

SYMON GOULD ET AL. DOING BUSINESS AS
THE HEALTH GUILD

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6843. Complaint, July 15, 1957—Decision, Aug. 4, 1959

Order requiring a New York City seller of diet and health books and pamphlets to cease advertising falsely that the regimen set out in certain of such books would effectively treat, arrest, and cure cancer, heart disease, and arthritis.

Mr. Charles S. Cox supporting the complaint.
Respondents appearing without counsel.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

PRELIMINARY STATEMENT

Complaint issued July 15, 1957 charges respondents Symon Gould and Raphael Gould individually and as co-partners doing business as the Health Guild with violation of the Federal Trade Commission Act. Answer and amendment to answer were filed by respondent Symon Gould who appeared without counsel. The initial hearing was held in New York on September 30, 1957 at which time both respondents testified. The taking of additional evidence was postponed until June 13, 1958 upon the representation to the hearing examiner from time to time by the Bureau of Litigation that the matter could and would be settled by an agreement containing an order to cease and desist.

Hearings were held in Washington, D.C. on June 13, 16, 17 and 18, 1958 for taking evidence in support of the allegations of the complaint. Counsel supporting the complaint then rested his case. Respondents did not attend the hearings in Washington, D.C. either in person or by attorney, although duly served with order in which such hearings were set. Order was entered June 23, 1958 and duly served upon respondents which directed that they inform the hearing examiner and counsel supporting the complaint on or before July 15, 1958 as to where they desired hearings to be held for the purpose of offering evidence in opposition to the allegations of the complaint. Such information was also requested by the hearing examiner in letters to respondent Symon Gould dated August 4 and September 8, 1958.

On October 6, 1958 the requested information not having been furnished, an order was entered and duly served on respondents closing the case for the taking of evidence and fixing November 3, 1958 as the date within which proposed findings, conclusions and orders and the reasons therefor could be filed by both sides for the benefit of the hearing examiner.

Upon requests from respondent Symon Gould the time within which such proposed findings, conclusions and orders and the reasons therefor could be filed was extended first to December 15, 1958 and then to January 15, 1959. Request for another extension of time by telegram dated January 12, 1959 was denied by order dated January 12, 1959.

On January 15, 1959 counsel supporting the complaint filed his proposed findings and conclusions and the reasons therefor. Respondent Symon Gould filed a document entitled "Brief in Docket No. 6843 In the Matter of Health Guild Before the Federal Trade

Commission." By order dated January 16, 1958 said document was ordered received and accepted in lieu of proposed findings and the reasons therefor, for respondent Symon Gould.

This proceeding is now before the hearing examiner for an initial decision upon the entire record including the pleadings, evidence, proposed findings and conclusions and the reasons therefor filed by counsel supporting the complaint and upon the document accepted in lieu thereof from respondent Symon Gould. All proposed findings and conclusions not hereafter adopted are hereby specifically rejected.

Upon the entire record and from the observation of the witnesses while testifying the hearing examiner makes the following findings as to the facts, conclusions and order.

FINDINGS AS TO THE FACTS AND CONCLUSIONS

1. Respondent Symon Gould runs a small bookselling business in New York City under the title of The Health Guild. He has been engaged in the business of selling books since 1921. The present address of his place of business is 353 West 48th Street, New York 36, New York.

2. That respondent Raphael Gould is the son of the respondent Symon Gould. He is associated with his father in business and conducts for him what is called the American Library Service which specializes in locating out-of-print books for libraries and individuals. Respondent Raphael Gould has had no part in the running of the business known as The Health Guild, and this proceeding should be dismissed as to him.

3. As indicated by the title of the business, many of the books sold by The Health Guild are on the subject of health, diet, and disease. Respondent Symon Gould advertises such books in two magazines "Health Culture" and "Lets Live." He has been advertising such books in these two magazines since 1942. Prior to the time he testified on September 30, 1957 he had advertised the following books among others in these two magazines:

The Heart: Prevention and Cure of
Cardiac Conditions
By James C. Thomson

Cancer: Its Cause, Prevention and Cure
By Edward Henty Smalpage

How to Avoid Cancer
By Fraser MacKenzie

New Hope For Arthritis Sufferers
By Max Warmbrand

4. These two magazines, "Health Culture" and "Lets Live" are circulated in all the states of the United States. Respondent Symon Gould, as a result of such advertisements has, from his place of business in New York City, sold and shipped these four books to customers in every state in the Union.

5. The evidence shows the first mentioned book was advertised in 1957 and prior thereto; the second mentioned book advertised in 1955; the third mentioned book advertised in 1955 and the last mentioned book advertised in 1955 and prior thereto. The evidence is silent as to what other times these books have been advertised but does show that the book Cancer: "Its Cause, Prevention and Cure" was no longer in print when respondent testified on September 30, 1957.

6. The advertisements in evidence represent directly and by inference that the regimen set out in the book entitled "The Heart: Prevention and Cure of Cardiac Conditions" provides an adequate and reliable; (1) treatment for heart diseases of all kinds; (2) means of arresting the progress of, correcting the underlying causes of and curing all kinds of heart diseases; (3) method of preventing the contraction or development of all kinds of heart diseases.

7. The advertisements in evidence represent directly and by inference that the regimen set out in the book entitled: "Cancer: Its Cause, Prevention and Cure" provides an adequate, effective and reliable: (1) treatment for cancer of all kinds; (2) means of arresting the progress of, correcting the underlying causes of and curing all kinds of cancer; (3) method of preventing the contraction or development of cancer of all kinds.

8. The advertisements in evidence represent directly and by inference that the matters set forth in the book entitled: "How To Avoid Cancer" endows the reader with knowledge that will enable him to; (1) recognize and avoid the causes of all kinds of cancer; (2) successfully prevent his contracting or developing of any kind of cancer; (3) allay any fear of the contraction or development of any kind of cancer.

9. The advertisements in evidence represent directly and by inference that the regimen set out in the book entitled: "New Hope for Arthritis Sufferers" provides an adequate, effective and reliable; (1) means of arresting the progress of, correcting the underlying causes of and curing all kinds of arthritis, rheumatism, neuritis, lumbago, sciatica, bursitis and sacro-iliac pain; (2) treatment that will afford relief from the pains of said diseases and conditions.

10. From the undisputed expert medical testimony in the record, it is found that said representations in regard to the regimen set

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out in the book entitled "The Heart: Prevention and Cure of Cardiac Conditions does not provide an adequate, effective or reliable; (1) treatment for any kind of heart disease; (2) means of arresting the progress of, correcting the underlying causes of, or curing, any kind of heart disease; (3) method of preventing the contraction or development of any kind of heart disease.

11. From the undisputed expert medical testimony in the record it is found that the regimen set out in the book entitled: "Cancer: Its Cause, Prevention and Cure" does not provide an adequate, effective or reliable: (1) treatment for cancer of any kind; (2) means of arresting the progress of, correcting the underlying causes of, or curing, cancer of any kind; (3) method of preventing the contraction or development of, cancer of any kind.

12. From the undisputed expert medical testimony in the record it is found that the matters set forth in the book entitled: "How to Avoid Cancer" do not endow the reader with knowledge that will enable him to; (1) recognize and avoid all kinds of cancer; (2) successfully prevent his contracting or developing of any kind of cancer; (3) allay any fear of the contraction or development of any kind of cancer.

13. From the undisputed expert medical testimony in the record, it is found that the recommendations for rest, fresh air, sunshine and freedom from worry found in the book entitled "New Hope For Arthritis Sufferers" are good for any one with any of the diseases enumerated in the advertisement in evidence for said book. However, it is further found that the regimen set out in said book taken as a whole, does not provide an adequate, effective or reliable (1) means of arresting the progress of, correcting the underlying causes of or curing any kind of arthritis, rheumatism, neuritis, lumbago, sciatica, bursitis or sacro-iliac pain, or; (2) treatment that will afford relief from the pains of any of said diseases or conditions.

14. Although the answer and amendment to the answer by respondent Symon Gould claims that he does only a small amount of business in these books, the evidence does not show anything about the volume of business. However, the expert medical testimony shows that following the various regimens set out in these books may, in the case of cancer or heart disease, cause or hasten death, and cause or hasten permanent crippling in some types of arthritis. The respondent has sold these books in every state of the United States as a result of the advertising attacked in this proceeding. The number of books sold as a result of the advertising is not a true measure of damage that may have resulted from it. Books

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unlike some other articles of merchandise are not limited to use by the purchaser but may be and frequently are passed on to others for reading. The respondent Symon Gould claims to have a right to continue to advertise these or similar books as he has in the past. It is therefore found that this proceeding is in the public interest, although the volume of business in the past may have been small.

15. Respondent Symon Gould in his "Brief" previously mentioned contends that any order to cease and desist herein would be in contravention of the first amendment to the constitution of the United States.

16. The right of the public to be protected from evils of conduct, even though the first amendment rights of persons are thereby in some manner infringed, has received frequent and consistent recognition by the Supreme Court.¹ Respondent in this proceeding advertises and sells books which expound the theories of writers as to the cause, prevention, treatment and cure of certain human ills. To respondent these books are not ideas, they are merchandise, tangible articles, upon which respondent makes or hopes to make a profit when they are sold. Respondent has no more right to falsely advertise these books than he has to falsely advertise any other kind of merchandise. As was said by the Court in *E. F. Drew & Co., Inc. v. F.T.C.*, 235 F. 2d 735, "there is no constitutional right to disseminate false or misleading advertisements."

17. The use by the respondent Symon Gould of the foregoing false, misleading and deceptive representations has had and now has the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that said representations are true and into the purchase of respondent's said books by reason thereof.

18. The aforesaid acts and practices of the respondent Symon Gould were and are all to the prejudice and injury of the public and constitute unfair and deceptive acts in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered. That respondent Symon Gould, individually and trading as The Health Guild, or trading under any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the books "The Heart: Prevention and Cure of Cardiac Conditions," "Cancer: Its Cause, Prevention and Cure,"

¹ *American Communications Assn. C.I.O., et al. v. Douds*, 339 U.S. 382, 398 and cases therein cited.

"How to Avoid Cancer" and "New Hope for Arthritis Sufferers" and any other books or writings, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that the regimen set out in the respective books or other said books:

1. Provides an adequate, effective or reliable:
 - (a) treatment for any kind of heart disease;
 - (b) means of arresting the progress of, correcting the underlying causes of, or curing, any kind of heart disease;
 - (c) method of preventing the contraction or development of any kind of heart disease.
2. Provides an adequate, effective or reliable:
 - (a) treatment for cancer of any kind;
 - (b) means of arresting the progress of, correcting the underlying causes of, or curing, cancer of any kind;
 - (c) method of preventing the contraction or development of cancer of any kind.
3. Endows the reader with knowledge that will enable him to:
 - (a) recognize and avoid the causes of cancer of any kind;
 - (b) successfully prevent his contraction or development of cancer of any kind;
 - (c) lose any existing fear of the contraction or development of cancer.
4. Provides an adequate, effective or reliable:
 - (a) means of arresting the progress of, correcting the underlying causes of, or curing, any kind of arthritis, rheumatism, neuritis, lumbago, sciatica, bursitis, sacro-iliac pain;
 - (b) treatment that will afford relief from the pains of, any kind of arthritis, rheumatism, neuritis, lumbago, sciatica, or bursitis.

It is further ordered, That this proceeding be and the same hereby is dismissed as to respondent Raphael Gould.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard on the appeal of respondent Symon Gould from the hearing examiner's initial decision; and

The Commission having considered the entire record, including briefs in support of and in opposition to said appeal, no oral argument having been requested, and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record but that the order contained in the initial decision is not appropriate in all respects to dispose of this matter:

It is ordered, That the aforesaid appeal be, and it hereby is, denied.

It is further ordered, That the order to cease and desist contained in the initial decision be modified by deleting from the preamble thereof the words "having to do with the prevention, treatment or cure of heart disease, cancer, arthritis, rheumatism, neuritis, lumbago, sciatica, bursitis, sacro-iliac pain and similar conditions, which contain the same or substantially the same subject matter."

It is further ordered, That the initial decision of the hearing examiner, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent Symon Gould 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 the order contained in said initial decision.