

IN THE MATTER OF
HEALTH SPOT SHOE COMPANY 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 5842. Complaint, Jan. 25, 1951—Decision, June 24, 1952

Abnormalities of the feet often result from systemic causes requiring medical treatment, or from abnormalities in the lower extremities such as bow-legs, knock-knees, sway-back, and other conditions requiring surgery, and no two feet may have like abnormalities.

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of their "Health Spot Shoes," made in sizes for men, women and children, and sold by retail stores to all who desired them; through statements on labels and in advertisements in newspapers and periodicals of general circulation, and through folders, circulars, and radio continuities, directly and by implication—

- (a) Represented falsely that their shoes possessed features and characteristics which would prevent and correct all common foot ailments, and that use thereof would prevent weak feet, weak ankles, inrolling ankles, and weak and broken-down arches and faulty posture, and would correct such conditions where they existed;
- (b) Represented falsely that they would promote proper foot and postural development in children, provide natural support to the feet and arches, and needed support in cases of ankle pronation;
- (c) Represented falsely that they would insure comfort to the user and provide foot and body balance; and
- (d) Represented falsely that they possessed natural curved insoles which conformed accurately to the contour of the bottom of the foot, and that they would eliminate foot fatigue, keep the ankles straight and strong, hold the heel in normal position, prevent the development of abnormalities and deformities, and correct all disorders of the feet and keep them healthy;

The facts being that their said products were stock shoes, and while they contained certain features not found in some other stock shoes, their effect upon the feet, either in the prevention or correction of common foot ailments, was insignificant and in some cases harmful;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such misrepresentations were true and thereby induce the purchase of substantial quantities of their 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.

Graham & Spivey, of Danville, Ill., 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 Health Spot Shoe Company, a corporation, and George E. Musebeck and Willard A. Andrews, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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. The respondent, Health Spot Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois. Individual respondents, George E. Musebeck and Willard A. Andrews, are president and secretary-treasurer of the corporate respondent, respectively. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of the corporate respondent and the individual respondents is located at Forest and Westover Streets, Oconomowoc, Wisconsin.

PAR. 2. The respondents are now, and have been for more than two years last past, engaged in the sale and distribution of shoes designated by them as "Health Spot Shoes." The said shoes are made in sizes for men, women and children. They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondents cause and have caused their said "Health Spot Shoes" when sold to be transported from their place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a course of trade in their said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in the sale of said shoes in commerce is and has been substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their said shoes, the respondents have made various statements and representations concerning the nature and usefulness of their said shoes by means of labels attached to said shoes, labels attached to the cartons in which the shoes are contained, advertisements in newspapers and magazines of general circulation, by means of folders and circulars and by radio continuities broadcast from radio stations. Among and typical of such statements and representations are the following:

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Health Spot Shoes * * * incorporate all the desirable features needed for the prevention and correction of common foot ailments.

Men—Women—Children, step out of foot trouble into foot health.

Weak foot conditions can cause fatigue, * * *

In many instances Health Spot Shoes have given weak, tired feet a "new lease on life."

It's because your ankles roll inward. In rolling heels and ankles are considered the major cause of most foot troubles. Try Health Spot Shoes and see what this principle of foot support will do for you.

A great deal of pain in the feet or elsewhere in the body, caused by weakened or broken down arches, can be reduced or completely removed.

* * * helps * * * promote proper foot and body posture * * *.

Health Spot Shoes help young feet grow strong.

* * * it is imperative that shoes be so designed that they * * * insure proper foot balance.

* * * special built-in heel wedge and steel shank give not only normal foot support but body balance as well.

* * * scientifically constructed with curved insole and built up heel wedge to give young feet natural support.

* * * Health Spot Shoe provides just the support needed in the management of ankle pronation.

* * * give you absolute foot protection and comfort * * *.

* * * say goodbye to working foot fatigue * * *.

These objectives can be attained only by making the shoe conform accurately to the contour of the bottom of the foot.

Health Spot Shoes Keep Your Ankles Straight and Strong.

Their primary purpose is to keep normal feet normal.

PAR. 5. Through the use of the words "Health Spot" to describe and designate their shoes and also the word "health" in connection therewith, respondents have represented and now represent that their said shoes are constructed in such a manner that their use will prevent and cure diseases and abnormalities of the feet, will keep the feet healthy, prevent the development of abnormalities and deformities of the feet and correct all disorders of the feet which may be present.

PAR. 6. The said representations are false, misleading and deceptive. In truth and in fact, the use of respondents' shoes will not prevent or cure diseases or abnormalities of the feet, keep the feet healthy, prevent the development of abnormalities or deformities or correct any disorder of the feet. Said shoes cannot be properly or truthfully represented or designated as health shoes or as possessing health features.

PAR. 7. Through the use of the additional statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and by implication, that their shoes possess features and characteristics which prevent and correct all common foot ailments; that the use of their shoes will prevent weak feet, weak ankles, in rolling ankles, weak and broken down

arches and faulty posture and will correct such conditions when they exist; that in the case of children they will promote proper foot and postural development, provide natural support to the feet and arches and needed support in cases of ankle pronation; that said shoes will assure comfort to the user, provide foot and body balance, possess natural curved insole which conforms perfectly to the contour of the bottom of the foot, will eliminate foot fatigue, keep the ankles straight and strong, and because of the manner of their construction will hold the heel in normal position.

PAR. 8. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, respondents' shoes are stock shoes and while they contain features not found in some other stock shoes, the effect of these features upon the feet either in the prevention or correction of common foot ailments is insignificant. The wearing of respondents' shoes will not prevent weak feet, weak ankles or arches, in rolling ankles, broken down arches, or faulty posture nor will they correct such conditions when they exist. They will not promote proper foot and postural development in the case of children. The feet of children do not ordinarily require any particular kind of support and in cases where support is necessary respondents' shoes cannot be relied upon to furnish the support needed to meet the requirements of the individual case. Such support as may be provided cannot be properly characterized as natural. In many instances such shoes will not provide the necessary support in cases of ankle pronation. There is no assurance that respondents' shoes will be comfortable to the wearer or that they will provide foot or body balance. The insole of said shoes will not in many cases conform to the contour of the bottom of the foot. There is no assurance that the wearing of said shoes will eliminate foot fatigue or that they will hold the heel in a normal position.

PAR. 9. The use by respondents of the foregoing false, deceptive and misleading designations, statements and representations with respect to their shoes have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce the purchase of substantial quantities of respondents' said shoes because of such erroneous and mistaken belief.

PAR. 10. 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.

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 June 24, 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 respondents Health Spot Shoe Company, a corporation, and George E. Museback and Willard A. Andrews, individually and as officers of said corporation, charging them and each of them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Respondents answered and after seasonable notice, hearings were held by the above-named hearing examiner theretofore duly designated by the Commission, at which testimony, documents and a stipulation were offered on behalf of both parties to this proceeding by their respective counsel and admitted in evidence, 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 answers 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 that 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. The respondent, Health Spot Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois. Individual respondents, George E. Musebeck is President and Willard A. Andrews was until recently Secretary-Treasurer, and is now Vice-President, of the corporate respondent. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of the corporate respondent and the individual respondents is located at Forest and Westover Streets, Oconomowoc, Wisconsin.

PAR. 2. The respondents are now, and have been for more than two years last past, engaged in the sale and distribution of shoes designated by them as "Health Spot Shoes." The said shoes are made in sizes for men, women and children. They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondents cause and have caused their said "Health Spot Shoes," when sold, to be transported from their place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a course of trade in their said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in the sale of said shoes in commerce is and has been substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their said shoes, the respondents have made various statements and representations concerning the nature and usefulness of their said shoes by means of labels attached to said shoes, labels attached to the cartons in which the shoes are contained, advertisements in newspapers and magazines of general circulation, by means of folders and circulars and by radio continuities broadcast from radio stations. Among and typical of such statements and representations are the following:

Health Spot Shoes * * * incorporate all the desirable features needed for the prevention and correction of common foot ailments.

Men—Women—Children, step out of foot trouble into foot health.

Weak foot conditions can cause fatigue, * * *

In many instances Health Spot Shoes have given weak, tired feet a "new lease on life."

It's because your ankles roll inward. In rolling heels and ankles are considered the major cause of most foot troubles. Try Health Spot Shoes and see what this principle of foot support will do for you.

A great deal of pain in the feet or elsewhere in the body, caused by weakened or broken down arches, can be reduced or completely removed.

* * * helps * * * promote proper foot and body posture * * *.

Health Spot Shoes help young feet grow strong.

* * * it is imperative that shoes be so designed that they * * * insure proper foot balance.

* * * special built-in heel wedge and steel shank give not only normal foot support but body balance as well.

* * * scientifically constructed with curved insole and built up heel wedge to give young feet natural support.

* * * Health Spot Shoe provides just the support needed in the management of ankle pronation.

* * * gives you absolute foot protection and comfort * * *.

* * * say goodbye to working foot fatigue * * *.

Findings

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These objectives can be attained only by making the shoe conform accurately to the contour of the bottom of the foot.

Health Spot Shoes Keep Your Ankles Straight and Strong.

Their primary purpose is to keep normal feet normal.

PAR. 5. By and through the representations referred to and set forth in the preceding paragraph respondents have directly and by implication represented, and now represent, to the public that their said shoes possess features and characteristics which prevent and correct all common foot ailments; that the use of their shoes will prevent weak feet, weak ankles, inrolling ankles, weak and broken down arches and faulty posture and will correct such conditions where they exist; that in the case of children they will promote proper foot and postural development, provide natural support to the feet and arches and needed support in cases of ankle pronation; that said shoes will assure comfort to the user, provide foot and body balance, possess natural curved insole which conforms accurately to the contour of the bottom of the foot, will eliminate foot fatigue, keep the ankles straight and strong, will hold the heel in normal position, and will prevent the development of abnormalities and deformities and correct all disorders of the feet that may exist and keep them healthy.

PAR. 6. No two feet may have like abnormalities. In many cases there is a disorder on one foot and occasionally an entirely different disorder on the other foot. Abnormalities of the feet often result from systemic causes requiring medical treatment, or from abnormalities in the lower extremities, such as bowlegs, knock-knees, sway-back and other conditions requiring surgery. Respondents' shoes are stock shoes and while they contain certain features not found in some other stock shoes, the effect of these features upon the feet either in the prevention or correction of common foot ailments is insignificant and in some cases harmful. Each and every representation made by respondents and which they are now making to the public, as set forth in the preceding paragraph, has been and is now misleading, deceptive and false.

PAR. 7. The use by respondents of the foregoing false, deceptive and misleading designations, statements and representations with respect to their shoes have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce the purchase of substantial quantities of respondents' said shoes because of such erroneous and mistaken belief.

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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.

ORDER

It is ordered, That the respondents Health Spot Shoe Company, a corporation, its officers, agents, representatives and employees, and George E. Musebeck and Willard A. Andrews, individually and as officers of said 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 their shoes now designated by them as "Health Spot Shoes," or any other shoe of similar construction, do forthwith cease and desist from :

1. Using the name "Health Spot Shoe Company" or any name in which the word "Health" appears in ordinary business transactions unless in immediate conjunction therewith there appear clearly and conspicuously the words "a corporate and trade name only."

2. Using in any advertisement of respondents' shoes the word "Health" or any other word importing a like or similar meaning, alone or in combination with any other word or words, to designate, describe or refer to respondents' shoes, or representing in any manner that the wearing of respondents' shoes will prevent or correct abnormalities of the feet, keep the feet healthy, prevent the development of abnormalities or deformities or will correct any disorder of the feet.

3. Representing, directly or by implication, that the use of their shoes will prevent weak feet, weak ankles, inrolling ankles, weak and broken down arches, faulty posture, or will correct such conditions where they exist.

4. Representing, directly or by implication, that their shoes possess features and characteristics which will prevent or correct any common foot ailment.

5. Representing, directly or by implication, that the use of their shoes in the case of children will promote proper foot and postural development or provide the necessary support to the feet and arches in cases of ankle pronation.

6. Representing, directly or by implication that the use of their shoes will assure comfort to the user, provide foot and body balance,

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eliminate foot fatigue, keep the ankles straight and strong or will hold the heel in normal position.

It is further ordered, That the foregoing Paragraphs One and Two insofar as they relate to labels in or on shoes manufactured or in process of manufacture on the date this order is issued, and cartons or containers in which said shoes are now or may be packaged, and existing supplies used for business and not advertising purposes such as letterheads, envelopes, cards, sales books, and checks, shall become effective on and after six months from the date this order is issued.

It is further ordered, That the marketing by respondent of any of said shoes, manufactured or in process of manufacture when this order is issued and on hand and unsold at the expiration of the six months' period referred to in the preceding paragraph, under a new name and with the words "Formerly Health Spot Shoes" appearing clearly and conspicuously and in immediate conjunction therewith shall not be construed as a violation of this order.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of June 24, 1952].

Complaint

IN THE MATTER OF

SOLOMON L. CORUSH D. B. A. AMERICAN COMMERCIAL
TRAVELER

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

Docket 5942. Complaint, Jan. 18, 1952—Decision, June 24, 1952

Where an individual engaged in the publication and interstate distribution of a directory in which were listed advertisements of hotels and motor courts, designated as "American Commercial Traveler"; in soliciting advertisements for paid publication therein, directly and through his sales agents, through oral statements—

- (a) Represented that he could and would assist his advertisers in obtaining listing with the American Automobile Association; when in fact he was not connected in any way with it and exercised no influence upon its selection of approved hotels, motor courts, and other overnight accommodations;
- (b) Falsely represented that he had established a commercial relationship with many businesses as a result of which they directed or requested their salesmen to patronize hotels and motor courts listed in his directory;
- (c) Represented that advertisers would be granted exclusive listings within a prescribed area; the facts being that he granted listings to as many hotels and auto courts as would purchase them;
- (d) Represented that specific numbers of persons would patronize advertisers weekly or monthly by reason of advertisements placed in his directory; when in fact he had no basis for making such representations and many advertisers received no benefit whatsoever from such advertisements;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce it to purchase listings in his said directory:

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. J. Earl Cox*, hearing examiner.

Mr. B. L. Williams and *Mr. J. J. McNally* for the Commission.

Hahn, Ross & Saunders, of Los Angeles, Calif., 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 Solomon L. Corush, an individual, doing business as American Commercial Traveler, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it