

IN THE MATTER OF
LOUIS SHAPIRO TRADING AS PURO COMPANY

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 5710. Complaint, Nov. 10, 1949—Decision, Nov. 19, 1953

Where an individual engaged in the manufacture and in the interstate sale and distribution of a water softening cleanser designated "Puro"; in promoting the sale of said product through (1) newspaper advertisements reading "BUY ONE—GET ONE FREE * * * Two 25¢ Packages—25¢"; the use of a coupon included in the package of the product or loose in the grocers' cartons thereof, reading "FREE COUPON—Take this Coupon to your dealer and he will give you one 25 cent box of PURO free with purchase of one box at the regular price. 25¢ * * * BUY ONE—GET ONE FREE"; and the placing upon the package the words "PURO—Free Coupon Inside"; (2) the dropping of the word "free" from the phrase "BUY ONE—GET ONE FREE" in his aforesaid advertising, following an April 1948 conference with the Chicago Better Business Bureau; and (3) following an August 1948 conference with officials of the Commission—outgrowth of earlier communications going back to 1946 and the using up of his existing stock of coupons—the issuance of a new form of coupon in which the word "free" was deleted from the body thereof, but continued in the heading, or in which the word was entirely deleted and there was set forth the depiction of a box of the product, and the inscription "BUY ONE—GET ONE" and the words "More for Your Money—2—25¢ Packages for 25¢"; and legend on package reading "BUY ONE—GET ONE", with no reference to "Free Coupon Inside"—

- (a) Represented through the use of the aforesaid statements that the usual and customary retail price of his said product was 25¢ per package; notwithstanding the fact that said product was regularly sold in retail grocery stores at two packages for 25¢; there was no evidence that a single package was ever sold for 25¢; and certain retail stores sold it at 13¢ for a single package and two packages for 25¢;
- (b) Represented, as aforesaid, that if one package was purchased at said 25¢ price, a second would be given "free", that is, as a gift or gratuity without cost to the retail purchaser; notwithstanding the fact that it was not thus given without cost to such purchaser, but was included in the regular retail selling price of 25¢ for two packages, as above noted:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. George M. Martin for the Commission.

Mr. Ralph M. Snyder, of Chicago, Ill., for respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Commission, on November 10, 1949, issued and subsequently served its complaint in this proceeding upon Louis Shapiro, an individual trading as Puro Company, charging him with unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the issuance of said complaint and the filing of respondent's answer thereto, a hearing was held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, on June 13, 1952, the hearing examiner filed his initial decision herein which was duly served on the parties.

On July 7, 1952, counsel for respondent filed with the Commission an appeal from said initial decision. Thereafter this proceeding regularly came on for consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeal (oral argument not having been requested) and the Commission issued its order granting said appeal in part and denying it in part; and the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion and order to cease and desist, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Louis Shapiro, is an individual doing business under the trade name of Puro Company with his principal office and place of business located at 2600 West Madison Street, in Chicago, Illinois.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing and offering for sale and selling a water softening cleanser designated as "Puro."

Respondent causes and has caused his said product, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of promoting the sale of said Puro, respondent, for more than two

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years prior to 1949, made certain statements with respect to the price and method of selling said product, in advertising matter in newspapers, upon coupons accompanying said product, and on the containers in which said product was packaged. Among and typical of statements appearing in newspaper advertisements, inserted either by respondent alone or in cooperative advertising with grocer customers, was the following:

BUY ONE—GET ONE FREE
PURO
Cleans Everything
Softens Water—Saves Soap
Two 25¢ Packages—25¢.

A coupon, which was inclosed within the package of Puro or was placed loose in the cartons in which said product was shipped to the grocer, contained the following legend:

FREE COUPON
Take this Coupon to your dealer
and he will give you one 25 cent
box of PURO free with purchase of
one box at the regular price.

25¢

* * *

BUY ONE—GET ONE FREE

The box in which said product was packaged contained thereon the following statement:

PURO
Free Coupon Inside

Following a conference with representatives of the Chicago Better Business Bureau, respondent, in April 1948, modified his newspaper advertising material somewhat. In such advertising he dropped the word "Free" from the phrase: "BUY ONE—GET ONE FREE," said advertisement thereafter reading typically as follows:

BUY ONE—GET ONE
PURO
* * *

Two 25¢ Packages—25¢.

However, respondent continued to use the same form of coupon and box until after a conference with officials of the Commission in August 1948, said conference being an outgrowth of earlier communications going back to 1946. Several months following the August 1948 conference, and after using up his existing stock of coupons, respondent issued a new form of coupon in which the word "Free" was deleted from the body of the coupon but continued to be used in the heading thereof, said coupon reading as follows:

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FREE COUPON

Take this Coupon to your dealer and
he will give you one box of PURO at
no extra cost with the purchase of one
box for 25¢

* * *

BUY ONE—GET ONE

Respondent has continued to use this form of coupon since the latter part of 1948. As an alternate form, respondent has also used another coupon in which the word "Free" has been entirely deleted and which contains a picture of a box of respondent's product with the inscription thereon:

BUY ONE—GET ONE

and the words:

More for Your Money

2

25¢ Packages
for 25¢

The box in which respondent's product is packaged no longer contains any reference to "Free Coupon Inside" but since the latter part of 1948 has contained the inscription:

BUY ONE—GET ONE

PAR. 4. Through the use of the aforesaid statements, respondent has represented and now represents: (a) that the usual and customary retail price of his said product is 25 cents per package, and (b) that if one package is purchased at said price, a second will be given "Free," that is, as a gift or gratuity without cost to the retail purchaser. Respondent claims that it discontinued the latter representation in 1948 after objection was raised by the Commission and the Chicago Better Business Bureau. However, the record discloses that respondent has continued to use a coupon entitled "Free Coupon" and that the box in which the said product is packaged contains the inscription: "BUY ONE—GET ONE." From the entire context of his advertising, it is clear that respondent has continued to represent that a second package of his product is given as a gift or gratuity without cost to the purchaser.

PAR. 5. The foregoing representations are false, misleading, and deceptive.

(a) The record discloses that respondent's product, Puro, is regularly sold in retail grocery stores at two packages for 25 cents. There is no evidence in the record that a single package was ever sold for 25 cents. Certain retail stores have sold it at 13 cents for a single package and two packages for 25 cents.

Respondent contends that his representation of Puro as a 25-cent item is true because he so designated it in his advertising material and in shelf markers distributed to his grocer customers, and because he suggested to the grocers in promotional material accompanying the shelf markers that the "best way" to sell Puro is: "Two 25¢ Packages for 25¢." Respondent's contention cannot be accepted in the face of the affirmative evidence that retail purchasers customarily received two packages upon payment of the sum of 25 cents, and in the absence of any evidence in the record that a customer ever received only a single package upon payment of that sum. Although respondent claims that the retail customer was not paying 25 cents for *two* packages but was only paying for *one* package and receiving the other one "*free*," this self-serving claim has no support in the record but merely reflects the false illusion which respondent sought to maintain in his advertising. It is significant that while respondent, in an effort to maintain the fiction that he was selling a 25-cent item, at one time purported to require the purchaser to present a "Free Coupon" in order to get the second package (a requirement which was widely ignored by the grocer customers), even this pose was dropped in 1949 when respondent advised his grocer customers in a promotional notice issued by him that a purchaser was to receive two packages for 25 cents "with or without a coupon" (albeit respondent still asserted in the notice that "Puro sells at Two 25¢ Packages for 25¢").

Respondent also relies on the fact that he had a "fair trade" agreement with one of his customers in Illinois providing for a minimum retail price of 25 cents for a single package. The agreement, however, also provided that the customer could distribute to the consumer an additional package, supplied by respondent, for the same price. Thus, even under this agreement, it is clear that the usual and customary retail price at which respondent's product is actually sold is not 25 cents per package but is two packages for 25 cents. Thus, the fact that respondent's "fair trade" agreement set the price of a single package at 25 cents is not controlling.

(b) The second package of respondent's product is not "Free," is not a gift or gratuity, and is not given without cost to the retail purchaser as the purchaser pays 25 cents, which is the regular retail selling price for two packages.

PAR. 6. The use by the respondent of the foregoing false and misleading 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 mistaken and erroneous belief that such statements and representations are true and to cause the purchase of substantial quantities of respondent's said product because of such mistaken and erroneous belief.

Order

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found are all of 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 respondent, Louis Shapiro, individually and trading and doing business as Puro Company or under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of "Puro," or any other merchandise, do forthwith cease and desist from representing, directly or by implication:

(1) That a price which is in excess of the price at which said merchandise is regularly sold is the customary or usual price of said merchandise.

(2) That any article of merchandise is being given free or as a gift or without cost where some or all of the cost of said article has been added to the regular price of other merchandise, the purchase of which is required as a condition for receiving said article.

It is further ordered, That respondent, Louis Shapiro, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Commissioner Mead concurs except he would issue a broader order regarding use of the word "free." (See Mead dissent in Walter J. Black, Inc., et al., Docket 5571.)

IN THE MATTER OF
MARLENE'S, INC. ET AL.

DECISION AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5998. Complaint, June 4, 1952—Decision, Nov. 19, 1953

Where a corporation and its president, engaged in the interstate sale and distribution of their "Mynex" drug preparation which contained vitamins and minerals and to which they had added methylcellulose in such a quantity as they deemed sufficient to give the user of the preparation a feeling of fullness and satisfaction and thereby curb his appetite; and two individuals who were their advertising representatives, and prepared, edited, tested, and placed all advertising material used to promote the sale of said "Mynex"; in advertising the same through newspapers of general circulation, radio and television continuities, and letters and circulars, directly and by implication—

- (a) Represented that said "Mynex" tablets, used in conjunction with a calorie-reducing regime, comprised a basically different type of weight reducer greatly superior to any other weight reducer known to medical science;

When in fact said "Mynex Plan" for reducing weight was dependent solely upon the low-calorie diet for its effectiveness, and, as such, was not basically different from or superior to numerous other weight-reducing plans, even with the addition of methylcellulose;

- (b) Falsely represented that said tablets possessed weight-reducing properties and that they would prevent the weak, tired, run-down feeling that usually accompanies a restrictive diet, and that through the use of their so-called "Mynex Plan", specific reductions could be achieved within a prescribed period of time;

The facts being they possessed no weight-reducing properties in themselves; a tired, weak, or run-down feeling which might result from following said "Mynex Plan" would ordinarily be caused by the low-calorie diet rather than a lack of vitamins or minerals; since said tablets would only prevent such conditions caused by such deficiency, it could not be truthfully stated that use of said preparation would prevent the same; and no specific predetermined weight reduction can be achieved by using respondents' preparation for a prescribed period of time; and

- (c) Falsely represented that their said preparation and low-calorie diet had been approved for advertising by the Canadian Government;

The facts being that while they had relied, in said representation, upon correction and apparent approval of advertising copy by an official of the Canadian Department of National Health and Welfare, advertising of weight-reducing preparations is expressly forbidden by Canadian law and approval of the advertising of "Mynex" in Canada was beyond the power of any official:

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. Abner E. Lipscomb*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Mr. Henry Junge, of Chicago, Ill., for respondents.