

IN THE MATTER OF
ELBERT W. BISHOP ET AL. TRADING AS SILOGERM
COMPANY

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

Docket 5186. Complaint, Mar. 6, 1944—Decision, Oct. 19, 1951

Where four partners engaged in the interstate sale and distribution, under the trade name "Silogerm," of a culture containing lactic acid-producing bacteria for use in making silage; in advertising their said product in newspapers and periodicals and through circulars, leaflets and other advertising material—

- (a) Represented that the treatment of silage with their product prevented mold and decay; notwithstanding the fact that lactic acid bacteria will not prevent mold or decay in silage which is not properly packed, or prevent spoilage due to putrifiactive organisms in the absence of sufficient carbohydrate material—which is available in many forage crops and can be added to others—for said bacteria to feed on; formation of mold and resultant decay is prevented by proper packing of the chopped forage to exclude air and prevention of the growth of putrifiactive organisms is insured by the presence of sufficient acid, furnished in the fermenting process, when sufficient carbohydrate materials are available;
- (b) Falsely represented that both grain and corn silage were substantially improved by its use, that it made corn silage more palatable, and rendered more minerals in such silage available to animals; and
- (c) Falsely represented that the use of their said product substantially increased the feed value of silage and was of significant value in keeping animals in good condition;

The facts being that neither lactic acid nor lactic acid-producing bacteria in silage increase its value except to the extent that they prevent spoilage as above described; and use of said culture would not result in the final product having a higher lactic acid content than untreated silage;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true and thereby induce its purchase of their 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. Earl J. Kolb*, trial examiner.

Mr. Edward L. Smith and *Mr. George M. Martin* for the Commission.

Darby & Darby, 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 Elbert W. Bishop, Willard R. Bishop, Harold S. Bishop and Evelyn M. Heigis, copartners trading as Silogerm 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. Elbert W. Bishop, Willard R. Bishop, Harold S. Bishop, and Evelyn M. Heigis are individuals and copartners, trading as the Silogerm Co., with their office and principal place of business located at 82 Washington Street in the city of Bloomfield, State of New Jersey.

PAR. 2. Said respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of bacteria cultures for the treatment of ensilage and designated as Silogerm. In the course and conduct of their aforesaid business, respondents cause their product when sold to be transported from their place of business in the State of New Jersey to purchasers thereof located 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 product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States mails and by various other means in commerce as commerce is defined by the Federal Trade Commission Act. Respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as herein set forth, by United States mails, by advertisements inserted in newspapers and periodi-

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cals, and by means of circulars, leaflets and other advertising material are the following:

SILGERM—For the prevention of mould and decay in upright or trench silos.

CORN SILAGE—Silogerm Makes Good Corn Silage Better. More minerals Available. More Palatable, and more valuable as a feed—Helps keep animals in good condition.

GREEN SILAGE—Farmers who use Silogerm say that it helps make Better Silage out of Green Hay, Mixed Grass, Alfalfa, Soy Beans, Clovers, Green Grain or any green crops, than any other method they know of and besides it costs only very little for enough Silogerm to treat a ton on ensilage.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set forth herein, respondents represent that the treatment of ensilage with their product prevents mold and decay; that both green and corn ensilage are substantially improved by its use; that treatment therewith makes corn ensilage more palatable, renders more minerals in such ensilage available to animals, substantially increases the value of such ensilage as feed and is of significant value in keeping animals in good condition.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, the treatment of ensilage with respondents' product will not prevent mold or decay. Neither green nor corn ensilage will be substantially improved by the use of said product. Its use will not make corn ensilage more palatable nor will more minerals in such ensilage be made available to animals. The value of corn ensilage will not be improved to any substantial degree by the use of said product, and it will be of no value as a conditioner of animals.

PAR. 6. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said product.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 6, 1944, issued and subse-

quently served its complaint in this proceeding upon the respondents named in the caption hereof charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' 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 was duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of the trial examiner and exceptions thereto by counsel for respondents and counsel supporting the complaint and the briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order ruling on 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Elbert W. Bishop, Willard R. Bishop, Harold S. Bishop, and Evelyn M. Heigis are individuals and co-partners trading as Silogerm Company with their place of business located at 82 Washington Street in the city of Bloomfield, State of New Jersey.

PAR. 2. Since 1942 the respondents have been engaged in the sale and distribution, under the trade name "Silogerm," of a culture containing lactic acid producing bacteria, designed for use in the process of making silage. The respondents do not manufacture Silogerm but purchase it from the Earp Laboratories located at Hampton, New Jersey. In the course and conduct of their business, respondents cause said product, when sold, to be transported from their place of business in the State of New Jersey or from the place of business of the Earp Laboratories in the State of New Jersey to purchasers thereof located 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 product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said product, re-

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spondents have circulated among their prospective purchasers throughout the United States, by means of advertisements inserted in newspapers and periodicals and by means of circulars, leaflets, and other advertising materials, many statements and representations. Among and typical of such statements and representations are the following:

SIOGERM—For the prevention of mold and decay in upright or trench silos

CORN SILAGE—Silogerm Makes Good Corn Silage Better. More Minerals Available. More palatable, and more valuable as a feed—Helps keep animals in good condition.

GREEN SILAGE—Farmers who use Silogerm say that it helps make Better Silage out of Green Hay, Mixed Grass, Alfalfa, Soy Beans, Clovers, Green Grain or any green crops, than any other method they know of and besides it costs only very little for enough Silogerm to treat a ton of ensilage.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set forth herein, respondents have represented that the treatment of silage with their product prevents mold and decay; that both green and corn silage are substantially improved by its use; that treatment therewith makes corn silage more palatable, renders more minerals in such silage available to animals, substantially increases the value of such silage as feed and is of significant value in keeping animals in good condition.

PAR. 5. One of the most important considerations in the process of making silage is the proper packing of the chopped forage in the silo so as to exclude as much air as possible. The exclusion of air prevents the formation of molds in the silage and resultant decay, but it does not prevent spoilage caused by the growth of certain putrefactive organisms in the silage. Therefore, another important consideration is to insure that there is sufficient acid present in the silage to prevent the growth of such putrefactive organisms. In the fermenting process of ensiling, acid is furnished by lactic acid producing bacteria. Where a sufficient amount of carbohydrate materials are readily available these bacteria will produce an adequate amount of acid to prevent the growth of putrefactive organisms in the silage. Sufficient carbohydrate material is readily available in many forage crops, such as corn, and can be added to or made available in others, such as alfalfa and soy beans. The presence of lactic acid bacteria will not prevent mold or decay in silage which is not properly packed, as the presence of air will permit mold to grow. This will not only spoil silage by causing it to become moldy but in addition the mold will destroy the acid content of the silage and thus permit spoilage due to the action of putrefactive organisms. Nor will the presence of lactic acid producing bacteria prevent spoilage of silage due to the action of

putrefactive organisms, even if air is excluded by proper packing, if there is insufficient carbohydrate material available for the lactic acid producing bacteria to feed on. But if the silo is properly packed and if sufficient carbohydrate material is available, these lactic acid producing bacteria will produce sufficient acid to prevent such spoilage.

Neither lactic acid nor lactic acid producing bacteria in silage render more minerals available to animals or have any value in keeping animals in good condition; nor do they make silage more palatable or increase the value of silage as feed, except to the extent that they prevent spoilage as above described.

PAR. 6. Adding Silogerm, a culture of lactic acid producing bacteria, to the forage used in making silage originally increases the bacterial count of lactobacilli on such forage. There are, however, millions of such bacteria already naturally present on such forage which, in the ensiling process, increases rapidly, reaching a bacterial count as high as one-half billion or more per gram of silage in a very short period of time. This increase is so great as to very shortly reduce to a negligible amount the difference between the bacterial count of the silage treated with Silogerm and that of the untreated silage. Thus the use of Silogerm has no practical effect during the fermenting process and does not result in the final product having a higher lactic acid content than untreated silage.

Therefore, the use of Silogerm in making silage will not prevent mold or decay, render minerals in silage available to animals, increase the value of the silage as feed, make the silage more palatable, improve the silage, or have any value in keeping animals in good condition. Respondents' statements and representations as hereinabove set forth are, therefore, false, misleading and deceptive.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and and mistaken belief, to purchase respondents' said product.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein 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.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and the exceptions thereto, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Elbert W. Bishop, Willard R. Bishop, Harold S. Bishop and Evelyn M. Heigis, individually and as copartners trading as Silogerm Company, or trading under any other name, and their representatives, agents, 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 said respondents' product Silogerm, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication:

1. That the use of the said product will prevent the formation of mold or decay in silage.
2. That the use of the said product in making silage will improve the silage, make such silage more palatable or render more minerals available to animals.
3. That the use of the said product in making silage increases the value of such silage as feed or has any value in keeping animals in good condition.

It is further ordered, That the respondents shall, within sixty (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.

Complaint

IN THE MATTER OF
MILTON SELBST ET AL. TRADING AS EXCELSIOR CLOAK
MANUFACTURING CO.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN
ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5803. Complaint, Sept. 1, 1950—Decision, Oct. 30, 1951

Where three individuals engaged in the manufacture, introduction into commerce, and sale therein of wool products as defined in the Wool Products Labeling Act of 1939—

Misbranding coats and other wool products in that they did not have affixed thereto stamps, tags or labels or other means of identification showing there constituent fibers, name or registered identification numbers of the manufacturer or other persons subject to said act, and other information required by said act and the Rules and Regulations promulgated thereunder:

Held, That such acts, practices and methods were in violation of said Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

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

Mr. Jesse D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Milton Selbst, Hyman Selbst, and Jacob Selbst, individually and as partners trading as Excelsior Cloak Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 respondents, Milton Selbst, Hyman Selbst, and Jacob Selbst, are partners trading as Excelsior Cloak Manufacturing Co., with their office and principal place of business located at 240 Market Street, Philadelphia, Pa.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, sale, transportation, and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce,