

Syllabus

IN THE MATTER OF

HOUSE OF PLATE, 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 5744. Complaint, Mar. 1, 1950—Decision, June 20, 1951

Where the president of a corporation prior to its discontinuance of business, who directed and controlled its acts and practices, engaged in the competitive interstate sale and distribution of small plastic ducks under a course of conduct which included the shipment of said products to selected retailers whom he had theretofore advised of the "Reddest, Hottest, Sizzling Seller that has come your way in years," without further specification as to the merchandise, and that "so unless you tell us not to, we will be forwarding you the perfect test that demonstrates and sells on sight * * * a 20 day free trial offer without your investing a cent," and to whom, failing to receive a reply he sent six ducks, together with a descriptive circular showing the fair trade resale price, a return envelope on which postage was to be paid by the addressee, with the price to the retailer printed on the inside of the flap, and a letter advising him that by virtue of his reputation he was being intrusted with the shipment "without delay through the mails"; followed by an invoice subject to discount for payment within 10 days and other reminders and demands for payment—

- (a) Represented, directly and by inference, that the retail merchant receiving the ducks was obligated to pay therefor or return them, through the act of shipping them without any previous order or authorization and making a charge therefor, and through the letter accompanying the shipment and subsequent letters;
- (b) Represented that said individual was insured against the loss of the ducks in transit through a postal card which he sent to the retail merchant following a final letter insisting that the bill be paid or the ducks returned at the merchant's expense, and in which the retailer was advised that insurance claim for loss of the ducks in transit was being filed and information was requested on the attached business reply card as to whether they had been sold, would be returned or had not been received; and
- (c) Represented through letters sent under the name of the "Certified Credit Bureau" and a different address, that the ducks were shipped under a contract of consignment, that the merchant's credit rating was endangered by failure either to pay for the ducks or return them, and that the account had been placed in the hands of an independent collection agency;

The facts being that the recipient of merchandise shipped without previous order and in the absence of an agreement to purchase, is not obligated to pay therefor or to return it; failure of the merchants to answer said first letter could not under the circumstances be considered as authorizing shipment and created no contracts of consignment; failure to pay for or return the same would not jeopardize the credit rating of the recipient with legitimate businessmen; said individual was not insured against loss in transit of the unauthorized shipment of said products; and said "Certified Credit Bureau"

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was a fictitious name adopted by him and was not an independent collection agency;

With capacity and tendency to cause retail merchants erroneously to believe that said representations were true; create doubts in their minds as to their rights and obligations in regard to said merchandise and mislead and deceive them into the erroneous belief that they were obligated either to pay for or return the same and cause them to pay therefor; unfairly harass and inconvenience them; and unfairly divert trade to said individual from his competitors:

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

Mr. Joseph Callaway for the Commission.

Slyfield, Hartman, Reitz & Tait, of Detroit, Mich., 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 House of Plate, Inc., a corporation and Robert T. Plate, an individual, 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. Respondent, House of Plate, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 9325 East Forest Avenue, Detroit 13, Mich.

The individual respondent, Robert T. Plate, is president of the corporate respondent, has his office and principal place of business at the address of said corporate respondent, and has at all times hereinafter mentioned, formulated, directed, and controlled the acts, policies, and business affairs of the corporate respondent, including the acts and practices hereinafter mentioned.

PAR. 2. Respondents are now and have been for the past several years engaged in the business of selling novelty merchandise at wholesale. Among the novelty items sold by respondents are small plastic ducks, which they call "Glub Glub." Respondents cause such plastic ducks to be transported from their place of business in the State of Michigan to purchasers and prospective purchasers located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said

plastic ducks in commerce among and between the various States of the United States. Respondents' volume of business in said commerce is substantial.

PAR. 3. Respondents are now and have been at all times hereinafter mentioned in substantial competition with other persons, firms, and corporations engaged in the interstate sale of novelty merchandise, including plastic ducks, similar to those sold by respondents.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of said plastic ducks, respondents engaged in the following acts and practices:

(1) A letter was sent to a selected list of retailers which did not mention the ducks but referred to the "Reddest, Hottest, Sizzling Seller that has come your way in years." This letter says "so unless you tell us not to, we will be forwarding you the perfect test that demonstrates and sells on sight * * * a 20 days free trial offer without your investing a cent."

(2) If no response was received to this letter, six ducks were sent about 3 weeks later. The box in which the ducks were sent had several enclosures, a descriptive circular, showing the fair trade retail sale price of the ducks, a return envelope, on which postage was to be paid by the addressee, which also had printed on the inside of the flap, the price to the retailer of the six ducks and a letter which usually stated among other things: "Your reputation for fair dealing and alert merchandising places you among the carefully chosen few whom we can entrust to bring this to you without delay through the mails."

(3) About 3 days later the retail merchant received an invoice for the ducks and a statement that if paid within 10 days the bill could be discounted 20 percent. Several other letters and reminders of the shipment and the amount claimed to be due were sent the retail merchant, some just before and some just after the so-called 20-day trial period had expired.

(4) If nothing was heard from the retail merchant, another letter was sent within a short time, which insisted that the bill be paid or the ducks returned at the expense of the respondents.

(5) If no answer to the last-mentioned letter was received, the retail merchant was advised by post card that insurance claim for loss of the ducks in transit was being filed, and requesting that information be given on a business reply card attached as to whether the ducks had been sold, would be returned, or had not been received.

(6) A short while later, if nothing was heard from the retail merchant, a letter was sent by respondents on the letterhead of and

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signed by the Certified Credit Bureau which showed a different address from that of respondents. Although the wording of this letter varied from time to time, the following excerpt is typical:

From a financial viewpoint, it is inadvisable for any company or individual to jeopardize their credit rating by neglecting to either pay for or surrender consignment merchandise. * * * Before we proceed further, will you please advise us in the enclosed envelope, what your intentions are in respect to this claim?

PAR. 5. Through the act of shipping the ducks without any previous order or authorization, and making a charge therefor, respondents represented, directly and by inference, that the retail merchant receiving them was obligated to pay for the merchandise or return it. This representation was also made through the letter accompanying the shipment and the subsequent letters. Through the use of the post card mentioned above, respondents represented directly and by inference that they were insured against loss of the ducks in transit. Through the letters sent under the name of the Certified Credit Bureau respondents represented, directly and by inference, that the ducks were shipped under a contract of consignment, that the retail merchants' credit rating was endangered by failure to either pay for the ducks or return them, and that the account had been placed in the hands of an independent collection agency for legal action if necessary.

PAR. 6. The aforesaid representations were false, deceptive, and misleading. In truth and in fact, failure of the retail merchants receiving respondents' first letter, to answer it, cannot, under the circumstances be considered as authorizing shipments of the ducks, and created no contract of consignment. The recipient of an unauthorized shipment of merchandise is not obligated to either pay for the merchandise or return it, and failure to do either does not jeopardize the credit rating of such retail merchants with legitimate businessmen. The respondents were not insured against loss in transit of the unauthorized shipments of the ducks. The name "Certified Credit Bureau" was a fictitious one adopted by respondents who well knew that legal action could not be maintained for either payment or return of the goods and was not an independent collection agency with which accounts have been placed by respondents for collection.

PAR. 7. The use by the respondents of the aforesaid acts and practices had the capacity and tendency to confuse many retail merchants, to create doubt in their minds as to their rights and obligations in regard to such merchandise and caused many of such merchants to pay for the merchandise so shipped, because of such doubts and confusion.

It also had the tendency and capacity to mislead and deceive a substantial number of other retail merchants into the erroneous belief that they were obligated to either pay for the merchandise or return it and caused many of them to pay for such merchandise because of such erroneous belief. It further had the tendency and capacity to and did unfairly harass and inconvenience those merchants who were neither confused or deceived. For the above reasons, the use by the respondents of the aforesaid acts and practices had the capacity and tendency to unfairly divert trade from their competitors.

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 methods of competition and 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 March 1, 1950, issued and subsequently served its complaint in this proceeding upon the respondents, House of Plate, Inc., a corporation, and Robert T. Plate, individually and as president of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of the provisions of that act. No answer was filed by the respondents. On June 28, 1950, a stipulation as to the facts was entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and the individual respondent, Robert T. Plate, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint against Robert T. Plate, an individual, or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or filing of briefs. On July 3, 1950, a memorandum signed by the said Daniel J. Murphy was filed with the Commission stating that respondent House of Plate, Inc., a corporation, is no longer doing business and has filed a petition for dissolution in the Michigan court having jurisdiction.

The Commission having served upon the respondents its tentative decision, together with leave to show cause why such tentative decision

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should not be entered as the final decision of the Commission, and said respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the said complaint, stipulation, and memorandum, said stipulation having been approved, accepted, and filed; 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. Respondent, House of Plate, Inc., was a corporation organized and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 9325 East Forest Avenue, Detroit 13, Mich. Said corporate respondent is no longer doing business. A petition for its dissolution has been filed in the Michigan courts. The Commission, having no reason to believe that the said corporate respondent will not be dissolved, is of the opinion that this complaint should be dismissed as to the said corporate respondent without prejudice to the right of the Commission to issue a new complaint or to take such further or other action against said respondent at any time in the future as may be warranted by the then existing circumstances. The term "respondent" as used hereinafter will, therefore, not include respondent House of Plate, Inc., unless the contrary is indicated.

Respondent, Robert T. Plate, an individual, was president of the corporate respondent, House of Plate, Inc., had his office and principal place of business at the address of said corporate respondent, and did at all times hereinafter mentioned formulate, direct, and control the acts, policies, and business affairs of the corporate respondent, including the acts and practices hereinafter mentioned.

PAR. 2. Respondent, Robert T. Plate, has for the past several years engaged in the business of selling novelty merchandise at wholesale. Among the novelty items sold by respondent were small plastic ducks. Respondent caused such plastic ducks to be transported from his place of business in the State of Michigan to purchasers and prospective purchasers located in various other States of the United States. Respondent maintained and at all times mentioned herein has maintained a course of trade in said plastic ducks in commerce among and between the various States of the United States. Respondent's volume of business in said commerce was substantial.

PAR. 3. Respondent, Robert T. Plate, was at all times mentioned hereinafter in substantial competition with other persons, firms, and corporations engaged in the interstate sale of novelty merchandise, including plastic ducks, similar to those sold by respondent.

PAR. 4. In the course and conduct of his said business, and for the purpose of inducing the purchase of said plastic ducks, respondent engaged in the following acts and practices:

(1) A letter was sent to a selected list of retailers which did not mention the ducks but referred to the "Reddest, Hottest, Sizzling Seller that has come your way in years." This letter says "so unless you tell us not to, we will be forwarding you the perfect test that demonstrates and sells on sight * * * a 20-day free trial offer without your investing a cent."

(2) If no response was received to this letter, six ducks were sent about 3 weeks later. The box in which the ducks were sent had several enclosures, a descriptive circular, showing the fair trade retail sale price of the ducks, a return envelope, on which postage was to be paid by the addressee, which also had printed on the inside of the flap the price to the retailer of the six ducks and a letter which usually stated among other things:

Your reputation for fair dealing and alert merchandising places you among the carefully chosen few whom we can entrust to bring this to you without delay through the mails.

(3) About 3 days later the retail merchant received an invoice for the ducks and a statement that if paid within 10 days the bill could be discounted 2 percent. Several other letters and reminders of the shipment and the amount claimed to be due were sent the retail merchant, some just before and some just after the so-called 20-day trial period had expired.

(4) If nothing was heard from the retail merchant, another letter was sent within a short time, which insisted that the bill be paid or the ducks returned at the expense of the respondent.

(5) If no answer to the last-mentioned letter was received, the retail merchant was advised by postal card that insurance claim for loss of the ducks in transit was being filed, and requesting that information be given on a business reply card attached as to whether the ducks had been sold, would be returned, or had not been received.

(6) A short while later, if nothing was heard from the retail merchant, a letter was sent by respondent on the letterhead of and signed by the Certified Credit Bureau which showed a different address from that of respondent. Although the wording of this letter varied from time to time, the following excerpt is typical:

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From a financial viewpoint, it is inadvisable for any company or individual to jeopardize their credit rating by neglecting to either pay for or surrender consignment merchandise. * * * Before we proceed further, will you please advise us in the enclosed envelope, what your intentions are in respect to this claim?

PAR. 5. Through the act of shipping the ducks without any previous order or authorization, and making a charge therefor, respondent represented, directly and by inference, that the retail merchant receiving them was obligated to pay for the merchandise or return it. This representation was also made through the letter accompanying the shipment and the subsequent letters. Through the use of the postal card mentioned above, respondent represented directly and by inference that he was insured against loss of the ducks in transit. Through the letters sent under the name of the Certified Credit Bureau respondent represented, directly and by inference, that the ducks were shipped under a contract of consignment, that the retail merchant's credit rating was endangered by failure to either pay for the ducks or return them, and that the account had been placed in the hands of an independent collection agency.

PAR. 6. In truth and in fact, failure of the retail merchants receiving respondent's first letter to answer it, could not, under the circumstances, be considered as authorizing shipment of the ducks, and created no contract of consignment. The recipient of merchandise shipped without a previous order and in the absence of an agreement to purchase is not obligated to pay for the merchandise or to return it, nor will failure to pay for or return such merchandise jeopardize the credit rating of the recipient with legitimate businessmen. The respondent was not insured against loss in transit of the unauthorized shipments of the ducks. The Certified Credit Bureau was a fictitious name adopted by the respondent and was not an independent collection agency.

PAR. 7. The use by respondent, Robert T. Plate, of the aforesaid acts and practices has been and is deceptive and misleading and has had and now has the capacity and tendency to cause retail merchants erroneously to believe that said representations were and are true; to create doubts in their minds as to their rights and obligations in regard to merchandise shipped to them under the circumstances described; to mislead and deceive retail merchants into the erroneous belief that they were obligated to either pay for the merchandise or return it and to cause such merchants to pay for such merchandise; to unfairly harass and inconvenience such merchants; and to unfairly divert trade to the respondent from his competitors.

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CONCLUSION

The aforesaid acts and practices of the respondent, Robert T. Plate, as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute 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, a stipulation as to the facts entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and the individual respondent, Robert T. Plate, in which stipulation the said individual respondent waived all intervening procedure and further hearing as to said facts, and a memorandum signed by the said Daniel J. Murphy stating that respondent House of Plate, Inc., a corporation, is in the process of dissolution in the Michigan courts, and the Commission having made its findings as to the facts and its conclusion that the individual respondent, Robert T. Plate, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Robert T. Plate, an individual, his agents, representatives, and employees, in connection with the offering for sale, sale, or distribution of novelty merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a recipient of merchandise shipped without a previous order and in the absence of an agreement to purchase is obligated to pay for the merchandise or to return it.

2. Representing, directly or by implication, that failure of a recipient to either pay for or return merchandise shipped to it without a previous order and in the absence of an agreement to purchase will jeopardize the credit rating of such recipient.

3. Representing, directly or by implication, that merchandise shipped without a previous order or agreement to purchase was shipped under a contract of consignment.

4. Representing, directly or by implication, that merchandise is insured against loss in transit when it is not so insured.

5. Representing by the use of the name "Certified Credit Bureau," or any other fictitious name, or in any other manner, that an account

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has been placed in the hands of a collection agency when the account has not been so placed.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondent, House of Plate, Inc., a corporation, without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against said respondent at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That respondent, Robert T. Plate, an individual, shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

WALTER W. GRAMER

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5746. Complaint, Mar. 1, 1950—Decision, June 21, 1951*

Where an individual engaged in the interstate sale and distribution of his drug preparation "Sulgly-Minol"; in advertisements through various circulars, including a card with testimonials printed on one side and a statement of said individual on the other—

- (a) Falsely represented that said preparation was a cure and remedy for athlete's foot, and an adequate and competent treatment therefor;
- (b) Falsely represented that it was a cure and remedy for all types of arthritis and an adequate and competent treatment therefor, and for the manifestations, including pain, soreness, and stiffness, of arthritis of all types; and
- (c) Falsely represented that his said preparation was an effective treatment for boils and acne;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statement and representations were true, and thereby into the purchase of substantial quantities of said product:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Arthur A. Logefeil, of Minneapolis, Minn., 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 Walter W. Gramer, an individual, 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. Respondent, Walter W. Gramer, is an individual, having an office and principal place of business at 3409 Blaisdell Avenue, Minneapolis, Minn.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing a drug