

IN THE MATTER OF
MARTIN J. GOLDSTEIN AND ISABEL GOLDSTEIN TRADING AS REALFLEX PRODUCTS CO.

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

Docket 5413. Complaint, Jan. 7, 1946—Decision, June 14, 1950

Where the words "Champion," "Goodyear," and "Eveready" had been used for many years in the corporate names and as trade names for the spark plugs and other automotive products made by well known companies, and the products of such companies had become well and favorably known to the purchasing public, members of which had developed a preference for them; and thereafter two partners, engaged in the interstate sale and distribution of ignition cable sets or, as sometimes referred to, spark plug cable sets, for use on automobiles—

- (a) Adopted and used the trade names and marks of well and favorably known concerns for their own said products, including the trade names "Champion," "Goodyear," and "Eveready," which they printed and made use of, along with the familiar picture of the winged foot in conjunction with the name Goodyear, on cards and in price lists and other advertising literature, and represented thereby that their said products were made by well known concerns;

When in fact said concerns did not make or have any connection with the spark cable sets sold by them, and aforesaid partners' use of said trade names was without the consent or approval of such concerns; and

- (b) Represented that their sets were made with new cables of the same quality as those used on Government planes in combat through stating in circulars distributed among prospective customers, "Spark Plug Cable Sets Made with the Identical 7 M. M. Stainless Steel Conductor—High Tension Cable Being Used To-day by the U. S. Government Exclusively on all War Planes in Actual Combat";

The facts being that when, due to wartime restrictions, said individuals were unable to purchase new cable directly from manufacturers, they purchased and used large quantities of cable which had been rejected for use on combat planes because of being obsolete or otherwise not meeting Government specifications, and also cable known as scrap material, some containing marks or scars indicating that it had been previously used;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce it to purchase substantial quantities of their said products; and with the result of placing in the hands of purchasers of their products for resale a means or instrumentality whereby they could mislead and deceive the purchasing public as to the true facts in regard to said products:

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.

910

Complaint

As respects the additional charges in the complaint that respondents falsely represented that they owned, operated or directly and absolutely controlled a plant or plants wherein were made the products offered by it, and falsely represented through use of the trade name "Zenith" that their products were manufactured by Zenith Radio Corp., such charges were not sustained by the evidence.

Before *Mr. Henry P. Alden*, trial examiner.

Mr. D. C. Daniel and *Mr. Charles S. Cox* for the Commission.

Booth, Lipton & Lipton, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Martin J. Goldstein and Isabelle Goldstein, individually and as copartners trading under the name of Realflex Products Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Martin J. Goldstein and Isabelle Goldstein are copartners, trading under the name of Realflex Products Co., with their principal office and place of business located at 335 Thirty-eighth Street, Brooklyn, N. Y. Respondents also maintain a place of business at 5216 Third Avenue, Brooklyn, N. Y. Respondents are now, and for more than 5 years last past have been, engaged in the sale and distribution of automotive specialties, including spark plug cable sets, to retail dealers and others located in the various States of the United States and in the District of Columbia, who, in turn, sell said products to the purchasing public.

Respondents cause, and have caused, said products, when sold, to be transported from their aforesaid places of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Respondents 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. 2. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said merchandise, respondents cause, and have caused, many false, misleading, and deceptive statements and representations respecting their said products

Complaint

46 F. T. C.

to be inserted in their price lists, invoices, catalogs, and other printed or written matter, and on the cartons or boxes containing said products. Among and typical of such false and misleading statements and representations are the following:

FOR THE DURATION—BUY
Spark Plug Cable Sets
Made with the Identical 7 M. M.
Stainless Steel Conductor—High Tension Cable
Being Used To-day by the U. S. Government Exclusively
On all War Planes in Actual Combat

* * * * *

Manufactured & Guaranteed by
REALFLEX PRODUCTS CO.
Brooklyn, N. Y.

By the use of the foregoing statements respondents represent, and have represented:

- (1) That their products are made or manufactured of new cables which are of the same quality as those cables used on combat airplanes of the United States;
- (2) That respondents own, operate, or directly and absolutely control a plant or plants wherein are made or manufactured the products offered for sale by them.

In truth and in fact respondents' said spark plug cable sets are not made of new materials of the same quality as the cables used in said combat airplanes, but, on the contrary, are made of second-hand, scrap cables which were rejected by United States Government inspectors as unfit for such use because of imperfections in said cables. Moreover, respondents neither own, operate, nor directly, nor absolutely control the plants in which their said products are made or manufactured. All the products sold and offered for sale by them are manufactured in plants owned, operated, and controlled by others.

PAR. 3. The Champion Spark Plug Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Toledo, Ohio. It is now, and for more than 25 years last past has been, engaged in the manufacture, sale, and distribution of automotive and metallic specialties, including spark plugs and porcelain therefor. It causes, and has caused, its said products, when sold, to be transported from its said place of business to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. For over 25 years last past the Champion Spark Plug Co., in addition to using the word

"Champion" in its corporate name, has used such word as a trade name or designation applying to its automotive and metallic specialties, including spark plug sets.

PAR. 4. The Goodyear Tire & Rubber Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in Akron, Ohio. It has subsidiaries located in various other States of the United States. It is now, and for more than 25 years last past has been, engaged in the manufacture, sale, and distribution, among other things, of automobile tires and tubes. It causes, and has caused, said products, when sold, to be transported from its said places of business to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. For over 25 years last past the Goodyear Tire & Rubber Co. has, in addition to using the word "Goodyear" as a part of its corporate name, used such word as a trade name and designation for its automobile tires and tubes and other articles of merchandise.

PAR. 5. Zenith Radio Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at Chicago, Ill. It is now, and for more than 15 years last past has been, engaged in the manufacture, sale, and distribution, among other things, of radios, radio parts, and other articles of merchandise. It causes, and has caused, said products, when sold, to be transported from its aforesaid principal place of business to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. For more than 15 years last past the Zenith Radio Corp. has used the word "Zenith" as a part of its corporate name and as a trade name or designation for its products.

PAR. 6. The Champion Spark Plug Co., the Goodyear Tire & Rubber Co., and the Zenith Radio Corp., as a result of the long and widespread usage of their corporate and trade names, as hereinabove set forth, have caused their products to become well and favorably known by the purchasing public. As a result thereof, members of the purchasing public have developed a preference for the products manufactured, sold, and distributed by such companies.

PAR. 7. In the course and conduct of their business, as aforesaid, and for the purpose of creating a demand on the part of the purchasing public for their said products, respondents adopted and began to use as trade names the words "Champion," "Goodyear," and "Zenith," respectively. In advertising, including catalogs, and on price lists,

Findings

46 F. T. C.

letterheads, and in legends on cartons and boxes respondents have made, and do now make, use of such terms to designate their said products. Such use of said terms on the part of respondents began long after the said Champion Spark Plug Co., the Goodyear Tire & Rubber Co., and the Zenith Radio Corp. had adopted and begun to use, in connection with the sale of their respective products, the trade names and terms "Champion," "Goodyear," and "Zenith," and was, and at all times has been, without the consent of said companies, who were not the manufacturers of respondents' products.

In addition to the foregoing trade names, respondents have used and are using the trade names of various other well and favorably known concerns as names or designations for respondents' products in the same manner as names or designations for respondents' products in the same manner and with the same effect as hereinabove related to the trade names of the Champion Spark Plug Co., the Goodyear Tire & Rubber Co., and the Zenith Radio Corp.

By the aforesaid use of such trade names and designations respondents represent, and have represented, that the products sold by them are products manufactured by the said well and favorably known concerns.

In truth and in fact respondents' products are not, and have not been, manufactured by said concerns.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, a tendency and capacity to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and statements are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' merchandise. By said acts and practices respondents also place in the hands of purchasers of their merchandise for resale a means and instrumentality whereby they may, and do, mislead and deceive the purchasing public as to the true facts in regard to said respondents' merchandise.

PAR. 9. The aforesaid acts and practices of the respondents, as hereinabove 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 January 7, 1946, issued and sub-

sequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, in violation of the provisions of that act. After the issuance of said complaint and the filing of respondents' answer thereto, 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 office of the Commission. Thereafter, this proceeding regularly came on for final consideration by the Commission on the complaint, answer, testimony, and other evidence, recommended decision of the trial examiner and exceptions thereto filed by counsel for respondents, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the trial examiner, 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. Respondents, Martin J. Goldstein and Isabel Goldstein (incorrectly named in the complaint as Isabelle Goldstein), were copartners doing business under the trade name of Realflex Products Co. from about the middle of 1942 until January 1, 1946, with their principal place of business located at 335 Thirty-eighth Street, Brooklyn, N. Y., and a branch place of business during a part of that time located at 5216 Third Avenue, Brooklyn, N. Y. Respondents were engaged in, among other things, the sale and distribution of ignition cable sets, sometimes referred to as spark plug cable sets, for use on automobiles. Respondents caused their said products when sold to be transported from their aforesaid places of business to the purchasers thereof located in various other States and in the District of Columbia.

Respondent Martin J. Goldstein has been engaged in the same type of business since 1926, at which time he and one Irving Beck organized a corporation, Real Products Corp., of which Martin J. Goldstein was the treasurer and said Beck was the president. Said corporation was dissolved in 1933. From 1933 until 1935, respondent Martin J. Goldstein did business as an individual under the trade name of Realflex Products Co. In 1935, Martin J. Goldstein became president of the Realflex Products Corp., which position he held until that corpora-

Findings

46 F. T. C.

tion was dissolved in 1941. On December 31, 1935, the Commission issued an order to cease and desist against the said corporations, Real Products Corp. and Realflex Products Corp., prohibiting them from using the trade name "Champion" as a designation or trade name for their automobile spark plug cable sets. On or after February 25, 1941, respondent Martin J. Goldstein began doing business as an individual under the name of Realflex Products Co. About the middle of 1942, respondent Martin J. Goldstein and his wife, respondent Isabel Goldstein, became partners in the business and continued to operate under the name Realflex Products Co., until January 1, 1946. The Realflex Products Co., Inc., was incorporated by respondents on January 1, 1946, and the business formerly conducted by the respondents has been conducted by said corporation since that date.

PAR. 2. In the course and conduct of their aforesaid business, respondents published and distributed among their customers and prospective customers a circular which contained the following statement:

FOR THE DURATION—BUY
Spark Plug Cable Sets
Made with the Identical 7 M. M.
Stainless Steel Conductor—High Tension Cable
Being Used To-day by the U. S. Government Exclusively
On all War Planes in Actual Combat

Through the use of said statement respondents represented that their spark plug cable sets were made with new cables of the same quality as those cables used on United States Government planes in actual combat.

PAR. 3. Due to wartime restrictions, respondents were unable to purchase new cable of the kind ordinarily used in spark plug cable sets directly from the manufacturers thereof. As a result, respondents purchased and used in their spark plug cable sets large quantities of cable which had been rejected for use on combat planes because of being obsolete, or otherwise not meeting Government specifications, and also cable known as scrap material. Some of the cable so purchased and used by respondents contained marks or scars indicating that the cable had been previously used. The representation by respondents that their spark plug cable sets were made with new cables of the same quality as those cables used on United States Government planes in actual combat was false, misleading, and deceptive.

PAR. 4. In the course and conduct of their aforesaid business, respondents have adopted and used the trade names and marks of well and favorably known concerns as names or designations for their

spark plug cable sets. Included in the trade names so adopted and used were the trade names "Champion," "Goodyear," and "Eveready." Such names were printed on cartons in which the sets were sold and also in price lists and other advertising literature. Respondents also used in conjunction with the word "Goodyear" a picture of the winged foot.

PAR. 5. The word "Champion" has been used by the Champion Spark Plug Co. of Toledo, Ohio, for more than 30 years as a part of its corporate name and as a trade name for the spark plugs it manufactures. The word "Goodyear" has been used by the Goodyear Tire & Rubber Co., of Akron, Ohio, for more than 40 years as a part of its corporate name and, in conjunction with a picture of a winged foot, as a trade name or mark for its products, which include automobile tires, tubes, and accessories. The word "Eveready" has been used by the National Carbon Co., Inc., New York, N. Y., for more than 20 years as a trade name for various automotive products which it manufactures and sells.

As a result of long and widespread usage and extensive advertising by Champion Spark Plug Co., Goodyear Tire & Rubber Co., and National Carbon Co., Inc., of their respective trade names, their products have become well and favorably known to the purchasing public and members of the purchasing public have developed a preference for the products manufactured, sold, and distributed by those corporations.

PAR. 6. By the use of the trade names and designations as set forth in paragraph 4 hereof, respondents have represented that their spark plug cable sets were made by well and favorably known concerns, including Champion Spark Plug Co., Goodyear Tire & Rubber Co., and National Carbon Co., Inc. Said corporations did not make, or have any connection with, the spark plug cable sets sold by respondents, and respondents' use of said trade names was without the consent or approval of those corporations. The Commission finds that the use by the respondents of the trade names and marks of well and favorably known concerns as names or designations for their spark plug cable sets was misleading and deceptive. The record establishes that respondents' wrongful use of such names had the tendency and capacity to mislead and deceive.

PAR. 7. In addition to the matters set forth above, the complaint herein charged also that the respondents have falsely represented that they own, operate, or directly and absolutely control a plant or plants wherein are made or manufactured the products offered for sale by them, and falsely represented, by use of the trade name "Zenith," that

Order

46 F. T. C.

their products are manufactured by Zenith Radio Corp. These charges in the complaint have not been sustained by the evidence.

PAR. 8. The use by the respondents of the false, misleading, and deceptive statements and representations set forth hereinabove had 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 were true and to cause a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' merchandise. By said acts and practices respondents also placed in the hands of purchasers of their products for resale a means or instrumentality whereby they could mislead and deceive the purchasing public as to the true facts in regard to respondents' products.

CONCLUSION

The acts and practices of the respondents as hereinabove 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, the answer of the respondents, 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, recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel, 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, Martin J. Goldstein and Isabel Goldstein, individually and trading as Realflex Products 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, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of spark plug cable sets or other automotive specialties, do forthwith cease and desist from:

1. Representing, directly or indirectly, that their said spark plug cable sets are made with cable of the same quality as the cable used on United States Government planes in combat or that their said

910

Order

spark plug cable sets are made from new and unused cable, when such is not a fact.

2. Using the words "Champion," "Goodyear," or "Eveready," or any of them, either alone or in connection with any other word or words, to designate, describe, or refer to their said products.

3. Representing, in any manner, that their said products are the products of, or are made by, Champion Spark Plug Co., Goodyear Tire & Rubber Co., or National Carbon Co., Inc., or that any of said corporations has any connection with the manufacture or sale of said products.

4. Representing, through the use of the trade name or mark of any other concern or concerns engaged in the manufacture, sale, or distribution of automotive specialties, or in any other manner, that respondents' said products are the products of, or are made by, such other concerns.

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.

IN THE MATTER OF
NICHOLAS SAGE TRADING AS GEO-MINERAL CO.

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

Docket 5666. Complaint, June 20, 1949—Decision, June 14, 1950

The generic term "anemia" embraces a considerable number of disease conditions, and it is only in that very small percentage of the cases of anemia encountered in medical practice, which is caused by an inadequate intake of iron in the diet, that a preparation such as that involved in the instant case would have any therapeutic value or be effective in enriching the blood or intending to produce rich red blood; and such a preparation would not be of value in the treatment of iron deficiency anemia resulting from an inadequate absorption of iron by the intestine or an increased loss of iron as in chronic bleeding; or in the treatment of pernicious anemia and other macrocytic anemias or those caused by derangements of the blood-forming organs of the body or conditions resulting in increased destruction of red blood cells; or in that of anemia secondary to severe or chronic diseases such as cancer, kidney disease, infections, etc.

Such symptoms or conditions as headaches, nervousness and dizzy spells, lack of vitality, energy, ambition, sparkle in the eyes and brilliance of the mind, poor appetite, underweight, weakened sexual powers and similar conditions may be due to anemia resulting from an inadequate intake of iron in the diet or to any of the numerous other types of anemia, and may also be due to a wide variety of disease conditions which are in no wise related to anemia. In only an extremely small percentage of persons having the aforesaid symptoms, however, are they the result of anemia due to a simple deficiency of iron in the diet, and it is only in said extremely small percentage of cases that such a preparation as that involved in the instant case would have any therapeutic value in their correction or relief.

Where an individual engaged in the interstate sale and distribution of a preparation designated as "Geo-Mineral" from his place of business and from his suppliers to dealers and individuals; in advertising in various newspapers and by other means—

- (a) Falsely represented that his said Geo-Mineral, taken as directed, was a competent and effective treatment for and would cure stomach and kidney ailments, bloating, constipation, bowel adhesions, rheumatism, arthritis and neuritis, and would relieve the pains of rheumatism and arthritis;
- (b) Represented that it was a competent and effective treatment for and would cure headaches and nervousness or dizzy spells and would restore vitality, energy or weakened sexual power, improve appetite, and increase weight and energy, build the blood, and correct dullness, tiredness, laziness, poor appetite or a lack of ambition to work or play, or of sparkle in the eyes or of mental brilliance, or similar symptoms or conditions;

The facts being it was of no value for the treatment of such conditions except in those very limited instances in which they are due solely to an iron deficiency diet rather than to numerous other possible causes;