

Syllabus

IN THE MATTER OF

MCGOWAN LABORATORIES, INC., AND WOMANHOOD
PUBLISHING CORPORATION

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

Docket 1393. Complaint, July 13, 1926—Decision, June 6, 1927

Where a corporation engaged in the preparation and sale of a toilet compound alleged to be effective in removing excess flesh, made many false and misleading statements in advertising the same in newspapers, magazines, and other publications of general circulation, to the effect that by the use thereof anyone might be freed from every ounce of unwelcome flesh, that getting thin was made pleasurable simple and easy for anyone thereby, that upon the application thereof to the human body a harmless chemical reaction took place, during which the excess fat was literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace desired by every man and woman, and that any purchaser thereof by patting the same gently on to the parts desired to be slenderized, thereby reduced any part of the body so treated, no matter how much or how little excess flesh there might be, quickly, surely, and permanently, the fact being that the preparation was of no value whatever for any such purposes; with the capacity and tendency to induce numerous persons seeking a safe and dependable means of quickly and permanently ridding their bodies of undesired flesh, into believing that the aforesaid product, when used as directed, produced the results represented; and

Where a corporation engaged in the publication and distribution throughout the United States of a monthly periodical designated True Romances, purposely and knowingly becoming a party to said false and fraudulent plan and scheme for the advertisement, sale, and distribution of said product (requiring for its success the cooperation of publishers of magazines and other publications of general circulation), and a medium for the accomplishment thereof, as such and for said purpose and for a consideration agreed upon, incorporated such false, misleading and fraudulent advertisements into its aforesaid magazine, and distributed the same as a part thereof to its subscribers and purchasers throughout the several States;

With the capacity and tendency to mislead and deceive persons into purchasing such fraudulent product, who might otherwise seek and obtain the services or products of competitors engaged in offering to the public, without any such misrepresentations, professional advice, instructions, etc., for ridding the body of undesired flesh, in response to the demands of many persons for a safe and dependable means of so doing, to the prejudice of the public and its competitors:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

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Mr. Martin A. Morrison for the Commission.

Tenney, Harding, Sherman & Rogers, of Chicago, Ill., for respondent McGowan Laboratories, Inc.

Mr. Joseph Schultz, of New York City, for respondent Womanhood Publishing Corporation.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent McGowan Laboratories, Inc., engaged in the manufacture or preparation of a toilet compound or cream alleged to be effective in removing excess flesh, and in the sale to customers throughout the several States, and with principal place of business in Chicago, with advertising falsely or misleadingly in connection with the sale of said product, and charged respondent Womanhood Publishing Corporation, engaged in the publication of a monthly magazine "True Romances," and in the sale thereof to subscribers and to the public by dealers throughout the several States, and with principal place of business in New York City, with becoming purposely and knowingly party to and part of a false and fraudulent plan for the misleading and deceptive advertisement and sale of a product, and medium for the accomplishment of such a plan; all in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Said last-named corporation, as charged, published in its aforesaid magazine advertisements of the first-named respondent falsely representing that upon the application of said compound to the body "a harmless chemical reaction takes place during which the excess fat is literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace to the body every man and woman desires"; and that any purchaser "by applying said product and patting it gently onto the parts of the human body which the purchaser desires to slenderize, will thereby reduce any and every part of the body so treated, no matter how much or how little excess flesh there may be, quickly, surely, and permanently," the fact being that the product in question was of no value for the purposes for which thus advertised and sold; with the capacity and tendency to induce those numerous persons seeking some safe and dependable means of removing excess fat or flesh into believing the aforesaid representations relative to said compound and to deceive those who might otherwise seek and obtain the services, products, means and

methods of competitors offering the public professional advice, information, instructions, etc., for ridding the body of excess flesh, without any such false or misleading and fraudulent assertions and representations, into purchasing the aforesaid fraudulent product; all to the prejudice of the public and respondent McGowan Laboratories' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, charging them with the use of unfair methods of competition in violation of the provisions of said act.

Respondents having entered their appearance and filed their separate and several written returns to the complaint herein, expressly waiving proof of the allegations of the complaint, admitting all allegations of the complaint, and consenting that the Federal Trade Commission may, upon said complaint and returns thereto, proceed to the final disposition of this cause and issue and serve upon respondents an order requiring respondents to cease and desist from using such method of competition, to wit, to cease and desist from the violation or violations of the law so charged in said complaint, the Federal Trade Commission, being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and its conclusions of law thereon:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, McGowan Laboratories, Inc., is a corporation, with its principal place of business located in the city of Chicago, in the State of Illinois. It is engaged in the manufacture or preparation of a certain toilet compound or cream alleged to be useful and effective in dissolving away and removing excess flesh of the human body, and in offering to sell and selling said compound or cream to customers in and throughout the several States of the United States. It causes its said product, when so sold, to be transported from its said place of business in the city of Chicago, in the State of Illinois, into and through other States of the United States to said purchasers thereof at their respective points of location.

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Said respondent designates, advertises and sells its said product by and under the name of "McGowan's Reducine."

PAR. 2. Respondent Womanhood Publishing Corporation is a corporation, with its principal place of business located in the city of New York, in the State of New York. It is engaged in publishing and distributing to the public a certain monthly magazine, under the name of True Romances, in which are included, together with the reading matter, many advertisements inserted and paid for by persons using said magazine as a medium for placing themselves and their products before the public. That said magazine is by respondent delivered, through United States mails and otherwise to the subscribers therefor, in and throughout the several States of the United States, and is by said respondent caused to be offered for sale and sold to the public by dealers in and throughout the several States of the United States.

PAR. 3. Respondent McGowan Laboratories, Inc., causes its said product to be advertised in newspapers, magazines, periodicals and other publications of general circulation throughout the United States and in various sections thereof. In all the aforesaid advertising, said respondent makes many false and misleading statements and assertions regarding the certain harmless chemical reaction which is alleged to take place in the portions of the human body to which said compound or cream is applied, to the effect that by the use of said product anyone may be freed from every ounce of unwelcome flesh and that getting thin is made pleasurably simple and easy for anyone. In all said advertisements said respondent asserts and represents that upon the application of said product to the human body, a harmless chemical reaction takes place, during which the excess fat is literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace to the body every man and woman desires. In all said advertisements said respondent asserts and represents that any purchaser thereof, by applying said product and patting it gently onto the parts of the human body which the purchaser desires to slenderize, will thereby reduce any and every part of the body so treated, no matter how much or how little excess flesh there may be, quickly, surely and permanently. That in and throughout the several States of the United States are many persons who are seeking some safe and dependable means whereby they may quickly and permanently rid their bodies of excess fat or flesh or of other portions of the flesh they now bear, and that said advertisements have the capacity and tendency to induce such persons to believe that said respondent's said product, to wit, McGowan's Reducine, will, when used as directed, produce

the results in said advertisements so asserted and represented. That in truth and in fact, said product does not possess the qualities or properties so asserted and represented in said advertisements, and the use or application of the same upon the human body, as so directed, does not produce any of the results in said advertisements so asserted or represented, and said product is useless and of no value for the purposes for which it is so advertised and sold by respondent, McGowan Laboratories, Inc.

PAR. 4. That in the enterprise of so advertising said product to the public, and misleading and deceiving intended purchasers thereof as to its qualities and properties and the results of its said use upon the human body, it is necessary for respondent McGowan Laboratories, Inc., to have the cooperation of publishers of magazine and other publications of general circulation in and throughout the several States of the United States. That respondent Womanhood Publishing Corporation has purposely and knowingly become a party to, and part of, said false and fraudulent plan and scheme for the advertisement, sale, and distribution of said product, and a medium for the accomplishment of the same; and as such, and for said purpose, and for a consideration agreed upon by and between the respondents herein, has incorporated such false, misleading, and fraudulent advertisements into its said monthly magazine, to wit: True Romances, and has distributed and is distributing the same as such part of said magazine to its subscribers and to purchasers thereof in and throughout the several States of the United States.

PAR. 5. That, to meet the demands of said many persons so seeking a safe and dependable means of ridding their bodies of excess fat or flesh, or other portions of the flesh they now bear, many competitors of respondent are offering to the public professional advice, books of information and instructions, and other means and methods for the accomplishment of such results; which said competitors do not make any of the false, misleading, and fraudulent assertions and representations above alleged as to the service, means and methods so offered by them, or any like or equivalent false, misleading and fraudulent assertions and representations.

That said false, misleading, and fraudulent assertions and representations so made and published by respondents herein have the capacity and tendency to mislead and deceive persons who might otherwise seek and obtain the services, products, means and methods of said competitors, into purchasing said fraudulent product of respondent McGowan Laboratories, Inc.

PAR. 6. That the acts and practices of the respondents, and each of them, above alleged, are all to the prejudice of the public and of

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the competitors of respondent, McGowan's Laboratories, Inc., and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

CONCLUSION

The acts and practices of respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, alleged in said complaint and set forth in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the separate and several written returns of respondents to the complaint herein, and pursuant to the terms of said written returns of the respondents, and the Commission having accordingly made its report in writing stating its findings as to the facts and its conclusion of law thereon, that the acts and practices of respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, alleged in the complaint herein and set forth in said findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an Act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, By the Federal Trade Commission that respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, do cease and desist from all and singular the acts and practices in said complaint alleged and set forth in said findings as to the facts, to wit:

PARAGRAPH 1. That respondent, McGowan Laboratories, Inc., cease and desist, in selling or offering for sale in interstate commerce its certain toilet compound or cream in said complaint referred to, and in causing its said compound to be advertised for sale in interstate commerce in newspapers, magazines, periodicals or other publications of general circulation throughout the United States and in various sections thereof, or in otherwise advertising the same for sale in interstate commerce, from making the false and misleading statements and assertions regarding the certain harmless chemical reac-

tion which is alleged to take place in the portions of the human body to which said compound or cream is applied:

(1) To the effect that by the use of said product anyone may be freed from every ounce of unwelcome flesh and that getting thin is made pleurably simple and easy for anyone.

(2) To the effect that, upon the application of said product to the human body, a harmless chemical reaction takes place, during which the excess fat is literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace to the body every man and woman desires.

(3) To the effect that any purchaser of said compound, by applying said product and patting it gently into the parts of the human body which the purchaser desires to slenderize, will thereby reduce any and every part of the body so treated, no matter how much or how little excess flesh there may be, quickly, surely and permanently.

(4) To the effect that any portion or portions of the alleged effects of the application of said compound to the human body, will result therefrom.

PAR. 2. That respondent, McGowan Laboratories, Inc., cease and desist in selling or offering for sale in interstate commerce its said certain toilet compound or cream, and in causing its said compound to be advertised for sale in interstate commerce, in newspapers, magazines, periodicals, or other publications of general circulation throughout the United States and the various sections thereof, or in otherwise advertising the same for sale in interstate commerce, from making any false and misleading statement or statements or assertions as to the said product or as to the effect or effects of its use upon, or application to, the human body.

PAR. 3. That respondent, Womanhood Publishing Corporation, cease and desist from incorporating in its certain magazine, to wit: True Romances, and distributing the same as a part of said magazine to its subscribers and to the purchasers thereof in and throughout the several States of the United States or any section thereof, all and singular the false and misleading statements and assertions in relation to the certain toilet compound or cream sold and offered for sale in interstate commerce by respondent, McGowan Laboratories, Inc., alleged and set forth in the complaint herein, or set forth in the Commission's findings as to the facts herein, or referred to or set forth in paragraph 1 or paragraph 2 of this order.

PAR. 4. That respondent, Womanhood Publishing Corporation, cease and desist from incorporating any of the false and misleading statements as to said toilet compound or cream referred to in paragraph 3 of this order, or any similar false and misleading statement

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or assertion, as to said toilet compound or cream, or as to the effect of its application to the human body, in any newspaper, magazine, periodical, or other publication, and distributing the same as a part of such newspaper, magazine, periodical, or other publication to the subscribers therefor, or purchasers thereof, in and throughout the several States of the United States or in any section thereof.

And it is further ordered, That respondents, McGowan Laboratories, Inc., and Womanhood Publishing Corporation, shall severally within 30 days after service upon them of a copy of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which each respondent respectively has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

COMMONWEALTH MANUFACTURING CO. AND HARRY DUSHOFF, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES HARRY DUSHOFF & COMPANY AND CHICAGO MANUFACTURING COMPANY

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

Docket 1367. Complaint, Mar. 1, 1926¹—Decision, June 25, 1927

- Where a corporation, and an individual, the organizer, owner, and operator thereof, engaged in the sale and distribution of prison-made binder twine, and prison made shoes, which simulated the general appearance of those long used by and manufactured under the supervision and specifications of the War Department, though greatly inferior thereto in quality and workmanship, and of surplus prison-made shirts available for sale and distribution after supplying the needs of the State's public institutions (made by the State, at the State prison, by prison labor, in its own factory building and with its own manufacturing machinery, augmented by some sewing machines furnished by them, along with some cloth and trimmings); and doing no manufacturing, nor owning, controlling nor operating any shirt factory;
- (a) Included in their corporate and trade names the word "manufacturing" and featured said names upon their order forms, letterheads, billheads, shipping tags, and other business stationery used in carrying on their aforesaid businesses, together with such statements as "Manufacturers and Distributors of BINDER TWINE," "Mills: Michigan City, Indiana. Buy DIRECT," "Manufacturers and distributors, SHOE DEPARTMENT," "Manufacturers, SHIRT DEPARTMENT, Factory: Michigan City, Indiana," "SPECIAL OFFER OF HIGH-GRADE WORK SHIRTS AT A LOW PRICE. Buy direct from the manufacturer," and in carrying on the sale of the shirts dealt in by them, held themselves out to customers and prospective customers as the manufacturers thereof; with the capacity and tendency to mislead and deceive the purchasing public into believing them to be the manufacturers of the aforesaid products, and that in buying from them they were obtaining the same directly from the manufacturers thereof, thereby eliminating and saving the costs and profits of middlemen, and to cause them to purchase said products in the aforesaid erroneous belief; and
- (b) Sold the aforesaid shoes branded with the letters "U. S." on the soles thereof, in large and conspicuous type, surrounded by an outline of the United States shield, together with the brand "Munson Army Last" in smaller letters, and invoiced and billed the same to its customers as "United States Army Munson Last Work Shoes," with the capacity and tendency to mislead and deceive the consuming public into believing said shoes to be genuine army shoes or shoes manufactured under the supervision and specifications of the United States Government, and cause the pur-

¹Amended complaint, Mar. 23, 1926.