

Syllabus

IN THE MATTER OF
PAUL GREENBERG, DOING BUSINESS AS BEVERLY
PRODUCTS COMPANY

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

Docket 2644. Complaint, Dec. 5, 1935—Decision, Apr. 14, 1937

Where an individual engaged in the sale and distribution among the various States of certain medicinal preparations known and described, respectively, as "Beverly Femin Tablets" and "Beverly Menses Tablets," in substantial competition with others engaged in sale and distribution among the various States and in the District of Columbia of various preparations similar in kind, and of preparations intended for and adapted to the purposes and uses for which his said products were adapted, and including among his said competitors those who do not make such false and misleading representations as made by said individual as hereinbelow set forth, but truthfully and accurately state the purposes for which their said products may be used and the effects thereof; in advertising his said preparations in newspapers and magazines circulated to the purchasing public in various parts of the United States, and, chiefly, through circular letters and other advertising material distributed to purchasing public in the various States by mail or otherwise—

- (a) Represented that said "Beverly Femin Tablets" preparation constituted an effective, potent, and powerful antiseptic and germicide for use by women in preventing and destroying germ life causative of female and sexual diseases, and for use in promoting feminine hygiene by reason of such properties, and was a cure, remedy, or competent and adequate treatment for leucorrhea and cervicitis, and could be used safely and without fear of harmful results, and, by innuendo and suggestion, that said preparation was a contraceptive which gave absolute protection and could be depended upon for such purpose without limitation, and that one "Prof. John R. Baker, M. A., Ph. D., of Oxford University" had established the fact, through investigations as to the antiseptic powers of feminine hygiene preparations on the market, that said tablets represented the furthest advance in vaginal therapy, and, through statements attributed to them by purported quotations, that physicians had endorsed and recommended such tablets, facts being said preparation was not an effective, potent, and powerful germicide under conditions of use when employed by women to prevent and destroy germ life, nor a proper or effective treatment for aforesaid diseases, and could not be used safely and without fear of harmful results as a germicide, due to fact that infection, preventable through use of an effective germicide, might result by reason of said preparation's ineffective and limited action in such respect, and said preparation was not a dependable contraceptive under all conditions or in all cases, and did not afford positive protection as such, in view of the nature of the circumstances attending the use thereof, and representations and intimations that it might be depended upon absolutely in such respect were inaccurate, greatly overdrawn and misleading; and

Complaint

24 F. T. C.

(b) Represented, as aforesaid, that his said preparation "Beverly Menses Tablets" was a cure, remedy, or competent and adequate treatment for diseases peculiar to women, and especially for delayed, painful, and suppressed menstruation, and that its action in such respects was certain, and that it was harmless and produced no distressing after-effects, and, by innuendo and suggestion, that said preparation was an abortifacient and could be absolutely depended upon for such purpose, facts being said medicine was not a cure, remedy, or competent and adequate treatment for such diseases generally, or for delayed, painful, or suppressed menstruation, use thereof might be harmful and produce distressing after-effects, it was not an abortifacient and could not be depended upon for such purpose, and was of no effect in many diseased and abnormal conditions of the feminine organs, nor effective in the treatment of the underlying causes of many female troubles and diseases, and his said representations in regard thereto were inaccurate and much too broad and inclusive to express true therapeutic effects thereof;

With tendency and capacity to confuse, mislead, and deceive members of the public as to the properties and therapeutic effects of said medicines in the particulars hereinbefore set forth, and to cause and induce them to buy and use the same because of the erroneous belief thus engendered, and to divert trade to him from competitors engaged in sale of preparations of the same or similar kind or adapted to and used for the legitimate purposes for which he recommended his said products as aforesaid, and with result, through suggestions and innuendos above set forth, of supplying merely added inducements for purchase and use of said products, and giving added sales appeal, to the disadvantage of similar preparations not thus represented:

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

Before *Mr. John J. Keenan* and *Mr. Robert S. Hall*, trial examiners.

Mr. Harry D. Michael 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 Paul Greenberg, doing business under the name and style of Beverly Products Company, 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. That said respondent, Paul Greenberg, doing business under the name and style of Beverly Products Company, is now and has been engaged for more than one year last past in the sale

and distribution in interstate commerce of certain preparations designed and intended for the use of women and represented as having certain therapeutic, medicinal, or antiseptic and germicidal functions, which said preparations are known and described, respectively, as Beverly Femin Tablets and Beverly Menses Tablets, the last named being in two forms called "Standard" and "Triple X Formula," respectively. The office of respondent, doing business as aforesaid, and principal place of business is and has been located in the city of Springfield, in the State of Massachusetts. Said respondent, in the course and conduct of his said business, causes the said preparations sold by him to be transported in interstate commerce from his said place of business in Massachusetts to, into, and through States of the United States other than Massachusetts to various and numerous persons in such other States to whom such preparations are or have been sold.

PAR. 2. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of preparations similar in kind to those of respondent or intended for and adapted to the ostensible uses for which respondent's said preparations are recommended as hereinafter set out. Such other individuals, firms, and corporations have caused and do now cause their said preparations when sold by them, to be transported from the various States of the United States where they are located, to, into and through States other than the State of origin of the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said preparations with such other individuals, firms, and corporations.

PAR. 3. That respondent, in connection with the sale of his said preparations as aforesaid, has made use of advertisements inserted in newspapers and other publications circulated to the purchasing public in various parts of the United States. He also has advertised and does now advertise his said preparations by means of circular letters and other advertising material which he causes to be distributed to the purchasing public in various States of the United States by mail or otherwise.

PAR. 4. By the means aforesaid respondent has represented or does represent that said preparation known as Beverly Femin Tablets is an effective, potent, and powerful antiseptic and germicide for use by women in preventing and destroying germ life, causative of female and sexual diseases, and for use in promoting feminine hygiene. It has been or is represented by respondent or implied from representations made by him that said preparation is a cure, remedy, or compe-

tent and adequate treatment for leucorrhea and cervicitis. It is further so represented that said preparation can be used safely and without fear of harmful results.

In truth and in fact, said preparation is not an effective, potent, and powerful antiseptic or germicide, particularly under the conditions of use, for the purposes recommended. It does not have such germicidal properties as to destroy the germs causative of venereal diseases nor does it constitute a proper or effective treatment for such diseases or for leucorrhea or cervicitis. Moreover, said preparation cannot be used safely and without fear of harmful results because of its ineffective and limited action as a germicide, the use of which, in cases of exposure, results in infection that might be prevented by an effective germicide.

By the means aforesaid, respondent, by innuendo and suggestion, makes representations which imply that said preparation is a contraceptive, that it gives absolute protection against pregnancy and that it can be depended upon for such purpose without limitation. In truth and in fact, said preparation is not a dependable contraceptive under all conditions or in all cases nor does it afford positive protection against pregnancy. The use of said preparation cannot be depended upon to destroy all of the spermatozoa that may be present in the female organ after copulation.

By the means aforesaid, respondent also represents or implies that an investigation conducted by Prof. John R. Baker of Oxford University disclosed that Beverly Femin Tablets represented "the furthest advance in vaginal therapy" when, in truth and in fact, Prof. Baker made no investigation involving said preparation as such and did not mention Beverly Femin Tablets in his report.

By the means aforesaid, respondent represents that numerous doctors have recommended Beverly Femin Tablets in accordance with their statements supposedly quoted in respondent's literature when, in truth and in fact, respondent's preparation, Beverly Femin Tablets, was not mentioned in the statements of the doctors whose ostensible statements are quoted by respondent.

PAR. 5. That respondent, by the means aforesaid, represents that said preparation, Beverly Menses Tablets, is a cure, remedy or competent and adequate treatment for diseases peculiar to women and especially for delayed, painful, and suppressed menstruation; that its action is certain and that it is harmless and produces no distressing after-effects. That, in truth and in fact, said preparation is a mere temporary palliative and its use cannot be depended upon to relieve said conditions nor is it effective in cases of the kind produced by many abnormal conditions and diseases. Moreover, the use of said

preparation is not harmless nor is it true to state that it produces no distressing after-effects but, on the other hand, its use may be harmful.

By the means aforesaid, respondent, by innuendo and suggestion, makes representations which imply that said preparation is an abortifacient and that it can be absolutely depended upon for that purpose and that it will produce such results when, in truth and in fact, such is not the case.

PAR. 6. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars as aforesaid and to cause and induce them to buy and use respondent's said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of preparations of the same or similar kind as those sold by respondent or of those adapted to and used for the purposes, or some of them for which respondent recommends his said preparations as aforesaid. There are, among the competitors of respondent, those who in no wise make the same or similar false and misleading representations as made by respondent as herein set out and who truthfully and accurately state the uses for which such preparations may be used and the effects thereof.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate 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 December 5, 1935, issued and served its complaint in this proceeding upon respondent, Paul Greenberg, doing business under the name and style of Beverly Products Company, charging him 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 other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, before John J. Keenan and

Findings

24 F. T. C.

Robert S. Hall, examiners of the Commission, theretofore duly designated by it, respondent having failed to introduce testimony and other evidence in opposition to the allegations of the complaint; and said testimony and other 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 other evidence, and brief in support of the complaint, respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice thereof; and the Commission having duly considered the same, and being now 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, Paul Greenberg, doing business under the name and style of Beverly Products Company, was, at the time of issuance of the complaint herein, and for more than three years prior thereto, engaged in the sale and distribution in commerce between and among the various States of the United States of certain medicinal preparations known and described, respectively, as Beverly Femin Tablets and Beverly Menses Tablets. In the conduct of said business as aforesaid, respondent had his office and principal place of business in the city of Springfield, in the State of Massachusetts. His last office address in said city and State was 66 Vernon Street. Said respondent, in the course and conduct of his said business, caused the said preparations sold by him to be transported in commerce from his said place of business in Massachusetts to, into and through States of the United States, other than Massachusetts, to various and numerous persons in such other States to whom such preparations had been sold.

PAR. 2. During the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in commerce between and among the various States of the United States, and in the District of Columbia, of preparations similar in kind to said preparations so sold by respondent and of preparations intended for and adapted to the purposes and uses for which respondent's said preparations are adapted. Such other individuals, firms, and corporations have caused and do now cause their said preparations, when sold by them, to be transported from the various States of the United States, where

they are located, to, into and through States other than the States of origin of the shipment thereof to the purchasers of the same in such other States. Respondent was, during the aforesaid time, in substantial competition, in the sale of his said preparations in commerce between and among the various States of the United States, with such other individuals, firms, and corporations.

PAR. 3. Respondent's usual method of business was to sell his said preparations by mail direct to members of the consuming public. At one time, respondent advertised his said preparations in newspapers and magazines circulated to the purchasing public in various parts of the United States. His chief means of promoting the sale of said preparations was by means of circular letters and other advertising material which he caused to be distributed to the purchasing public in various States of the United States by mail or otherwise.

PAR. 4. By means of one or both of the means of advertising aforesaid, respondent represented that said preparation known as Beverly Femin Tablets is an effective, potent, and powerful antiseptic and germicide for use by women in preventing and destroying germ life causative of female and sexual diseases, and for use in promoting feminine hygiene by reason of such properties; that it is a cure, remedy or competent and adequate treatment for leucorrhea and cervicitis; and that it can be used safely and without fear of harmful results. Respondent, also, made representations in regard to said preparation, by the means aforesaid, which, by innuendo and suggestion, implied that said preparation is a contraceptive, that it gives absolute protection against pregnancy and that it can be depended upon for such purpose without limitation.

Examples of such representations, as aforesaid, are the following:

Femin Tablets are designed to give Dependable Antiseptic Safeguarding in feminine hygiene.

Women all over America have learned that they can absolutely rely on Femin's active ingredient for dependable ethical antiseptic germ-destroying power. * * * They realize that a product they can fully trust may cost a little more, but that it is fully worth the price.

* * * germ-destroying foam (from Beverly Femin Tablet) * * *

* * * a rather dry foam remains in the vagina (after using Beverly Femin Tablets) for many hours to absolutely safeguard against any further infiltrations of inherent, infectious germ-laden discharges and secretions.

* * * they (women) are not slow in understanding why they may at last have no further concern about the efficiency and safety of their method in intimate feminine hygiene when using Beverly Femin Tablets.

* * * extremely potent * * *

* * * an effervescent germ-destroying foam (from Beverly Femin Tablets) which expands, spreads, pushes the terrific, yet absolutely harmless germ-

Findings

24 F. T. C.

destroying ingredients into every tiny fold and crevice,—to attack and kill every vantage (vestige) of germ life. * * *

This foam (from Beverly Femin Tablets) can be left in for as long as eight hours, to continue its antiseptic mission, * * *

Women * * * are not slow in understanding why they may at last have no further concern about the efficiency and safety of their method in intimate feminine hygiene when using Beverly Femin Tablets!

Femin Tablets are designed to give DEPENDABLE ANTISEPTIC SAFEGUARDING in feminine hygiene.

It was further represented by respondent, by the means aforesaid, that one "Prof. John R. Baker, M. A., Ph. D., of Oxford University" carried on investigations as to the antiseptic powers of feminine hygiene preparations on the market and that he thus "established the fact that Beverly Femin Tablets represent the furthest advance in vaginal therapy; * * *." Also, that physicians had endorsed and recommended Beverly Femin Tablets by the statements attributed to them in purportedly quoted statements. The following is an example of such representations:

Dr. Walther, A University Professor, says: "have used Beverly Femin Tablets and after thorough clinical tests can say that it is a superior product, * * *."

PAR. 5. By means of one or both of the means of advertising aforesaid, respondent represented that his said preparation, "Beverly Menses Tablets" is a cure, remedy, or competent and adequate treatment for diseases peculiar to women, and especially for delayed, painful and suppressed menstruation, and that its action in such respects is certain, and that it is harmless and produces no distressing after effects. It was further represented by respondent, by the means aforesaid, by innuendo and suggestion that said preparation is an abortifacient and that it can be absolutely depended upon for that purpose.

PAR. 6. The formula of Beverly Menses Tablets (Triple X) is as follows:

Ex. Cotton Root.....	1 gr.
Ergotin, Bonjean, P. T.....	1 gr.
Ferrous Sulph. Exsic.....	1 gr.
Ext. Black Hellebore.....	1 gr.
Aloe, Purified.....	1 gr.
Oil Savin	¼ min.

The Beverly Femin Tablets are composed of two percent "Panto-sept" with a base of tartaric acid and sodium bicarbonate.

PAR. 7. In truth and in fact, said preparation, "Beverly Femin Tablets," is not an effective, potent, and powerful germicide under the conditions of use when used by women for the purpose of preventing and destroying germ life. Neither is said preparation a

proper or effective treatment for sexual diseases or for leucorrhea or for cervicitis. Moreover, said preparation cannot be used safely and without fear of harmful results, when used as a germicide, because of its ineffective and limited action in such respect and the fact that, in cases of exposure, infection might result that could have been prevented by the use of an effective germicide. Said preparation is not a dependable contraceptive under all conditions or in all cases, nor does it afford positive protection against pregnancy. On account of the structure of the female organ and the difficulty of reaching all parts of the surfaces of the folds thereof, a preparation such as this, under the conditions of use, cannot be depended upon to come in contact with all of such surfaces and to destroy all of the spermatozoa that may be present. Representations and intimations that said preparation may be absolutely depended upon in such respect are therefore inaccurate, greatly overdrawn and misleading.

In truth and in fact, Prof. John R. Baker of Oxford University never mentioned "Beverly Femin Tablets" nor used it as such in conducting investigations and experiments, nor did the doctors who were represented by respondent as having endorsed said preparation ever use "Beverly Femin Tablets" as such, nor did they mention said preparation by name in any of their purported endorsements.

PAR. 8. In truth and in fact, said medicine, "Beverly Menses Tablets," is not a cure, remedy, or competent and adequate treatment for female diseases generally or for delayed, painful, or suppressed menstruation. Its use may be harmful and it may produce distressing after effects. It is not an abortifacient, nor can it be depended upon to bring about the resumption of menstruation after conception has taken place. Said preparation is of no effect in many diseased and abnormal conditions of the female organs, nor is it effective in the treatment of the underlying causes of many female troubles and diseases. The representations of respondent in regard thereto are not accurate and are much too broad and inclusive to express the true therapeutic effects of said medicine.

PAR. 9. The representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public as to the properties and therapeutic effects of said medicines in the particulars as herein set forth and to cause and induce them to buy and use said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of preparations of the same or similar kind as those sold by respondent or adapted to and used for the legitimate purposes for which respondent recommends his said preparations as aforesaid. The representations

Order

24 F. T. C.

by suggestion and innuendo as to uses of respondent's preparations as a contraceptive and as an abortifacient, respectively, merely serve as added inducements for their purchase and use and give an added sales appeal to the disadvantage of similar preparations not so represented. There are among the competitors of respondent those who do not make the same or similar false and misleading representations as made by respondent as herein set out but who truthfully and accurately state the purposes for which their preparations may be used and the effects thereof.

CONCLUSION

The aforesaid acts and practices of respondent, Paul Greenberg, doing business under the name and style of Beverly Products Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John J. Keenan and Robert S. Hall, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief in support of the complaint, respondent having failed to introduce evidence in his behalf, and having failed to file a brief, although given opportunity so to do, and having failed to appear at the time and place set for oral argument, after due notice of the same, 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, Paul Greenberg, doing business under the name and style of Beverly Products Company, trading under his own name, or under said trade name, or under any other trade name or names, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of Beverly Femin Tablets and Beverly Menses Tablets, respectively, or of any medicines of the same formulae designated and described by any other means, or of any medicines of substantially the same formulae desig-

nated and described by the aforesaid names, or by any other names in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication, or by innuendo or suggestion, or by use of the statements of others:

1. That said preparation "Beverly Femin Tablets" is an effective, potent, and powerful germicide under the conditions of use for feminine hygiene; or that it is effective in the treatment of sexual diseases, leucorrhea or cervicitis; or that it can be used safely and without fear of harmful results so far as the prevention of infection is concerned; or that it can be absolutely dependent upon or relied upon for results; or that it is a positive or dependable contraceptive under all conditions, or in all cases; or that said preparation has been tested or endorsed by physicians or other persons when no such endorsements have been given, or no such tests have been made of the specific preparation.

2. That said "Beverly Menses Tablets" is a cure, remedy, or competent and adequate treatment for female diseases generally or for delayed, painful, or suppressed menstruation; or that it is beneficial in any or all of such conditions regardless of the cause thereof; or that it is an abortifacient, or that it is harmless and produces no distressing after effects.

It is further ordered, That respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
MAPLE CITY CANDY COMPANY

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

Docket 2916. Complaint, Aug. 28, 1936—Decision, Apr. 17, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which consisted of a number of candy bars and a box of candy, together with push card, for sale under a plan and in accordance with said card's explanatory legend, pursuant to which purchaser received, for 5¢ paid, one, two, three, or four bars of candy, in accordance with particular number pushed by chance therefrom, and purchaser of last disk was entitled to receive, without charge, in addition to bars secured, aforesaid box of candy—

Sold, to wholesalers and jobbers for display and resale to purchasing public by their retailer-vendees, in accordance with aforesaid plan, such assortments and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said product in accordance with such plan, contrary to public policy, long recognized by the common law and criminal statute, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer and sell candy so packed and assembled or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance, or to adopt and use any method involving such a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade from its competitors as aforesaid, exclude from such trade all competitors who are unwilling to and do not use such or an equivalent practice or method as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as use same or an equivalent method, deprive purchasing public of benefit of free competition in trade involved, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or an equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.