deth, Schutte's Red Squill, and Rat Nip, or any products containing substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from representing, directly or by implication:

1. That the product Rat-Deth is an effective killing agent for mice.
2. That rats and mice, after consuming the product Rat-Deth, go outside to die.

3. That mice and moles, after consuming the product Mouse and Mole Deth, go outside to die.

4. That the product Rat Nip, or the product Schutte's Red Squill, will kill all rats on the premises.

5. That the product Rat-Deth, or the product Schutte's Liquid Red Squill, is harmless to humans or domestic animals: *Provided, however*, That this shall not prohibit respondents from representing that such products are relatively or comparatively harmless.

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.

Syllabus

IN THE MATTER OF

ASSOCIATED MERCHANDISING CORP., OWENS STAPLE-
TIED BRUSH CO., ABRAHAM & STRAUS, INC., ET AL.

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

Docket 4719. Complaint, Mar. 3, 1942—Decision, Apr. 24, 1947

In a proceeding in which it appeared that bristles for use in the making of tooth brushes were, prior to their importation into the United States, subjected to a bleaching solution of chemicals, rinsed, and dried, and thus made sterile at the time, but were not thereafter sterilized, and that during subsequent incorporation into tooth brushes and packaging no methods were used to maintain the bristles in a sterile condition, the Commission took notice of the scientifically well-known and thoroughly established fact that under conditions such as those stated an article such as tooth-brush bristles will not remain sterile and free of pathogenic bacteria.

When an article such as a tooth brush is branded or described as "sterilized" at the time of its sale, the public understanding is that such article has been subjected to a process that destroyed all pathogenic bacteria and that such sterile condition has been maintained.

Where (1) a corporate service organization, owned and controlled by 21 corporations engaged in the operation of retail department stores in various American cities; (2) a corporation engaged, among other things, in the manufacture, packaging, and sale of tooth brushes; and (3) said department stores;

Following a plan directed to the marketing by said stores of tooth brushes under a distinctive name or brand; the action of their committee in selecting such a name or brand and a design for and the wording to appear on the package or carton in which the tooth brushes would be marketed; the selection by their said service organization of aforesaid corporate manufacturer to make such tooth brushes, etc., and agreement therewith, so to do, and to sell the same exclusively to such member stores, under such brand and in such carton; and the manufacture, accordingly, of such tooth brushes—

Made use, in accordance with and as the result of aforesaid plan, agreement, arrangements, and acts, of the word "sterilized" on the handles of said brushes and in the cartons enclosing the same, through use of such words and representations as "Guaranteed Sterilized," and, later, the words "Bristles sterilized before packaging and sealed in cellophane for your protection," along with the brand, for a time, "P & S—Purity and Safety," later changed to "P & S—Private Seal"; and offered, distributed, and sold such tooth brushes, thus stamped, containered, labeled, and branded;

Notwithstanding the fact that, while the bristles of said products were made sterile prior to importation, no methods were used thereafter to maintain them in a sterile condition, and said products, accordingly, were not, when offered for sale and sold to the public, sterile and free from pathogenic bacteria;