

JAMES M. MARNER, TRADING UNDER THE NAME OF DISPENSARY SUPPLY 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 2278. Complaint, Jan. 4, 1935—Decision, May 20, 1935

- Where an individual engaged in the sale and distribution of a certain proprietary preparation designated as "Dr. McCaskey's Prescription Tablets"; in advertising the same in various publications and newspapers—
- Represented that said preparation constituted a remedy and competent and adequate treatment for obesity, and that through use thereof a person could reduce a definite amount, or any desired part of the body, without diet or exercise, and that it contained no drugs, through such statements as "reduce five pounds this week with the proven method of prominent New York physician. Reduce five pounds during the next week. You can—surely, safely and without discomfort, This sensational statement * * * is our absolute money back guarantee. * * * "Fifty-five pounds reduction in six weeks. Dr. McCaskey's case reports to medical journals have been sensational. * * * His prescription is not a physic—it positively contains no thyroid, no drugs, nothing that could harm a baby. No drastic diets are necessary, no exercise, * * *." "Reduce where you want to reduce * * *," and through accounts or purported accounts of and by said physician relative to his standing, experience, method and success in dealing with weight control and reduction;
- The facts being that said preparation did not constitute a remedy, cure or competent and adequate treatment for obesity or fat reduction, would not reduce any desired part of the body, contained no ingredients capable of producing effects set forth, was not a safe remedy due to presence therein of certain ingredients, long continued use of which, except under direction and oversight of a physician, might endanger or injure user's health, would not cause a person to reduce a definite number of pounds within a specified time, and did not give users results similar to those obtained by Dr. McCaskey in his practice as a physician;
- With capacity and tendency to confuse, mislead and deceive members of purchasing public into the belief that said preparation constituted a remedy and competent and adequate treatment for the ailments for which recommended and advertised, as aforesaid, and induce their purchase and use thereof because of such erroneous belief, thus engendered, and with effect of unfairly diverting trade from legitimate competitors truthfully advertising similar preparations for the same purpose and selling in interstate commerce preparations intended for the same ailments for which aforesaid product was offered, and thereby doing substantial injury to substantial competitors in such commerce:

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

Mr. Astor Hogg 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 individual, engaged in the manufacture of a certain medical preparation, known, described and designated as "Dr. McCaskey's Prescription Tablets", and in the sale thereof to wholesale and retail druggists in various parts of the United States, and also direct to the purchasing public residing in various States, through the United States mails, in competition with individuals and concerns engaged in the compounding and sale and distribution in interstate commerce of medicinal preparations intended and used for the same general purposes, with advertising falsely or misleadingly, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, represents said preparation as a remedy and competent and adequate treatment for obesity, and that through the use thereof a person can reduce a definite number of pounds within a specified time, or any particular part of the body desired, that results are guaranteed, preparation contains no drugs, weight may be reduced without diet or exercise, and users thereof will obtain results similar to those obtained by Dr. Donald McCaskey in his regular practice as a physician,¹ the facts being that said product contains certain ingredients of such a nature that long continued use thereof, except under the direction and oversight of a physician, may endanger or injure the user's health, and it is not a safe remedy, and the aforesaid representations are all false in all other respects.

Said representations as alleged, have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that said preparation is a remedy and competent and adequate treatment for the ailments for which recommended and advertised, as above set forth, and to induce them to buy and use the same because of such erroneous belief thus engendered, and have the effect of diverting trade to said individual from legitimate competitors, who truthfully advertise similar preparations, and who are

¹ The false and misleading advertisements, as alleged and quoted in the complaint, are set forth verbatim in the findings, *infra*, at pp. 349, 350.

Findings

20 F. T. C.

engaged in the sale of products intended and used for the same ailments; all to the injury and 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, on January 4, 1935, issued and served its complaint upon the respondent, James M. Marner, trading under the name of Dispensary Supply Company. Respondent filed no answer to the complaint. Testimony and evidence were received, duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for a final hearing before the Commission on the complaint, the testimony and evidence and brief of counsel for the Commission (without oral argument), and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. James M. Marner is an individual trading under the name and style of "Dispensary Supply Company" with his principal place of business in New York, N. Y. Until May 28, 1934, he was the sole owner of the business of the Dispensary Supply Company which had been for more than three years immediately prior thereto engaged, under the trade name hereinbefore mentioned, in the sale and distribution of a certain proprietary preparation known as "Dr. McCaskey's Prescription Tablets" in commerce between and among the various States of the United States which sales were made to wholesale and retail druggists located in the various States of the United States. While doing business under said trade name, he caused his products, when sold, to be shipped from his principal place of business in the City of New York, aforesaid, into and through other States of the United States to the purchasers thereof located in such States other than the State of New York. In the course and conduct of said business, he was in substantial competition with other individuals, firms, partnerships and corporations engaged in the sale and distribution of like remedies and preparations, in commerce in various States of the United States and between and among the various States of the United States.

PAR. 2. Respondent, in the course and conduct of his business, represented as herein set out that Dr. McCaskey's Prescription Tab-

lets were a remedy and competent and adequate treatment for obesity; that by the use of said preparation a person could reduce a definite number of pounds within a specified time; that with the use of said preparation a person could reduce any particular part of the body desired; that results were guaranteed; that the preparation contained no drugs; that weight could be reduced without diet or exercise. In the aid of the sale of said preparation and to create a public demand therefor, respondent made the following statements and representations through advertisements inserted in various publications and newspapers:

REDUCE
5 pounds this week with
the proven method
of a prominent
New York Physician

REDUCE 5 pounds during the next week. You can—surely, safely and without discomfort. This sensational statement is not merely an advertising claim—it is our absolute money-back guarantee.

Take Dr. McCaskey's Prescription Tablets according to the instructions found in each package and like hundreds of others you will probably remove 5 pounds the very first week.

You will feel better, look better and be better. You will realize why fashionable and famous patients have built a reputation for Dr. McCaskey that makes him an acknowledged authority on weight control.

55 POUNDS REDUCTION IN 6 WEEKS

Dr. McCaskey's case reports to medical journals have been sensational. He has shown cases where followers of his method have lost 125 pounds, reductions as much as 55 pounds in 6 weeks.

His prescription is not a physic—it positively contains no thyroid, no drugs, nothing that could harm a baby. No drastic diets are necessary, no exercises, nothing that materially interferes with your regular habits or comfort.

REDUCE WHERE YOU WANT TO REDUCE

Follow the instructions of the remarkable booklet found in each package and see how easily you can reduce abdomen, legs, ankles, hips or any other part of your body you particularly want to reduce.

Even though you are only a few pounds overweight but are constantly fighting a battle with fat you will find Dr. McCaskey's method will enable you to control your weight with comfort. And you will feel brighter, clearer and happier and look better in the size of garments you ought to be wearing.

SEND NO MONEY—TRY AT OUR RISK

The regular price of Dr. McCaskey's Prescription Tablets is \$1.00 per package. If you use the coupon we will send you three full size packages. Send no money. Merely pay the postman \$2.50 and a few cents postage. And if you

Findings

20 F. T. C.

do not reduce 5 pounds the very first week, return the package and your money will be refunded immediately. Use the coupon now and the tablets will be sent to you in plain package at once.

DONALD McCASKEY, M. D.

Recognized authority on weight control. His fine thirty year record as a physician brought him such honors as Fellowship in the New York Academy of Medicine, Membership in the Medical Society of the County of New York and an Officer's Commission in the Medical Corps of the Army. He is a licensed physician and surgeon in both New York and Pennsylvania. He has lectured and written on weight control for medical journals and magazines of general circulation.

(See True Confessions, July 1933, p. 67.)

I approached the subject of weight control as a health measure. Women who came to me complaining of feeling run down and being always tired out were quick to grasp the point when I had them stand naked before a full length mirror and look at the great gobs of fat they were carrying around on their bodies. I have pointed out to patients who were "always tired" but who weighed 30 to 40 pounds more than they should that anyone would get tired if forced to carry a 30-pound pail of water around all day long. It was hard to prescribe for a fat woman.

* * * * *

This treatment will astonish you in its quick action for removing localized areas of fat. It brings quarts of blood racing through the tiny blood vessels under the treated spot. Fatty tissue is oxidized, waste matter is carried away and fat reduction occurs. Repeat this treatment daily wherever you are most eager to reduce. Within a very short time you will notice a change from flabby, fatty tissue to firm, well-formed flesh. You will also notice a decided improvement in the texture of your skin. I have had remarkable results with this treatment in cases of neuritis and rheumatism.

* * * * *

The patient was a woman, aged 35, who presented herself for treatment, weighing 275 pounds. The date of her first visit was September 13, 1924. Five weeks after she started treatment—the same general treatment you are about to start—she had accomplished a reduction of 55 pounds and October 12, 1925, 56 weeks after her first call she had reduced her weight to 150 pounds, a reduction of 125 pounds.

* * * * *

In my continual experimenting and search for a medicine that would be effective and yet safe for patients and under all conditions I finally prepared the prescription that now bears my name. It has given me remarkably fine results with patients of all ages and classes. It is effective. It is safe. It is inexpensive and is therefore available for all people. It cannot harm a baby.

When these tablets are taken coincidentally with the simple menu recommendations, the fro-tages, baths and exercises I explain below, the patient who is overweight will undoubtedly benefit.

* * * * *

My specialized and earnest study of the subject of weight reduction convinces me that the prescription tablets bearing my name are the most efficient contribution thus far made to the subject of weight reduction but they must be accompanied by your own persistent efforts.

That in addition respondent makes other similar representations in advertising copy in different periodicals which have a circulation throughout the various States of the United States.

PAR. 3. In truth and in fact the preparation known as Dr. McCaskey's Prescription Tablets sold and advertised by respondent as hereinbefore stated is not a remedy or cure or competent and adequate treatment for obesity or fat reduction; neither will it reduce any particular area of the body desired; it contains no ingredients with properties capable of producing the effect set forth in said preparation; it is not a safe remedy, for certain ingredients contained therein are such that long continued use thereof, except under the direction and oversight of a physician, may endanger or injure the user's health; it will not cause a person to reduce a definite number of pounds within a specified time and users of said preparation do not obtain results similar to those obtained by Dr. McCaskey in his practice as a physician.

PAR. 4. The representations of respondent had the tendency and capacity to confuse, mislead and deceive members of the purchasing public into the belief that said preparation is a remedy and competent and adequate treatment for the ailments of the human body for which said preparation was recommended and advertised by respondent as aforesaid and to induce them to buy and use the same, because of said erroneous belief so engendered; that respondent unfairly diverted trade from legitimate competitors who truthfully advertise similar preparations and who are engaged in the sale in interstate commerce of preparations intended for and used for the ailments of the human body for which respondent represented his said preparation to be a remedy and competent and adequate treatment, as aforesaid, and, thereby, substantial injury was done by respondent to substantial competitors in interstate commerce.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings were to the prejudice of the public and respondent's competitors; they were unfair methods of competition in commerce and constituted violations 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 testimony in support

Order

20 F. T. C.

of the charges of said complaint and brief filed herein on behalf of the Commission, and the Commission having made its findings as to the facts with its conclusion that said respondent has 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":

It is ordered, That respondent, James M. Marner, trading under the name and style of Dispensary Supply Company, or under any other name, his agents, representatives, servants and employees, in connection with the sale or offering for sale in interstate commerce of Dr. McCaskey's Prescription Tablets or of said preparation under any other name forthwith cease and desist from representing, directly or indirectly:

- (1) That said preparation is a remedy or competent or adequate treatment for obesity;
- (2) That by the use of said preparation a person can reduce any definite number of pounds;
- (3) That by the use of said preparation a person can reduce any area of the body;
- (4) That the said preparation contains no drugs;
- (5) That by the use of said preparation weight may be reduced without diet or exercise.

It is further ordered, That said 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 it has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

DIXIE E. BOYER, TRADING AS D. E. BOYER

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

Docket 2360. Complaint, Apr. 11, 1935—Decision, May 29, 1935

Where an individual engaged in the manufacture and sale of stogies and small cigars—

- (a) Featured the words "Hand-made" on the inner face of the lids of the containers of said products and also in various places on the outer faces thereof, notwithstanding fact they were not made entirely by hand;
- (b) Encircled said products with bands containing words "Perfectos Habanas", notwithstanding fact they were not made of tobacco grown in Cuba; and
- (c) Featured the words "Wheeling Twins" and "Wheeling Twins Master Quality" on containers of said products, as hereinabove set forth, notwithstanding fact they were not made in Wheeling;

With tendency and capacity to mislead and deceive a large part of purchasing public and trade into believing said products were made in Wheeling, were hand-made, or made of tobacco grown in Cuba, as the case might be, and into purchasing same in such belief by reason of the preference of a large portion of said trade and the public for products thus made or composed, and unfairly to divert trade to said individual from competitors who actually make such products in Wheeling, or entirely by hand, or of tobacco grown in Cuba, and thus represent the same, to the substantial injury of substantial competition in interstate commerce:

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. John W. Hildrop for the Commission.

Walker & Walker, of St. Clairsville, Ohio, 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 Dixie E. Boyer, an individual trading as D. E. Boyer, hereinafter called the respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said 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. The respondent, Dixie E. Boyer, is an individual trading under the name and style of D. E. Boyer, with her principal