

Syllabus

IN THE MATTER OF

BATTLE CREEK APPLIANCE COMPANY, LTD., (ALSO
KNOWN AS W. T. B. LABORATORIES, ETC.) ET AL.

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

Docket 2017. Complaint, Mar. 9, 1932—Decision, Nov. 19, 1934

Where a partnership engaged in selling by mail order a goitre treatment consisting of, (1) diagnosis from answers to questions on its so-called diagnosis chart, (2) liquids, pills, medicines, and salve, with printed instructions for their use, and (3) printed instructions as to patient's diet and general care, in competition, among others, with many large pharmaceutical houses selling preparations, for administration on physicians' prescriptions, to jobbers, wholesale and retail drug stores, and hospitals and boards of health—

Represented that it could determine the absence or presence and type of goitre from the patient's answers to said question, and properly and efficaciously treat such patient, by mail, without having seen him, making such statements in newspaper and periodical advertisements of general circulation and through booklets and leaflets published and distributed to patients and prospective patients, as that a new treatment had been developed for goitre, which many believed would prove to be the "long-sought specific for this unsightly and dangerous disease", had caused many of the largest and most hideous goitres to recede almost in a day, causing them to "gradually get smaller, and in many cases" to be "entirely gone in a few weeks", was "equally efficient in cases of toxic and so-called inside goitre", and was one which was "harmless" and could be used by anyone "with perfect safety at home", and that "200,000 others have treated goitre at home by this harmless easy method", which "ends goitre quick without danger or operation", and that "surgery should never be considered except as a last resort", together with other statements of similar tenor, and set forth in the book "Goitre, its Causes, Dangers, and Treatment", sent prospective patients, many purported testimonials of laymen claiming that they had been cured thereof by the treatment in question;

The facts being such members of the laity were not able to say truthfully whether they had ever had such affliction or not, or been cured or relieved thereof by said treatment, and the so-called diagnosis chart, with the numerous questions therein propounded, did not afford, as claimed, a means of ascertaining, without physical examination, the absence or presence of goitre, for which purpose careful examination by a skilled physician alone suffices, said various preparations were not specifics for goitre, and would not cause recession within one day or any specified time, contained possibilities of temporary or permanent injury to patient by reason of their properties, or the delay in adequate treatment thereby brought about, said treatment was neither scientific, nor harmless, and goitre cannot be treated properly or successfully at home without the

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personal supervision of a physician, and medicines are useless for the removal thereof;

With capacity and tendency to mislead and deceive the consuming public into believing that said various preparations and treatments would remove and cure, without harm to the patient and without operation, any goitre, and induce the purchase thereof in such belief, and with effect of unfairly diverting trade from and otherwise prejudicing and injuring competitors and the public:

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

Mr. E. J. Hornibrook for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Battle Creek Appliance Co., Ltd., a limited copartnership also doing business as W. T. B. Laboratory and as Physicians Treatment and Advisory Co., engaged in the offer and sale direct to the consuming public of liquids, medicines, pills, and salves for the treatment of goitre, and with principal office and place of business in Battle Creek, Mich., and respondent Bobo, individually and as principal owner thereof, with advertising falsely or misleadingly as to qualities or properties of product, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondents in periodical and newspaper advertisements and in leaflets distributed to purchasers and prospective purchasers,¹ falsely represent that their said preparations constitute a new and effective and demonstrated treatment, specific, and cure for goitre, which can be used with safety by anyone at home, and which offers a safe means to restore health quickly without operation, and is explained in a free book by an eminent Battle Creek goiter specialist, facts being said preparations are not specifics for said ailment, will not, as asserted, cause it to recede within a day or any other definite period of time, are not harmless, but may and do often permanently or temporarily injure the purchasers thereof, the free book referred to is not the work of an eminent specialist, as set forth, and respondents have not, as asserted, treated 200,000 people for goitre; with capacity and tendency to deceive and mislead the consuming public into the belief that said preparations are specifics for goitre, which will remedy and

¹ Respondent's advertisements as alleged and quoted in the complaint may be found set forth in the findings, *infra*, at pp. 386-387.

cure without operation any goitre, and with effect of inducing purchaser thereof in such belief, and unfairly diverting trade from competitors; to their prejudice and injury and that of the public.

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 on the 21st day of December, 1933, issued against and thereafter served its complaint upon respondents, Battle Creek Appliance Company, Ltd., and W. Thompson Bobo, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents, having entered their appearances and having filed their answers to said complaint, hearings were had before a trial examiner heretofore duly appointed, testimony was heard, and evidence taken in support of the charges stated in the complaint, and in opposition thereto; and on September 7, 1934, the Commission accepted a stipulation in lieu of testimony on the subject of competition herein; which stipulation was signed and executed on the 28th day of August, 1934, by William T. Kelley, acting chief counsel for the Federal Trade Commission, and John A. Nash, attorney for respondents; which stipulation has become and is a part of the record herein. Thereafter, this proceeding came on for final hearing, and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Battle Creek Appliance Company, Ltd., is a limited copartnership organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in the city of Battle Creek, in said State. The respondent, limited copartnership, is known also as and has conducted the business hereinafter described under the name and style of W. T. B. Laboratories. The respondent, limited copartnership, is known also as and has conducted the business hereinafter described under the name and style of Physicians' Treatment and Advisory Company. Respondent, W. Thompson Bobo, departed this life after complaint was filed.

Respondent, Battle Creek Appliance Company, Ltd., is now, and for more than three years last past has been, engaged in the business of offering for sale and selling direct to the consuming public a treatment for use in the human affliction known as goitre.

This treatment consists of, first, a diagnosis made from answers of a patient to questions appearing on a so-called diagnosis chart furnished by respondent; second, liquids, medicines, pills, and salves, and printed instructions for their use; third, printed instructions as to the diet and general care which it is suggested by respondent such patient should impose upon himself.

When contact is made by respondent, Battle Creek Appliance Company, Ltd., with a patient, said diagnosis chart and a "free book" called, "Goitre, its Causes, Dangers, and Treatment", are sent to him. The questions appearing on such chart are to be answered by the patient, who is usually a layman. Respondent, Battle Creek Appliance Company, Ltd., maintains that from these answers it can determine whether a patient has goitre and, if so, the particular type of goitre with which such patient is afflicted, and if so afflicted it can properly and efficaciously treat the same by mail, without having seen such patient.

After a diagnosis of goitre has been made a contract is entered into, whereby respondent, Battle Creek Appliance Company, Ltd., is to be paid for its treatment of the patient's said supposed affliction the sum of \$10 for four weeks' treatment, and medicines are prepared by respondent, Battle Creek Appliance Company, Ltd., and, together with printed instructions for their use, are transported from respondent's place of business in the city of Battle Creek, State of Michigan, into and through other States of the United States, to the purchasers thereof, located in all of the States of the United States.

PAR. 2. In the course and conduct of its said business, respondent, Battle Creek Appliance Company, Ltd., is in competition with individuals, partnerships, and corporations engaged in the sale and transportation of liquids, medicines, pills, and salves, used for the treatment of goitre, in commerce between and among various States of the United States.

There are many large pharmaceutical houses selling drugs, medicines, pills, and salves, for use in the treatment of goitre to be administered on prescriptions of physicians, and which sell the same to jobbers, wholesale and retail drug stores, hospitals, and boards of health, in the several States and cause the same to be transported from their places of business into and through other States to the respective points of location of such jobbers, stores, hospitals, and boards of health.

Some of these drugs, medicines, pills, and salves are:

Burnham's Soluble Iodine, manufactured by Burnham's Soluble Iodine Co., of Auburndale, Mass., and Amend's Laboratory, of New York City, N. Y.

Lugol's Solution of Iodine, manufactured by Sharp & Dohme, of Baltimore, Md.

Wampole's Organidin, manufactured by Henry K. Wampole & Co., of Philadelphia, Pa.

Lipo-Iodin, manufactured by Ciba & Co., of New York, N. Y.

Iodalbin, manufactured by Park-Davis, of Detroit, Mich.

Dessicated Thyroid, manufactured by Armour & Co., Chicago, Ill.; Park-Davis, Detroit, Mich.; Burroughs-Wellcome, New York, N. Y., and others.

Stearodine, manufactured by Park-Davis, Detroit.

Oridine, manufactured by Eli Lilly & Co., Indianapolis, Ind.

Thyroidectine, manufactured by Park-Davis & Co., Detroit.

Thyroxin, manufactured by Squibbs & Son, of New York and Chicago.

One or more of these said drugs or medicines is prescribed by physicians in all parts of the United States in the treatment of goitre.

These said drugs or medicines are sold and shipped in interstate commerce by the said manufacturers thereof, to jobbers, to retail drug stores, and to hospitals and boards of health. The said jobbers thereof sell and ship the same in interstate commerce to retail drug stores, hospitals, and boards of health.

A large majority of the retail drug stores in the United States carry one or more of said drugs or medicines, to be sold, and they are sold, upon prescriptions of physicians.

Said drugs and medicines are sold to persons afflicted with goitre, upon prescriptions of physicians in the District of Columbia, in Ohio, Michigan, Indiana, Illinois, Wisconsin, and in other States.

PAR. 3. Up until the time of his death and for twenty years prior thereto, the late respondent, W. Thompson Bobo, had been treating goitre at Battle Creek, Mich., by mail. For a period of about thirty years he was a physician and was licensed to practice as such during said time under the laws of the State of Michigan, and since the legal existence of respondent, Battle Creek Appliance Company, Ltd., and up until the time of his demise he was associated with the respondent, Battle Creek Appliance Company, Ltd., in the treatment of goitre in the manner herein described. For about three years last past the respondent, Battle Creek Appliance Company, Ltd., has had in its employ a Dr. Henry J. Enright who is also a physician

and licensed to practice as such by the State of Illinois, and who has been associated with respondent, Battle Creek Appliance Company, Ltd., in the treatment of goitre in the manner herein described.

Respondent, Battle Creek Appliance Company, Ltd., causes some patients to be treated after physical examinations at its own offices in Battle Creek, but the great majority of its patients are treated without having been subjected to a physical examination by the mail order methods above described. Its mail order business is directed entirely to the treatment of goitre.

The revenues of respondent's said business range from \$90,000, to \$120,000 per year and have aggregated approximately \$2,000,000.

The respondent, Battle Creek Appliance Company, Ltd., carries in stock large supplies of drugs and medicines to be used by it in the treatment of goitre. This stock inventoried in the month of December 1932 the sum of \$5,000.

PAR. 4. Respondent, Battle Creek Appliance Company, Ltd., advertises its business in newspapers and periodicals circulated among the several States and by means of booklets and leaflets which they publish and distribute to patients and prospective patients located in the several States of the United States. Among the magazines so used are Comfort, The Gentlewoman, Home Friend and Grit. Among the newspapers are the Portland Telegram, Denver Post, Saint Louis Star, Chicago Herald, Toledo Times, Cleveland News, and Detroit Free Press. Respondent spends in such advertising approximately from \$20,000 to \$30,000 a year. These advertisements, leaflets and booklets contain, among others, the following typical representations:

A new treatment for goitre has been developed by the W. T. B. Laboratories, 2152 Sanborn Building, Battle Creek, Mich., which many believe will prove to be a long-sought specific for this unsightly and dangerous disease. Many of the largest and most hideous goitres begin to recede almost in a day. They gradually get smaller, and in many cases are entirely gone in a few weeks. It is equally efficient in cases of toxic and so-called inside goitre. The treatment is harmless and anyone can use it with perfect safety at home.

* * * the relief you seek cannot be further denied you should you show the same determination which actuated others to seek my help, induce you to accept my services and employ my treatment to overcome your goitrous condition.

Free 44-page book explains all about how you can rid yourself of goitre right at home.

Surgery should never be considered except as a last resort, and not until every other means has been thoroughly exhausted.

In the course of over twenty years the Physicians' Treatment and Advisory Company has been asked many times during a day, "Can you remove the goitre without injury to my general health?" "Is the treatment safe?" The answer is positively and unequivocally, "Yes".

Now—today—the means of recovery are laid before you. The Physicians' Treatment and Advisory Company's methods and treatments are founded on the best and latest known to progressive science.

The adoption of the treatment offers a safe means to quickly restore health, without the dangers attending an operation.

END GOITRE QUICK

200,000 others have treated goitre at home by this harmless easy method. Ends goitre quick without danger or operation.

Method explained in big illustrated 44-page *free book* by eminent Battle Creek Goitre Specialist.

In one advertisement respondent, Battle Creek Appliance Company, Ltd., depicts to women, one of whom is represented as saying, "My goitre's gone * * * see?"

The book, "Goitre, its Causes, Dangers, and Treatment", which is furnished each prospective patient, as aforesaid, contains many purported testimonials of lay persons who claim therein that they have been cured of goitre by respondent's said treatment. Such members of the laity are not able to truthfully say whether they ever had goitre or whether this affliction had been cured or relieved by respondent's said treatment.

The advertisements and representations described last above are false and misleading in that in truth and in fact the said liquids, medicines, pills, and salves for the treatment and remedy of goitre, so advertised, offered for sale and sold, are not specifics for goitre nor will the use of said liquids, medicines, pills and salves cause a goitre to recede within one day or within any other definite period of time; in that the said liquids or medicines, pills, and salves are not harmless, and when used by purchasers thereof in accordance with the directions furnished by respondent, Battle Creek Appliance Company, Ltd., may, and often do, permanently or temporarily injure such purchasers either as a result of the effects of the properties in the said liquids, medicines, pills, and salves furnished by respondent for the remedy and treatment of goitre or because of consequent postponement of proper treatment for goitre; in that respondent's said treatment is not a scientific treatment for goitre and in that goitre cannot properly or successfully be treated at home without the personal supervision of a physician.

PAR. 5. Goitre has been classified in the record as simple goitre, cystic goitre, toxic goitre and adolescent goitre. Simple goitre is simply an enlarged thyroid; it is sometimes called nontoxic goitre. Cystic goitre is one where there is a cyst within the thyroid gland filled with fluid, sometimes blood. Adolescent goitre is generally found in girls at puberty—the goitre of adolescence. Toxic goitre,

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which is sometimes called Grave's Disease, causes great toxicity or poisoning of the system. These goitres usually, but not always, manifest themselves by swellings or enlargements. In the case of cystic goitre there may be a swelling if the cyst is large.

There may be swellings about the neck and throat which are due to an enlarged gland, that do not indicate a goitrous condition at all.

Cystic goitres may not be removed by the use of drugs—only surgery will remove that type. Simple or nontoxic goitres may not be removed by drugs. If this type does not disappear naturally, sometimes they become very large and only surgery will remove them. Adolescent goitres usually correct themselves, disappearing after six months or a year. In the case of toxic goitre, medicine is given to support the heart and nature takes its course in removing it, but if not so removed, surgery must be resorted to. In all classes of goitre medicines are useless, except in a case of toxic goitre, and in goitres of that type medicine is given not to cure or remove the goitre, but to assist nature in doing so. Respondent, Battle Creek Appliance Company, Ltd., prescribes medicines for all types of goitres.

Dr. Carl B. Wagner, Dr. Adelbert Klaptoz, and Dr. A. S. Park are experts who testified for the Commission. They deny that goitre can be adequately diagnosed from the information supplied to answers to respondent's questionnaire or by any other means short of a physical examination. They deny the claimed effectiveness of respondent's medicines.

Dr. Wagner, who is a teacher in the Illinois Medical College and Loyola University, says that toxic goitre is the only kind that should be treated with medicines and that all cases of cystic goitre should be treated surgically; and concludes that respondent's methods are worthless in the treatment of simple goitre, including the cystic and adolescent types.

Dr. Klaptoz, a graduate of the University of Vienna, in 1910, is of the opinion that medicines have no value in the treatment of cystic goitre or some of the types of simple goitre, and that toxic goitre is incurable by the use of medicine. He states some of the drugs used by the respondent, Battle Creek Appliance Company, Ltd., contain iodine and the use of such might make some goitres worse.

Dr. Park, who has had twenty-five years' experience in the general practice of medicine, says that some cases of simple goitre, including all cases of the cystic type, cannot be efficaciously treated with medicines; that most cases of toxic goitre cannot be successfully treated medicinally; and that surgery is the proper treatment for all cases of cystic goitre. The trend, he says, of modern medical practice

is to rely less on medicine and more on surgery in the treatment of goitre. He says, again, respondent's medicines are not harmless. They include iodine, which is sometimes very dangerous and should never be given except under the personal supervision of a doctor.

PAR. 6. The diagnosis chart referred to above is Commission's Exhibit 28-B, and reads as follows:

DIAGNOSIS CHART

There are several varieties of goitre, each of which requires an entirely different line of treatment, therefore in order that I may accurately determine to which class yours belongs and thus be able to prescribe treatment to meet the needs of your particular case, please fill out this Diagnosis Chart and return to me at once.

Please remember that MUCH depends upon a correct diagnosis and as I am wholly dependent on YOU for my information about your case, I hope you will write me FULLY and HONESTLY. Advise me regarding your general health as well as about the goitre. Often a goitre is the result of other troubles and when this is the case the primary trouble must also be corrected or the goitre will be likely to return even after it has apparently been entirely cured. All correspondence strictly confidential.

PHYSICIANS' TREATMENT AND ADVISORY CO.,

Y. M. C. A. Building, Battle Creek, Mich.

Your Full Name ----- (If a lady and married, use husband's initials). Town or Post Office ----- Street Number or R. F. D. ----- State ----- Age ----- yrs. Weight ----- lbs. Height ----- inches. If you have gained or lost materially in the last year state which and how much. Gained ----- lbs. Lost ----- lbs. Married or single? ----- What is your occupation? ----- Are you blonde or brunette? ----- Would you say your general health is ----- good; ----- fair; ----- poor. Please briefly describe your general troubles -----

Are you constipated? ----- Are you more nervous than formerly? ----- Do you have a tremor (tremble) of the hands and fingers? ----- Is it constant or only after exertion, or when you are nervous and excited? ----- Do you tire more easily than you should? ----- Do you perspire unusually freely? ----- How long have you had goitre? ----- How large around is your neck over the goitre? ----- Is it still growing? ----- Does it ever pain you? ----- Does it choke you or interfere with your breathing or swallowing? ----- Is it larger some days than others? ----- Is the goitre soft or hard? ----- Do you suffer from frequent headaches? ----- Do you have dizzy spells? ----- How often does your heart beat per minute? (Count the number of beats per minute) ----- Do your eyes protrude? ----- Have you ever been treated for goitre? ----- What was the nature of the treatment? ----- Did your mother or father have a goitre? ----- Are there many cases of goitre in your locality? ----- Do you take cold easily? ----- Are your tonsils diseased? ----- Have you any bad teeth? ----- Have you ever had a surgical operation and if so what? -----

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IMPORTANT!

One of the most important diagnostic signs of goitre is the location of the swelling or tumor, and that I may have every possible assistance in making a diagnosis of your condition, I wish you would please mark the tumor's exact location on the cut below. Also kindly indicate its approximate size that I may see how far advanced it is. If you have a photograph showing the enlargement, this would be even more instructive. If you can send me a photo, I will return it if you wish. Otherwise I would be pleased to add it to my case files. Neither letter nor photograph will be used for any other purpose without the consent of the sender.

(Drawing of head and throat of a young lady)

SPECIAL QUESTIONS FOR LADIES

Is there any noticeable enlargement of the goitre at your periods? -----
Any aggravation of your nervousness and other symptoms? ----- Are your periods regular? ----- Are they painful? ----- Did childbirth have anything to do with the development of your goitre? -----.

GENERAL REMARKS

As to the questions on the chart quoted above, the said experts testified as follows:

Question of chart: How often does your heart beat per minute?

Answer of experts: Only very intelligent members of the laity can take their own heart beat accurately.

Question of chart: Are your tonsils diseased?

Answer of experts: No connection between that and goitre.

Question of chart: Do your eyes protrude?

Answer of experts: Protrusion of the eyes may be natural.

Question of chart: Are you married or single?

Answer of experts: An answer to this question would not aid a physician in making a diagnosis as to goitre.

Question of chart: What is your occupation?

Answer of experts: An answer to this question would not aid a physician in making a diagnosis as to goitre.

Question of chart: Are you blonde or brunette?

Answer of experts: I do not think answer to this question would aid.

Question of chart: What is the condition of your health, ——— poor, ——— good, or ——— fair?

Answer of experts: An answer to this question would not aid a diagnosis as to goitre.

Question of chart: Are you constipated?

Answer of experts: On the contrary, a person with toxic goitre has diarrhea.

Question of chart: Are you nervous?

Answer of experts: There are many diseases of the human body that bring about nervousness.

Question of chart: Do you perspire freely? Do you tire easily?

Answer of experts: Many diseases have these symptoms.

Question of chart: Have you goitre?

Answer of experts: A lay person cannot tell whether he has a cystic or toxic, or a non-toxic goitre.

Question of chart: Do you have headaches, dizzy spells?

Answer of experts: Lots of people have dizzy spells and headaches and do not have goitre.

Question of chart: Did your mother or father have a goitre?

Answer of experts: The fact that the mother or father had goitre would not add to the diagnosis.

Question of chart: Are your teeth bad?

Answer of experts: Bad teeth do not indicate goitre.

Question of chart: Do you have tremors?

Answer of experts: Tremors do not necessarily pertain to goitre.

Goitre cannot be adequately diagnosed from answers to the said questions in the said diagnosis chart made by the laity, or through the information contained in said free booklets or by any other means short of a physical examination.

The attempted diagnosis of the respondent, Battle Creek Appliance Company, Ltd., is a part of the treatment for which a patient pays his said \$10 per month. Without correct diagnosis a treatment can be and is of no avail in cases of goitre.

A correct diagnosis as to goitre cannot be made without a careful physical examination of the patient by a skilled physician. A correct diagnosis as to goitre cannot be made from answers to the questions of the said diagnosis chart.

PAR. 7. The false, misleading, and deceptive statements and representations referred to in paragraph 4 hereof and the said use by respondent, Battle Creek Appliance Company, Ltd., of the said diagnosis chart and Free Book have and have had the capacity and tendency to deceive and mislead the consuming public into the belief that the respondent's liquids, medicines, pills, salves, and treatments will remove and cure without harm to the patient, and without an operation, any goitre. In reliance upon such erroneous belief, the consuming public has been induced to purchase from the respondent, Battle Creek Appliance Company, Ltd., the said liquids, medicines, pills and salves, and treatment for goitre offered for sale and sold by the respondent, Battle Creek Appliance Company, Ltd., as aforesaid.

PAR. 8. The use by respondent, Battle Creek Appliance Company, Ltd., of the false, misleading, and deceptive statements and representations heretofore set forth and described constitute practices or methods of competition in interstate commerce which tend to and do prejudice and injure the public and unfairly divert trade from and otherwise prejudice and injure respondent's competitors.

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CONCLUSION

The practices of the respondent, Battle Creek Appliance Company, Ltd., under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors and are unfair methods of competition in interstate commerce, and constitute a 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."

ORDER TO CEASE AND DESIST

This proceeding, having come on to be heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondent, the testimony and evidence and the briefs of the attorney for the Commission and of the attorney for the respondent, and the Commission having made its report in writing, in which it stated its findings as to the facts, with its conclusions that the respondent, Battle Creek Appliance Co., Ltd., had violated 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", and the Commission being fully advised in the premises—

It is now ordered, That the respondent, Battle Creek Appliance Co., Ltd., its agents, associates, employees, and representatives, in connection with the advertising, offering for sale, or sale in interstate commerce and in the District of Columbia, of liquids, medicines, pills, salves, and treatments for the human affliction known as goitre, cease and desist from representing in any manner, including by or through the use of testimonials and endorsements, or in or through newspapers, magazines, radio, circulars, pamphlets, photographs or pictures, books or booklets, letters, or otherwise:

(1) That goitre can be or has been correctly diagnosed by said respondent from answers made by the laity to questions propounded by respondent through the mails;

(2) That the presence of goitre can be determined or the type of goitre can be diagnosed without personal examination of a patient by a skilled physician;

(3) That said respondent can or has successfully treated goitre by mail;

(4) That said respondent can or has successfully treated goitre patients in their homes without the personal supervision and services of a skilled physician in such treatment;

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(5) That said respondent's medicines or treatment will cure or remove goitre, or cause the same to recede or that they are specifics for goitre;

(6) That the use of medicines is proper treatment in all types of goitre;

(7) That surgery is unnecessary or can with safety be postponed in the treatment of all types of goitre;

(8) That said respondent's methods of diagnosing goitre and treating the same by mail are scientific or safe or harmless.

It is further ordered, That respondent shall, within 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 it has complied with this order.

IN THE MATTER OF
GEORGE ZIEGLER COMPANY

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

Docket 1787. Complaint, Apr. 28, 1930—Decision, Nov. 20, 1934

Where a corporation engaged in the manufacture and sale of candy, including three so-called "break and take" assortments, with explanatory display cards, composed of (1) chocolate-covered penny candies of uniform size, shape, and quality, together with a number of larger pieces given as prizes to chance purchasers of a relatively few of said candies, the color of the concealed centers of which differed from that of the others, and also together with an article of merchandise given to the purchaser of the last penny piece in the assortment, (2) penny packages composed chiefly of three white candy wafers wrapped and concealed in tinfoil, together with a number of larger pieces given as prizes to chance purchasers of one of a relatively few of such packages, within which there was enclosed one pink along with two white wafers, (3) individually wrapped, penny, chocolate candies of uniform size, shape, and quality, together with larger pieces given as prizes to chance purchasers of one of a relatively few of said candies, within the wrappers of which a slip containing the word "winner" was enclosed and concealed—

Sold said various assortments and display cards, so packed and assembled that they might and would be resold through such lottery or gaming devices and could not be sold otherwise, without unpacking, disassembling, and rearranging the same, to wholesalers, jobbers, and retailers, with knowledge that they would thus be resold to the consuming public, in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling, and especially among children, and as injurious to the industry in merchandising a chance or lottery rather than candy, and providing retailers who sell candy by such methods with the means of violating the laws of the several States, and who therefore refuse to sell candy so packed and assembled that it can be resold to the public by lot or chance;

With result that some of its competitors, who can compete on even terms only through following such practice to meet the demand and preference for such candy from small retailers and the children of nearby schools, were put at a disadvantage by reason of their refusal to make use thereof, and others felt constrained to adopt the same, trade was diverted from the former to their prejudice and injury and that of the public, freedom of fair and legitimate competition in the industry concerned was restrained and harmed, gambling by children was taught and encouraged, and sales of so-called "straight goods" with their larger pieces, or better quality, were decreased by the competition, principally, of the gambling or lottery feature connected with the other:

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

Mr. Henry C. Lank for the Commission.

Mr. Herbert G. Ziegler, of Milwaukee, Wis., for respondent.