

Complaint

IN THE MATTER OF

BOB ARMSTRONG TRADING AS R. K. ARMSTRONG

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

Docket 5507. Complaint, Aug. 5, 1947—Decision, Dec. 10, 1948

Where an individual engaged in the interstate sale and distribution of his "Bob Armstrong's Distemper Remedy" capsules, ingredients of which included arsenic trioxide, and which were contained in boxes conspicuously labeled "poison"; through statements in advertisements in newspapers, periodicals, pamphlets, circulars, and other advertising literature, including reproductions or purported reproductions of testimonials—

(a) Represented thereby and also through the use of the word "remedy" in the name of his preparation, directly or by implication, that the same was a cure or remedy for distemper in dogs;

When in fact it had no therapeutic value in the treatment of said condition except insofar as it might act as a palliative by affording a measure of relief from the symptoms of the disease; and

(b) Failed in said advertisements to reveal the arsenic trioxide content of the preparation and that said ingredient was a poison;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his said product, and to cause it thereby to purchase 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.

Before *Mr. William L. Pack*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. H. G. Rawls, of Albany, Ga., 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 Bob Armstrong, an individual trading as R. K. Armstrong, hereinafter referred to as 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 interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Bob Armstrong, is an individual trading as R. K. Armstrong, with his principal place of business located in the town of Fitzgerald, State of Georgia.

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PAR. 2. Said respondent is now, and has been for several years last past, engaged in the business of offering for sale and selling a medicinal preparation designated as "Bob Armstrong's Distemper Remedy." Respondent causes and has caused said preparation, when sold, to be shipped from his said place of business in the State of Georgia to purchasers thereof located in various other States of the United States and the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said medicinal preparation by the United States mails and by various 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 advertisements concerning his preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers, periodicals, pamphlets, circulars, and other literature, and by radio continuities, are the following:

I have treated thousands of cases of distemper and have not lost a single dog in the past twenty years. Put up in capsules; easy to give and no bad effects.

Bob Armstrong's internationally known and used distemper remedy. This is no new thing. Here is proof of the pudding, the eating and digesting.

Shortly after your capsules arrived last Monday morning, I had a call from Mrs. Sims saying that the puppy was in such shape that she did not think he could live but a short time. He was gasping and his hindquarters were so paralyzed that he could not get up. * * * I gave him a capsule, and within 24 hours he was almost his normal self. His temperature was gone and he is going around as well as usual.

I sent for an order of your Distemper Remedy, and wish to state I cured one of the worst cases of distemper I have ever had or seen in 40 years of handling dogs.

It beats all the shots, serums and preventatives that were ever invented.

The last litter we raised all had distemper and we saved every pup with your remedy.

It is, and will be one of the greatest contributions to the lives of dogs. My seventeen dogs all recovered.

I lost dogs with distemper for years and years. Two years ago I decided to try your remedy. I have cured several cases of bad distemper.

Your Distemper Remedy saved my seven dogs.

My dog just reeled on his hind-parts and he would just lay and quiver, but after giving him the first capsule he was up the next morning and drank some milk and ate some meat. I gave him three capsules, and he is sound and well and no after effects. I think you have got the best remedy I have seen used.

PAR. 4. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic value and properties of respondent's said preparation, respondent represents that use of his preparation, "Bob Armstrong's Distemper Remedy," will cure or prevent and is an effective remedy for distemper in dogs; that said preparation is internationally known and used as a distemper remedy; that it is superior to all shots, serums, or preventatives used to combat such disease in dogs; that it is one of the greatest contributions in saving the lives of dogs; and that its use produces no bad effects.

PAR. 5. The aforesaid representations and advertisements, used and disseminated by respondent, are grossly exaggerated, false, and misleading. In truth and in fact the use of respondent's said preparation will not cure or prevent distemper in dogs and is not an effective remedy for distemper. Said preparation does not constitute any preventative treatment for or provide relief from distemper in dogs. It is not superior to all shots, serums, or preventatives that were ever invented. It is not one of the greatest known contributions in saving lives of dogs affected by distemper, and its ingredients, on the contrary, by virtue of their extremely toxic character, produce a bad effect upon dogs, and may even result in death to dogs.

PAR. 6. Respondent's advertisement, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations and material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements, and under such conditions as are customary and usual. The principal ingredients of respondent's preparation, as contained in each capsule, thereof, are as follows:

Arsenic trioxide.....	9.7 grains.
Opium.....	1.85 grains.
Ginger.....	Present.

The dosage of said preparation and the frequency of its administration, as recommended on the directions accompanying each package thereof, are: "Give one capsule, then wait 72 hours before giving a sec-

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ond. Then wait 72 hours before giving the third, and if necessary, give another 72 hours later."

The formula for respondent's preparation disclosed that said preparation is an extremely toxic and dangerous article containing in each capsule thereof many times the maximum therapeutic dose of arsenic trioxide that should be administered to a dog. Its use as recommended in the directions accompanying each package of the product may produce violent illness to dogs, and death where the dog absorbs a full dose of the said arsenic compound. Respondent's advertisements contain no warnings or statements revealing the potential danger from the use of said preparation and such failure to reveal has the tendency and capacity to lead and does lead members of the public to believe that said preparation may be safely taken in such amounts and with such frequency as may be necessary to accomplish the represented and desired results.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and that said preparation is entirely safe and harmless for use under the conditions prescribed in respondent's advertisements, and under such conditions as are customary and usual, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said medicinal preparation.

PAR. 8. The acts and practices of the respondent, as herein alleged, are 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 August 5, 1947, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of the respondent's answer, testimony and other evidence in support of and in opposition to the allegations of 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

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office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer thereto, the testimony and other evidence, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondent 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 respondent, Bob Armstrong, is an individual trading as R. K. Armstrong, with his principal place of business located in Fitzgerald, Ga. Respondent is now, and for a number of years last past has been, engaged in the sale and distribution of a medicinal preparation intended for use in the treatment of distemper in dogs, the preparation being designated "Bob Armstrong's Distemper Remedy."

PAR. 2. Respondent causes and has caused his preparation, when sold, to be shipped from his place of business in the State of Georgia to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his preparation in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondent's preparation is put up in capsule form and is sold in small boxes or cartons, four capsules to each box. Each capsule contains 9.7 grains of arsenic trioxide, approximately 1.85 grains of henbane, and approximately 5 grains of ginger. Opium was formerly used in the preparation but this was discontinued some 5 years ago, the henbane being substituted in its stead. In the label on each box of capsules there is conspicuously displayed, in connection with the name of the preparation, the word "poison." The directions for the use of the preparation are as follows: "Give one capsule, then wait 72 hours before giving a second. Then wait 72 hours before giving the third, and if necessary, give another 72 hours later."

PAR. 4. In the course and conduct of his business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his preparation by means of the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission

Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements appearing in respondent's advertisements, disseminated by means of newspapers, periodicals, pamphlets, circulars, and other advertising literature, are the following:

I have treated thousands of cases of distemper and have not lost a single dog in the past twenty years. Put up in capsules; easy to give and no bad effects.

Bob Armstrong's internationally known and used distemper remedy. This is no new thing. Here is proof of the pudding, the eating and digesting.

Shortly after your capsules arrived last Monday morning, I had a call from Mrs. Sims saying that the puppy was in such shape that she did not think he could live but a short time. He was gasping and his hindquarters were so paralyzed that he could not get up. * * * I gave him a capsule, and within 24 hours he was almost his normal self. His temperature was gone and he is going around as well as usual.

I sent for an order of your Distemper Remedy, and wish to state I cured one of the most cases of distemper I have ever had or seen in 40 years of handling dogs.

It beats all the shots, serums and preventatives that were ever invented.

The last litter we raised all had distemper and we saved every pup with your remedy.

It is, and will be one of the greatest contributions to the lives of dogs. My seventeen dogs all recovered.

I lost dogs with distemper for years and years. Two years ago I decided to try your remedy. I have cured several cases of bad distemper.

Your Distemper Remedy saved my seven dogs.

My dog just reeled on his hind-parts and he would just lay and quiver, but after giving him the first capsule he was up the next morning and drank some milk and ate some meat. I gave him three capsules, and he is sound and well and no after effects. I think you have got the best remedy I have seen used.

PAR. 5. Through the use of these representations, including the use of the word "remedy" in the name of his preparation, respondent has represented, directly or by implication, that his preparation is a cure or remedy for distemper in dogs. Actually, the preparation is not a cure or remedy for this condition. Nor has it any therapeutic value in the treatment of distemper except insofar as it may act as a palliative by affording a measure of relief from the symptoms of the disease. The Commission therefore finds that respondent's representations are erroneous and misleading and constitute false advertisements.

Respondent's advertisements are false for the further reason that they fail to reveal facts material in the light of the representations made therein; that is, the advertisements fail to reveal the arsenic trioxide content of the preparation and the fact that this ingredient is a poison.

PAR. 6. The use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's preparation, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparation 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 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 respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Bob Armstrong, individually and trading as R. K. Armstrong, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's medicinal preparation now designated "Bob Armstrong's Distemper Remedy," or any preparation of substantially similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails or by means in commerce, as "commerce" is de-

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fined in the Federal Trade Commission Act, any advertisement which:

(a) Represents, directly or by implication, that said preparation is a cure or remedy for distemper; or that said preparation possesses any therapeutic value in the treatment of distemper except insofar as it may afford relief from the symptoms thereof;

(b) Uses the word "remedy" or any word of similar import, either alone or in connection with other words, to designate or describe said preparation.

2. 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 fails to reveal that each capsule of said preparation contains 9.7 grains of arsenic trioxide and that said ingredient is a poison.

3. 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 of respondent's preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in Paragraph 1 hereof or which fails to comply with the affirmative requirements set forth in Paragraph 2 hereof.

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.

Syllabus

IN THE MATTER OF
COLUMBIA APPLIANCE CORPORATION¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4669. Complaint, Jan. 13, 1942—Decision, Dec. 30, 1948*

As respects the question as to whether or not a particular synthetic solvent, one of a number used in synthetic solvent dry-cleaning machines, may be properly characterized as more toxic, poisonous or dangerous than the others, it appearing that all are poisonous and toxic to same extent and, if allowed to come in contact with the skin or if the vapors thereof are inhaled, are dangerous to life and health, and, furthermore, that all, if not properly handled or used in such machines will cause illness to the operators—dangers which are increased by repeated contacts therewith: it is deceptive and disparaging for the seller of a competitive solvent to refer to it as more toxic, poisonous, and dangerous than the others.

In such a connection the nature of the impairment to health which results from contact with such a solvent is immaterial and reference thereto is deceptive and disparaging; and while in scientific circles distinctions as to the safety or dangerous character of such a solvent may be justified, in the commercial world broad distinctions as to the relative safety or dangerous character thereof are not justified and, if made in connection with the sale thereof, constitute false and deceptive acts and practices and an unfair, false, and misleading method of competition.

Where a manufacturer of synthetic solvent dry-cleaning machines, engaged in interstate sale and distribution, for use therein, of synthetic dry-cleaning solvents, which then included (1) carbon tetrachloride and ethylene dichloride—about 50 percent of which was made by Dow, of Michigan, and mixtures of which were used for most of the dry cleaning done by some 4,000 to 5,000 dry cleaners in the United States who used synthetic solvent machines, and accounted for 15 percent of the dry cleaning done with such machines as compared with that done with "naphtha plants" and "naphtha systems"; (2) trichlorethylene of which, as "Tri-Clene," du Pont made from 94 percent to 97 percent; (3) perchlorethylene or "Per-clene," production of which was about equally divided between said two companies and which, together with said Tri-Clene made up about one-third of the synthetic dry cleaning solvents then used; and, (4) since 1938, "Kolene C," which, composed of carbon tetrachloride, trichlorethylene, and benzol was produced by the Kolene Corporation, and by it sold to some 500 dry cleaners;

In promoting the sale and distribution of its synthetic dry-cleaning solvents through salesmen and technical servicemen who called upon jobbers, distribu-

¹The instant case, and the three which follow, namely Detroit Rex Products Co., D. 4674, page 396, G. S. Blakeslee & Co., D. 4678, page 418, and E. I. du Pont de Nemours & Co., Inc., D. 4685, page 437, all have to do with deceptive and disparaging representations with respect to certain competitive synthetic cleaning and degreasing solvents, of the Kolene Corporation, of Detroit, Mich. An earlier case which also involved such disparagement is that of the Dow Chemical Co., D. 3991, November 22, 1944, 39 F. T. C. 444.