

Complaint

IN THE MATTER OF

CYRUS SWIFT AND MYRTLE F. SWIFT
DOING BUSINESS AS FAIRYFOOTCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6479. Complaint, Dec. 8, 1955—Decision, June 19, 1956*

Consent order requiring a seller in Chicago to cease representing falsely in advertisements in newspapers, periodicals, leaflets, and form letters, that her bunion plasters, designated "Fairyfoot for Bunions," were a sensational and miraculous scientific achievement use of which would permanently stop the pain of a bunion, cause the inflammation and swelling to quickly subside, correct the deformity of the foot associated with a bunion, etc.

Before *Mr. Robert L. Piper*, hearing examiner.
Mr. Joseph Callaway for the Commission.

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 Cyrus Swift and Myrtle F. Swift, individuals doing business under the trade name of Fairyfoot, 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. Respondents Cyrus Swift and Myrtle F. Swift are individuals doing business under the trade name of Fairyfoot, with their office and principal place of business located at 1223 South Wabash Avenue, Chicago 5, Illinois.

PAR. 2. Respondents are now and have been for more than two years last past engaged in the sale and distribution of bunion plasters designated as Fairyfoot for Bunions. Respondents' said product comes within the classification of both "drug" and "device" as those terms are defined in the Federal Trade Commission Act. According to the manufacturer, the formula is 98% rubber adhesive base and 2% benzocaine. On the label of the product as sold by respondents it is stated:

This formula in combination contains 1% Benzocaine

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The directions for use are as follows:

When applying the plaster, be sure the foot is dry. Moisture prevents plaster from sticking properly. A little alcohol or witch-hazel rubbed on the skin just before applying will make it perfectly dry.

Now remove the special new covering from the face of the plaster.

THE ENTIRE PLASTER SHOULD BE APPLIED.

Plaster adheres smoothly when applied in a diamond shape * * * Rub gently from center toward edges.

* * *

FOR BEST RESULTS A FRESH PLASTER SHOULD BE APPLIED EVERY TWO DAYS.

After two days remove the plaster.

DO NOT LEAVE IT ON LONGER OR TAKE IT OFF SOONER!

* * *

After removing the plaster bathe foot in hot water. Dry foot and with palm of hand try and rub bunion for a few minutes. Then apply a fresh plaster.

* * *

A few applications of Fairyfoot for Bunions relieves pain. This is only the first step.

Do not make the mistake of stopping too soon. Immediately upon finding relief you should purchase another package of Fairyfoot and continue your treatment without interruption until the redness, pain and inflammatory swelling is subdued.

PAR. 3. The respondents cause said bunion plasters, when sold, to be transported from their place of business in the State of Illinois to the purchasers thereof located in various States of the United States. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said preparation in commerce between and among various States of the United States.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, advertisements concerning said bunion plasters by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of respondents' bunion plasters; and respondents have also disseminated, and caused the dissemination of, advertisements concerning said bunion plasters by various names for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said bunion plasters in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements, principally in newspapers and other periodicals, leaflets and form letters, disseminated and caused to be disseminated as hereinabove set forth, are the following:

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A sensational advance in miracle science was hailed with the startling announcement of a simple treatment developed to stop Bunion Pain almost at once and reduce the aching, enlarged hump at the sides of the big toe, then you walk in comfort. Hundreds of letters have been received telling of prompt comforting relief as bunions get smaller and smaller until sufferers may wear regular shoes again. * * * Almost overnight relieves terrible stinging itching Bunions. The ugly swelling is reduced so you can wear the smart shoes you like.

Fairyfoot—Quick pain relief for bunions. Terrible stinging, itching pain goes away—swelling goes down quickly.

* * * While of course it is necessary to remove the pressure immediately, the relief cannot be accomplished by this means alone. Inflammation must first be subdued. Fairyfoot contains an effective type of pain reliever that relieves the inflammation and therefore the pain.

PAR. 5. Through the use of the above statements and representations and others similar thereto, not specifically set out herein, respondents have represented directly and by implication that said bunion plasters are a sensational and miraculous scientific achievement; that their use (1) permanently stops the pain of a bunion, (2) causes the swelling to quickly subside, (3) subdues inflammation and inflammatory swelling through a pain relieving ingredient, (4) corrects the deformity of the foot associated with a bunion by reducing the enlarged hump on the side of the big toe, and (5) causes a bunion to get smaller and smaller until the sufferer is able to wear regular shoes again in comfort.

PAR. 6. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondents' bunion plasters are not a sensational miraculous scientific achievement nor sensational or miraculous. (1) The use of respondents' bunion plasters does not permanently stop the pain of a bunion; (2) does not cause the swelling to quickly subside; (3) does not subdue inflammation or inflammatory swelling through a pain relieving ingredient. (4) The "enlarged hump" referred to in respondents' advertising is usually caused by a deviation of the big toe towards the little toe in relation to the first metatarsal bone (which is the bone that forms a joint with the big toe) and an accompanying bony enlargement on the side of the first metatarsal near the big toe. The use of respondents' bunion plaster does not correct the deformity of the foot or the "enlarged hump" caused by the deviation of the big toe and the bony enlargement on the side of the first metatarsal. (5) The use of respondents' bunion plasters do not cause a bunion to get smaller and smaller until the sufferer is able to wear regular shoes again in comfort.

PAR. 7. The use by respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, has

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had and now has the capacity and tendency 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 cause them to purchase respondents' bunion plasters.

PAR. 8. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 8, 1955, charging them with having violated the Federal Trade Commission Act through the making of false and misleading representations concerning the medical properties of their products. In lieu of submitting answer to the complaint, respondent Myrtle F. Swift on April 9, 1956, entered into an agreement for a consent order disposing of all the issues in this proceeding as to said respondent without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission. In addition, counsel supporting the complaint has moved to dismiss it without prejudice as to respondent Cyrus Swift, upon the grounds, as evidenced by a supporting medical statement, of mental incompetence with the likelihood of retrogression rather than improvement. Having fully considered same, the motion to dismiss the complaint as to Cyrus Swift should be granted.

Respondent Myrtle Swift, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that she has violated the law as alleged in the complaint, that said order to cease and desist

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shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement, together with the aforesaid motion to dismiss, cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the order and agreement are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Myrtle F. Swift is an individual doing business under the trade name of Fairyfoot, with office and principal place of business located at 1223 South Wabash Avenue, Chicago 5, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent Myrtle F. Swift, individually and doing business under the trade name of Fairyfoot or under any other name, and respondent's agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of bunion plasters or of any other product of substantially the same composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or indirectly:

(a) That said product is a sensational or scientific achievement, or sensational or miraculous;

(b) That the use of said product,

(1) permanently stops the pain of a bunion,

(2) causes the swelling to quickly subside,

(3) subdues inflammation or swelling through a pain relieving ingredient;

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(4) corrects the deformity of the foot associated with a bunion or reduces the bony enlargement,

(5) causes a bunion to get smaller and smaller until the sufferer is able to wear regular shoes again in comfort.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said product, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the complaint, as to respondent Cyrus Swift, be and hereby is dismissed without prejudice.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 19th day of June, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon her of this order, file with the Commission a report in writing setting forth in detail the manner and form in which she has complied with the order to cease and desist.

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IN THE MATTER OF

ELVIN P. COURANT TRADING AS
COURANT DISTRIBUTING COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 5867. Complaint, Mar. 27, 1951—Decision, June 20, 1956*

Order dismissing, as not supported by substantial evidence, complaint charging a seller with false advertising concerning its "Sav-A-Battery" treatment or conditioner for automotive storage batteries.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Jesse D. Kash and *Mr. William M. King* for the Commission.

Mr. R. H. Moore, and *Reeder, Gisler & Griffin*, of Kansas City, Mo., and *Wheeler & Scoutt*, of Washington, D. C., 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 Elvin P. Courant, an individual trading as Courant Distributing Company, hereinafter referred to as 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 that respect as follows:

PARAGRAPH 1. The respondent Elvin P. Courant is an individual trading as Courant Distributing Company having his principal office and place of business located at Nowata, Oklahoma.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the sale and distribution of a product represented as a treatment or conditioner for automotive storage batteries. Said product is designated "Sav-A-Battery."

The formula for said product according to information supplied by respondent is as follows:

29% Magnesium
70% Sodium sulfate
1% Trisodium phosphate

An analysis of the product shows the ingredients to be as follows:

13.2% Magnesium sulfate
75.0% Sodium sulfate