

Complaint

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IN THE MATTER OF

HERBST SHOE MANUFACTURING COMPANY

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

Docket 5843. Complaint, Jan. 25, 1951—Decision, Mar. 18, 1952

An orthopedic shoe is one made as prescribed by an orthopedic doctor to correct a special disorder or abnormality in a particular case, and, due to the causes and nature of abnormalities of the feet, to prescribe an orthopedic shoe for an individual in many cases necessitates a thorough physical examination of the individual by an orthopedic doctor to determine the cause of the trouble, often necessitating X-rays of particular areas of the body, or keeping the individual under observation and treatment for a time.

Where a corporation engaged in the manufacture and interstate sale and distribution of shoes; through statements and representations on its shoe boxes and in advertisements in magazines of general circulation and in folders and circulars—

- (a) Represented falsely that its "Child Life" shoes were orthopedically designed, tested and approved and were truly "orthopedic shoes", and that its "College Chum Orthopedic" and "Official P. H. D. Physical Health Director" shoes correctly supported the longitudinal arch of the foot and the ankle and thereby prevented pronation and eversion and caused the foot to function normally, and were specially designed for their physical health properties; when in fact its said products were stock shoes;
- (b) Falsely represented that its "Child Life" shoes would make young feet grow strong and healthy and keep them so, would insure freedom from future foot ailments, maintain normal foot health, prevent development of abnormalities, deformities and disorders in growing feet and correct any such conditions which might manifest themselves; would promote and maintain a proper and balanced posture, prevent and correct poor posture, promote and insure proper foot growth, hold the bones of the feet in proper alignment, promote sound physical development, correct muscle strain and inrolling ankles, make crooked ankles straight and restore the arch to normal;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with capacity and tendency so to do, and thereby induce purchase of substantial quantities of its 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.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. B. G. Wilson and *Mr. J. M. Doukas* for the Commission.

Nohl, Petrie & Stocking, of Milwaukee, Wis., 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 the Herbst Shoe Manufacturing Company, a corporation, hereinafter referred to as the 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 respect thereof as follows:

PARAGRAPH 1. Respondent, Herbst Shoe Manufacturing Company, is a corporation organized under the laws of the State of Wisconsin with its principal place of business at 2367 North 29th Street, Milwaukee, Wisconsin.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the manufacture, sale and distribution, in commerce, of shoes designated as "Child Life," "College Chums" and "Official P. H. D. Physical Health Director."

PAR. 3. Respondent causes, and has caused, said shoes, when sold, to be transported from its place of business in the State of Wisconsin to purchasers thereof located in the various other States of the United States. At all times mentioned herein respondent has maintained and now maintains a substantial volume of trade in said products among and between the various States of the United States.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its said shoes, the respondent has made certain statements and representations concerning the nature and usefulness of said shoes by means of labels on its shoe boxes, advertisements inserted in magazines of general circulation and in folders and circulars. Among and typical of such statements and representations are the following:

Child Life Shoes—ORTHOPEDIC

TEN PERFECT TOES—TWO HEALTHY FEET

Child Life ORTHOPEDIC FINEST QUALITY

CHILD LIFE SHOES, orthopedically designed and constructed, provide ample toe room, snug firm fitting heels, proper support under the arches, and flexible freedom needed for healthy foot growth.

CHILD LIFE SHOES are *truly* orthopedic shoes, orthopedically designed and made over *truly* orthopedic lasts, combining outstanding features, a good name, tailored styling, fine shoe making and honest values.

Child Life SHOES. A DAILY TREAT FOR GROWING FEET. Designed to PROMOTE HEALTHY FOOT GROWTH. Scientific arch construction and pre-shaped insoles to KEEP FEET IN BALANCED POSTURE.

Children enjoy foot freedom and better foot control when wearing CHILD LIFE SHOES . . . perfected with approved orthopedic features that keep young feet strong and healthy.

Child Life SHOES A DAILY TREAT FOR GROWING FEET. CHILD LIFE SPECIAL FEATURES. Orthopedically designed, scientifically tested and approved, CHILD LIFE SHOES maintain normal foot health and promote proper

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foot growth. **BETTER FEET AND PROPER POSTURE. CHILD LIFE SHOES** are scientifically built to provide better fit and balanced posture.

Child Life SHOES. Tan and brown orthopedic saddle. Thoroughly tested orthopedic lasts. Orthopedically designed coordinated patterns. * * * Wedged Thomas orthopedic heels.

Child Life SHOES. BUILT IN arch construction giving balanced foot support. **ORTHOPEDIC** design throughout—to protect your child's foot health.

Child Life ORTHOPEDIC SHOES. These twenty styles . . . all orthopedically designed and orthopedically constructed. * * * Exclusive Orthopedic Lasts.

Keep your youngster's feet strong and healthy in **CHILD LIFE SHOES.** * * * Keep young feet strong and healthy. * * * **WHEN ANKLES ROLL IN . . .** Foot care Should Begin (Pictures of two sets of feet showing ankles rolling in and ankles straight). * * * **ORTHOPEDICALLY DESIGNED AND CONSTRUCTED** to Make Young Feet Grow Strong and Healthy. * * * Everything your child needs for future foot health. * * * Amazingly comfortable with special features to promote balanced posture. * * * Assuring proper posture and healthy foot growth.

Amazingly helpful to young growing feet.

In-rolling ankles mean muscle strain, resulting poor posture. This can be corrected with correct shoes.

Stop Future Foot Ills by Foot Care Now. Most adults suffer from some sort of foot trouble. The greatest percentage of this is caused by improper footwear during formative years. * * *

* * * **CHILD LIFE** shoes help nature give your child healthy feet by assuring scientific assistance * * *

The Orthopedic Lasts over which **CHILD LIFE SHOES** are made provide room for every toe to lie naturally; to hold the 52 bones of the feet in proper alignment, promote healthful foot growth, correct posture and sound physical development.

SEE HOW CHILD LIFE Shoes straighten the ankles and restore the arch to normal.

COLLEGE CHUMS ORTHOPEDIC.

OFFICIAL P. H. D. PHYSICAL HEALTH DIRECTOR "SHOES"

At this point the longitudinal arch is supported correctly to prevent pronation and eversion. Control the arch * properly and the foot functions normally.

(*Referring to the longitudinal arch.)

PAR. 5. Through the use of the word "orthopedic" to describe its "Child Life" and "College Chum" shoes, and the word "orthopedically" to describe certain characteristics thereof, respondent represented, directly and by implication, that said shoes are especially designed and constructed to, and will, prevent and correct deformities, diseases and disorders of the feet; and through the use of the name "Official P. H. D. Physical Health Director" has represented, directly and by implication, that the shoes so designated are affirmatively conducive to the health of the feet.

PAR. 6. The said representations are false and misleading. In truth and in fact "Child Life" and "College Chum" shoes are stock shoes and are not so constructed as to, and will not, prevent or correct

deformities, diseases or disorders of the feet. "Physical Health Director" shoes cannot be relied upon to beneficially affect the health of the feet.

PAR. 7. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, with respect to its "Child Life" shoes:

That said shoes will make young feet grow strong and healthy, will keep growing feet strong and healthy and will insure freedom from future foot ills, will maintain normal foot health, prevent the development of abnormalities, deformities, diseases and disorders in growing feet and correct any abnormality, deformity, disease or disorder which may manifest itself in growing feet; will promote and maintain a proper and balanced posture and prevent and correct poor posture, and will promote and insure proper foot growth, that said shoes will hold the bones of the feet in proper alignment, promote sound physical development, correct muscle strain, in-rolling ankles and make crooked ankles straight, control the longitudinal arch of the feet and restore it to normal, will prevent and correct pronation and eversion of the feet and ankles, and assure normal foot function; that support under the arches of the feet of children is necessary and that said shoes will furnish it properly.

PAR. 8. The aforesaid statements and representations are false and misleading. In truth and in fact, the use of respondent's shoes will not make young feet grow strong and healthy, will not keep growing feet strong and healthy or insure freedom from future foot ills, will not maintain normal foot health or prevent the development of abnormalities, deformities, diseases and disorders in growing feet or correct any abnormality, deformity, disease or disorder which may manifest itself in growing feet. They will not promote or maintain a proper and balanced posture or prevent or correct poor posture, and will not promote or insure proper foot growth. Said shoes will not hold the bones of the feet in proper alignment or promote sound physical development. They will not correct muscular strain, in-rolling ankles or make crooked ankles straight. Said shoes will not control the longitudinal arch of the feet or restore it to normal or prevent or correct pronation or eversion of the feet and ankles or assure normal foot function. Support under the arches of the feet of children is usually not necessary, and in those instances in which support becomes necessary, respondent's shoes cannot be relied upon to furnish the support needed to meet the particular requirements of the individual case.

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PAR. 9. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

PAR. 10. The aforesaid acts and practices of the respondent, 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated March 18, 1952, the initial decision in the instant matter of hearing examiner Webster Ballinger, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 25, 1951, issued and subsequently served its complaint in this proceeding upon respondent, Herbst Shoe Manufacturing Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The corporate respondent answered and after reasonable notice, hearings were held, at which no representative of the respondent appeared, the testimony and other evidence submitted and received consisting of that offered in support of the allegations of the complaint before the above-named hearing examiner theretofore duly designated by the Commission, which said evidence was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, requested findings, conclusion and form of order submitted by counsel for the complaint, oral argument being waived; and said hearing examiner, having duly considered the record herein, finds this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Herbst Shoe Manufacturing Company, is a corporation organized under the laws of the State of Wisconsin, with its principal place of business located at 2367 North 29th Street, Milwaukee, Wisconsin.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the manufacture, sale and distribution, in commerce, of shoes designated as "Child Life," "College Chums," and "Official P. H. D. Physical Health Director."

PAR. 3. The respondent causes, and has caused, said shoes, when sold, to be transported from its place of business in the State of Wisconsin, to purchasers thereof located in various other States of the United States. At all times mentioned herein respondent has maintained and now maintains a substantial volume of trade in said products among and between the various States of the United States.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its said shoes, the respondent has made certain statements and representations concerning the nature, usefulness and health-contributing properties of said shoes by means of labels on its shoe boxes, advertisements inserted in magazines of general circulation and in folders and circulars. Among and typical of such statements and representations are:

Child Life Shoes—ORTHOPEDIC.

TEN PERFECT TOES—TWO HEALTHY FEET.

Child Life ORTHOPEDIC FINEST QUALITY.

CHILD LIFE SHOES, orthopedically designed and constructed, provide ample toe room, snug firm fitting heels, proper support under the arches, and flexible freedom needed for healthy foot growth.

CHILD LIFE SHOES are *truly* orthopedic shoes, orthopedically designed and made over *truly* orthopedic lasts, combining outstanding features, a good name, tailored styling, fine shoe making and honest values.

Child Life SHOES—A DAILY TREAT FOR GROWING FEET. Designed to PROMOTE HEALTHY FOOT GROWTH. Scientific arch construction and pre-shaped insoles to KEEP FEET IN BALANCED POSTURE.

Children enjoy foot freedom and better foot control when wearing CHILD LIFE SHOES . . . perfected with approved orthopedic features that keep young feet strong and healthy.

Child Life SHOES—A DAILY TREAT FOR GROWING FEET. CHILD LIFE SPECIAL FEATURES. Orthopedically designed, scientifically tested and approved, CHILD LIFE SHOES maintain normal foot health and promote proper foot growth. BETTER FEET AND POSTURE. CHILD LIFE SHOES are scientifically built to provide better fit and balanced posture.

Child Life SHOES. Tan and brown orthopedic saddle. Thoroughly tested orthopedic lasts. Orthopedically designed coordinated patterns. * * * Wedged Thomas orthopedic heels.

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Child Life SHOES. BUILT IN arch construction giving balanced foot support. ORTHOPEDIC design throughout—to protect your child's foot health.

Child Life ORTHOPEDIC SHOES. These twenty styles * * * all orthopedically designed and orthopedically constructed. * * * Exclusive Orthopedic Lasts.

Keep your youngster's feet strong and healthy in CHILD LIFE SHOES. * * * Keep young feet strong and healthy. * * * WHEN ANKLES ROLL IN . . . Foot care Should Begin (Pictures of two sets of feet showing ankles rolling in and ankles straight). * * * ORTHOPEDICALLY DESIGNED AND CONSTRUCTED to Make Young Feet Grow Strong and Healthy. * * * Everything your child needs for future foot health. * * * Amazingly comfortable with special features to promote balanced posture. * * * Assuring proper posture and healthy foot growth.

Amazingly helpful to young growing feet.

In-rolling ankles mean muscle strain, resulting poor posture. This can be corrected with correct shoes.

Stop Future Foot Ills by Foot Care Now, Most adults suffer from some sort of foot troubles. The greatest percentage of this is caused by improper footwear during formative years. * * *

* * * CHILD LIFE shoes help nature give your child healthy feet by assuring scientific assistance. * * *

The Orthopedic Lasts over which CHILD LIFE SHOES are made provide room for every toe to lie naturally; to hold the 52 bones of the feet in proper alignment, promote healthful foot growth, correct posture and sound physical development.

SEE HOW CHILD LIFE Shoes straighten the ankles and restore the arch to normal.

COLLEGE CHUMS ORTHOPEDIC.

OFFICIAL P. H. D. PHYSICAL HEALTH DIRECTOR "SHOES."

At this point the longitudinal arch is supported correctly to prevent pronation and eversion. Control the arch* properly and the foot functions normally.

(*Referring to the longitudinal arch.)

PAR. 5. By said advertising matter respondent, directly and by implication, represented to the public:

(a) That its shoes described as "Child Life" shoes are orthopedically designed, tested and approved and are "truly orthopedic shoes."

(b) That its shoes described as "College Chum Orthopedic" and "Official P. H. D. Physical Health Director" shoes correctly support the longitudinal arch of the foot and the ankle, thereby preventing pronation and eversion, cause the foot to function normally and are specially designed for their physical health properties.

(c) That its "Child Life" shoes will make young feet grow strong and healthy, will keep growing feet strong and healthy and will insure freedom from future foot ills, will maintain normal foot health, prevent the development of abnormalities, deformities and disorders in growing feet and correct any abnormality, deformity or disorder which may manifest itself in growing feet; will promote and maintain a proper and balanced posture, prevent and correct poor posture,

and will promote and insure proper foot growth; that said shoes will hold the bones of the feet in proper alignment, promote sound physical development, correct muscle strain and in-rolling ankles, make crooked ankles straight and restore the arch to normal.

PAR. 6. Respondent's said representations are false and misleading in that:

(a) Its "Child Life" and "College Chum" shoes are stock shoes and are not orthopedically designed, tested and approved. An orthopedic shoe is one made as prescribed by an orthopedic doctor to correct a special disorder or abnormality in a particular case. No two feet may have like abnormalities. An individual may have one abnormality in or on one foot and an entirely different abnormality in or on the other foot. Abnormalities of the feet often result from systemic causes requiring medical treatment, or abnormalities in the lower extremities, such as bowlegs, knock-knees, sway-back and other conditions sometimes requiring surgery. To prescribe an orthopedic shoe for an individual in many cases necessitates a thorough physical examination of the individual by an orthopedic doctor to determine the cause of the trouble which often necessitates X-rays of particular areas of the body, or keeping the individual under observation and treatment for a time.

(b) Its "College Chum Orthopedic" shoes will not control the longitudinal arch of the foot and restore it to normal, nor will they prevent pronation of the feet and ankles or prevent eversion of the feet and ankles, nor will the wearing of said shoes insure normal foot function.

(c) Its "Child Life" shoes will not make young feet grow strong and healthy, will not keep growing feet strong and healthy and will not insure freedom from future foot ills, will not maintain normal foot health, prevent the development of abnormalities, deformities and disorders in growing feet and will not arrest or correct any abnormality, deformity or disorder which may manifest itself in growing feet; will not promote and maintain a proper and balanced posture, prevent and correct poor posture, and will not promote and insure proper foot growth; that said shoes will not hold the bones of the feet in proper alignment, promote sound physical development, correct muscle strain and in-rolling ankles, make crooked ankles straight and restore the arch to normal.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and repre-

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sentations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's products.

CONCLUSION

The aforesaid acts and practices of the respondent, 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.

ORDER

It is ordered, That the respondent, Herbst Shoe Manufacturing Company, a corporation, 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 respondent's shoes designated "Child Life," "College Chums" and "Official P. H. D. Physical Health Director," or any other shoe of similar construction or performing similar functions irrespective of the designation applied thereto, do forthwith cease and desist from:

(1) Using the word "Orthopedic" with respect to "Child Life" and "College Chum" shoes, alone or in combination with any other word or words, to describe or designate said shoes, or using any other word or words in any manner to represent, directly or by implication, that respondent's shoes will prevent or correct deformities or disorders of the feet.

(2) Using the words "Official P. H. D. Physical Health Director" with respect to shoes designated "Official P. H. D.," alone or in combination with any other word or words, to describe or designate said shoes, or using any other words in any manner to represent, directly or by implication, that respondent's shoes so designated are affirmatively conducive to the health of the feet.

(3) Representing, directly or by implication, that the use of respondent's shoes with respect to "Child Life" will make young feet grow strong and healthy or will keep growing feet strong and healthy or insure freedom from future foot ills or will maintain normal foot health or prevent the development of abnormalities, deformities and disorders in growing feet or correct any abnormality, deformity or disorder which may manifest itself in growing feet.

(4) Representing, directly or by implication, that the use of "Child Life" shoes will promote or maintain a proper and balanced posture or prevent or correct poor posture or promote or insure proper foot growth.

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(5) Representing, directly or by implication, that the use of "Child Life" shoes will hold the bones of the feet in proper alignment or promote sound physical development.

(6) Representing, directly or by implication, that the use of "Child Life" shoes will correct muscle strain or in-rolling ankles, make crooked ankles straight or restore the arch to normal.

(7) Representing, directly or by implication, that the use of shoes designated "Child Life," "College Chums" or "Official P. H. D. Physical Health Director" will control the longitudinal arch of the foot or restore it to normal or prevent or correct pronation or eversion of the feet and ankles or insure normal foot function.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of March 18, 1952].

IN THE MATTER OF
BASIC VEGETABLE PRODUCTS, INC. ET AL.

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

Docket 5939. Complaint, Dec. 13, 1951—Decision, Mar. 18, 1952

Where two dehydrators and processors of onions and garlic with dominant positions in said industry in the United States and two other important corporate factors in dehydrating and processing onions, all of which were engaged in the packing, distribution, offer and sale of onion powder, garlic powder, onion flakes and garlic flakes, and also in processing various other forms for use by food packers, processors and others as seasoning agents; which by virtue of their aggregate production and sales volumes had the power to and, as below set forth, did exercise actual control of the market prices thereof; were in competition with one another except for the restraints herein concerned; and, confronted by the fact that production of dehydrated onion flakes had exceeded national consumption thereof, disseminated advice among themselves not to cut prices below the going market prices for said products;

Acted unlawfully to suppress competition by entering into and carrying out an understanding and planned common course of action between and among themselves and with others with respect to their pricing practices, and pursuant thereto—

- (1) Exchanged information concerning prices, terms and conditions of sale, trade discounts and volume discounts, and made known among themselves their bid quotations in connection with particular transactions;
- (2) Attempted to and to a large extent did fix, stabilize and maintain uniform prices, uniform terms and conditions of sale, and uniform trade and volume discounts;
- (3) Held formal and informal conferences and meetings at which were discussed prices, terms and conditions of sale, trade discounts and volume discounts to be adopted by them; and
- (4) Entered into agreements and other arrangements for competing sellers to fix, stabilize, maintain, and make uniform resale prices, terms and conditions of sale of said products, adopted and maintained methods and policies of merchandising to effectuate such resale price maintenance agreements;

Held, That said combination and agreements, acts and practices, in one or more of which each respondent participated, were all and singularly unfair and to the prejudice of the public and against public policy because of their dangerous tendency unduly to hinder competition and create monopoly, and because they oppressively restricted the activities of competing sellers, including distributors and jobbers, and otherwise restrain competition in the sale in commerce of the products concerned; and constituted unfair methods of competition and unfair or deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.
Mr. Leslie S. Miller for the Commission.