

IN THE MATTER OF
HOME DRUG COMPANY

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

Docket 2164. Complaint, July 2, 1934¹—Decision, Feb. 11, 1936

Where a corporation engaged in the sale direct to the public of proprietary remedies represented as efficient therapeutic agents for self-medication; in advertising and describing its "Prescription No. 69" for gallstones, gallstone colic, liver, gall bladder and stomach disorders, in newspapers, through purported testimonial recommendations from prior users, sent to inquirers, and in circulars enclosed with product, and in circular, and circular follow up letters;

- (a) Falsely represented that said preparation would relieve or cure diseases or pathological conditions of the gall bladder or connected ducts and would cause gallstones to be dissolved and evacuated from the body, and thus avoid surgical operations for their removal, against asserted ineffectiveness and danger of which it warned, facts being more than 97% of such operations are successful;
- (b) Set forth as symptoms indicating presence of gallstones, attacks of mild indigestion and a number of other conditions, facts being the ordinary member of the public is not qualified to diagnose diseases or pathological conditions, and said various conditions set forth were symptoms of many different abdominal disorders and a competent physician would make no diagnosis and prescribe no remedy on the basis thereof; and
- (c) Represented said "Prescription No. 69" broadly as an effective medical treatment for liver and stomach disorders or troubles, facts being that, in the minds of lay people, a stomach disorder is any distress in the lower abdominal area and includes such diseases and conditions as impacted gallstones, gastric ulcer, and cancer of the stomach, tendency of which is progressive, in which latter conditions, as in the case of those described as "liver" or "stomach" trouble it would have no effect by way of relief or cure, but might lead to incurable conditions or premature death through delaying resort to competent and effective treatment;

With result of misleading and deceiving members of the public into believing aforesaid representations to be true and in reliance on such belief into purchase of said preparation in place of products of competitors sold for diseases or pathological conditions of the abdominal tract other than gallstones or the gall bladder, and into purchase thereof for removal of gallstones and for gall bladder disorder, and with capacity and tendency so to do, and to cause such members mistakenly to diagnose conditions with which they were afflicted and thus delay or fail to obtain competent surgical or medical care or treatment necessary, in the case of dangerous progressive diseases, to stay their course or remove their cause, to the great

¹ Amended.

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public prejudice, and with result of diverting from competitors to it trade in articles or preparations for treatment of certain ailments:

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. Edward E. Reardon for the Commission.

Mr. Clinton Robb, of Washington, D. C., and *Mr. F. W. Murphy*, of Minneapolis, Minn., for respondent.

AMENDED 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 the Home Drug 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 this its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Home Drug Company, is a corporation, incorporated and existing under the laws of South Dakota since February 24, 1930. The respondent was duly qualified to do business in Minnesota on March 7, 1930, in compliance with the foreign corporation law of Minnesota and since on or about March 7, 1930, the respondent had and now has a place of business at number 18 North Fourth Street, Minneapolis, Minn.

PAR. 2. The respondent during the times above mentioned has been and now is engaged in the business of the sale of drugs and proprietary articles or remedies, direct to members of the public, consumers thereof, which respondent claims and represents to be efficient therapeutic agents in their self-medical treatment by the purchasers thereof for various diseases and pathological conditions of the human body hereinafter mentioned, including the proprietary article called "Prescription 69" which the respondent during said times has sold and still sells for their self-medical treatment to the members of the public referred to, purchasers thereof, residing in various States of the United States other than Minnesota; and the respondent during said times has caused its said drugs and proprietary articles or remedies, including its so-called "Prescription No. 69" when so sold by it to be transported from respondent's place of business in Minnesota or from the State of origin of the shipment to, into and through other States to the purchasers.

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PAR 3. During all the times above mentioned others, manufacturers, wholesale and retail dealers hereinafter referred to as sellers, located in the District of Columbia and in various States of the United States, have been and now are engaged in the business of the sale of drugs and articles or remedies used in the medical treatment of the diseases and pathological conditions of the stomach and liver, including those diseases and pathological conditions of the stomach and liver mentioned, and referred to in paragraphs 6 and 7 hereof, to purchasers, residing in the District of Columbia and in States other than the State of the seller or the State of origin of the shipment, including consumers and users and wholesale and retail dealers who buy the drugs, articles or remedies for resale and who resell and distribute them to users and consumers.

The sellers above mentioned, respectively, have caused the drugs, articles or remedies referred to, when so sold by them, to be transported from the District of Columbia, the State of the seller or the State of origin of the shipment, as the case may be, to, into and through other States, and into the District of Columbia, to the purchasers.

PAR. 4. The respondent, during all the times above mentioned and referred to has been and still is in substantial competition in commerce in the sale of its drugs and proprietary articles or remedies, including its proprietary article, called "Prescription No. 69", with other individuals, firms and corporations, the sellers of the drugs and proprietary articles or remedies referred to in paragraph 3 hereof.

PAR. 5. During the times above mentioned the respondent has caused advertisements of its proprietary article called "Prescription No. 69" to be published in newspapers, magazines, and other periodicals circulating among the public in the various States and in circulars, pamphlets, and booklets which respondent has caused to be distributed among the public of the various States.

PAR. 6. In the advertisements of respondent mentioned and referred to in paragraph 5 hereof the respondent caused statements to be made concerning its "Prescription No. 69", among others, as follows:

**GALLSTONE COLIC, LIVER, GALL BLADDER AND STOMACH DISORDERS
QUICKLY RESPOND.**

Don't Operate!

You make a bad condition worse. Treat the cause in a sensible, painless, inexpensive way at home. Write Home Drug Co., 812-146 Masonic Temple, Minneapolis, Minn., for a recognized practicing specialist's prescription on liver and gall bladder troubles and literature on treatment which has been giving gratifying results for 28 years. Sold under money-back guarantee.

The ingredients in Prescription 69 have the proper medicinal qualities to do four essential things in the relief of such disorders. The liver is relieved of its sluggish and torpid condition; this naturally makes possible healthy bile secretion, which dissolves the gallstones; irritation and inflammation in the gall bladder and ducts are cleared up and the stomach receives the required tone which gives the sufferer back that much desired health, comfort, and figure.

This medicine acts directly upon the sluggish liver, where the bile is made. It clears up the torpid liver, which will then make healthy bile, capable of dissolving the stones in the gall bladder.

Operations do not clear up the causes of a sluggish liver, where the disorder starts. Prescription No. 69 gets at the real cause. It works on the liver. It restores the inactive cells and starts healthy bile secretion. When healthy bile begins to flow into the gall bladder it alone has the power to dissolve the gallstones. It cuts like acid and the particles of stagnant bile, lime and salts which make up gallstones give way to its action.

Are you going to continue to hide your pains, tortures, dangers and living misery; the future happiness of yourself and family, behind the Delays, Excuses and Future Time, which perhaps may lead only to a fatal result; or will you join those who are gratified with results of the medicine and who are shouting the praises of Prescription No. 69.

Prescription No. 69 corrects the disorder—it gets to the real cause. Healthy bile is created which has a dissolving action on the stones and they pass out.

Should the stone pass through the duct, after days of suffering, the lining is scratched and torn, which sets up a violent inflammation, never healing, but frequently developing into a cancer.

PAR. 7. Respondent has represented in its advertisements during the times above mentioned that "Many have gallstones and don't know it" and has represented in its advertisements, as symptoms of gall bladder and liver disorders, as follows:

Early attacks of mild indigestion, burning pains around the liver, back and right side below the ribs, sour stomach, dizziness, biliousness, jaundice, colic, vomiting, gastritis with often chills and fever, * * *

and

Long-standing stomach trouble is a forewarning of gallstones.

PAR. 8. The respondent's proprietary article or alleged remedy called "Prescription No. 69" is not a remedy or cure for gallstones, gallstone colic, liver, gall bladder or stomach disorders or any of the diseases or pathological conditions for which it is claimed by respondent to be a cure, remedy or treatment.

Respondent's "Prescription No. 69" will not act upon the human system so as to cause, by dissolution of the gallstones or otherwise, evacuation of them from the body of the person who has taken a treatment or treatments consisting of the said "Prescription No. 69."

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The symptoms represented by respondent as being symptoms of gall bladder and liver disorders are not necessarily symptoms of gall bladder and of liver disorders. Such symptoms are also symptoms of other conditions and diseases. Long-standing stomach trouble is not necessarily a forewarning of gallstones. Gallstones passing through the gall ducts do not necessarily scratch and tear the lining, thereby setting up a violent inflammation which never heals but frequently develops into cancer.

The ingredients in respondent's "Prescription No. 69" do not have medical or therapeutic qualities sufficiently efficient to do any of the essential things necessary for the dissolution or removal of gallstones from the human body or for the relief of liver and stomach disorders and the use of respondent's "Prescription No. 69" for the treatment of gallstones, liver or stomach disorders may result in definite harm to the persons using the same for their self-treatment, because of the progression of the diseases, disorders or pathological conditions for which it is used, which may result from neglecting to have proper medical care and treatment during the period of time respondent's said product is being used.

PAR. 9. The acts and things done by respondent as set out above have the capacity and tendency to mislead and deceive members of the public, purchasers of respondent's "Prescription No. 69" into the belief that it is an efficient medical or therapeutic agency as a remedy or cure for gallstones, gallstone colic, liver disorders, gall bladder disorders, and stomach disorders, or any of the said diseases or pathological conditions for which it is represented as a treatment by respondent, and relying upon such belief into purchasing the respondent's "Prescription No. 69" instead of the drugs, proprietary articles or remedies sold, respectively, by respondent's competitors for the treatment, relief or cure, respectively, of the various diseases or pathological conditions above mentioned, and the said acts and things done by respondent tend to and do divert trade from respondent's competitors.

PAR. 10. The above acts and things done and caused to be done by respondent are each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717, 719), 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 2nd day of July 1934, issued its amended complaint in this proceeding and caused it to be served upon the respondent Home Drug Company on July 5, 1934, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent entered its appearance by Clinton Robb, Esq., and after the filing of the respondent's answer to the amended complaint, testimony and evidence in support of the allegations of the amended complaint were introduced by Edward E. Reardon, Esq., attorney for the Commission, before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the amended complaint by Mr. D. A. Lundy, general manager of respondent, representing the respondent; and the testimony and evidence introduced was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission upon the said amended complaint, the answer thereto, testimony and evidence, the brief in support of the amended complaint, and upon the oral arguments of counsel for the Commission and for the respondent; 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. The respondent, Home Drug Company, is a corporation organized February 24, 1930, and existing under the laws of South Dakota. The respondent was duly qualified to do business in Minnesota on March 7, 1930, and at all times since the latter date it had and now has a place of business at Minneapolis, Minn.

PAR. 2. The respondent during all the times since on or about March 7, 1930, has been and now is engaged in the business of the sale of drugs and proprietary articles or remedies, direct to members of the public, purchasers and consumers thereof, which respondent represents to be efficient therapeutic agents in self-medical treatment by the purchasers thereof for various diseases and pathological conditions of the human body, including the proprietary article called "Prescription No. 69" which the respondent during said times has sold for self-medical treatment of the diseases or pathological conditions known as gallstones, gallstone colic, liver, gall bladder, and stomach disorders, to purchasers thereof, members of the public residing in various States of the United States other than Minnesota.

The respondent during said times has caused its drugs and proprietary articles, including its so-called "Prescription No. 69", when so sold by it, to be transported from respondent's place of business in Minnesota or from the State of origin of the shipment to, into and through other States to the said purchasers located in other States.

PAR. 3. During all the times above mentioned others, manufacturers, and wholesale and retail dealers, hereinafter referred to as sellers, located in the District of Columbia and in various States of the United States, have been and now are engaged in the business of the sale of drugs and proprietary articles for use in the medical treatment of diseases and pathological conditions of the human body, including diseases and pathological conditions of the stomach and liver for the medical treatment of which the respondent sells its "Prescription No. 69", to purchasers, including consumers and users, and wholesale and retail dealers who purchase the same for resale, residing in the District of Columbia and in States other than the State of the seller or the State of origin of the shipment.

The sellers above referred to, respectively, have caused the drugs or proprietary articles referred to, when so sold by them, to be transported from the State of the seller or the State of origin of the shipment, as the case may be, to, into and through other States and the District of Columbia to the said purchasers located in other States.

The respondent, during all the times above mentioned and referred to has been and still is in substantial competition in interstate commerce in the sale of its drugs and proprietary articles, including its "Prescription No. 69", with the other individuals, firms and corporations, the sellers above referred to.

PAR. 4. During all the times above mentioned, the respondent's proprietary article called "Prescription No. 69", has been and still is a dark brown viscous liquid having the characteristic odor of anise and at first a sweetish followed by a bitter taste. It consists of glycerin, water, plant extracts, strychnine, bile acids, and oil of anise with indications of caramel. One hundred cubic centimeters of the product contain substantially approximately 102.9 grams of glycerin, approximately .254 gram of taurocholic acid, and .0093 gram of plant extractive, alkaloid, and probably glycocholic acid together with traces of other plant extractive. Chemical analysis of the product showed no positive test for podophyllum, and chemical tests were negative for quinine, brucine, hydrastine, and berberine, the latter five substances being plant extracts claimed by respondent to be in the composition of the product.

PAR. 5. The respondent caused advertisements to be placed in newspapers which circulated among the public of various States and caused circulars to be distributed in the packages in which its product, "Prescription No. 69", was sold and delivered to members of the public for use and consumption, and caused copies of testimonial recommendations purporting to have been received from prior users of "Prescription No. 69" to be sent to members of the public in reply to their inquiries concerning the effects of the use of the product. It caused statements to be made in its advertisements, and in its circulars and in its correspondence with members of the public, concerning its "Prescription No. 69", among others, as follows:

Gall Stone Colic, Liver, Gall Bladder and Stomach Disorders Quickly Respond.

Avoid operations if possible. Treat the cause in a sensible, painless, inexpensive way at home. Write Home Drug Company, 18-147 North Fourth Street, Minneapolis, Minnesota, for a recognized practicing specialist's prescription on liver and gall bladder troubles, for literature on treatment which has been giving gratifying results for 28 years. Sold under money back guarantee.

Why Wait! Why Delay! When Results May Be Yours!

Surely you should listen to this timely advice if you knew the results of gall stones. If you have experienced the unbearable pains, the tortures and suffering which they cause, you should be first to welcome relief. The item of price should be your smallest consideration. An operation is not a cheerful outlook but will eventually come, yet it will not cure gall stones. Neither will an operation clear a sluggish liver—correct an unhealthy bile, nor can it prevent the formation of gall stones.

So why should you suffer and neglect the duty you owe to yourself and others about you, when an easy, sensible home treatment may be found in "Prescription No. 69." And think of the small expense as compared with hundreds of dollars for an operation with added misery and suffering to yourself and then the possibility of having the same disheartening trouble return.

In circular letters which the respondent sent out to the public, the respondent made statements, among others, as follows:

An operation at best can only clean the gall bladder. This does not get at the accepted cause of the trouble. Operations are dangerous, painful and expensive. To our knowledge few have been relieved permanently, or even temporarily so why submit to uncertainties only as a last resort. "Prescription No. 69" has given hundreds of our patients results after an operation had failed.

This medicine "Prescription No. 69" has been cheating the knife for years as hundreds of our patients will bear witness by testimonials. The medicine in itself is harmless. It has no habit-forming tendencies but has most gratifying beneficial effect upon the stomach and liver regions. It gives just the required toning

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effect. It gets at the real cause. The treatment causes healthy bile to flow, the liver to again function normally. * * *

So why hesitate! Why be a slave to Gall bladder, Liver and Stomach suffering if you can clean your system of the disorders which cause them. Especially with a Money Back Guarantee, the matured suggestions of a practicing physician and a medicine that has been giving relief to others for 28 years.

With letters containing the above statements the respondent sent circulars containing a number of testimonial recommendations purporting to have been received from prior users of the product and in the letters were included, among others, statements as follows:

It is not a patent medicine.

When taking this medicine some at first (but the majority never have any symptoms of this proof of passing out), get a sore feeling in the right side, showing that materials are breaking up and passing out. The very thing the poor sufferer wants to have happen, that is Get Rid of Them. * * *

"Prescription No. 69" has spared many a liver and gall sufferer from the tortures and expenses of an operation. It is a safe, simple home treatment taken as easily as one's meals.

In circular follow-up letters to customers and prospective customers, respondent, among other statements, made the following:

Like a Thief in the Night.

Long-standing stomach trouble is a forewarning of gallstones. They may lie inactive, in the gall-bladder for years and not make themselves felt by gallstone colic. Yet, at any moment a large gallstone may slip into the neck of the gall-bladder and close the passage. An operation may be necessary, if the stone can't pass through the duct no larger than a knitting needle. Death frequently results from such an operation. Should the stone pass through the duct, after days of suffering, the lining is scratched and torn, which sets up a violent inflammation, never healing, but frequently developing into cancer.

Heed the Timely Warning, Order Prescription No. 69.

The ingredients in Prescription No. 69 have the proper medicinal qualities, to do four essential things in the relief of such disorders. The liver is relieved of its sluggish and torpid condition; this naturally makes possible healthy bile secretion, which dissolves the gall-stones; irritation and inflammation in the gall-bladder and ducts are cleared up and the stomach receives the required toning which gives the sufferer back that much desired original health, comfort and vigor.

PAR. 6. The statements above mentioned and referred to that the respondent made and caused to be made in its advertisements in newspapers and in its circulars distributed with its Prescription No. 69 when sold and delivered to members of the public and in its correspondence with members of the public in answering inquiries concern-

ing the use and the effect of the use of its Prescription No. 69 as a treatment for the relief and cure of the diseases and pathological conditions mentioned and referred to by the respondent in its said statements, were statements that represented it to be a fact that the use of respondent's Prescription No. 69 as a medical treatment for those diseases and conditions would relieve and cure, among others, the diseases and pathological conditions mentioned and referred to under the names or classifications, liver and stomach disorders or troubles, gall stone colic, gall bladder disorders, and gall stones. The statements of the respondent made to members of the public as set forth above included statements of fact that surgical operations for the removal of gall stones from the human body were dangerous; that death frequently results from such operations; that the results of operations for gall stones were uncertain and that such operation did not, by removing gall stones from a person afflicted with them, permanently or even temporarily remove the cause of their occurrence, or cure the subjects of the operations except in a few instances.

The statements of the respondent disparaging and warning against surgical treatment for gall stones represented on the other hand that the use of respondent's Prescription No. 69, as a treatment for the relief and cure of gall stones and the condition occasioned by their presence, as shown over a period of years, caused the gall stones to be dissolved and evacuated from the bodies of subjects of the treatments in the cases of hundreds of persons afflicted, and effectually relieved and cured the condition occasioned by the presence of gall stones so that the condition did not again recur.

The statements referred to above, made by the respondent, included statements of fact to members of the public to the effect that the ingredients, of which respondent's Prescription No. 69 was composed, were of the proper medicinal qualities to dissolve gall stones in the human body and to relieve and cure the gall bladder and gall bladder ducts of irritation and inflammation and to tone the stomach of the user of the respondent's product and restore the user of it to his original health and vigor.

PAR. 7. The ordinary member of the public is without medical training or knowledge sufficient to be qualified properly or correctly to diagnose diseases from which he or other members of the public may be suffering or existing pathological conditions, and the respondent during all the times above mentioned and referred to represented in its advertisements that many persons have gall stones and don't know it and represented the symptoms indicating the presence of gall stones to be: Early attacks of mild indigestion, burning pains around the liver, back and right side and below the ribs, sour

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stomach, dizziness, biliousness, jaundice, colic, vomiting, gastritis with often chills and fever and long standing stomach trouble.

PAR. 8. During all the times above mentioned the respondent represented to members of the public who purchased respondent's Prescription No. 69 the manner of using the same in directions which the respondent gave for that purpose as follows:

Two teaspoonfuls in one-half glass of water before the morning meal for liver and gall bladder trouble. Shake bottle.

Further directions were given by respondent, as follows:

IMPORTANT. In using Prescription No. 69 the most satisfactory results are obtained by taking two teaspoonfuls daily for the first two months and one teaspoonful for the next eight months. Then keep it on hand to take occasionally as is necessary.

and

When taking No. 69 if there is soreness or pain it is considered a good sign, it is due to materials passing out—sediment, thick bile and other materials which cause spasm of the gall duct and this in turn causes pain.

and

If there is much soreness or pain take full dose of two teaspoonfuls two or three times a day for a few days. Also keep bowels acting freely—at least two or three bowel movements a day are necessary.

PAR. 9. The respondent's product, Prescription No. 69, when taken by a member of the public according to the directions given by the respondent for its administration as a treatment for the relief from or the cure of any of the diseases for which its use is recommended by the respondent and for which it has been sold by the respondent to members of the public for their use in such cases, is innocuous and harmless. Besides being harmless when so used, Prescription No. 69 is also without efficacy to produce any beneficial effect either in relieving, or curing any of such diseases, or any pathological conditions from which the user of it may be suffering.

Practically, the sole ingredients in the composition of respondent's Prescription No. 69 which produce any physiological effect to the user who takes it according to the directions of the respondent for its use, are the bile salts, represented by taurocholic and glycocholic acids. But, neither bile salts administered orally in any amount whatsoever, nor any other known substance so taken by a person can dissolve any gall stones present in the body of such person. The full dosage of respondent's product taken by a person every day would not cause an appreciable increase in the flow of bile of such person.

It is an impotent dose of bile salts. Respondent's Prescription No. 69 is composed approximately 80% of glycerin by volume. Glycerin taken in large amounts internally is likely to cause irritation of the stomach, gastro-enteritis, and inflammation of the whole tract of the stomach. While respondent's product is harmless in the dosage directed by respondent, if the dosage was enlarged to cause a considerable secretion of bile, it would in consequence involve the taking of an amount of glycerin that would cause the use of the respondent's product to be harmful.

PAR. 10. The terms "stomach disorders" or "stomach troubles" are vague terms and they do not appear in the regular classification of diseases, and such terms are not used to state a cause of death. The symptoms which the respondent represented to members of the public to indicate the presence of gall stones, as set forth in paragraph 7 hereof are not symptoms of the presence of gall stones. They are symptoms of many different abdominal disorders and a competent physician in the procedure of scientific treatment would make no diagnosis and prescribe no remedy for treatment of a patient on the basis of such symptoms.

PAR. 11. In the minds of lay people a stomach disorder is anything that causes distress in the lower abdominal area, and such trouble, amongst others, might be gastric ulcer, cancer, gastritis, gall-bladder disease, appendicitis, colitis, or many other diseases or pathological conditions that might be mentioned. Also there are a number of diseases which the layman might consider to be included in the term "stomach disorders" which have a progressive tendency. For instance, gastric ulcer may cause symptoms in the upper abdomen. Unless properly treated, it may progress until the ulcer ruptures and causes death from peritonitis; or until the ulcer begins to bleed and causes death from extensive hemorrhage or loss of blood.

Cancer of the stomach is another similar example of a progressive disease. Still another example is the case of gall stones in the gall bladder. The gall stone may become impacted in the hepatic duct which leads the bile from the gall bladder. A rupture or empyema of the gall bladder may result from such an impacted gall stone in which case the gall bladder may even rot and break open into the abdominal cavity and cause death.

PAR. 12. More than 97% of the surgical operations for the removal of gall stones are successful. A surgeon might or might not be able to save the life of a patient where there was a rupture of the gall bladder, depending principally on how long a time after the rupture occurred before the patient consulted the surgeon. The use of the respondent's Prescription No. 69 while it has no effect

at all to relieve or cure any of the conditions described by the terms "liver trouble" and "stomach trouble" would have a harmful effect insofar as it would be the cause of preventing or delaying persons subject to such conditions as above mentioned from obtaining competent medical or surgical treatment until the disease or condition had progressed to the extent that it had become incurable and the cause of death, perhaps prematurely.

PAR. 13. The respondent's proprietary article called Prescription No. 69 is not an efficient therapeutic agent or treatment for the relief or cure of any of the diseases or pathological conditions for which it has been sold and offered for sale by the respondent to members of the public, including the diseases or pathological conditions mentioned and referred to by the respondent as gall stones, gall stone colic, gall bladder trouble, liver and stomach disorders. The respondent's said Prescription No. 69 during all said times when used as a treatment for gall stones, has not caused gall stones to be dissolved or evacuated from the body of any member of the public. It has not caused the relief or cure of gall stone colic, gall bladder trouble or the condition known as gall stones. The respondent's Prescription No. 69 cannot be said to have caused the cure of any of the diseases or pathological conditions referred to by the respondent as liver and stomach disorders or to have caused relief from such diseases or pathological conditions to any member of the public who used it as a treatment for the relief and cure of the same, and the statements and representations of the respondent, mentioned and referred to above, to the effect that its Prescription No. 69 is an efficient therapeutic agent for the relief or cure of the diseases or pathological conditions, or of any of them for which it was offered for sale and sold by respondent, are and have been false statements and representations.

PAR. 14. The statements and representations above mentioned and referred to made by the respondent to members of the public concerning the use and the effect of the use of its product, Prescription No. 69, had, during all the times above mentioned, the capacity and tendency to mislead and deceive members of the public, and members of the public were misled and deceived thereby, into the belief that they were true, and, in reliance upon such belief, into purchasing respondent's Prescription No. 69 instead of proprietary articles or products sold by respondent's competitors for use in the treatment for the relief of certain of the various diseases or pathological conditions of the abdominal tract other than gall stones or of the gall bladder.

The respondent's said statements also had the capacity and tendency to mislead and deceive members of the public, and members of the public were misled and deceived thereby, into the belief that the use of respondent's Prescription No. 69 would cure gall bladder disorder and cause the removal of gall stones without the necessity of a surgical operation or of other medical treatment and that surgical operation for the removal of gall stones was dangerous, and in reliance upon such belief into purchasing respondent's Prescription No. 69 for the removal of gall stones and gall bladder disorder.

The statements and representations of the respondent had the further capacity and tendency to mislead and deceive members of the public into believing that they were true and, in reliance upon such belief into mistakingly diagnosing the cause of the condition with which they were afflicted, and into purchasing and using respondent's Prescription No. 69. In consequence they would be delayed or be prevented from obtaining competent surgical or medical care or treatment, necessary when dangerous progressive diseases are present in order successfully to stay the course of the disease, or to remove its cause; or, in some instances, to prolong the life of the person afflicted. And so the public has been greatly prejudiced by the above practices of the respondent and trade in articles or preparations for the medical treatment of certain diseases or pathological conditions has been diverted from competitors to the respondent.

PAR. 15. In consequence of the practices of the respondent above set forth, trade in articles or preparations for the treatment of certain various diseases or pathological conditions was diverted to the respondent from competitors.

CONCLUSION

The practices of the respondent, Home Drug Company, under the conditions and circumstances described in the foregoing findings were to the prejudice and injury of the competitors of the respondent and were to the prejudice and injury of the public and were unfair methods of competition in commerce and constitute a violation of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of

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the respondent to the amended complaint, testimony and evidence taken before John W. Bennett, Esq., an examiner of the Commission theretofore duly designated by it, in support of the charges of the amended complaint and in opposition thereto, the brief on the part of the Commission filed herein, and oral arguments by Edward E. Reardon, Esq., counsel for the Commission, and by Clinton Robb, Esq., counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that the 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 the respondent, Home Drug Company, its agents, representatives, and employees, in the sale and offering for sale in interstate commerce of the proprietary article, Prescription No. 69, or of any other proprietary article or preparation of substantially the same composition, whether sold or offered for sale under the name or designation, Prescription No. 69 or under any other name or designation, do

Cease and desist from representing or causing others to represent to the public or individual members thereof; either verbally or in correspondence by mail, or by means of advertisements in newspapers or periodicals; or in circulars delivered with its proprietary article or preparation, herein mentioned; or by means of radio broadcasts; or by publishing or otherwise communicating to the public the contents of testimonial recommendations of such article or preparation received by it and purporting to have been written by users thereof that;

(1) The proprietary article, Prescription No. 69, or any preparation of substantially the same composition, will cause gall stones in the human body to be dissolved or that it will cause gall stones when present in the human body to be evacuated therefrom or that it will relieve or cure diseases or pathological conditions of the gall bladder or connected ducts, including those diseases or conditions caused by the presence of gall stones in the body of the user.

(2) Certain stated symptoms of body disorder or of human ailments indicate the presence of a particular disease or pathological condition, when, in fact, such symptoms occur in the case of various body disorders or pathological conditions possessing definitely different natures and requiring definitely different treatments or remedies.

(3) The use of its Prescription No. 69 or of any other preparation of substantially the same composition will cause any result to the user, other than the secretion or increased flow of an inconsiderable amount

of bile in the body of the user, unless and until any other result to the user of the same can reasonably be ascertained and be identified as the result of the use thereof.

It is further ordered, That the respondent, Home Drug Company, shall within 30 days after the service of this order file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order to cease and desist.

IN THE MATTER OF
**MAX KIPPERMAN AND SAMUEL ORENSTEIN, DOING
BUSINESS AS SAMAC KNITTING MILLS**

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

Docket 2635. Complaint, Nov. 20, 1935—Decision, Feb. 18, 1936

Where a firm engaged as jobbers in the sale and distribution of clothing and knitted goods—

- (a) Included words "Knitting Mills" in their trade name and displayed same on invoices, letterheads, statements and other printed matter in soliciting sale of and selling their said products in commerce among the States, and printed on their letterheads and other printed matter the words "Manufacturers of Sweaters and Knit Goods", and set forth on labels affixed to their aforesaid products words "Samac Knit", notwithstanding fact they neither owned, operated nor controlled any mill or factory making the same, but filled orders therefor with products knitted or made in a mill or factory neither owned, controlled, nor operated by them; and
- (b) Set forth on labels attached to their said products the term "100% Pure Spun", notwithstanding fact products thus labeled were not composed wholly of wool but contained in substantial part material other than wool, and were not products of superior characteristics and made of "100% pure spun wool" as imported by said phrase, and did not have characteristics superior to those made of like material and in like manner;

With capacity and tendency to deceive ultimate purchasers into buying that which they did not intend to buy, and with effect of so doing and placing in the hands of retailers the means of deceiving the ultimate purchaser, and with further capacity and tendency to divert to them trade of competitors engaged in selling products of the same kind and nature, truthfully advertised and described:

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

Mr. John Darsey for the Commission.

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 Max Kipperman and Samuel Orenstein, copartners doing business as Samac Knitting Mills, hereinafter referred to as respondents, have been and are now 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