

Syllabus

IN THE MATTER OF

F. L. McWETHY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2853. Complaint, June 26, 1936—Decision, Jan. 22, 1937*

Where an individual engaged in the manufacture, sale and distribution of a pharmaceutical preparation which was known as "McWethy's Home Treatment," and was in the form of pills and made up in packages sold for \$5.00, but, in some instances, to old customers for \$3.50—

Misrepresented, in advertising his said product in newspapers and in periodicals of interstate circulation which, in the main, reached readers in rural communities and small towns, that said preparation was an effective or valuable remedy or treatment for bladder, prostatic, kidney, and bowel troubles, and that it reached the underlying causes thereof and would cure or rid one of all such ailments, and that delay in taking such medicine might make it too late for one to treat his bladder ailment effectively, and misrepresented the functioning thereof through numerous statements of one sort and another of foregoing tenor, such as "Suffered 12 years. Bladder trouble now gone. * * * I have just finished two treatments and after 12 years of suffering, I can truthfully say I am free from bladder trouble," " * * * not only for the bladder, but helps the kidneys, liver, and bowels as well," "Now then why not get after this ailment and get rid of it?," etc., facts being said "Home Treatment" is not an effective remedy for such troubles and does not relieve systemic causes of kidney, bladder, and bowel ailments and troubles as represented, and aforesaid representations with respect to nature, value and effect of preparation in question were grossly exaggerated, misleading, and deceptive, and such product does not and will not accomplish results claimed therefor;

With capacity and tendency to lead purchasers and prospective purchasers of his said so-called "Home Treatment" into the belief that it constituted an effective or valuable remedy or treatment for such various ailments, and would reach the underlying causes of such troubles and cure or rid one of all such ailments, relieve weakened condition of the bladder due to enlarged prostate gland or to deranged condition of the kidneys, be beneficial in effect upon acid or rheumatic conditions of the blood, enable one, through action thereof, to avoid Bright's disease, and that delay might make it too late, etc., and to purchase his said product in substantial quantities in and on account of erroneous belief that his said various representations were true, and with result of thereby unfairly diverting trade to him from competitors, including manufacturers and distributors, and sellers and distributors of like and similar products, who truthfully advertise and represent the character and nature and therapeutic value of their respective products and do not advertise and otherwise represent, as the case may be, that such products have merit or therapeutic value which they do not have; to the injury of competition in commerce among the various States;

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT¹

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 F. L. McWethy, an individual, hereinafter referred to as 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. Respondent, F. L. McWethy, is an individual with his principal office and place of business located at 329 Michigan Avenue, in the city of Marshall, State of Michigan. Respondent, for more than three years last past, has been, and still is, engaged in the manufacture and sale of a pharmaceutical preparation known as "McWethy's Home Treatment," which he represents to be a diuretic stimulant for the kidneys. In the course and conduct of his business respondent offers said product for sale and sells the same in commerce between the State of Michigan and the several States of the United States and in the District of Columbia.

When said product is sold, respondent transported from his place of business in the State of Michigan to the purchasers thereof located in States of the United States other than the State of Michigan and in the District of Columbia. There has been for more than three years last past, and still is, a constant current of trade and commerce in said product so manufactured and sold by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now and for more than three years last past has been engaged in substantial competition with

¹ As amended by order of Commission on Dec. 30, 1936. Extended enumeration in Par. 2 of the complaint, as thus amended, quoting at length respondent's various representations with respect to the alleged therapeutic value of respondent's product and its effect upon users thereof, is likewise set forth in the findings, *infra*, at page 524, and for this reason is omitted from the amended complaint as published in the interest of brevity.

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other individuals and with firms, partnerships, and corporations engaged in the manufacture of like and similar products and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent, in soliciting the sale of and in selling "McWethy's Home Treatment" and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than three years last past has caused advertisements to be issued, published, and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter, and in other ways. In said ways and by said means, respondent makes and has made to the general public many unfair, false and misleading statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which are as follows:²

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and many others similar thereto, serve as representations on the part of respondent to purchasers and prospective purchasers of respondent's product as to the nature of the product and its effectiveness in use. Said representations are:

(a) That said Home Treatment is an effective remedy for any bladder trouble;

(b) That it is an effective or valuable treatment for prostatic trouble of any kind;

(c) That it is an effective or valuable treatment for kidney trouble;

(d) That it is an effective or valuable treatment for the bowels;

(e) That it reaches all of the underlying causes of either bladder or kidney or prostatic or bowel troubles;

(f) That it will "cure" or "rid" one of all such ailments;

(g) That it will relieve a weakened condition of the bladder due to enlarged prostate gland or to a deranged condition of the kidneys;

(h) That it can or should eliminate the cause of bladder or other organic troubles;

(i) That it will have a beneficial effect upon an acid or rheumatic condition of the blood causing bladder irritations;

² The quotations which follow at length in the complaint at this point, as allegedly made by respondent with respect to the therapeutic value of its preparation and effect upon users thereof, is set forth in the findings, *infra*, at page 524, and is, for this reason, omitted here in the interest of brevity.

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(j) That the use of this medicine in preventing retention of urine will enable one to avoid interstitial nephritis or Bright's disease;

(k) That delay in taking this medicine may make it too late for one to treat his bladder ailment effectively;

(l) That the Home Treatment acts directly on the seat of the trouble or that it brings quick relief no matter what the causes are;

(m) That it relieves systemic causes of kidney, bladder and bowel ailment and troubles;

whereas, in truth and in fact, "McWethy's Home Treatment" is not an effective remedy for bladder, bowel, or prostatic irritations or ailments, nor does it relieve the systemic causes of kidney, bladder, and bowel ailments and troubles, as represented. It does not eliminate the cause of such irritations or ailments or relieve a user's weakened physical condition due to a derangement of the kidneys, prostate gland, bladder or bowels. In truth and in fact, the representations made by respondent with respect to the nature, value and effect of his preparation, when used, are grossly exaggerated, false, misleading, and untrue, as said preparation will not accomplish the results claimed for it.

PAR. 4. There are among the competitors of the respondent in interstate commerce, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, sellers and distributors of like and similar products who do not advertise and otherwise represent that such products have the merit or therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs that respondent's representations set out in paragraph 3 hereof are true and into the purchase of respondent's product in such beliefs. Thereby trade is unfairly diverted to respondent from respondent's competitors in interstate commerce referred to in paragraph 4 and as a consequence thereof substantial injury is done by respondent to competition in interstate commerce.

PAR. 6. Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on June 26, 1936, issued and served its complaint in this proceeding upon the respondent, F. L. McWethy, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent duly filed his answer on July 27, 1936, in which he denied the material allegations of the complaint. Thereafter, testimony and evidence in support of the allegations of said complaint were introduced in behalf of the Commission before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, no testimony and evidence being offered by the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, upon the motion of the attorney for the Commission, notice and service of a copy of said motion having been waived in writing by the attorney for the respondent, the Commission, on December 24, 1936, ordered the complaint amended conformable to the testimony and evidence received at the hearing theretofore held, and ordered that said testimony and evidence be received and considered as testimony and evidence under said complaint, as amended. After the issuance of said order amending the original complaint herein, the respondent, through his attorney, John A. Nash, Esq., filed his answer in which said answer the respondent stated that he waived hearing on the charges set forth in the complaint, as amended, that he admitted all of the material allegations of the complaint as amended to be true and that the Commission might, without trial, without further evidence, and without any intervening procedure, make, enter, issue and serve upon him, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint, as amended. Thereafter, the proceeding regularly came on for final hearing before the Commission on said amended complaint, and the answer of the respondent to the amended complaint, testimony and other evidence, and the Commission having duly considered 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, F. L. McWethy, is an individual with his principal office and place of business located at 329 Michigan Avenue, in the city of Marshall, in the State of Michigan. He is now, and for more than five years last past, has been engaged in the manufacture, sale, and distribution of a pharmaceutical preparation known as "McWethy's Home Treatment." This treatment, in the form of pills, is made up in packages which respondent sells for \$5.00, but which, in some instances, he has sold to old customers for \$3.50. Respondent represents and has represented this so-called home treatment to be a diuretic stimulant for the kidneys and to be a remedy for bladder and bowel ailments. He offers and has offered said product for sale and distribution in commerce between and among the various States of the United States, and in the District of Columbia.

When said product is sold, respondent transports it from his place of business in Marshall, Mich., to the purchasers thereof, located in various parts of the United States and in the District of Columbia. Respondent is now, and has been at all times hereinafter mentioned, in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution in commerce as herein set out of like and similar products.

PAR. 2. In the course and conduct of his business, as above described, respondent advertises his product by means of advertisements published in newspapers and magazines such as the "National Farm News" and in other periodicals and publications and forms of printed matter having interstate circulation which, in the main, reach readers in rural communities and small towns. Typical of the advertisements which the respondent thus published and circulated prior to November 7, 1932, is the following advertisement which appeared in the "National Farm News" for January 1932:

CAN YOU SLEEP

ALL NIGHT?

Or Must You Get Up Frequently By Reason of Bladder Trouble?

If you are kept awake half the night and get up frequently on account of irritation and weakness of the bladder, or if you are suffering from prostatic trouble, write me at once for a generous free trial of my home treatment for the relief of bladder weakness. I send it free so you can try it in your own case and know how quickly it relieves the irritation and stops the getting up nights. This trial treatment alone will bring you such wonderful relief you will be delighted beyond words. Write me today. F. L. McWethy, 329 Michigan Ave., Marshall, Mich.

In form letters, folders, and circulars, which respondent published prior to November 7, 1932, respondent made many statements and representations concerning his product, of which the following are typical:

* * * The Home Treatment is proving effective in many cases of long standing, and I see no reason why you can not derive the same splendid results, if you will persist in the use of the medicine.

So many reports of cures have been coming in the past two weeks from my customers from all over the United States and Canada that I sometimes feel I do not recommend the medicine half as high as I should.

No matter whether caused by enlarged prostate gland or a deranged condition of the kidneys, the Home Treatment is designed to relieve this condition. (To wit: Weakened condition of the bladder.)

I induced a number of my acquaintances to try it, some of them in such an extremely bad condition they could hardly pass water without artificial means, and the results were so wonderfully satisfactory that I at once arranged for the manufacture of the medicine.

Bladder irritations arise from various sources, a very common one being an acid and rheumatic condition of the blood, but whatever the cause, you can not overestimate the advantage to be gained by giving prompt attention to the trouble.

No matter what the causes are, you want relief quickly. My Home Treatment is prepared to act directly on the seat of your trouble, and you will not have to use the medicine very long to prove its effectiveness.

The object all the way through is not only to relieve the existing local conditions, but as far as possible relieve systemic causes of the trouble.

To everyone afflicted with a disordered condition of the bladder, I say, do not let another day go by, * * * but order a full treatment at once.

McWethy's Combined Home Treatment is not only for the bladder, but the kidneys and bowels.

Why put up with your trouble longer. Others were told their case was incurable, yet after all, see what they say about the medicine after giving it a good fair trial.

In November 1932, the respondent stipulated and agreed with the Federal Trade Commission to discontinue making and advertising the foregoing statements and representations, and other representations and statements equivalent thereto, in form or substance. Since November 7, 1932, the effective date of the aforementioned stipulation, which was approved by the Commission, the respondent has no longer used any of the foregoing advertisements and has discontinued making the specific representations as hereinabove set out. However, among the statements and representations made by the respondent since November 7, 1932, have been the following:

Suffered 12 years. Bladder trouble now gone. * * * I have just finished two treatments and after 12 years of suffering, I can truthfully say I am free from bladder trouble. b-5a

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McWethy's Combined Home Treatment is not only for the bladder, but helps the kidneys, liver and bowels as well. b-4d

Now then why not get after this ailment and get rid of it? f-12a

A medicine that has proven wonderfully successful in relieving what is commonly called a weakened condition of the bladder indicated by an unnatural desire to pass water very frequently both day and night, usually accompanied with a feeling of extreme restlessness. No matter what may have caused it, the Home Treatment is designed to relieve this condition * * *.

What you or any other sufferer wants is a treatment that will produce results. No matter what the causes are you want relief quickly. My Home Treatment is prepared to act directly on the irritated parts, and you will not have to use the medicine very long to prove its effectiveness. b-4b

PAR. 3. The statements and representations as set forth in paragraph 2 hereof, and many others similar thereto, serve as representations on the part of respondent to purchasers and prospective purchasers of his product as to the nature thereof, and its effectiveness in use. These statements and representations of respondent hereinabove set out, and others similar thereto, have the capacity and tendency to lead purchasers and prospective purchasers of respondent's so-called home treatment into the belief:

- (a) That said Home Treatment is an effective remedy for any organic bladder trouble;
 - (b) That it is an effective or valuable treatment for prostatic trouble of any kind;
 - (c) That it is an effective or valuable treatment for kidney trouble;
 - (d) That it is an effective or valuable treatment for the bowels;
 - (e) That it reaches all of the underlying causes of either bladder, kidney, prostatic or bowel troubles;
 - (f) That it will "cure" or "rid" one of all such ailments;
 - (g) That it will relieve a weakened condition of the bladder due to enlarged prostate gland or to a deranged condition of the kidney;
 - (h) That it can or should eliminate the cause of bladder or other organic troubles;
 - (i) That it will have a beneficial effect upon an acid or rheumatic condition of the blood causing bladder irritations;
 - (j) That the use of this medicine in preventing retention of urine will enable one to avoid interstitial nephritis or Bright's disease;
 - (k) That delay in taking this medicine may make it too late for one to treat his bladder ailment effectively;
 - (l) That the Home Treatment acts directly on the seat of the trouble or that it brings quick relief no matter what the causes are;
 - (m) That it relieves systemic causes of kidney, bladder and bowel ailments and troubles;
- and to purchase respondent's products in such beliefs.

In truth and in fact, "McWethy's Home Treatment" is not an effective remedy for bladder, bowel, or prostatic troubles, nor does it relieve the systemic causes of kidney, bladder, and bowel ailments and troubles, as represented. It does not eliminate the cause of such irritations or ailments or relieve a user's weakened physical condition due to a derangement of the kidneys, prostate gland, bladder, or bowels. In truth and in fact, the representations made by respondent with respect to the nature, value and effect of his preparation, when used are grossly exaggerated, misleading, and deceptive, as said preparation does not and will not accomplish the results claimed for it.

PAR. 4. There are among the competitors of respondent in commerce as herein set out, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, sellers and distributors of like and similar products who do not advertise and otherwise represent that such products have merit or therapeutic value which they do not have.

PAR. 5. The use of the statements and representations herein set forth in paragraphs 2 and 3 by the respondent in offering for sale and selling his products in commerce herein set out, have had, and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said representations are true and into the purchase of substantial quantities of respondent's product on account of such belief induced as aforesaid. As a result thereof, trade has been unfairly diverted to the respondent from competitors referred to in paragraph 4 hereof, who truthfully advertise and represent the character and nature and therapeutic value of their respective products. In consequence thereof, injury has been done by respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent and constitute unfair methods of competition in commerce 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 the respondent filed herein on July 25, 1936, testimony and evidence taken before Trial Examiner W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, upon the said complaint as amended by order of the Commission on December 24, 1936, and the answer to the said amended complaint, filed herein on January 7, 1937, by respondent admitting all the material allegations of the complaint, as amended, to be true and waiving the taking of further evidence and all other intervening procedure; 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 the respondent, F. L. McWethy, his agents, representatives, servants, and employees, in connection with the offering for sale, sale and distribution of a product now designated as "McWethy's Home Treatment" or any product of substantially the same composition and ingredients sold under the name "McWethy's Home Treatment" or under any other name, in interstate commerce, do cease and desist from:

Representing, directly or indirectly, through form letters, folders, circulars, catalogs, or any other form of printed matter, or by radio broadcasting, or in any other manner:

(a) That said Home Treatment is an effective remedy for any bladder trouble;

(b) That it is an effective or valuable treatment for prostatic trouble of any kind;

(c) That it is an effective or valuable treatment for kidney trouble;

(d) That it is an effective or valuable treatment for the bowels;

(e) That it reaches all of the underlying causes of either bladder, kidney, prostatic or bowel troubles;

(f) That it will "cure" or "rid" one of all such ailments;

(g) That it will relieve a weakened condition of the bladder due to enlarged prostate gland or to a deranged condition of the kidneys;

(h) That it can or should eliminate the cause of bladder or other organic troubles;

(i) That it will have a beneficial effect upon an acid or rheumatic condition of the blood causing bladder irritations;

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(j) That the use of this medicine in preventing retention of urine will enable one to avoid interstitial nephritis or Bright's disease;

(k) That delay in taking this medicine may make it too late for one to treat his bladder ailment effectively;

(l) That the Home Treatment acts directly on the seat of the trouble or that it brings quick relief no matter what the causes are;

(m) That it relieves systemic causes of kidney, bladder and bowel ailments and troubles;

and from making any other representations of similar tenor or import.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon him of this order file with this Commission a report, in writing, setting forth the manner and form in which he shall have complied with this order.

IN THE MATTER OF
SUN RADIO SERVICE & SUPPLY CORPORATION

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

Docket 3022. Complaint, Dec. 23, 1936—Decision, Jan. 23, 1937

Where a corporation long engaged in the manufacture, sale, and distribution of radio receiving sets and radio tubes and supplies in commerce among the various States and in the District of Columbia, made use of letters "R. C. A." as a mark or brand for its said sets, tubes, and supplies thus made and sold by it and its subsidiaries, and built up and enjoyed a valuable goodwill in said letters as thus applied, which, so used, were generally recognized and understood by trade and purchasing public as meaning products made and sold as aforesaid by it and its said subsidiaries; and where activities above set forth of said corporation and its subsidiaries, as well as those of other well-known manufacturers and distributors of such products, included the new type of metal tube developed by them to meet demand of many purchasers of such sets for such a tube, in which the technical elements are sealed in steel, or in which metal functions instead of glass, and such so-called metal tubes had become popularized and were sold to purchasers in large quantities; and thereafter a corporate retailer engaged in the District of Columbia in selling and distributing radio sets, tubes and supplies, including its so-called "Automatic Radio"—

Displayed letters "R. C. A." over word "Automatic" in representing, designating and referring to its aforesaid set in advertisements in newspapers of wide interstate circulation, together with words "Newest" and "Licensed," and "Featuring the New METAL Tube," and sold said products, thus advertised and represented, in commerce among the various States and in aforesaid District, notwithstanding fact sets in question were not those made by aforesaid corporation and its subsidiaries, nor were the tubes thus featured those products which had become popularized and known to trade and purchasing public as metal tubes, as hereinbefore set forth;

With effect of confusing, misleading and deceiving purchasers and prospective purchasers into the erroneous belief that said various products were those of said corporation and its subsidiaries, and of other competitors who had built up and long enjoyed valuable goodwill, as aforesaid, in manufacture, sale and distribution of their respective products, and with tendency and capacity unfairly to divert trade to it from its competitors, including manufacturers and distributors who do not misrepresent their products and deceive or mislead purchasers or prospective purchasers thereof through use of such letters or simulation, or through use of word "Metal" as descriptive of their tubes, not, in fact, such, as understood as hereinbefore explained, and who truthfully represent nature and merits of their products under their own trade names and brands and as of their own manufacture and design; and to the substantial injury of aforesaid corporation and its subsidiaries and other competitors, and of a substantial portion of public, by inducing purchasers and prospective purchasers to buy prod-