

Syllabus

IN THE MATTER OF

UNITED STATES NAVY WEEKLY, INC. ET AL.

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

Docket 5841. Complaint, Jan. 18, 1951—Decision, May 15, 1952

Any qualification or explanation of the name "United States Navy Magazine" to the effect that a publication so entitled has no official connection with the United States Navy would only contradict rather than qualify the conclusion necessarily attendant upon the use of such name, and would not eliminate the tendency and capacity of the use of such name to mislead and deceive.

Where a private corporation, organized for profit, and its two officers, engaged in the publication and in the competitive interstate sale and distribution of their "United States Navy Magazine" and in soliciting advertising therein, and selling subscriptions thereto through methods designed to capitalize on the erroneous impression that it was officially connected with the Navy—

- (a) Represented falsely in their advertising, letters and circulars that said publication was officially connected with or sponsored by the Navy, and that it was owned, edited and published by Navy personnel; the facts being that, owned and published by said corporation, the magazine was largely carried on by its president, who was its principal stockholder and a retired Navy Chief Warrant Officer, and not by persons on active duty in the Navy;
- (b) Represented falsely, as aforesaid, that said publication contained a complete coverage of Navy news from correspondents on ships at Naval stations, bases and yards, and from Washington; and
- (c) Represented, as aforesaid, that said publication had a national office in Washington, D. C. and editorial offices in several other cities of the United States;

The facts being their only editorial office was that of the said president in Philadelphia; the address given as their national office was only a mailing address; and the other addresses listed were mailing addresses of the offices of free-lance advertising agents authorized to sell advertising space in said magazine;

- (d) Falsely represented and implied through use of the name, "United States Navy Magazine" as the title of their publication, that said magazine was an official publication of the United States Navy, notwithstanding affirmative statements therein and elsewhere to the contrary which, by reason of small type in inconspicuous locations and obscure language were of no substantial value in correcting the false impression thereby created;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into a mistaken belief that their publication was an official publication of the Navy, and that such other representations were true, and into the purchase of said publication or advertising space therein as a result, and thereby to divert to them from their competitors substantial trade in commerce:

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

Complaint

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Before *Mr. James A. Purcell*, hearing examiner.

Mr. Charles S. Cox and *Mr. J. F. Walsh* for the Commission.

Mr. Byron N. Scott, of Washington, D. C., 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 United States Navy Weekly, Inc., a corporation, and George L. Carlin and Ray E. Fenstermaker, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, United States Navy Weekly, Inc., is a corporation existing under the laws of the State of Virginia. Respondents, George L. Carlin and Ray E. Fenstermaker are President and Secretary-Treasurer, respectively, of respondent United States Navy Weekly, Inc., and, as such, formulate, control and direct the policy of said corporate respondent. All of said respondents have an office mailing address at Room 820 National Press Building, Washington, D. C.

Said respondents are now, and for more than ten years last past have been, engaged in the publication, sale and distribution of a publication known as United States Navy Magazine and in the sale of advertising space therein and subscriptions thereto. Respondents cause and have caused said publication to be shipped from their place of business in the District of Columbia or in the State of Pennsylvania to purchasers in States other than the State of Pennsylvania or the District of Columbia and at all times mentioned herein have maintained, and now maintain, a course of trade in said publication 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 business as aforesaid, respondents have made many statements and representations concerning said business and the nature of the same in newspapers, letterheads, circulars and other literature. Typical of, but not limited to, such statements and representations are the following:

"United States Navy Magazine," "The Flagship of Navy Publications—At your Service Since 1927," "Owned, Edited and Published by Naval Personnel," and "All the News from Washington—Official—Reliable." "Please don't confuse our publication with the so-called service publications owned by civilians."

PAR. 3. The respondents in the manner aforesaid have represented that such publication is an official organ or publication of the United States Navy Department and the same is associated or connected with the United States Navy; that the same is the main publication of the Navy relative to all other publications of the Navy Department; that the said publication is owned, edited and published by naval personnel and that it contains all naval news from Washington of an official and reliable nature.

In truth and in fact, said United States Navy Magazine is in no manner connected with the United States Navy Department and is neither owned, edited nor published by naval personnel in that the same is privately owned and operated, and personnel employed in connection therewith is not that of the United States Navy or the United States Navy Department and is composed of civilians; said publication does not contain all the news from Washington of an official and reliable nature, but only contains a portion of news that has been released by the United States Navy Department to, and available through, all news agencies alike.

PAR. 4. Respondents in the manner aforesaid have also represented that they have publication, editorial and other offices located at various places and have within the times aforesaid included the following: publication offices at—South and Hanover Streets, Pottstown, Pa.; 675 N. Broad Street, Philadelphia, Pa.; 642 N. Broad Street, Philadelphia, Pa.; E. Madison Ave. at Holley Street, Clifton Heights, Pa.; editorial offices at—12 South 12th Street, Philadelphia, Pa.; and Schaff Building, 15th and Race Streets, Philadelphia, Pa.; 742 Market Street, Room 230, San Francisco, California; 228 West 4th Street, Room 305, Los Angeles, California; Kress Building, Room 507, Long Beach, California; and other offices at—1419 North American Building, Philadelphia, Pa.; Finance Building, Philadelphia, Pa.; Harry J. Collins, Suite 543, 7th and Liberty Avenues, Pittsburgh, Pa.; 11017 Cedar, Cleveland 6, Ohio; 424 S. Broadway, Los Angeles, California; 812 Pine Avenue, Room 205, Long Beach, California; 46 Burns Street, N. E., Washington, D. C., and Suite 820, National Press Building, Washington 4, D. C.

Respondents have, in the manner aforesaid, also made statements and representations as follows:

We offer you complete coverage of the ships and stations of the Navy
Correspondents on Navy ships, at Naval Stations, Bases and Yards.

PAR. 5. Respondents have thereby represented that their business is of such magnitude that it has publication, editorial and other offices

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at the places listed, and has coverage of all the ships and stations and has accredited correspondents on all the ships, and at all stations, bases and yards, of the United States Navy.

In truth and in fact, respondents do not have publication offices at the places listed therefor but only have facilities available to said respondents for the purpose of publishing any given issue of said publication, United States Navy Magazine, under contract for same. In truth and in fact, respondents do not have offices at some of the addresses listed, and only have mailing addresses thereat. Respondents do not have coverage of any nature of most of the ships and stations nor accredited correspondents on any of the ships nor at any of the stations, bases or yards, of the United States Navy.

PAR. 6. In the course and conduct of said business respondents have also made the following representations and statements on circulars, letterheads and in letters addressed to prospective advertisers as follows:

SEND YOUR GREETINGS TO THE OFFICERS AND MEN AND PAY HONOR
TO THE WORLD'S GREATEST NAVY AND THE FINEST PERSONNEL
OF ANY NAVY

Send a Message of encouragement and congratulations to the personnel of OUR Navy that has never been licked in battle. PAY THEM A TRIBUTE.

LEST YOU FORGET!

NAVY CASUALTY TOTALS (Official Navy Figures as of November 9, 1945)
56,557 Killed 80,264 Wounded 8,624 Still Missing

Picture of
Cemetery with Crosses

Official U. S. Navy Photo.

HONORED, THEY LIE AT REST ON FAR-FLUNG ISLANDS, OR IN THE
OCEAN'S ARMS

WE SHALL NEVER FORGET THEY DIED FOR US
UNITED STATES NAVY MAGAZINE

Owned and Operated by Active, Reserve and Retired Navy Personnel
Exclusively!

Dedicates its May edition to the memory of our shipmates, the brave and heroic officers and men of the United States Navy killed while engaging the enemy in battle.

On this MEMORIAL DAY of 1947, we urge and request you to cooperate with the United States Navy Magazine and send your condolences and sympathy to the brave officers and men of the Navy who have battled side by side in the ships and on the stations of the Navy with men who died while engaged in the battle with the enemy.

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NAVY DAY TRIBUTE

TO the Heroic Officers and Men of the United States Navy

Pay A tribute to the
Brave Officers and
Men of the Navy

Navy Day—October 27
sponsored by the
Navy League of the
United States

Boost The Morale. Send greetings to the Navy and Honor the Brave officers
and Men.

PATRIOTIC NAVY DAY EDITION

Pay a Well Deserved Tribute to the Brave and Courageous Officers and Men
of the United States Navy this Navy Day.

SHOW YOUR PATRIOTISM IN THIS GREAT NAVY DAY EDITION!

WE ASK YOU—was it too much to ask your firm to send a message of
condolence to men out there who daily give their lives so you civilians may live
in comfort. While I was on active duty, I would not have believed the indif-
ference that YOU CIVILIANS exhibit toward the men of the service. What a
heartless gang you must be.

* * * * *

Might I suggest that when you *sell* again—sell yourself a heart.

PAR. 7. In the manner aforesaid respondents have thereby repre-
sented that the placement of an advertisement in said publication,
United States Navy Magazine, would thereby inure to the benefit of
the advertiser as a tribute and act of patriotism in honor of naval
personnel killed in action as well as all naval personnel who have
served in the United States Navy, and that the placement of such an
advertisement in said publication is definitely an act of patriotism
and would be construed as an expression of appreciation by the adver-
tiser of a debt of gratitude to the past and present personnel of the
United States Navy; that any person or addressee receiving one of
respondent's solicitations to advertise in said publication, who refuses
to place an advertisement in such publication, thereby indicates a lack
of patriotism on the part of said recipient and indicates an indifference
towards the men in the service.

PAR. 8. In truth and in fact, said publication is privately owned and
operated and does not inure to the benefit or credit of the United States
Navy Department nor the men in the service of the United States
Navy. No part of the proceeds from the advertisements placed in
said publication is paid over to any naval organization, society or
division of the United States Navy Department, and said business is
conducted solely for the benefit and profit of the stockholders owning
the stock in said corporate respondent herein.

PAR. 9. The use by respondents of the name, United States Navy Magazine, as aforesaid, has had and now has the capacity to, and does, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said publication is an official organ or publication of the United States Navy Department and because of such mistaken belief, causes them to purchase advertising space in said magazine.

PAR. 10. At all times mentioned herein, respondents, in the course and conduct of their business, have been in actual and substantial competition with other corporations and individuals and with firms and partnerships likewise engaged in the publication of magazines; in the sale of subscriptions thereto, of advertising therein and in the distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. The use by respondents of the aforesaid acts and practices in connection with the sale and the offering for sale of their said publication in commerce as described herein, has had, and now has, a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the belief that the above-described representations are true. As a consequence of such erroneous and mistaken beliefs, as herein set forth, the purchasing public has been induced to purchase and has purchased substantial quantities of advertising in said publication and subscriptions to said publication with the result that trade has been unfairly diverted from competitors of respondents.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and to respondents' competitors and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 18, 1951, issued and subsequently served its complaint in this proceeding upon respondents, United States Navy Weekly, Inc., a corporation, and George L. Carlin and Ray E. Fenstermaker, individually and as officers of said respondent 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 said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in

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support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and 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, and proposed findings as to the facts and conclusions presented by counsel, and said hearing examiner, on May 31, 1951, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for respondents filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeal and oral argument of counsel; and the Commission, having issued its order granting said appeal in part and denying it in part 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 and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, United States Navy Weekly, Inc., is a corporation existing under the laws of the State of Virginia. Respondents, George L. Carlin and Ray E. Fenstemaker, are President and Secretary-Treasurer, respectively, of respondent United States Navy Weekly, Inc., and, as such, formulate, control and direct the policy of said corporate respondent. All of said respondents have an office mailing address at Room 820, National Press Building, Washington, D. C. The permanent address of respondent Carlin is 4749 North Thirteenth Street, Philadelphia, Pennsylvania. Respondent Carlin maintains an editorial office for respondent United States Navy Weekly, Inc., at 12 South 12th Street, Philadelphia, Pennsylvania.

Said respondents are now, and for many years last past have been, engaged in the publication, sale and distribution of a magazine named "United States Navy Magazine," and in the sale of advertising space therein, in commerce. Respondents cause said publication to be shipped from the State of Pennsylvania to purchasers thereof in States other than the State of Pennsylvania, and at all times mentioned herein have maintained, and now maintain, a course of trade in said publication in commerce among and between the various States of the United States and in the District of Columbia. At all times mentioned herein, respondents have been in actual and substantial

competition with others engaged in the publication and circulation of magazines, and in the sale of subscriptions thereto and of advertising therein, in commerce between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, respondents have made the following representations in their magazine and in letters and circulars sent to prospective advertisers in their magazine:

The FLAGSHIP of NAVY Publications—
At Your Service Since 1927
OWNED, EDITED AND PUBLISHED BY NAVY
PERSONNEL
Please don't confuse our publication
with the ordinary so-called service
publications owned by civilians.

PAR. 3. By the use of the above set out statements respondents have represented that their magazine is an official publication of the United States Navy and that it is owned, edited and published by persons on active duty with the United States Navy.

PAR. 4. In fact respondent United States Navy Weekly, Inc., which owns and publishes the magazine United States Navy Magazine, is a private corporation organized for profit. This corporation is not connected in any manner with, nor is its magazine an official publication of, or sponsored or endorsed by, the United States Navy or the United States Navy Department or any branch or division thereof. Nor is this magazine owned, edited or published by persons on active duty with the United States Navy. The actual editing and publishing work has largely been carried on by respondent George L. Carlin, a retired United States Navy Chief Warrant Officer, who is the principal stockholder in respondent corporation. His activities in connection with this magazine have been carried on by him while in an inactive retired Navy status.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents have also made the following representations in their magazine and in letters and circulars sent to prospective advertisers in their magazine:

Correspondents on Navy ships, at Naval
stations, bases and yards.
We offer you complete coverage of the
ships and stations of the Navy.
All the news from Washington Official—
Reliable.

Respondents have also stated in their said publication that they maintain a national office in Washington, D. C., and editorial offices

in several other cities of the United States. The cities in which these editorial offices have been represented as being located have varied from time to time. Typical of such representations was respondents' listing of addresses in Philadelphia, Pennsylvania, San Francisco, Los Angeles and Long Beach, California, in one issue of their magazine under the heading "Editorial Offices."

PAR. 6. By the use of the above set out statements the respondents have represented that they maintain a large business organization with a national office in Washington, D. C., and with several editorial offices located in various other cities of the United States, and that their publication contains a thorough coverage of the Navy news from Washington, D. C., and from the Navy's ships, stations, bases and yards.

PAR. 7. In fact respondents' business is very small. Their entire paid staff consists of respondent Carlin. Their only editorial office is that of respondent Carlin's, whose office is now, and during the period of time in which the representations as to the editorial office hereinabove referred to were made has been, located in Philadelphia, Pennsylvania. The address given as respondents' national office is only a mailing address from which mail is forwarded to respondent Carlin. The addresses listed as editorial offices, other than in Philadelphia, are in fact either mailing addresses or the offices of free-lance advertising agents authorized to sell advertising space in respondents' magazine.

Respondents' magazine is presently published once every two months and has a total circulation of 2,500 copies per issue. Their Navy news sources, other than those contacts made by respondent Carlin personally, are limited to official news releases issued by the Navy Department, greetings and messages solicited from high-ranking Naval officers and special articles contributed gratuitously or on a fixed columnar basis by Navy personnel from time to time. They do not have or publish a full and complete coverage of the Navy news from Washington, D. C., or from the Navy ships, stations, bases and yards.

PAR. 8. The name "United States Navy Magazine," used by respondents as the title for their magazine, implies that the publication is an official publication of the United States Navy. Respondents have affirmatively stated both in said publication and in their letters and circulars soliciting advertising that said publication was not owned by the United States Navy. However, such denials when made in said publication were made in such small type and in such inconspicuous locations and when made in advertising circulars usually were made in such obscure language, that such denials were not of

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any substantial value in eliminating the tendency and capacity of the use of said name to create the impression that said publication is an official publication of the United States Navy.

Respondents' methods of soliciting advertisements and of selling subscriptions to said publication are designed to capitalize on the erroneous belief that their publication is officially connected with the United States Navy. Practically all of the advertisements solicited and published by respondents are in the form of greetings or tributes by the advertisers to the men of the United States Navy. These advertisements are solicited through appeals to the patriotism of the prospective advertiser and to his gratitude to the men of the United States Navy. Respondents also solicit subscriptions for their magazine to be sent to Naval and Veterans hospitals, by similar methods.

PAR. 9. The use by the respondents of the name "United States Navy Magazine" as the title of their publication, and the use of the false, misleading and deceptive statements and representations, referred to in Paragraphs Two, Three, Five and Six of these findings, 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 respondents' publication is an official publication of the United States Navy and that such statements and representations are true, and into the purchase of said publication or advertising space therein as a result of such erroneous and mistaken beliefs. By reason of the erroneous and mistaken beliefs so engendered, the use of the name "United States Navy Magazine" as the title of respondents' publication and the use of such statements and representations have also had and now have the tendency and capacity to divert to respondents, from their competitors, substantial trade in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

1. The acts and practices of the respondents as herein found are all to the prejudice and injury of the public 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.

2. Any qualification or explanation of the name "United States Navy Magazine" to the effect that a publication so entitled has no official connection with the United States Navy would only contradict rather than qualify the conclusion necessarily attendant upon the use of such name. The presence of such contradictory statements would

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not eliminate the tendency and capacity of the use of such name to mislead and deceive.

ORDER

It is ordered, That the respondent, United States Navy Weekly, Inc., a corporation, and its officers, representatives, agents and employees and the individual respondents, George L. Carlin and Ray Fenstermaker, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the solicitation for the sale of advertising space in, or the offering for sale, sale or distribution of respondents' magazine or any other publication in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "United States Navy Magazine" as the title of any publication not officially connected with or sponsored by the United States Navy, or using any other title which falsely represents, directly or by implication, that the publication so entitled is officially connected with or sponsored by the United States Navy.

2. Representing, directly or by implication:

(a) That said publication is officially connected with or sponsored by the United States Navy or the United States Navy Department or any of their branches or divisions.

(b) That said publication is owned, edited or published by naval personnel or by anyone acting in other than a civilian capacity.

(c) That said publication contains a complete coverage of Navy news from the ships, stations, bases or yards of the United States Navy or from Washington, D. C.

(d) That said publication has a national office or an editorial office at any location contrary to the fact.

It is further ordered, That the respondents herein 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.

IN THE MATTER OF
HAIR EXPERTS, INC. ET AL.

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

Docket 5757. Complaint, Mar. 22, 1950—Decision, May 17, 1952

Where a corporation and its three officers, engaged in the operation in cities in various States of branches and retail stores dealing exclusively in the sale of cosmetic and medicinal preparations for external use in the treatment of conditions of the hair and scalp, and in the use of said preparations in office treatments;

In conducting their operations (1) through extensive advertising inviting persons to come to their places of business for diagnosis and treatments involving purchase of their preparations; (2) through selling home treatment kits of their preparations to persons thus induced to visit their offices; (3) through sending traveling representatives to various cities, extensively advertising their visits and inviting the public to call upon them for diagnosis and advice, following which said representatives recommended either office treatment or purchase of the home treatment kits; and (4) the mailing of questionnaires, answers to which were followed up by offers of branch office treatment or the sale of home treatment kits; in advertisements in newspapers, periodicals, and other advertising literature—

- (a) Represented falsely that use of their preparations, methods and treatments, by their operators in their places of business and by purchasers in their homes, would cause hair to grow when growth had ceased and resulted in thin hair or partial baldness; that the hair growing functions of the scalp would be rejuvenated; and that fuzz on the scalp would be developed into normal hair;
- (b) Represented falsely that the germicides included among their preparations would penetrate below the skin surface and kill bacteria there located, and destroy bacilli on the scalp surface;
- (c) Represented falsely that their preparations would prevent baldness, grow hair on bald heads and enable an individual to maintain a thick growth of hair for life; would reopen clogged hair passages in the scalp, energize hair papillae, make sluggish circulation in the scalp normal, and eliminate excessive falling hair, loose dandruff, itching and dryness and oiliness of the hair and scalp;
- (d) Represented that their preparations, treatments and methods were new scientific discoveries in the treatment of hair and scalp disorders; when in fact all the ingredients in said preparations, as well as said methods of treatment, have been used without success for many years in efforts to correct falling hair and prevent baldness; and
- (e) Represented falsely by the use of the designation "Trichologist" in their advertisements that certain of their operators or employees had had competent training in dermatology or other branches of medicine having to do with the diagnosis and treatment of scalp disorders affecting the hair;