

IN THE MATTER OF
GEORGE L. WALKER, DOING BUSINESS UNDER THE
NAME AND STYLE OF WALKER MEDICINE CO.

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

Docket 2059. Complaint, July 11, 1932—Decision, July 18, 1933

Where an individual engaged in the compounding, preparation, and sale of proprietary or so-called patent medicines,

- (a) Included in designation of one of said preparations, the words "Indian health tonic", and represented said preparation as "the unfailing remedy for laziness and a drowsy, tired, sleepy feeling", and as relieving "weakness and tired feeling in one day", facts being preparation in question was not a general health restorative and use of the word "health" without proper limitations, in the name of the medicine, or otherwise in connection therewith, was unwarranted, and said medicine did not constitute a remedy for laziness and a sleepy feeling, unless due to constipation, and would not relieve weakness and a tired feeling, unless caused by anemia, and then only to a slight extent;
- (b) Represented said preparation as one for liver, kidneys, and blood, relieving bladder and kidney trouble, and as one which relieved in one day a bad cold or cough, grippe, or fever, facts being said medicine had no specific effect on the liver or any particular effect on the kidneys, and no therapeutic effect on any disease of the blood, except, possibly, in cases of anemia, would not relieve bladder trouble, and did not constitute an effective treatment for colds or grippe, nor a treatment for fevers generally, nor an effective one for ordinary fever and one which would relieve fever in one day; and
- (c) Represented said preparation as one which relieved pain in the neck, side, shoulder, back, or hips in one day, and one which relieved rheumatism, giving quick relief from pain, and also female diseases and women's troubles, facts being it would not relieve pain in the neck, etc., and was not generally beneficial in the treatment of rheumatism, other than as a laxative or purgative where the condition was connected in some way with constipation, and would not give quick relief from pain in such cases and had no effect in female diseases and women's troubles and would not be beneficial in treatment thereof unless in cases of constipation;

With tendency and capacity, through said exaggerated, misleading, and unwarranted representations which passed beyond the medicinal value of the preparation and did not truthfully and accurately state the therapeutic effect thereof, to confuse, mislead and deceive the general public into believing that said medicine had general curative properties in restoring health, without regard to the particular ailment, and constituted a remedy for, or would give relief in, the diseases and ailments named, or constituted such remedy or relief generally, without qualification or limitation, and to induce the purchase and use of such medicine because of such erroneous beliefs thereby caused, and divert trade to said individual

from competitors engaged in the sale of products similar in kind and purposes of use, to aforesaid medicine, and in sale of products adapted to and used in the treatment of aforesaid diseases and ailments, and with the effect of so diverting business to said individual from competitors, including those who in nowise misrepresent the therapeutic uses and effects of the medicines dealt in by them, to their substantial injury:

Held, That such practices, under the conditions and circumstances set forth, were all to the injury and prejudice of the public, and competitors, and constituted unfair methods of competition.

Mr. Harry D. Michael for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent George L. Walker, an individual doing business as Walker Medicine Co., engaged for ten years or more last past in the compounding and preparation of proprietary or so-called "patent" medicines, including one known and described as "Walker's Old Indian Health Tonic", and in the sale thereof to purchasers in the various States of the United States, and with principal office and place of business in Atlanta, Ga., with naming product misleadingly, advertising falsely or misleadingly, and misbranding or mislabeling as to results or quality of products, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, in soliciting the sale of and in selling the said "Walker's Old Indian Health Tonic" makes statements and representations through printed coupons or circulars distributed in the different States, and the labels on the containers thereof, as to the therapeutic value or effect of said medicine, many of which are misleading and deceptive in that they either greatly exaggerate or do not truthfully and accurately state the therapeutic value thereof, said statements and representations holding out the same as a cure or treatment for liver, kidneys, blood, drowsy, tired feeling, cold, etc.¹

Facts are, as alleged, that said medicine is not a remedy for the ailments set forth in respondents' circulars and labels, nor does its therapeutic value warrant statements or representations that it will

¹ Statements, among others, made in the coupons and circulars, as alleged in the complaint, are set forth in the findings, *infra* at p. 19.

Statements, among others, made on the labels, as alleged in complaint, included the following:

"Walker's Old Indian Health Tonic."
 "The Unfailing Remedy for Laziness and a Drowsy, Tired, Sleepy Feeling."
 "Relieves Indigestion, . . . Dizziness, Sick Headache, Numbness or Chills, Kidney or Bladder Troubles, Piles, Jaundice, . . . Weakness, Tired Feeling."
 "Stimulates and Purifies the Blood."

give relief therein and such therapeutic value is not such as to warrant use of word "Health" in the name of said medicine since it is not a general health restorative.

Said representations, as charged, have the capacity and tendency to confuse, mislead, and deceive members of the public into believing said medicine has general curative properties in restoring health without regard to the particular ailment, and constitutes a remedy for those enumerated, or will give relief therein, and to induce purchase and use of said medicine in such erroneous belief, and to divert trade to respondent from competitors engaged in sale in interstate commerce of similar preparations; all to the prejudice of the public and 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 its complaint upon the respondent, George L. Walker, doing business under the name and style of Walker Medicine Co., charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered his appearance and filed his answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing upon the record and brief of the attorney for the Commission, respondent having failed to file a brief herein, although opportunity was given therefor, and the Commission, having duly considered the record and being fully advised in the premises, makes this its finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, George L. Walker, is the sole owner and manager of the business conducted by him under the name Walker Medicine Co., which said business has been owned and conducted by respondent for more than ten years last past with his principal place of business in the city of Atlanta in the State of Georgia. Said business consists of the compounding, preparation,

and sale of proprietary or so-called "patent" medicines. One of said medicines is known and prescribed as "Walker's Old Indian Health Tonic" which is and has been sold to members of the public and to retail dealers for ultimate resale to members of the public, in various States of the United States other than the State of Georgia, and said respondent causes and has caused said product when so sold to be transported in interstate commerce from his said place of business in Georgia to, into, and through States of the United States other than the State of Georgia to members of the public and retail dealers to whom said product is and has been sold.

During said time other individuals, firms, and corporations are and have been engaged in the manufacture and sale of proprietary medicines similar in kind and as to purposes of use to that manufactured and sold by respondent as aforesaid. Also, during said time other individuals, firms, and corporations are and have been engaged in the manufacture and sale of proprietary medicines adapted to and used in the treatment of the respective diseases and bodily conditions for which the respondent herein advertises and recommends his said medicine. Said other individuals, firms, and corporations have caused and do now cause their said products when sold by them to be transported in interstate commerce from their several places of business in various States of the United States to, into, and through States other than the State of origin of the shipment thereof. Respondent herein has been during said time in competition in interstate commerce in the sale of his said product with the several products of such other individuals, firms, and corporations.

PAR. 2. Respondent herein, during said time, in soliciting the sale of and in selling said "Walker's Old Indian Health Tonic", makes use of and has made use of certain printed coupons or circulars which he causes to be transported from his place of business in Georgia to places in other States where said medicine is offered for sale and sold and where said coupons or circulars are distributed to and among the purchasing public. Said coupons or circulars have imprinted thereon various statements and representations as to the therapeutic value or effect of said medicine, among which are the following:

Walker's Old Indian Health Tonic.

For liver, kidneys, blood.

The unfailing remedy for laziness and a drowsy, tired, sleepy feeling.

Relieves a bad cold or cough in one day.

Relieves la grippe in one day.

Relieves fever in one day.

Relieves weakness and tired feeling in one day.

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Relieves pain in the neck, side, shoulder, back or hips in one day.

Relieves bladder and kidney trouble.

Relieves rheumatism, giving quick relief from pain.

Relieves female diseases and women's troubles.

PAR. 3. Respondent's said medicine is composed of the following ingredients in approximately the proportions indicated below:

Magnesium sulphate.....	16.68	grams per 100 cc.
Ferric Chloride.....	.78	grams per 100 cc.
Quinine sulphate.....	.062	grams per 100 cc.
A very small amount of aromatic sulphuric acid.		

Said formula was obtained by an analysis of a bottle of respondent's medicine. An analysis of a second sample showed only slight variations in the quantitative analysis. Questions asked Commission's medical witnesses were based on the analyses of both samples. Two such medical witnesses gave opinions as to the therapeutic uses and effects of said medicine.

On behalf of respondent no quantitative analysis was given. Respondent testified that the chemist who testified on behalf of the Commission failed to find the presence of citric acid in the medicine and that quantitatively the analysis is incorrect. However, citric acid has no therapeutic effect, as admitted by respondent's medical witnesses. Respondent used two medical witnesses, one of whom was his son. The questions to these witnesses were based on an assumed qualitative analysis only, namely, "sulphate of magnesia, quinine, aromatic sulphuric acid, citric acid, and ferric chloride".

There is little, if any conflict between the testimony given by the medical witnesses for the Commission and that given by those for the respondent in regard to the therapeutic uses and effects of respondent's said medicine and the individual ingredients thereof. In conformity to such testimony, the Commission finds that said "Walker's Old Indian Health Tonic" is not a general health restorative and that the use of the word "health" without proper limitations in the name of said medicine or otherwise in connection therewith is unwarranted. The Commission further finds that said medicine has no specific effect on the liver; that it has no particular effect on the kidneys; that it has no therapeutic effect on any disease of the blood except that it might be of some benefit in cases of simple anemia; that it is not a remedy for laziness and a drowsy, tired, sleepy feeling, unless such conditions are due to constipation; that it is not an effective treatment for colds or coughs or la grippe; that it does not constitute a treatment for fevers generally, is not an effective treatment for ordinary fever and would not relieve a fever in one day; that it would not relieve weakness and tired feeling unless such condition is caused by anemia, and then only to a slight extent;

that it will not relieve pain in the neck, side, shoulder, back or hips; that it will not relieve bladder trouble; that it is not generally beneficial in the treatment of rheumatism, except to act as a laxative or purgative where the condition is connected in some way with constipation, and will not give quick relief from pain in such cases; and that it has no effect in female diseases and women's troubles and would not be beneficial in such treatment unless the patient is constipated.

The Commission therefore finds that said representations of respondent in regard to the therapeutic effects of said medicine are exaggerated, misleading, unwarranted in fact, beyond the medicinal value of the same, and that they do not truthfully and accurately state the therapeutic effect thereof.

PAR. 4. The said representations of respondent as to the therapeutic value and effects of said medicine have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that said medicine has general curative properties in restoring health, without regard to the particular ailment, and that it is a remedy for, or will give relief in, the diseases and ailments named therein, or is such a remedy or will give such relief generally without qualification or limitation. Said representations of respondent have the tendency and capacity to induce members of the public to purchase and use said medicine because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of products similar in kind and as to purposes of use to that of respondent and those adapted to and used in the treatment of said respective diseases and ailments.

PAR. 5. There are among the competitors of respondent in the sale of said medicine those who in no wise misrepresent the therapeutic uses and effects of their said medicines, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors to their substantial injury.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and are in violation 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".

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony in support of the charges of said complaint and in opposition thereto, and the brief of counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has been and is now violating 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",

It is ordered, That the respondent, George L. Walker, his agents, representatives, servants, and employees, in connection with the offering for sale, sale or distribution in interstate commerce of "Walker's Old Indian Health Tonic", or of said preparation under any other name or names, cease and desist from using the word "health" in the name of said product and from representing directly or indirectly:

(1) That said medicine is a remedy or cure for or relieves diseases or disorders of the liver, kidneys, or bladder, or that it is a remedy or cure for or relieves female diseases, women's troubles, pain in the neck, side, shoulders, back, or hips.

(2) That said medicine is a remedy or cure for diseases of the blood or that it will relieve the same unless such representation is limited to simple anemia.

(3) That said medicine is a remedy or cure for laziness and a drowsy, tired, sleepy feeling; or that it will relieve the same unless such representation is limited to such conditions resulting from constipation.

(4) That said medicine is a remedy or cure for weakness and a tired feeling resulting therefrom; or that it will relieve the same unless such representation is limited to conditions due to simple anemia.

(5) That said medicine is a remedy or cure for colds, coughs or la grippe; or that it will relieve such ailments unless such representation is limited to the effects on said ailments of relieving constipation if such condition be present.

(6) That said medicine is a cure or remedy for fever; or that it will relieve fever generally.

(7) That said medicine is a cure or remedy for rheumatism; that it gives quick relief from pain; or that it will relieve rheumatism and pain unless such representation is limited to such conditions resulting from constipation.

It is further ordered, That such respondent shall, within 60 days after the service upon him of a copy 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 to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
 PITTSBURGH TILE & MANTEL CONTRACTORS'
 ASSOCIATION ET AL.

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

Docket 1979. Complaint, Oct. 19, 1931—Order, Aug. 11, 1933

Consent order requiring respondent association, its members and other agents, representatives, servants, and employees to cease and desist "from directly or indirectly making application of any resolution, rule, by-law, understanding, or agreement, having for its purpose or effect interference with, or restriction upon the purchase, sale or importation into the State of Pennsylvania from any other State of the United States of tiles or similar materials, including a vitreous enamel tile on a steel base heretofore designated and known as 'Porstelain', manufactured and sold in interstate commerce by the Porcelain Tile Company, and particularly from giving any further force and effect to that certain resolution adopted by respondent Pittsburgh Tile & Mantel Contractors' Association on the 9th day of July A.D. 1929, making it an offense for member concerns to deal in said product formerly known as 'Porstelain', *Provided*, That this order shall not be construed as restricting the respondent Pittsburgh Tile & Mantel Contractors' Association in determining the bona fide eligibility requirements for membership therein."

Mr. PGad B. Morehouse for the Commission.

Davies, Jones, Beebe & Busick, of Washington, D.C., and *Alter, Wright & Barron*, of Pittsburgh, Pa., for respondents.

COMPLAINT

Acting in the public interest 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 charges that the respondents named in the caption hereof have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Pittsburgh Tile & Mantel Contractors' Association, Certified Tile Corporation, Beachview Mantel & Tile Co., Dormont Mantel & Tile Co., Highland Mantel & Tile Co., Lincoln Mantel & Tile Co., Starr Tiling Co., and Twin City Tiling Co. are all Pennsylvania corporations having their respective places of business in Pittsburgh. Respondent Frank J. Haggerty Mantel Co. is a Pennsylvania corporation with its principal place of business at