

Complaint

IN THE MATTER OF

CARLTON FREDERICKS

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

Docket 8668. Complaint, Oct. 25, 1965—Decision, Feb. 20, 1967

Order dismissing a complaint against an author and radio lecturer on diet and nutrition which charged respondent with allegedly misrepresenting his academic background and status, the number of radio stations carrying his program, and the copyright data of his book on diets.

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 Carlton Fredericks, 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. Respondent Carlton Fredericks is an individual whose home address is Spring Valley, Rockland County, New York, and whose business address is 1440 Broadway, New York, New York.

PAR. 2. Respondent is now, and has been for some time last past, engaged in selling and distributing a radio program concerning nutrition, diet and health. Respondent's said program is recorded on tape by him at his home and place of business, and said tapes are then distributed by respondent or his agents to various radio stations throughout the United States. Respondent also writes, and has written and published, books and pamphlets concerned with nutrition, diet and health, which books and pamphlets are sold and distributed by respondent or his agents to purchasers thereof located in various States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a substantial trade in said radio programs, books and pamphlets in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the sale and distribution of his radio program recordings to various radio stations throughout the United States, and of his books and pamphlets to the purchasing public, respond-

ent has made certain statements and representations with respect thereto in advertisements and promotional material, including advertising appearing in trade magazines and newspapers, and in brochures and circulars.

PAR. 4. Among and typical, but not all inclusive, of the statements and representations made and appearing in said advertisements are the following:

The scripts of the [respondent's] programs have been translated into braille by the Library of Congress * * *.

His [respondent's] Ph.D. dissertation * * * was entirely in the field of nutrition * * *.

He [respondent] taught Nutrition * * * as a member of the faculty of the School of Education of New York University * * *.

Visiting Lecturer * * * College of Pharmacy, Columbia [University].

For the public services rendered in his broadcasts, Dr. Fredericks has received an honorary Doctorate of Humanities degree * * *.

Dr. Fredericks is a Founding Fellow in the International College of Nutrition, and has been awarded the Diplomate by this college.

Dr. Fredericks' biography appears in: * * * [the] National Cyclopedia of American Biography.

These Top Stations KNOW Carlton Fredericks SELLS * * * WEIV, Ithaca, New York, WOIV, Syracuse, New York, WJIV, Albany, New York * * *.

Eat, Live and Be Merry—a New Book by Carlton Fredericks * * * Copyright 1961, by Nutrition Surveys, Inc.

PAR. 5. Through the use of said statements and representations, and of others not specifically set out herein, respondent has represented, and now represents, directly or by implication in his advertising:

1. That scripts of respondent's radio programs have been reproduced in braille by, or at the instigation of, the Library of Congress, an agency of the United States Government;

2. That respondent's doctoral dissertation or thesis was written on the subject of, or in the field of, the science of nutrition;

3. That respondent at one time held or enjoyed the rank of member of the faculty of New York University, and of Visiting Lecturer in the College of Pharmacy of Columbia University;

4. That respondent has received an honorary Doctorate of Humanities degree from an institution or academic body lawfully authorized and empowered to award the same;

5. That respondent has been awarded the degree or status of "diplomate" by an institution or academic body lawfully authorized and empowered to award the same;

6. That respondent's biography has been published in a cer-

tain encyclopedia of professional biography, *viz.*, "The National Cyclopedia of American Biography";

7. That certain radio stations, *viz.*, Station WEIV, Ithaca, New York, Station WOIV, Syracuse, New York, and Station WJIV, Albany, New York, broadcast respondent's radio program;

8. That a certain book, *viz.*, "Eat, Live and Be Merry," was a "new" book authored by respondent, and was copyrighted in the year 1961 by "Nutrition Surveys, Inc."

PAR. 6. In truth and in fact:

1. Scripts of respondent's radio programs have not been reproduced in braille by, or at the instigation of, the Library of Congress or any other agency of the United States Government;

2. Respondent's doctoral dissertation or thesis was not written on the subject of, in the field of, nor was it concerned with, the science of nutrition;

3. Respondent has at no time been a member of the faculty of New York University, nor has he held the rank of Visiting Lecturer in the College of Pharmacy of Columbia University, nor has he held a teaching relationship with any institution of learning other than Fairleigh Dickinson University, Rutherford, New Jersey;

4. Respondent has not received the honorary degree of Doctor of Humanities from an academic institution lawfully entitled or empowered to award or grant the same, but on the contrary has been "awarded" the said degree by a foreign school of theological learning which said school is not entitled or empowered by its charter to award or grant the same;

5. Respondent has not been awarded the degree or status of "diplomate" by any institution or academic body lawfully authorized or empowered to award the same;

6. Respondent's biography has not appeared in the publication entitled "The National Cyclopedia of American Biography";

7. Radio Stations WEIV (Ithaca, New York), WOIV (Syracuse, New York), and WJIV (Albany, New York) have not broadcast respondent's radio program;

8. The edition of the book referred to as "Eat, Live and Be Merry, a new book by Carlton Fredericks * * * copyright 1961 by Nutrition Surveys, Inc." was not a "new" and previously unpublished book, but on the contrary was essentially the same book which had been published under that title in 1951; said book was not copyrighted in 1961 and was never copyrighted by "Nutrition Surveys, Inc."

Therefore, the statements and representations made by re-

spondent as set forth and referred to in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. The use by respondent of the foregoing false, misleading and deceptive statements and representations in advertising has had and now has the tendency and capacity to mislead and deceive those purchasing radio programs, and the purchasing public, into the mistaken belief that such statements and representations were, and are, true, and into substantial purchases of respondent's radio programs and books and pamphlets respectively by reason thereof.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Richard Whittington Whitlock and Mr. Edward F. Downs, supporting the complaint.

Mr. Milton A. Bass (assisted by *Mr. Robert Ullman*), of *Bass & Friend*, New York, N.Y., for respondent.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

JULY 11, 1966

The complaint herein, issued on October 25, 1965, alleges the making of deceptive statements and misrepresentations constituting violation of the Federal Trade Commission Act, presumably Section 5 in particular. An answer was interposed, followed (on order of the examiner) by an amended answer. Various motions were filed directed to the complaint and the answer, and seeking discovery, as to which the examiner made various rulings.

A nonpublic prehearing conference was held, and is reported in the stenographic transcript, consisting of 99 pages. The examiner issued a detailed prehearing conference order of directions dated January 12, 1966, followed later by certain supplementary directions.

There was considerable discovery. Each side submitted lists of proposed witnesses and exhibits, and also indicated the issue to be proved by each witness and exhibit. Copies of exhibits were exchanged. Both sides were very cooperative.

The Commission authorized hearings in both Washington, D.C., and New York, adopting a recommendation by the examiner

that this be done pursuant to a plan obviating the necessity for going to New York more than once. The hearing commenced in New York City on March 30, 1966, where it continued until April 8, and concluded with one day in Washington, D.C., on April 12. There is a hearing transcript of 969 pages.

Practically all of the witnesses were called by complaint counsel, most of them being faculty members of New York University, where respondent took his Ph.D. and also briefly taught; they testified as to the meaning, particularly at said University, of a Ph.D. thesis "in nutrition" and of "faculty member," the subjects of two alleged misrepresentations. Although complaint counsel gave notice that they were calling two faculty members of the School of Pharmacy of Columbia University on whether or not respondent was a "visiting lecturer" there, they were not called, nor was any evidence presented as to whether or not respondent was a "visiting lecturer" there.

Complaint counsel also had listed a proposed witness from Canada, stating that he had specialized knowledge on Canadian academic institutions, on the issue of the authority of a certain institution there to issue an honorary doctorate degree held or claimed to be held by respondent; however, they did not produce him, nor any other specialized witness, or any general proof of Canadian law as to the authority to issue honorary degrees.

Paragraph Two of the complaint alleges that respondent has been engaged in selling and distributing a radio program concerning nutrition, diet and health, that the program is prerecorded by him and distributed by him or his agents to various radio stations throughout the United States. It also alleges that he has written and published various books and pamphlets, also concerning nutrition, diet and health, although the proof mainly and predominately concerns one book, to wit, "Eat, Live and Be Merry." Interstate commerce is duly pleaded, and does not seem to be seriously contested as such. But respondent strenuously denies that *he* made the representations in commerce, rather than independent third parties.

Paragraph Three of the complaint alleges that in the course of his business, and for the purpose of inducing the sale of his radio program recordings to radio stations, and of his books and pamphlets to the purchasing public, respondent has made "certain statements and representations with respect thereto in advertisements and promotional material, including advertising appearing in trade magazines and newspapers, and in brochures and circulars."

Said paragraph three expressly relates to representations not only to "radio stations" in connection with his radio program, but to the "purchasing public" in connection with his writings. However, the proof is, for all practical purposes, that all but one of the representations were made to radio stations, in connection with the sale of respondent's radio program. Only one representation was made to the general public, in connection with a book, pamphlet, or other writing, to wit, the book "Eat, Live and Be Merry."

Moreover, apart from the book representation to the public, all of the proved representations to radio stations are made in a single "large advertisement" in Broadcasting Magazine, except for one of them made in a single "small advertisement" in Broadcasting Magazine; both advertisements appeared as far back as 1961. Furthermore, both of these advertisements were subscribed by CF Productions, Inc., not by respondent, and were inserted by said company.

It will also be noted that the complaint alleges representations "in advertisements and promotional material." Complaint counsel at the hearing, in order to bolster up their proof, contended that various Who's Who and similar biographical sketches of the respondent come within the meaning of "advertisements and promotional material." The examiner ruled that they are neither advertisements nor promotional material—although relevant on the issue of respondent's responsibility for the derived representations in the advertising herein, since he referred the drafter of the advertising to the biographical sketches.

In general, the hearing examiner finds in this decision that complaint counsel have completely failed in their proof as to all the alleged misrepresentations to the radio stations, and have succeeded in their proof only as to the one representation to the general public in connection with the book "Eat, Live and Be Merry." In general, the examiner has found that none of the representations to the radio stations have been proved to be false, except perhaps two which were inadvertent and not worthy of serving as the basis for the issuance of a cease and desist order.

The following is a quotation of paragraph four of the complaint, purporting to quote the specific representations relied on. The subnumbering is added by the examiner but is the same as used in five and six of the complaint:

PAR. 4. Among and typical, but not all inclusive, of the statements and representations made and appearing in said advertisements are the following:

[1] The scripts of the [respondent's] programs have been translated into braille by the Library of Congress * * *.

[2] His [respondent's] Ph.D. dissertation * * * was entirely in the field of nutrition * * *.

[3] He [respondent] taught Nutrition * * * as a member of the faculty of the School of Education of New York University * * *.

Visiting Lecturer * * * College of Pharmacy, Columbia [University].

[4] For the public services rendered in his broadcasts, Dr. Fredericks has received an honorary Doctorate of Humanities degree * * *.

[5] Dr. Fredericks is a Founding Fellow in the International College of Nutrition, and has been awarded the Diplomate by this college.

[6] Dr. Fredericks' biography appears in: * * * [the] National Cyclo-
pedia of American Biography.

[7] These Top Stations KNOW Carlton Fredericks SELLS * * * WEIV, Ithaca, New York, WOIV, Syracuse, New York, WJIV, Albany, New York * * *.

[8] Eat, Live and Be Merry—a New Book by Carlton Fredericks * * *
Copyright 1961, by Nutrition Surveys, Inc.

These representations are quoted, but in some instances more fully, in Part FOUR of this decision. There is a fuller quotation herein, particularly as to No. 2 and No. 8, both of which make liberal uses of asterisks; No. 2 also omits a preceding and a following sentence deemed by the examiner to be pertinent.

For convenience, and for further use in captions of various subparts of this decision, the alleged misrepresentations will be listed here in the following cryptic form:

1. *Braille of radio scripts by Library of Congress.*
2. *Ph.D. thesis in "nutrition."*
3. *Faculty member, New York University.*
Visiting lecturer, School of Pharmacy, Columbia Un.
4. *Honorary Doctor of Humanities.*
5. *"Diplomate."*
6. *National Cyclopedic biographee.*
7. *On Ivy stations—WEIV, WOIV, WJIV.*
8. *New book, Copyright 1961; author thereof.*

Both sides have duly filed proposed findings and conclusions, together with legal argument, as well as supplemental submissions subsequently authorized by the examiner.—Important exhibits are reproduced herein as part of the decision.

FINDINGS OF FACT AND DISCUSSION

All findings of fact in this case are contained herein. Any proposed finding not found here is disallowed, although not necessarily on the ground of lack of proof.

Salient findings of fact are emphasized. Evidentiary facts and

