

Complaint

IN THE MATTER OF

A. C. HAYSLER, JR., TRADING UNDER THE NAME AND
STYLE OF DR. SOUTHLINGTON REMEDY COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2202. Complaint, June 20, 1934—Decision, Mar. 18, 1935*

Where an individual engaged in the sale of certain so-called prescription compounds and suppositories, for women, advertised, represented, and held out by him as remedies for or affording relief in cases of pain, disturbances, and ailments, caused or produced by amenorrhea, dysmenorrhea, and other diseases and ailments peculiar to women, and, in the case of the last-named product, as a contraceptive—

Made such statements in labels, leaflets, periodicals, and other printed matter describing and offering the same as "I positively guarantee", "End pain and worry", "Successful relief compound", "End pain and delay", "have safely relieved some of the most obstinate and abnormal cases in from three to five days", will never "disappoint in a single instance where they are properly and faithfully used", "A grand good remedy and often worth its weight in gold", and others of similar tenor, notwithstanding fact that aforesaid preparations did not have the effects thus indicated or represented, or any effect in female diseases and troubles, and were not beneficial in their treatment, and said suppositories were not effective for the purpose for which offered;

With tendency and capacity to confuse and mislead members of the public into believing that aforesaid preparations had general curative properties in relieving cases of pain and distress due to said ailments, and would restore health and constituted remedies for or would give relief in, such diseases or ailments, generally, or afford prevention, without qualification or limitation, and to induce members of the public to purchase and use said compounds, medicines or products because of the erroneous beliefs thus engendered, and with effect of diverting trade to said individual from competitors engaged in sale of similar products or those adapted to and used for treatment of such ailments, and for said purposes, including those who in nowise misrepresent the therapeutic uses or effects of their compounds and medicines, and with tendency so to divert:

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. Carrel F. Rhodes for the Commission.

Mr. Clinton Robb, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

respondent individual, engaged as aforesaid in the sale and distribution of emmenagogues and suppositories for women, with using misleading trade name and advertising falsely or misleadingly as to qualities or properties of product, in violation of the provisions of Section 5 of said Act prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, engaged in sale of said products made for it by a manufacturing chemist, from formulae purchased by respondent from his predecessor in business,¹ so advertises his aforesaid preparations in newspapers, periodicals, booklets, and other advertising matter as to imply or assert, falsely or misleadingly, that they are positive and unfailing remedies for the ailments and conditions for which offered, and are based on the prescription of a Dr. Southington, and that a physician is connected with the business, the facts being said products constitute an ordinary combination of drugs, or prescriptions frequently used by physicians, they are not based on any formula or prescription of a Dr. Southington or prepared or compounded by a competent doctor, and there is no physician connected with the business, and the claims made for them are not justified; with the result that prospective customers buy said products in reliance upon the truth of the aforesaid extravagant, false, and misleading statements, and with the tendency thereby to mislead such purchasers into the erroneous belief that the use of said products in accordance with directions will serve to produce the results set out, and induce the purchase thereof by consumers in reliance upon such erroneous belief, and divert trade from and otherwise injure competitors; all to their prejudice and that of the public.²

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, A. C. Haysler, Jr., trading under the name and style of Dr. Southington Remedy Company, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

¹ The composition of said various products, as alleged in the complaint, is set forth in the findings, *infra*, at page 199.

² The claims made by respondent for his aforesaid preparations, as alleged and quoted in the complaint, are set forth in the findings, *infra*, at pages 198, 199.

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 an opportunity was given him therefor, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, A. C. Haysler, Jr., is the sole owner and manager of the business conducted by him under the name "Dr. Southington Remedy Company", which said business has been owned and conducted by him for more than four years last past, with his principal place of business in the city of Kansas City in the State of Missouri. Said business consists of the compounding, preparation, sale and distribution of proprietary or so-called "patent" medicines. Said medicines or compounds are known and described as: "Dr. Southington's Single Strength Prescription Compound"; "Dr. Southington's Double Strength Prescription Compound"; "Dr. Southington's Combination Prescription Compound No. 3"; "Dr. Southington's Vaginal Suppositories"; and are and have been sold to members of the public in various States of the United States other than the State of Missouri, and said respondent causes and has caused said products when so sold to be transported in interstate commerce from his said place of business in the State of Missouri to, into and through States of the United States other than the State of Missouri, to members of the public to whom said products are and have been sold.

During said time, other individuals, partnerships, and corporations are and have been engaged in the manufacture and sale of proprietary or patent medicines similar in kind and as to purposes of use to those manufactured and sold by respondent as aforesaid. Also, during said time other individuals, partnerships, and corporations are and have been engaged in the manufacture and sale of proprietary or patent 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 medicines and compounds. Said other individuals, partnerships, and corpora-

tions 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 Missouri or the State of the origin of the shipment thereof. Respondent herein has been during said period in competition in interstate commerce in the sale of his said products with the several products of such other individuals, partnerships, and corporations.

PAR. 2. Respondent in soliciting the sale of and selling said "Dr. Southington's Single Strength Prescription Compound", "Dr. Southington's Double Strength Prescription Compound", "Dr. Southington's Combination Prescription Compound No. 3", and "Dr. Southington's Vaginal Suppositories" makes use of and has made use of certain printed matter, i. e.: Labels, leaflets, booklets, circulars, pamphlets, and newspapers, magazines, and other periodicals which he has caused to be transported or circulated thorough the mails and otherwise in interstate commerce from his place of business in the State of Missouri to places in other States of the United States where said medicines and compounds are offered for sale and sold and where said printed matter is circulated and distributed to and among the purchasing public. Said printed matter has printed thereon various statements and representations as to the therapeutic value or effect of said medicines or compounds, among which are the following:

(a) LADIES! I positively guarantee my great successful "Relief Compound". Safely relieves some of the longest, stubborn and unusual cases in three to five days.

(b) End Pain and Worry.

(c) * * * They have safely relieved some of the most obstinate and abnormal cases in three to five days * * * we do not believe that these choice treatments will ever disappoint in a single instance, where they are properly and faithfully used * * *.

(d) There are thousands of women in all walks of life, married and single, who suffer each month from * * * unnatural suppression of menstruation.

(e) * * * a valuable "Relief" Treatment to use at once when the necessity arises one, two or three months from now, thus saving time and avoiding much trouble, worry and delay.

(f) I positively guarantee my great successful "Relief Compound." Safely relieves some of the most unnaturally painful and functionally delayed cases in 3 to 5 days.

(g) For over a quarter of a century women from all over the country have used this compound with remarkable results. Testimonials without number. No harm, pain or interference with work. Mail \$2. Double strength, \$3. Booklet Free. Also FREE with each order while they last 2 Books of 127 pages entitled "What Every Married Woman Should Know" by Fielding and "The Physiology of Sex Life" by Dr. Greer. Simply mail this ad and your order today for either single or double strength treatment to Dr. E. C. Southington Remedy Co., Kansas City, Mo.

Findings

(h) Prescription No. 1 * * * is adapted to restore normal menstruation in very mild and uncomplicated cases * * *.

(i) Prescription No. 2, Double Strength is urgently advised in more prolonged cases of long standing where complete suppression or other stubborn unnatural irregularities exist. This is a grand, good remedy, and often *worth its weight in gold* to women who suffer from prolonged cases of suppression due to functional causes. Read Testimonials * * *.

Respondent in a written statement signed and filed by him as evidence in this case, and in his oral testimony, admits that he published and circulated or caused to be published and circulated, in the manner and form set out hereinabove, the advertisements enumerated in this paragraph.

PAR. 3. Respondent admits that the said compounds, manufactured and sold as stated in paragraphs 1 and 2 hereof, are composed of medicinal ingredients in the proportions as follows:

(1) Dr. Southington's Single Strength Prescription Compound:

Senecin, Concentrated.....	1 gr.
Cemicifugin, Concentrated.....	1/4 gr.
Caulophyllum, Concentrated.....	1/2 gr.
Ferri Sulphas, Gran.....	1 gr.
Medicago Sativa.....	1/8 gr.
Po. Kola Nut.....	1/500 gr.
Po. Ergot.....	1/500 gr.
Oil Cloves.....	1/50 gr.

(2) Dr. Southington's Double Strength Prescription Compound:

Senecin, Concentrated.....	2 gr.
Cemicifugin, Concentrated.....	1/2 gr.
Caulophyllum, Concentrated.....	1 gr.
Ferri Sulphas, Gran.....	2 gr.
Medicago Sativa.....	1/4 gr.
Po. Kola Nut.....	1/500 gr.
Po. Ergot.....	1/500 gr.
Oil Cloves.....	1/50 gr.

(3) Dr. Southington's Combination Prescription Compound:

Senecin, Concentrated.....	2 gr.
Cemicifugin, Concentrated.....	1/2 gr.
Caulophyllum, Concentrated.....	1 gr.
Ferri Sulphas, Gran.....	2 gr.
Medicago Sativa.....	1/4 gr.
Po. Kola Nut.....	1/500 gr.
Po. Ergot.....	1/500 gr.
Oil Cloves.....	1/50 gr.

(4) Dr. Southington's Vaginal Suppositories:

Ext. Calendula.....	1/15 gr.
Oil Cloves.....	1/2 min.
Po. Tannic Acid.....	3/16 gr.
Po. Kola Nut.....	5/128 gr.
Hardening Material to fill capsule.	

Several doctors, specialists in diseases of women, and druggists familiar with the ingredients contained in respondent's compounds, testifying on behalf of the Commission gave their opinions as to the therapeutic uses and effectiveness of said compounds. Dr. Bernard Fantus, one of the medical specialists, testifying for the Commission, after exhaustive research, careful study and comparison with Culbreth's "Materia Medica and Pharmacognosy", "National Formulary", and "The United States Pharmacopeia" has set out in memoranda prepared by him and filed in evidence in this case, two exhibits, i. e., Commission's Exhibit No. 23,^a a "Materia Medica of Ingredients of Southington's Preparations", and Exhibit No. 24, "Ingredients Usually Contained in Emmenagogues and Abortifacients (and Contraceptives)", which show the average dose and use of the ingredients contained in such compounds and remedies and that the ingredients contained in respondent's compounds are in too small quantities to be effective. Dr. Fantus further testified that compounds (1), (2), and (3) above are intended to be used as emmenagogues and abortifacients, and as shown by the printed matter put out by respondent, are represented to be and sold for such purposes, but that "the dosage is so small in this formula as to be absolutely worthless"; and Dr. Fantus further testified that compound (4) above is intended to be used as a contraceptive, and as shown by the printed matter put out by respondent is represented to be and sold for such purpose, but that said compound would have no value or effect for such purposes. Dr. Fantus' conclusions and opinions are agreed to by other expert medical witnesses who testified for the Commission.

Respondent used two medical witnesses, one of whom is regularly employed by respondent as medical adviser in his business. Respondent is not a doctor. There is some conflict between the testimony given by medical witnesses for the Commission and that given by witnesses for respondent regarding the therapeutic uses and effects of respondent's said compounds, but they are agreed that the compounds are not a cure for the complaint, ailments, causes and diseases, namely, amenorrhea and dismenorrhea, or as emmenagogues, abortifacients and contraceptives—for which they are advertised, recommended and sold by respondent. All the witnesses except one agree as to the individual ingredients contained in the compounds and that there is but one effective ingredient, namely, ergot, contained in respondent's compounds and that said ingredient is not given in sufficient quantity to be effective. The one medical witness who disagrees as to the merit of the ingredients contained in the compounds, their therapeutic value and remedial effects, is one of

^a Not published.

respondent's witnesses and he admits that the compounds are not "cures" for the complaints for which they are recommended.

PAR. 4. The Commission finds, in conformity to the signed statement of respondent filed in the case and the overwhelming testimony of medical and other expert witnesses, that respondent's said compounds:

- (1) Dr. Southington's Single Strength Prescription Compound;
- (2) Dr. Southington's Double Strength Prescription Compound;
- (3) Dr. Southington's Prescription Compound Number 3;

are advertised, represented, held out to be, and sold by respondent as remedies for or as affording relief in cases of pain, disturbances and ailments caused or produced by amenorrhea, dismenorrhea, and other disorders and diseases peculiar to women. The Commission further finds that the said compounds—

(a) Are not cures for and will not afford relief in cases of amenorrhea and dismenorrhea, or long "stubborn and unusual cases" due to this kind of female sickness, disorder, and disease.

(b) Will not "end pain and worry" due to such disorders.

(c) Will not relieve "obstinate and abnormal cases" due to such disorders.

(d) Have no value or effect as a treatment for such disorders.

(e) They will not relieve "unnaturally painful and functionally delayed cases" and cannot be guaranteed as a "successful relief compound".

(f) That compound or Prescription No. 1 will not "restore normal menstruation".

(g) That "Prescription No. 2, Double Strength" is not "a grand, good remedy, worth its weight in gold to women who suffer from prolonged cases of suppression due to functional causes", and will not relieve "suppression or other stubborn unnatural irregularities."

(h) That they have no effect in female diseases and troubles and would not be beneficial in such treatment.

The Commission also finds that respondent's compound (4) "Dr. Southington's Vaginal Suppositories" is advertised, represented, held out to be, and sold by respondent as a contraceptive. The Commission further finds that said "Dr. Southington's Vaginal Suppositories" are not effective as a contraceptive and will not prevent conception.

PAR. 5. The Commission finds that the representations of respondent in regard to the therapeutic effects of said compounds or medicines, namely:

Ladies! I positively guarantee my great successful "Relief Compound." Safely relieves some of the longest stubborn and unusual cases in three to five days.

End Pain and Worry.

* * * They have safely relieved some of the most obstinate and abnormal cases in three to five days * * * we do not believe that these choice treatments will ever disappoint in a single instance, where they are properly and faithfully used * * *.

There are thousands of women in all walks of life, married and single, who suffer each month from * * * unnatural suppression of menstruation.

* * * a valuable "Relief" Treatment to use at once when the necessity arises one, two or three months from now, thus saving time and avoiding much trouble, worry and delay.

I positively guarantee my great successful "Relief Compound." Safely relieves some of the most unnatural painful and functionally delayed cases in 3 to 5 days.

For over a quarter of a century women from all over the country have used this compound with remarkable results. Testimonials without number. No harm, pain or interference with work. Mail \$2. Double strength, \$3. Booklet Free. Also free with each order while they last 2 Books of 127 pages entitled "What Every Married Woman Should Know" by Fielding and "The Physiology of Sex Life" by Dr. Greer. Simply mail this ad and your order today for either single or double strength treatment to Dr. E. C. Southington Remedy Co., Kansas City, Mo.

Prescription No. 1 * * * is adapted to restore normal menstruation in very mild and uncomplicated cases * * *.

Prescription No. 2, Double Strength is urgently advised in more prolonged cases of long standing where complete suppression or other stubborn unnatural irregularities exist. This is a grand, good remedy, and often worth its weight in gold to women who suffer from prolonged cases of suppression due to functional causes. Read Testimonials * * *

are exaggerated, misleading, unwarranted in fact, beyond the medical value of the compounds, and that said representations do not truthfully and accurately state the therapeutic effects thereof.

PAR. 6. The representations of respondent as to the therapeutic value and effects of his said compounds have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the erroneous belief that said "Dr. Southington's Single Strength Prescription Compound", "Dr. Southington's Double Strength Prescription Compound", and "Dr. Southington's Prescription Compound Number 3" have general curative properties in relieving cases of pain and distress due to amenorrhea and dysmenorrhea and restoring health without regard to the particular cause of said ailments, and that said "Dr. Southington's Vaginal Suppositories" are an effective contraceptive or would prevent conception, and that the same are remedies for or will give relief in cases of the diseases and ailments named therein, or are such remedies or will give such relief generally, or afford such prevention, without qualification or limitation. Said representations of respondent have the tendency and capacity to induce members of the public to purchase and use said compounds or medicines because of the

erroneous belief engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce between and among the several States of the United States and in the District of Columbia of products similar in kind and as to the purposes of use to those of respondent, and those adapted to and used in the treatment of said respective diseases, ailments and purposes.

PAR. 7. There are among the competitors of respondent in the sale of said compounds and medicines those who in no wise misrepresent the therapeutic use and effects of their said compounds or medicines, and respondent's acts and practices as hereinabove set forth tend to and do divert business to respondent from his 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".

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, A. C. Haysler, Jr., his agents, representatives, servants, employees, and successors, in connection with the offering for sale, sale or distribution in interstate commerce between and among the several States of the United States and the District of Columbia of the products or remedies known as "Dr. Southington's Single Strength Prescription Compound", "Dr. Southington's Double Strength Prescription Compound", "Dr. Southington's Combination Prescription Compound Number 3", and "Dr. Southington's Vaginal Suppositories", or any products of substantially the same composition and ingredients, under any other name

Order

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or names, in any letters, leaflets, booklets, labels, circulars, pamphlets, newspapers, magazines or other periodicals, or in any sales talks or radio broadcasts, cease and desist:

1. From using the phrases "I positively guarantee"; "end pain and worry"; "successful relief compound"; "end pain and delay" to describe any of the aforesaid products or the effects or use thereof.

2. From representing directly or indirectly in any letters, leaflets, booklets, labels, circulars, pamphlets, newspapers, magazines or other periodicals, or in any sales talks or radio broadcasts, that "Dr. Southington's Single Strength Prescription Compound", "Dr. Southington's Double Strength Prescription Compound", "Dr. Southington's Combination Prescription Compound Number 3", and "Dr. Southington's Vaginal Suppositories", or any of the said compounds, or any products of substantially the same composition and ingredients.

(a) Are competent treatment for relief in cases of pain or anxiety due to amenorrhea or dismenorrhea;

(b) Will produce abortion;

(c) Will relieve any stubborn and abnormal cases due to amenorrhea and dismenorrhea;

(d) Are positively efficacious in all cases;

(e) Will never cause disappointment;

(f) Will "end pain and worry";

(g) "Have safely relieved some of the most obstinate and abnormal cases in three to five days";

(h) Will never "disappoint in a single instance where they are properly and faithfully used" in cases of amenorrhea and dismenorrhea;

(i) That any of these compounds "is adapted to restore normal menstruation * * * in uncomplicated cases";

(j) That any of these compounds "is a grand, good remedy, and often worth its weight in gold to women who suffer from prolonged cases of suppression due to functional causes"; or

(k) Any statements of a similar or substantially like false and misleading nature.

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

NATHAN HOFFMAN, DOING BUSINESS UNDER THE
TRADE NAME HOFFMAN ENGINEERING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2207. Complaint, July 13, 1934—Decision, Mar. 18, 1935*

Where an individual engaged in the manufacture and sale of a device for use in connection with the ignition system of automobiles, falsely represented in newspapers and periodicals and on the containers thereof that it would cause the motor to start more readily and have more power and speed and to run more smoothly, coolly, and economically, with less carbon accumulation and trouble; with effect of deceiving and misleading the public and inducing purchase of said device in reliance upon the truth of said statements and representations, and of diverting trade in amplifying appliances or units for use in connection with the ignition systems of automobile engines, from competitors, to their substantial injury and prejudice and that of the public:

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

Mr. Edward E. Reardon for the Commission.

Mr. Anthony J. Wolf, of New York City, for respondent.

COMPLAINT

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, having reason to believe that Nathan Hoffman, doing business under the trade name Hoffman Engineering Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in 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, Nathan Hoffman, is a citizen of the State of New York, residing in the City of New York, and he is and has been doing business under the trade name Hoffman Engineering Company with a place of business in New York City at all times since on or about March 23, 1933.

PAR. 2. The respondent is and has been during all the times above mentioned engaged in the business of the manufacture and