

IN THE MATTER OF
COOK-MASTER, INC.,¹ THEODORE N. GOULD, 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 5567. Complaint, June 9, 1948—Decision, Feb. 13, 1950

Where an officer of a corporation which was engaged, prior to its withdrawal from business, in the interstate sale and distribution of "Cook-Master" stainless steel cooking utensils, in competition with others engaged in sale and distribution of utensils made from steel and other materials, and the policies and practices of which he formulated;

In selling said products through representatives who personally solicited the general public and gave demonstrations before groups of prospective purchasers, at which various pamphlets, leaflets, advertising circulars, and other written matter were exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by or under his direction—

- (a) Represented that Cook-Master cooking utensils provided a means of cooking food which was especially conducive to and did promote good health; and
- (b) Represented that other means of cooking destroyed minerals and vitamins in food, and that by the use of his utensils they would be preserved;

The facts being that cooking in Cook-Master utensils would not promote health any more than the cooking of food in any other sanitary utensils; mineral content of food is not destroyed or materially affected by heat; and if the cooking water is utilized and not thrown away there is no significant loss of minerals in any of the procedures commonly employed in cooking;

¹ The Commission on the same date issued an order dismissing the complaint as to Cook-Master, Inc., as follows:

This matter coming on to be heard by the Commission upon a motion filed June 22, 1948, on behalf of the respondents Cook-Master, Inc., and Theodore N. Gould, requesting that the complaint herein be dismissed as to said respondents, and the answer to such motion filed by counsel in support of the complaint; and

It appearing from said motion and from an affidavit attached thereto, executed by Phillip Markey as vice president of the respondent, Cook-Master, Inc., that the respondent, Cook-Master, Inc., at the time of the issuance of the complaint had ceased the sale and distribution of cooking utensils, that it did not then and does not now have either such utensils to sell or sales representatives or agents, and, further, that the corporation is in process of being liquidated and will soon be dissolved; and

It further appearing from the motion and from the record as a whole that the respondent, Theodore N. Gould, is now an employee of the American Stainless Steel Kitchen Co., Inc., but that he was, during the time of the operation of the corporation, Cook-Master, Inc., responsible for the policies, activities and practices of said corporation against which the complaint was directed; and

The Commission being of the opinion that in the circumstances a continuation of this proceeding as against the corporation, Cook-Master, Inc., would not be in the public interest, but that no sufficient reason has been advanced for dismissal as to the individual respondent, Theodore N. Gould:

It is ordered, That the complaint herein be, and it hereby is, dismissed as to the respondent Cook-Master, Inc.

It is further ordered, That the respondents' motion for dismissal of the complaint as to Theodore N. Gould be, and it hereby is, denied.

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- (c) Misrepresented the time of delivery of said products, through promising delivery at or near specified dates without arrangements with suppliers which would enable him to fulfill such promises; and as a result failed to make delivery within a reasonable approximation of the dates promised;
- (d) Sought to and did cause employees and former employees of his competitors to bring vexatious and unfounded law suits against the latter, and during the pendency of such suits, circulated false and disparaging statements of and concerning the solvency and financial responsibility of said competitors;
- (e) Sought to and did lure employees, and especially key employees, away from competitors, through the circulation of such false and disparaging statements and through offering financial and other advantages to them; and
- (f) Sought to and did cause customers to cancel their orders for utensils of competitors and to purchase Cook-Master utensils instead, through the circulation of such false and disparaging statements, and through offering customers of competitors credit for part payments they might have made to them;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of said stainless steel products to their injury, to unfairly divert trade to said corporation from its competitors, and to impair and destroy competition in the interstate sale of cooking utensils between said corporation and its competitors:

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

Before *Mr. Frank Hier*, trial examiner.

Mr. J. R. Phillips, Jr., for the Commission.

Mr. Maurice L. Markey, of Milwaukee, Wis., 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 the Cook-Master, Inc., a corporation, Theodore N. Gould, J. Phillip Markey, Helen E. Markey, and Maurice L. Markey, individually and as officers of said 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Cook-Master, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 239 West Center Street, Milwaukee, Wis. Respondents, Theodore N. Gould, J. Phillip Markey, Helen E. Markey,

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and Maurice L. Markey, are the officers of and formulate and control the policies, activities, and practices of corporate respondent, including the acts and practices herein alleged. The addresses of the individual respondents are as follows:

Theodore N. Gould, 3379 South Delaware Avenue, Milwaukee, Wis.

J. Phillip Markey, 2210 North Booth Street, Milwaukee, Wis.

Helen E. Markey, 1800 East Olive Street, Milwaukee, Wis.; and

Maurice L. Markey, 1800 East Olive Street, Milwaukee, Wis.

PAR. 2. Respondents are now, and for more than 2 years last past, have been engaged in the sale and distribution of stainless steel cooking utensils in commerce between and among the various States of the United States and in the District of Columbia. Respondent cause, and have caused, said products when sold, to be transported from their aforesaid place of business in the State of Wisconsin to purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been, at all times mentioned herein, a constant course of trade in said products sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other corporations and with persons, firms, and partnerships likewise engaged in the business of selling and distributing cooking utensils made from steel and other metals or materials, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The advertising and selling of respondents' cooking utensils are conducted principally through the medium of agents, representatives, or employees through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives, or employees, at respondents' direction, is the giving of demonstrations or respondents' products before groups of prospective purchasers at which times various pamphlets, leaflets, charts, circulars, and other written matter are exhibited and distributed, accompanied by sales talks, taken from sales manuals supplied by the respondents, all with respect to the characteristics, nature, and effectiveness of said products used in the preparation of food.

PAR. 5. Among and typical of the statements and representations contained in said pamphlets, leaflets, charts, circulars, and other written matters and the sales talks of said agents, representatives or em-

ployees, used in connection with the offering for sale, sale and distribution of respondents said products, in commerce, are the following:

A lifetime of Healthful Cooking.

Cook-Master is made from Allegheny Pluraimelt, Stainless Steel.

You are going to eat foods that taste a little different * * * We are under the impression that food must be boiled in order to soften. That is not true because the cellulose structure of fresh foods can be broken down with pasteurization temperatures * * * that is how Cook-Master does its job. The food is soft, you can eat it. It has retained the natural color, appearance, flavor and, the most important part, the vital food elements which, after all folks, is what you really want.

Remember, we are selling health.

Health Dinners.

The most healthful clean cooking ware known to man.

This is, of course, our way of advertising "health".

Aid to health.

Stomach or gall-bladder victims appreciate hearing about their enjoying better health.

Preserves the vital elements of your food.

Cook-Master "waterless" cooking is easier, preserves vitamins and minerals. Stain'ess steel does not darken foods as other metals may—is healthier.

By means of the statements and representations immediately hereinabove quoted, respondents have represented and now represent that respondents' said utensils constitute a cooking method which is especially conducive to good health; that the cooking of food in said utensils will promote good health; that other methods of cooking destroy minerals and vitamins and that by the use of respondents' utensils the minerals and vitamins may be preserved in cooked food.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, respondents' said utensils do not constitute a cooking method which is especially conducive to health. The cooking of food in said utensils will not promote good health any more than any other sanitary utensils. The mineral content of foods is not destroyed or materially affected by heat. There is no significant loss of these substances in any of the procedures commonly employed in cooking, provided the cooking water is utilized and not thrown away.

PAR. 7. In the course of offering for sale and selling to the public their said cooking utensils, respondents have misrepresented the time of delivery, have promised delivery at or near specified dates without arrangements with suppliers that would enable them to fulfill such promises, and they have failed to make delivery within a reasonable approximation of the date promised.

PAR. 8. Respondents have sought to injure and have injured their said competitors, and have sought to impair and destroy competition in the sale of cooking utensils by the following means and methods:

(a) They have sought to cause, and have caused, employees and former employees of competitors of respondents to bring vexatious and unfounded law suits against said competitors and while said suits were pending, circulated and caused to be circulated, false and disparaging statements of and concerning the solvency and financial responsibility of said competitors.

(b) By the circulation of said false and disparaging statements and by offering financial and other advantages to the employees of said competitors, they have sought to lure, and have lured, employees, especially key employees, away from competitors.

(c) By the circulation of said false and disparaging statements and by offering them credit for part payment they may have made to said competitors, respondents have sought to cause, and have caused, customers of said competitors to cancel orders for such utensils and purchase instead the utensils of respondents.

PAR. 9. The foregoing acts and practices of respondents, have and have had the capacity and tendency to deceive and mislead, and have deceived and misled, purchasers and prospective purchasers to their injury, and to divert trade to respondents from their said competitors, and to impair and destroy competition between respondents and their competitors, to the injury of the public and respondents' competitors, and constitute unfair and deceptive acts and practices, and unfair methods of competition, 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 9, 1948, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondents' joint answer to said complaint was filed on July 2, 1948.

At a hearing held June 20, 1949, before a trial examiner of the Commission theretofore duly designated by it, and pursuant to leave granted by said trial examiner, the respondents, Cook-Master, Inc., and Theodore N. Gould withdrew as to themselves the aforesaid answer and filed in lieu thereof an answer dated June 18, 1949, in which said respondents, solely for the purposes of this proceeding,

admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts. At the same time a stipulation was entered into by and between counsel for the respondents, J. Phillip Markey, Helen E. Markey, and Maurice L. Markey, and counsel in support of the complaint, in which it was stipulated and agreed that the said J. Phillip Markey and Maurice L. Markey are members of the bar, practicing attorneys-at-law of the State of Wisconsin, that they are not now engaged in the sale of cooking ware or utensils and have no agents or representatives engaged in such business, and that their former association with the respondent, Cook-Master, Inc., was largely in an administrative and advisory capacity in which capacity they did not direct the sales policies of the said Cook-Master, Inc., and in which stipulation it was further stipulated and agreed that the respondent Helen E. Markey was merely one of the incorporators of the respondent, Cook-Master, Inc., and that she never had any active connection with the policies of said corporation. Acting upon said stipulation and a motion contained therein, the trial examiner dismissed the complaint as to the respondents, J. Phillip Markey, Helen E. Markey, and Maurice L. Markey.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the substitute answer of the respondents Cook-Master, Inc., and Theodore N. Gould, and a motion to dismiss the complaint on behalf of said respondents Cook-Master, Inc., and Theodore N. Gould and the answer thereto filed by counsel in support of the complaint, which motion has been disposed of by the Commission in a separate order sustaining the same as to Cook-Master, Inc., and denying it as to Theodore N. Gould; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding, insofar as it affects the respondent Theodore N. Gould, 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. Cook-Master, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin. Said respondent formerly maintained its office and principal place of business at 239 West Center Street, Milwaukee, Wis., but in September 1947 it moved to 647 West Virginia Street, Milwaukee, Wis. This corporation is now out of business and the record disclosed that it will soon be dissolved, but prior to about January 1, 1948, it was en-

gaged in the sale and distribution of stainless steel cooking utensils.

PAR. 2. During the time of the operation of Cook-Master, Inc., the officers of said corporation were J. Phillip Markey, address 2210 North Booth Street, Milwaukee, Wis.; Helen E. Markey, address 1800 East Olive Street, Milwaukee, Wis.; Maurice L. Markey, address 1800 East Olive Street, Milwaukee, Wis., and the respondent, Theodore N. Gould, address 3379 South Delaware Avenue, Milwaukee, Wis., but the policies, activities and practices of the corporation were formulated and controlled by the respondent, Theodore N. Gould.

PAR. 3. While in business the corporation Cook-Master, Inc., acting by and through its officers, including the respondent, Theodore N. Gould, caused its stainless steel cooking utensils, when sold, to be transported from its place of business in the State of Wisconsin to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. There was during that period of time a constant course of trade in said products between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business the corporation Cook-Master, Inc., was in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution in commerce of cooking utensils made from steel and other metals or materials.

PAR. 5. The advertising and selling of the cooking utensils of Cook-Master, Inc., were conducted principally through the medium of agents, representatives, or employees of said corporation through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives and employees, at the direction of Cook-Master, Inc., acting by and through the respondent Gould, was the giving of demonstrations before groups of prospective purchasers, at which demonstrations various pamphlets, leaflets, advertising circulars, and other written matter were exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by or under the direction of respondent Gould, all with respect to the characteristics, nature, and effectiveness of Cook-Master utensils used in the preparation of food.

Among and typical of the statements and representations contained in the pamphlets, leaflets, advertising circulars, and other written matter, and in the sales talks of the agents, representatives, and employees, used as aforesaid, were the following:

A lifetime of Healthful Cooking.

Cook-Master is made from Allegheny Pluramelt, Stainless Steel.

You are going to eat foods that taste a little different * * * We are under the impression that food must be boiled in order to soften. That is not true because the cellulose structure of fresh foods can be broken down with pasteurization temperatures * * * that is how Cook-Master does its job. The food is soft, you can eat it. It has retained the natural color, appearance, flavor and, the most important part, the vital food elements which, after all folks, is what you really want.

Remember, we are selling health.

Health Dinners.

The most healthful clean cooking ware known to man.

This is, of course, our way of advertising "health".

Aid to health.

Stomach or gall-bladder victims appreciate hearing about their enjoying better health.

Preserves the vital elements of your food.

Cook-Master "waterless" cooking is easier, preserves vitamins and minerals. Stainless steel does not darken foods as other metals may—is healthier.

PAR. 6. By means of the foregoing statements and representations the respondent, Theodore N. Gould, represented, among other things, that the Cook-Master cooking utensils provided a means of cooking food which was especially conducive to good health; that the cooking of food in said utensils would promote good health; that other means of cooking destroyed minerals and vitamins in food; and that by the use of Cook-Master utensils the minerals and vitamins in the food would be preserved.

PAR. 7. The aforesaid representations were false, misleading, and deceptive. It was not true that Cook-Master utensils provided a means of cooking food which was especially conducive to good health. The cooking of food in said utensils will not promote good health any more than the cooking of food in any other sanitary utensils. The mineral content of food is not destroyed or materially affected by heat. If the cooking water is utilized and not thrown away there is no significant loss of minerals in any of the procedures commonly employed in cooking.

PAR. 8. In the course of offering for sale and selling to the public Cook-Master utensils, the respondent, Theodore N. Gould, also misrepresented the time of delivery of said products, promising delivery thereof at or near specified dates without arrangements with suppliers that would enable him to fulfil such promises. As a result he thereafter failed to make delivery of said utensils within a reasonable approximation of the dates promised.

PAR. 9. During the time Cook-Master, Inc., was in business the respondent Gould also did the following acts and things: (a) He sought to cause, and did cause, employees and former employees of

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competitors of Cook-Master, Inc., to bring vexatious and unfounded lawsuits against said competitors and while said lawsuits were pending circulated false and disparaging statements of and concerning the solvency and financial responsibility of said competitors; (b) by the circulation of said false and disparaging statements, and by offering financial and other advantages to the employees of said competitors, he sought to lure, and did lure, employees, especially key employees, away from competitors; (c) by the circulation of said false and disparaging statements and by offering customers of competitors credit for part payments they may have made to said competitors he sought to cause, and did cause, such customers to cancel their orders for utensils of said competitors and to purchase instead the utensils of Cook-Master, Inc.

PAR. 10. The use by the respondent, Theodore N. Gould, of the false, misleading, and deceptive statements and representations with respect to Cook-Master products, as set forth in paragraph 5, the misrepresentations concerning the dates of delivery of such products referred to paragraph 8, and the acts and things done to injure competitors as summarized in paragraph 9, all had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of Cook-Master products to their injury, to unfairly divert trade to Cook-Master, Inc., from its competitors, and to impair and destroy competition in the interstate sale of cooking utensils between the said Cook-Master, Inc., and its competitors.

CONCLUSION

The acts and practices of the respondent, Theodore N. Gould, as herein found, were all to the prejudice and injury of the public and of the competitors of Cook-Master, Inc., and constituted unfair methods of competition in commerce and 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 substitute answer of the respondents Cook-Master, Inc., and Theodore N. Gould, in which answer said respondents, for the purposes of the proceeding, admitted all of the allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts, and a motion to dismiss the complaint as to the respondents Cook-Master, Inc., and Theodore N. Gould, and the

answer thereto, which motion has been disposed of by the Commission in a separate order sustaining the same as to Cook-Master, Inc., and denying it as to Theodore N. Gould; and the Commission, having made its findings as to the facts and its conclusion that the respondent Theodore N. Gould has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Theodore N. Gould, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils, do forthwith cease and desist from:

(1) Representing, directly or by implication, that stainless steel cooking utensils provide a means of cooking food which is especially conducive to the health of the consumer, or that the cooking of food in such utensils will promote good health;

(2) Representing, directly or by implication, that the use of any of the utensils or procedures commonly employed in the cooking of food results in the destruction or material reduction of the mineral content of such food;

(3) Representing, directly or by implication, that the products sold by said respondent will be delivered at any specified time, unless and until adequate arrangements have been made with suppliers of said products to insure delivery at or reasonably near such time;

(4) Making or publishing any false or disparaging statement or representation of or concerning any competitor or the products of any competitor;

(5) Doing or engaging in any of the following acts, practices or things for the purpose or with the effect of injuring competitors: (1) causing or encouraging employees of any competitor to institute vexatious or unfounded lawsuits against such competitor, (2) inducing or attempting to induce employees of any competitor to leave the employ of such competitor, or (3) causing or attempting to cause customers of any competitor to cancel orders for cooking utensils sold by such competitor.

It is further ordered, That the respondent, Theodore N. Gould, 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.

IN THE MATTER OF
THE ARMY AND NAVY PUBLISHING COMPANY, ETC.,
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 5475. Complaint, Dec. 19, 1946—Decision, Feb. 17, 1950

In considering the possibility of avoiding the absolute prohibition of such a trade name as "Army and Navy Photographic Bureau" to describe a business involving the private sale of photographs of men in military units, by requiring the use, in immediate connection therewith, of some qualifying or explanatory statement to the effect that the business involved was in fact that of a private concern, the Commission was of the view that said name was false *per se*, and that, such being the case, any additional words used in connection therewith would serve only to contradict the name rather than qualify it.

As respects the trade name "Army and Navy Publishing Company" and the question as to whether or not its absolute prohibition might not be avoided by requiring the use in immediate connection therewith of some qualifying or explanatory statement to the effect that the business involved was in fact a private business, the Commission was of the opinion that the representations implied therein were in part substantially true under the facts in the instant case, and that said trade name was not false *per se*, and that its misleading effect could be avoided by the use, in connection therewith, of an explanatory statement making it clear that the business was in fact a private one.

Where three partners engaged in the publication and interstate sale and distribution of books similar to college annuals, which contained reading matter of a descriptive and historical nature with respect to military units in the United States Armed Forces, including photographs of the personnel, and were prepared and published with the express permission and, to a substantial extent, with the cooperation and under the supervision of the military units involved, and were sold only to the men in the service—to whom the matter was usually presented in group meetings—and by mail to their families—

- (a) Represented or implied through the use of the words "Army and Navy" in their trade name "Army and Navy Publishing Company" that their business was a part of or was connected with the Army and Navy, and that their said publications were produced by or under the auspices of the Army or Navy; when in fact said business was a private concern; and

Where the aforesaid individuals and two others, engaged in the sale to the men and their families of enlargements of photographs made incident to the aforesaid publications—

- (b) Falsely represented and implied through the use of the trade name "Army and Navy Photographic Bureau," in connection therewith, that their business was a part of or connected with the United States Army and Navy, and that their photographs were produced by or under the auspices of the services;