

Syllabus

IN THE MATTER OF
DISPENSARY SUPPLY COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2559. Complaint, Sept. 24, 1935—Decision, June 25, 1936*

Where a corporation engaged in the sale of "Dr. McCaskey's Prescription Tablets" to wholesale and retail dealers for ultimate resale to the members of the public, and also to members of the purchasing public in the various States—

- (a) Represented that said proprietary preparation constituted a cure or remedy or competent and adequate treatment for obesity and that it would reduce excess fat, through such statements as "Do not let overweight rob you of popularity. You can so easily have a slim, attractive figure * * * you will reduce if you faithfully follow my treatment," "REDUCE EXCESS FAT with the prescription of a specialist on weight control. Seeking health with drastic baths and exhausting exercises is no longer necessary," etc., facts being that said preparation did not constitute an adequate or competent remedy for the treatment of obesity and would not reduce fat at all;
- (b) Represented that said preparation was harmless or safe to take, through such statements as "Reduce quickly, safely," etc., "* * * Reduce as your doctor would advise you * * *," "Reduce safely, surely, * * *," "There is no thyroid, no harsh drugs—nothing that could possibly harm you," "Nothing that could harm a baby," facts being said preparation, by virtue of certain ingredients therein and effect thereof on the body in course of time, was neither safe nor harmless;
- (c) Represented that users of said preparation would reduce five pounds a week, through such statements as "How would you like to reduce five pounds during the next week? You can, if you are overweight—surely, safely, and without discomfort. * * *," facts being said preparation would not reduce fat at rate of five pounds per week or at all;
- (d) Represented that users thereof would obtain results similar to those obtained by "Dr. McCaskey" in his practice as a physician, or to those obtained by a physician in his practice as such, through such statements as "Dr. McCaskey's treatment enables you to do this safely" (i. e., reduce without tiring exercises or starvation diet), "You can easily and comfortably control your weight with Dr. McCaskey's Prescription Tablets," "Reduce as your doctor would advise you with a proven treatment of a prominent American physician, an authority on weight control," facts being users thereof do not get same results as Dr. McCaskey in his private practice as a physician or same results that any physician gets in his private practice as such;
- (e) Represented that, through use of said preparation, a person could reduce any part of the body desired, through such statements as "REDUCE

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WHERE YOU WANT TO REDUCE. Take weight off your abdomen, hips * * *—Wherever you want to reduce. Dr. McCaskey's treatment enables you to do this safely—* * *," etc., facts being users thereof cannot reduce any part of the body desired;

With tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said preparation constituted a remedy and adequate and competent and safe treatment for obesity, that might be used by any and all purchasers thereof without danger of harmful results, and that users thereof would reduce five pounds weekly and any part of the body desired, and secure the same results as said doctor in his private practice, and to induce members of such public to buy such preparations because of such erroneous beliefs thus engendered, and to divert business unfairly to it from its competitors; to their substantial injury and prejudice: *Held*, That such acts and 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.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Carl H. Fowler and *Mr. Frank C. McKinney*, 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 Dispensary Supply Co., Inc., a corporation, has been and now 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 to the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Dispensary Supply Co., Inc., is and at all times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business, located in the city of New York, in said State. It is now and for more than 1 year last past has been engaged in the business of causing to be manufactured and selling a certain medical preparation for the treatment of obesity known and described as "Dr. McCaskey's Prescription Tablets"; respondent sells said preparation to wholesale and retail druggists located in various States of the United States for ultimate resale to the purchasing public and also sells said preparation direct to the purchasing public residing in the various States of the United States, and pursuant to such sales, shipment is made from its place of business in the State of New York into and through various States of the United States other than the State of point of origin of such shipment, and in the District of Columbia.

There are in the United States other corporations, persons, and firms engaged in the sale and distribution of similar competing products, who, pursuant to such sales, ship their products into and through the various States of the United States other than the States of the point of origin of such shipments, and with such other corporations, persons, and firms, the respondent is and at all times hereinafter mentioned, has been in active and substantial competition.

PAR. 2. Respondent represents, as hereinafter set out, that said medical preparation is a remedy and competent and adequate treatment for obesity and that it will reduce excess fat; that a person can reduce by the use of said preparation any particular part of the body desired; that the preparation contains no drugs and that it is safe and harmless; that a person can reduce 5 pounds within a week by the use of said preparation; that users of said preparation can reduce without diet or exercise; that users of said preparation will obtain results similar to those obtained by Dr. McCaskey in his practice as a physician.

In aid of the sale of said preparation and to create a demand therefor respondent has made the following statements and representations through advertisements inserted in various publications and newspapers by advertising literature, testimonials, and otherwise:

Reduce quickly, safely with a proven treatment of a prominent New York physician.

Do not let overweight rob you of popularity. You can so easily have a slim, attractive figure * * * you will reduce if you faithfully follow my treatments."

REDUCE WHERE YOU WANT TO REDUCE. Take weight off your abdomen, hips, waist, ankles—wherever you want to reduce. Dr. McCaskey's treatment enables you to do this safely—without tiring exercises or starvation diet. There is no thyroid, no harsh drugs—nothing that could possibly harm you.

* * * I used Dr. McCaskey's Prescription Tablets, and after following directions in booklet carefully I lost six pounds during the first week * * *.

My husband started Dr. McCaskey's treatment a month ago, weighing 325 pounds. He has lost thirty pounds * * *.

I am well pleased with results from the ten-day Dr. McCaskey treatment. I have already lost eight pounds * * *.

I've had better results with Dr. McCaskey's Prescription than anything I ever took * * *. I weighed 210 pounds and have taken off 13 pounds in two weeks * * *.

Whether you are overweight or only fighting the approach of fat, you can easily and comfortably control your weight with Dr. McCaskey's Prescription Tablets.

REDUCE EXCESS FAT

With the prescription of a specialist on weight control. Seeking health with drastic baths and exhausting exercises is no longer necessary. Reduce as your

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doctor would advise you—with a proven treatment of a prominent American physician—an authority on weight control.

Dr. McCaskey is one of the pioneer advocates of dehydration * * *. Dehydrating the system not only cleanses and purifies the body, it is a preventative of colds, lumbago, hay fever, and many other ailments caused by a toxic condition. Eliminate toxic poisons and your general health is bound to improve. Dr. McCaskey's Prescription Tablets contain no thyroid, no harmful drugs— * * *.

The Base of these tablets is a simple alkaline salt that dehydrates and purifies the water remaining, which, in turn, promotes better general health.

REDUCE

Safely, Surely, with a proven prescription of a prominent New York physician.

How would you like to reduce five pounds during the next week? You can, if you are overweight—surely, safely and without discomfort. Take Dr. McCaskey's Prescription Tablets and follow the method explained in each package and watch pounds fade away.

Have lost five pounds a week since I have been taking Dr. McCaskey's treatment, and am now down to normal weight * * *.

Dr. McCaskey's Prescription * * * contains * * * nothing that could harm a baby.

Dr. McCaskey warns especially against starvation diets * * * with Dr. Bailey at Bellevue Hospital he says "I kept one woman without food or water a full week. This woman actually GAINED while starving."

Phone your druggist or Department Store for Dr. McCaskey's Prescription Tablets now. Then measure and weigh yourself carefully before you start. Do this weekly and watch how you pick up pep and energy as you drop excessive weight.

PAR. 3. In truth and in fact the preparation advertised, sold, and distributed by respondent as hereinbefore stated, is not a remedy or competent or adequate treatment for obesity and neither will it reduce excess fat; it will not reduce any particular part of the body desired; the preparation contains drugs; it is not a safe remedy and certain ingredients contained therein are such that long continued use thereof, except under the direction of a physician, may endanger and injure the user's health; a person cannot reduce five pounds or any number of pounds within a week by the use of said preparation; weight of a person cannot be reduced without diet or exercise and users of said preparation do not obtain results similar to those obtained by Dr. McCaskey in his practice as a physician. In fact, all of the statements and representations set out in paragraph 2 hereof are grossly inaccurate, incorrect, false, and misleading.

PAR. 4. The representations of respondent as aforesaid, have the capacity and tendency to confuse, mislead, and deceive members of the purchasing public into the belief that said medical preparation is a remedy and competent and adequate for the ailments of the human body for which said preparation is recommended and advertised by respondent as aforesaid and induces the public to buy and

use the same because of such erroneous belief so engendered; it diverts trade to respondent from legitimate competitors who truly 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 represents its preparation to be a remedy and adequate treatment as aforesaid.

PAR. 5. The above acts and practices of respondent are to the injury and prejudice of the public and to competitors of respondent in interstate commerce within the meaning and intent 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."

REPORT, FINDINGS AS TO 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 September 24, 1935, issued and served its complaint in this proceeding upon respondent, Dispensary Supply Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Frank C. McKinney, attorney for respondent, and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, and briefs in support of the complaint and in defense thereto, 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. Respondent, Dispensary Supply Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business in the city of New York, in the State of New York. Respondent began doing business as a corporation in the month of June 1934. From the month of June 1934 until the month of Novem-

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ber 1934, respondent was engaged in the sale in interstate commerce of a certain proprietary preparation designated by it as "Dr. McCaskey's Prescription Tablets" to wholesale and retail dealers for ultimate resale to members of the public, and also to members of the purchasing public located in the various States of the United States other than the States of New York and Connecticut. Respondent caused its said preparation, when sold by it, to be transported in commerce from its place of business in New York City and from the place of manufacture of such preparation in New London, Conn., to, into, and through said other States to the purchasers to whom the said preparation was sold by respondent. While respondent did not sell its preparation during the year 1935, according to the testimony of its president it expects to resume the sale of its preparation in the future.

PAR. 2. During the time above mentioned and referred to, other corporations, firms, and individuals located in the various States of the United States have been engaged in the manufacture and in the sale of preparations and products advertised and used for the treatment of obesity, and other corporations, firms, and individuals have been engaged in the manufacture and sale of preparations of the same general character and having the same general therapeutic effects that respondent's preparation has, which preparations they have sold and still sell to wholesale and retail dealers and to members of the public located in the various States of the United States. The respondent during the aforesaid time was and still is, in competition in commerce in the sale of its preparation with said other corporations, firms, and individuals herein referred to.

PAR. 3. The respondent herein, in soliciting the sale of and selling "Dr. McCaskey's Prescription Tablets," has made use of advertisements in newspapers and magazines circulated in and among the various States of the United States to members of the public, which said advertisements state that said preparation is a cure or remedy for obesity and that it will reduce excess fat; that by the use of said preparation a person can reduce any particular part of the body desired; that the preparation is safe and harmless; that by the use of said preparation a person can reduce five pounds within a week; that users of said preparation will obtain results similar to those obtained by Dr. McCaskey in his practice as a physician. Among such statements so used in referring to said preparation are the following:

Reduce quickly, safely with a proven treatment of a prominent New York physician.

Do not let overweight rob you of popularity. You can so easily have a slim, attractive figure * * * you will reduce if you faithfully follow my treatments.

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REDUCE WHERE YOU WANT TO REDUCE. Take weight off your abdomen, hips, waist, ankles—wherever you want to reduce. Dr. McCaskey's treatment enables you to do this safely—without tiring exercises or starvation diet. There is no thyroid, no harsh drugs—nothing that could possibly harm you.

Whether you are overweight or only fighting the approach of fat, you can easily and comfortably control your weight with Dr. McCaskey's Prescription Tablets.

REDUCE EXCESS FAT

With the prescription of a specialist on weight control. Seeking health with drastic baths and exhausting exercises is no longer necessary. Reduce as your doctor would advise you—with a proven treatment of a prominent American physician—an authority on weight control.

The Base of these tablets is a simple alkaline salt that dehydrates and purifies the water remaining, which, in turn, promotes better general health.

REDUCE

Safely, Surely, with a proved prescription of a prominent New York physician.

How would you like to reduce 5 pounds during the next week? You can, if you are overweight—surely, safely and without discomfort. Take Dr. McCaskey's Prescription Tablets and follow the method explained in each package and watch pounds fade away.

Dr. McCaskey's Prescription * * * contains * * * nothing that could harm a baby.

Phone your druggist or Department Store for Dr. McCaskey's Prescription Tablets now. Then measure and weigh yourself carefully before you start. Do this weekly and watch how you pick up pep and energy as you drop excessive weight.

PAR. 4. The formula for each tablet of Dr. McCaskey's Prescription Tablets is as follows:

Potassium Chloride—2 grains
Potato Starch—1 grain
Lactose—1 grain
Phenolphthalein— $\frac{1}{8}$ grain
Cane Sugar—1 grain

This preparation is manufactured for respondent by Tracy Chemical Co., of New London, Conn. The preparation consists of tablets which are placed in a small cardboard container which is sold to the purchasing public at \$1.00 per box. Also enclosed in the container of tablets is a circular containing, among other things, the directions recommended to the user of the preparation. In and by said directions, the user is directed to take two tablets three times a day.

Two doctors of medicine, one of whom was also a pharmacologist, testified to the general effect that a preparation of the constituency as given above and taken in the dosage recommended by respondent does not constitute a treatment or remedy for obesity and will not of itself reduce excess fat. Their testimony was to the effect that there is only one active ingredient in the tablet—phenolphthalein—and that

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if any weight reduction took place as a result of taking said preparation it would be due to this drug; that the action of this drug is cathartic and usually produces a stool, but no great water loss, and only in cases which would be considered hyper-susceptible to the drug would it produce a loose or water stool and effect any appreciable amount of water loss, and if such losses were effected they would be generally detrimental to the patient's health; that water loss as a reduction in obesity cases is quickly made up and not of any permanent value; that the only ingredient in the formula that is of any therapeutic value is the phenolphthalein and it is a laxative in small doses and a cathartic in large doses. These witnesses further testified that if this preparation is taken in the dosage prescribed, the patient would get one grain of phenolphthalein a day, in which event it would have the action of a laxative; that phenolphthalein is cumulative, and its action persists; that a single dose of one grain often has a continued effect for 3 or 4 days because of the peculiar behavior of the substance in the human body and it is absorbed in the large intestine and excreted through the liver and bile into the small intestine and there it produces its irritant effect and as it goes down it may be reabsorbed again from the large intestine and go through the same process again. If one continues taking the prescribed dosage over a long period of time, the effect would be cumulative and may cause a drastic cathartic effect. This ingredient may be harmful in respondent's prescribed doses to susceptible individuals, and in some cases it causes irritation of the intestines as well as the kidneys, and in some case causes albumin in the urine. If a user of this preparation should take it according to directions for as much as two months, it would likely be harmful from the standpoint of excess irritation of the bowel as well as of the kidneys and such user might get skin eruptions.

Said witnesses testified that phenolphthalein is not a remedy for obesity. A certain amount of loss of water through catharsis may be obtained, but it is temporary in its nature. Obesity is an abnormal deposit of fat in the body due, in the great majority of cases—probably 90 percent—to excess of eating and under-exercising. If the amount of intake of food is in excess of that used by the body, one gets a deposit of fat. In some cases excess fat of individuals is brought about by disturbances of certain glands. This preparation is not a remedy or a treatment for obesity of any kind. The statement that by the use of said preparation one can reduce any part of the body desired is not physiological and incorrect. It is impossible to reduce by the use of said preparation any part of the body desired.

The testimony of the medical witnesses above detailed was not contradicted by the testimony of any other witness.

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PAR. 5. The Commission finds that the preparation "Dr. McCaskey's Prescription Tablets," is not an adequate, or competent remedy for the treatment of obesity; that users of said preparation cannot reduce any part of the body desired; that the preparation is not a safe and harmless one; that the preparation will not reduce fat at the rate of five pounds per week or at all and users thereof do not get the same results as does Dr. McCaskey in his private practice as a physician or the same results that any physician gets in his private practice as a physician.

PAR. 6. In and throughout the several States of the United States are many persons who are seeking some dependable means whereby they may quickly and permanently rid their bodies of excessive fat or portions of the flesh which they now bear and of which they desire to be rid. Said statements and representations made by respondent in said advertisements have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that said Dr. McCaskey's Prescription Tablets is a remedy and adequate and competent treatment for obesity, and a safe remedy that may be used by any and all purchasers thereof without danger of harmful results; that the users of said "Prescription" will reduce at the rate of five pounds per week; that users thereof can reduce any part of the body desired; and that users thereof get the same results as does Dr. McCaskey in his private practice as a physician. Such representations have the capacity and tendency to induce members of the purchasing public to purchase said preparation because of the erroneous beliefs engendered as above set forth, and respondent's acts and practices as hereinbefore set forth have the capacity and tendency to unfairly divert business to respondent from its competitors to the substantial injury and prejudice of said competitors.

CONCLUSION

The aforesaid acts and 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, testimony and evidence taken before Edward M. Averill, an examiner

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of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and briefs filed herein, and the Commission having made its findings as to the facts and 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, Dispensary Supply Co., Inc., its officers, directors, agents, representatives, servants, and employees in connection with the offering for sale, sale or distribution in interstate commerce of "Dr. McCaskey's Prescription Tablets" or of said preparation or of any similar preparation containing substantially the same ingredients under the same or under any other name or names, cease and desist, directly or indirectly, from:

(1) Representing that said preparation constitutes a cure or remedy or a competent and adequate treatment for obesity, or that it will reduce excess fat;

(2) Representing that said preparation is harmless or is safe to take;

(3) Representing that users of said preparation will reduce five pounds within a week or any number of pounds within any stated period of time;

(4) Representing that users of said preparation will obtain results similar to those obtained by Dr. McCaskey in his practice as a physician, or results similar to those obtained by any physician in his practice as a physician;

(5) Representing that by the use of said preparation a person can reduce any part of the body desired.

It is further ordered, That respondent, Dispensary Supply Co., Inc., within 30 days after the service upon it of this order shall file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with and conformed to.

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IN THE MATTER OF
GROVE DISTILLERS & WINE COMPANY, INC.

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

Docket 2421. Complaint, May 31, 1935—Decision, June 26, 1936

Where a corporation, engaged in the rectifying and sale at wholesale to jobbers and retailers, principally, of whiskies, brandies, rum, gin, cordials, and other spirituous beverages under basic permit from the Federal Alcohol Administration, and never applicant for a distiller's permit nor authorized by the government to produce distilled spirits from the grain, and which never distilled or owned a still, but purchased all of its distilled spirits requirements in bulk from distillers and rectified and blended or bottled such spirits for resale under its own brand names and, in some cases, under names and brands of customer wholesalers, jobbers, or retailers, and with equipment consisting of four bottling tanks and some rectifying receptacles, but with no distilling apparatus whatever—

Made use of a corporate name which included word "Distillers", and displayed said name on labels of its said products, and featured the same on its stationery and advertising in the course and conduct of its aforesaid business in competition with actual distillers and with other rectifiers who do not, through the use of such words as "Distilling", "Distiller", or "Distilleries" as a part of their corporate or trade names, misrepresent their status to the trade by reason of the definite significance long attached to word "Distillers" when used in connection with liquor industry and products thereof as meaning, to wholesalers and retailers therein and to the ultimate purchasing public, manufacturers of such liquors by a process of original distillation from raw materials;

With effect of (1) misleading and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, gins, and other alcoholic beverages sold by it were made through process of original distillation from raw materials as aforesaid; of (2) inducing dealers and purchasing public, in response to preference of a substantial portion thereof for purchase of spirituous liquors prepared and bottled by its actual distillers to buy said whiskies, etc., bottled and sold by it, and thereby diverting trade to it from competitors who do not thus or otherwise misrepresent themselves as manufacturers by original distillation from raw materials of their whiskies and other alcoholic beverages; to the substantial injury of substantial competition in interstate commerce; and (3) furnishing its customers, through such potentially deceptive name, with means of representing it to their own retailer and jobber vendees and the ultimate consuming public, as a distiller, and its whiskies and other beverages as made or distilled by it from mash, wort or wash by one continuous process:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.