

Syllabus

IN THE MATTER OF
PEDODYNE COMPANY, INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3048. Complaint, Feb. 4, 1937—Decision, Apr. 21, 1937*

Where a corporation and three individuals, officers and owners thereof and directors and in control of its sales policies and business operations, engaged in the sale and distribution, under name "Pedodyne," of a product sold and recommended as a bunion treatment; in widely advertising their said product in newspapers and periodicals of general circulation throughout the States, and in advertising folders, literature, circular letters and other advertising matter printed and circulated throughout the several States to customers and prospective customers—

- (a) Represented that said product would penetrate beneath the outer skin and give permanent results, and would banish, cure, or heal bunions and give perfect foot comfort and end torture or misery thereof and soothe and heal the instant used, through such statements, among others, as "BUNION TORTURE needless. Pain stops almost instantly. * * *." " * * * penetrates to the tender, inflamed, diseased tissue," etc., "You want PERMANENT results. You want ENTIRE FREEDOM and complete foot comfort. You want to BANISH the misery for good," etc.;
- (b) Represented that said "Pedodyne" was a scientific product and a recent discovery, or improvement of a scientific discovery, through such statements as "For many years the true nature of bunions was not understood. Now Science has conquered," and "PEDODYNE is Scientific"; and
- (c) Represented that competing products were of no value in treatment of bunions, through such statements as "Perhaps you have tried other methods—pads, plasters, appliances of one type or another—without satisfactory results. It is not surprising if you have failed to get the relief you sought," "How can you expect some little pad or appliance that does not penetrate beneath the outer skin to heal your bunion? I say that I do not believe that it can be done that way";

Facts being that, while product in question would, in numerous cases, temporarily relieve pain and torture caused from bunions and do so with reasonable promptness and, absent any bone deformity, aid in reducing the swelling and inflammation, it would not banish, cure or heal such ailments or conditions, but efficacy thereof was limited to temporary relief of pains and discomforts caused thereby, formula in question had been used for many years in treating such ailments and conditions and could not correctly be termed a recent discovery nor an improvement of a scientific discovery, product would not penetrate to the affected parts of the foot in cases of such conditions, and there were other products on the market sold and recommended for treatment of bunions, of which some were helpful in relieving pains caused thereby, and some in correction thereof; and

- (d) Represented to purchasing public, through circulars, letters, and literature issued and mailed to prospective purchasers, that they were making a "special offer" to particular person thus contacted, and that price quoted

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In the literature was a special one, facts being such "special offers" pointed out in their follow-up letters and literature were not thus limited, but were made indiscriminately to any prospective purchaser, and price quoted was the regular selling price of the product;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and into buying a substantial volume of their said product on account of such beliefs, thus induced, and with result that trade was diverted to them from those likewise engaged in sale and distribution of products prepared, designed, intended and sold for substantially same purpose and use for which their said product was advertised and sold, and who truthfully advertised the same and the efficacy thereof; to the injury of competitors and commerce:

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

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

Mr. Floyd O. Collins 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 the Pedodyne Company, Inc., a corporation, George J. Katz, individually and as president of Pedodyne Company, Inc., Rose M. Katz, individually and as vice president and treasurer of Pedodyne Company, Inc., and Robert L. Keats also known as Robert L. Katz, individually and as secretary of Pedodyne Company, Inc., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Pedodyne Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, State of Illinois. Respondent, George J. Katz, is president and general manager of Pedodyne Company, Inc. Respondent, Rose M. Katz, is vice president and treasurer of Pedodyne Company, Inc. Respondent, Robert L. Keats, also known as Robert L. Katz, is the secretary of Pedodyne Company, Inc. The individual respondents own all the stock of Pedodyne Company, Inc., and direct and control its sales policies and business operations. The respondents are now, and have been for several years past, engaged in the sale and distribution of a preparation for the treatment of

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bunions known as "Pedodyne." The respondents cause said product, when sold, to be shipped and transported in interstate commerce from their place of business located in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State of Illinois. They now maintain, and have at all times mentioned herein maintained, a constant current of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents, in the course and conduct of their business, are now, and at all times herein referred to have been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of other preparations and appliances, prepared, designed, manufactured, advertised, and sold as treatments for bunions, in commerce among and between the various States of the United States.

PAR. 3. Respondents, in the course and conduct of their business as aforesaid, and for the purpose of inducing individuals to purchase said bunion treatment, "Pedodyne," have caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, and have printed and circulated throughout the several States of the United States, through the United States mail and otherwise, to customers and prospective customers, certain advertising folders and literature, circular letters and other advertising matter, in all of which the respondents have caused the firm name and the name of the product to be prominently and conspicuously displayed and in which the following statements are made:

A. BUNION TORTURE needless. Pain stops almost instantly. The swelling and inflammation is so quickly reduced you can wear smaller, neater shoes with ease.

Now then, if you actually want to get rid of this misery, if you want to enjoy perfect foot ease, this is your opportunity.

The Most Torturing Bunions Surrender to Pedodyne.

If you can positively get rid of your bunion irritation and humiliation, do so by all means. Thousands say that PEDODYNE will do this for you, thereby increasing your happiness and your efficiency!

PEDODYNE is a real friend to every person who has bunions—just starting or of longer standing.

You want PERMANENT results. You want ENTIRE FREEDOM and complete foot comfort. You want to BANISH the misery for good.

For many years the true nature of bunions was not understood. Now Science has conquered.

PEDODYNE is Scientific.

As soon as PEDODYNE comes in contact with the bunion it quickly softens the hard, dead outer epidermis and penetrates to the tender, inflamed, diseased tissue and bursal sac, * *

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B. Permitted to go untreated, or relieved through clumsy appliances or by slitting your shoes to "relieve the pressure", your bunion may cause serious foot disorders.

Perhaps you have tried other methods—pads, plasters, appliances of one type or another—without satisfactory results. It is not surprising if you have failed to get the relief you sought.

How can you expect some little pad or appliance that does not penetrate beneath the outer skin to heal your bunion? I say that I do not believe that it can be done that way.

C. Respondents further state, by way of purporting to quote alleged testimonials, that:

My bunions are showing such rapid improvement that it seems almost a miracle.

I am very happy to inform you your Pedodyne treatment has acted like magic.

All of said statements, together with many other similar statements appearing in respondents' advertising and literature, purport to be descriptive of respondents' product "Pedodyne." In all of respondents' advertising matter and literature the respondents represent, through the statements herein set out and through other statements of like import and effect, that:

1. Pedodyne will end bunion torture;
2. Pedodyne will stop pain caused from bunions almost instantly;
3. Pedodyne will quickly reduce swelling and inflammation caused by bunions;
4. Pedodyne will rid the user of misery caused by bunions;
5. Pedodyne will give perfect foot comfort;
6. Pedodyne will soothe and heal the first instant it is used;
7. Pedodyne will give permanent results;
8. Pedodyne will banish, cure and heal bunions;
9. Pedodyne is superior to other bunion treatments;
10. Pedodyne is a scientific product, and that it is a recent discovery or an improvement of a scientific discovery;
11. Pedodyne is penetrative;
12. Other competing products are of no value in the treatment of bunions.

PAR. 4. The claims and representations made by the respondents with respect to the therapeutic value of the product, Pedodyne, are grossly exaggerated, false, and misleading. In truth and in fact respondents' product, Pedodyne, will not end bunion torture. It will not stop pain caused from bunions almost instantly. It will not quickly reduce swelling and inflammation. It will not rid the user of the pain and misery caused from bunions. It will not give perfect foot comfort. It will not soothe and heal the first instant it is used. It will not give permanent results. It will not banish, cure, or heal

bunions. It will not, without danger, enable the user to wear smaller shoes. It will not penetrate, neither is it a new or improved scientific treatment. In addition, said claims and representations serve to falsely disparage bunion treatments prepared and marketed by respondents' competitors in that said statements falsely represent that the products sold by respondents' competitors are of no value as bunion treatments. In truth and in fact the products sold by respondents' competitors are of some value as bunion treatments in that they will relieve pain and assist in correcting the trouble caused by certain types of bunions.

PAR. 5. The respondents further represent to prospective purchasers, through a series of letters and literature, that the respondents are making special reduced prices to the prospect and that the offer is for a limited time only. The truth is that the respondents make the representations and concessions indiscriminately to prospective purchasers and the time of acceptance is without limitation.

PAR. 6. There are among respondents' competitors many who manufacture, distribute and sell to the purchasing public, appliances and treatments for bunions, who in no way misrepresent the quality, efficacy, or therapeutic value of their product and who do not falsely disparage the products manufactured and sold by their competitors; and who do not falsely represent that their products are being sold at special prices for limited periods of time when such is not the case.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating and describing the product, "Pedodyne," and its effectiveness, as hereinabove set out, in offering for sale and selling said product were, and are, calculated to, and had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true, and into the further erroneous belief that the appliances and preparations devised, manufactured, and sold by respondents' competitors are inferior in quality and less effective than respondents' product. Further, as a direct consequence of said mistaken and erroneous beliefs, induced by the acts and representations as hereinabove set out, a substantial number of the consuming public has purchased a substantial amount of respondents' product with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in selling and distributing appliances and preparations for the treatment of bunions and who do not misrepresent the price, quality, and efficacy of their products. As a result of the unfair acts and false and misleading representations of the respondents, injury has been, and is now being done by respondents to competition

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in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The above and foregoing acts, practices and representations of the respondents have been and are all to the prejudice and injury of the public and respondents' competitors, and have been and are unfair methods of competition in 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 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 February 4, 1937, issued, and on February 5, 1937, served, its complaint in this proceeding upon respondents, Pedodyne Company, Inc., a corporation, and George J. Katz, Rose M. Katz, and Robert L. Keats, also known as Robert L. Katz individually and as officers of the Pedodyne Company, Inc., charging respondents 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 respondents' answer, the Commission, by an order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substituted answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and the substituted answer, briefs and oral arguments of counsel having been waived, 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 Pedodyne Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, State of Illinois. Respondent George J. Katz is president and general manager of Pedodyne, Inc. Respondent Rose M. Katz is vice president and treasurer of Pedodyne Company, Inc. Respondent Robert L. Keats, also known as Robert

L. Katz, is secretary of Pedodyne Company, Inc. The individual respondents own all the capital stock of the respondent corporation and direct and control its sales policies and business operation.

The respondents have been engaged for several years in the sale and distribution in commerce among and between the various States of the United States and the District of Columbia of a product designated "Pedodyne." The product designated "Pedodyne" is sold and recommended as a bunion treatment. Respondents caused said product, when sold, to be shipped from their place of business in Chicago, Ill., to the purchasers thereof located at various points in the States of the United States other than the State of Illinois. Respondents do now and have for several years last past maintained a constant current of trade in commerce among and between the various States of the United States and the District of Columbia in the product "Pedodyne."

There are likewise other corporations, firms, individuals, and partnerships engaged in selling and distributing in commerce among and between the various States of the United States and the District of Columbia of other preparations and appliances sold and recommended as bunion treatments. Respondents are now and have been in active substantial competition with these other corporations, firms, individuals, and partnerships in the sale of their respective products.

PAR. 2. For the purpose of inducing the purchase of the product "Pedodyne" respondents have widely advertised said product in advertisements inserted in newspapers and magazines of general circulation throughout the United States. Respondents have also printed and circulated throughout the several States of the United States to customers and prospective customers advertising folders, literature, circular letters, and other advertising matter.

In all of the advertisements and advertising matter hereinabove mentioned the respondents have caused the corporate name and name of the product "Pedodyne" to be prominently and conspicuously displayed, together with such statements as:

BUNION TORTURE needless. Pain stops almost instantly. The swelling and inflammation is so quickly reduced you can wear smaller, neater shoes with ease.

Now then, if you actually want to get rid of this misery, if you want to enjoy perfect foot ease, this is your opportunity.

The Most Torturing Bunions Surrender to Pedodyne.

If you can positively get rid of your bunion irritation and humiliation, do so by all means. Thousands say that PEDODYNE will do this for you, thereby increasing your happiness and your efficiency!

PEDODYNE is a real friend to every person who has bunions—just starting or of longer standing.

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You want PERMANENT results. You want ENTIRE FREEDOM and complete foot comfort. You want to BANISH the misery for good.

For many years the true nature of bunions was not understood. Now Science has conquered.

PEDODYNE is Scientific.

As soon as PEDODYNE comes in contact with the bunion it quickly softens the hard, dead outer epidermis and penetrates to the tender, inflamed, diseased tissue and bursal sac, * * *

Permitted to go untreated, or relieved through clumsy appliances or by slitting your shoes to "relieve the pressure", your bunion may cause serious foot disorders.

Perhaps you have tried other methods—pads, plasters, appliances of one type or another—without satisfactory results. It is not surprising if you have failed to get the relief you sought.

How can you expect some little pad or appliance that does not penetrate beneath the outer skin to heal your bunion? I say that I do not believe that it can be done that way.

My bunions are showing such rapid improvement that it seems almost a miracle.

I am very happy to inform you your Pedodyne treatment has acted like magic.

The statements above set out, together, with many similar statements appearing in respondents' advertising literature purport to be descriptive of respondents' product. Through these statements and other statements of like import and effect the respondents represent that (1) Pedodyne will end bunion torture; (2) Pedodyne will stop pain caused from bunions almost instantly; (3) Pedodyne will quickly reduce swelling and inflammation caused by bunions; (4) Pedodyne will rid the user of misery caused by bunions; (5) Pedodyne will give perfect foot comfort; (6) Pedodyne will soothe and heal the instant it is used; (7) Pedodyne will give permanent results; (8) Pedodyne will banish, cure and heal bunions; (9) Pedodyne is superior to other bunion treatments; (10) Pedodyne is a scientific product, and that it is a recent discovery or an improvement of a scientific discovery; (11) Pedodyne penetrates beneath the outer skin; and (12) Other competing products are of no value in the treatment of bunions.

PAR. 3. In truth and in fact it is generally understood and believed by the public that any enlargement of or on the metatarsophalangeal joint, whether bursitis or hallux valgus, is a bunion. The product designated "Pedodyne" will, in numerous cases, temporarily relieve the pain and torture caused from bunions and will do so with reasonable promptness, and where there is no bone deformity Pedodyne will aid in reducing the swelling and inflammation. The product Pedodyne will not banish, cure, or heal bunions, but its efficacy is limited to temporary relief of pains and discomforts caused by

bunions. The Pedodyne formula has been used for many years in treating bunions and it cannot be correctly termed a recent discovery; neither is it an improvement of a scientific discovery. Pedodyne is not penetrative in a sense meaning it will penetrate to the affected parts of the foot in cases of bunions. There are other products on the market which are sold and recommended for use in treating bunions and some of said products are helpful in relieving pains caused by bunions and some are helpful in the correction of bunions.

PAR. 4. Further the respondents represent to the purchasing public by issuing and mailing to prospective purchasers circular letters and literature that the respondents are making a "special offer" to the particular person so contacted and that the price quoted in the literature is a special price.

In truth and in fact, the special offers pointed out in respondents' follow-up letters and literature are not limited to the one to whom the letter is addressed but such offers are made indiscriminately to any prospective purchaser and the price quoted is the regular selling price of said product.

PAR. 5. There are among respondents' competitors many who sell and distribute preparations and appliances as bunion treatments who do not misrepresent the quality or character of their respective product or its efficacy in treating bunions.

PAR. 6. The various statements and misrepresentations made by respondents in describing the product "Pedodyne" and the effectiveness of said product when used had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and into the purchase of a substantial volume of respondents' product on account of such beliefs induced by the respondents' representations as above set out. As a result thereof, trade has been diverted to respondents from corporations, firms, individuals, and partnerships likewise engaged in the business of selling and distributing their products prepared, designed, intended, and sold for substantially the same purpose and use for which the respondents' product is advertised and sold, and who truthfully advertise their products and the efficacy of their products when used. As a consequence thereof, injury has been and is now being done by respondents to competitors in commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice of the public and of respondents' competitors and constitute

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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 and the answer filed herein on March 26, 1937, by respondents admitting all the material allegations of the complaint 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 respondents have 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, Pedodyne Company, Inc., a corporation, its officers, representatives, agents, and employees, and George J. Katz, Rose M. Katz, and Robert L. Keats, also known as Robert L. Katz, in connection with the offering for sale, sale, and distribution of Pedodyne in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That Pedodyne will banish, cure or heal bunions or give perfect foot comfort;
2. That Pedodyne will end bunion torture or rid the user of the misery caused by bunions;
3. That Pedodyne acts with other than reasonable promptness;
4. That Pedodyne will give permanent results;
5. That Pedodyne is scientific in a sense meaning that Pedodyne is a recent discovery or a recent improvement of a scientific discovery;
6. That Pedodyne will penetrate beneath the outer skin;
7. That competing products are of no value in the treatment of bunions;
8. That a stated price is the regular price, where periodic reductions are offered in follow-up form letters; or that the price stated is a special offer to the particular person contacted, where the offer is made indiscriminately to any prospective purchaser.

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

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IN THE MATTER OF

LOUIS KIPILMAN, DOING BUSINESS AS MAJESTIC
LABORATORIES

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

Docket 3080. Complaint, Mar. 17, 1937—Decision, Apr. 21, 1937

Where an individual engaged in the manufacture of a pharmaceutical preparation known as "Kipzeme Ointment," intended and designed to remedy and cure leg sores, eczema, and other skin diseases and kindred ailments, and in the sale thereof in substantial competition with others engaged in the manufacture of like and similar products and sale thereof among the various States and in the District of Columbia, including those who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products, and those who do not advertise or otherwise represent that such products have merit or therapeutic value which they do not have—

Represented and implied, in advertisements of said "Kipzeme Ointment," in various newspapers, periodicals, and publications and in other forms of printed matter, and by radio broadcast and in other ways, that preparation in question was a competent and adequate remedy for leg sores, running sores, aggravated cases of eczema, and other skin eruptions and kindred ailments, through such statements as "Leg sores all healed," "Druggist Makes Discovery for OPEN LEG SORES, OLD Leg Sores, . . . running sores, aggravated eczema. Send for KIPZEME * * *," facts being said preparation does not heal all such sores and is not a competent and adequate remedy in cases of aggravated eczema or in the case of old leg sores, running sores, and other skin conditions, and representations in question, as respects nature and effect of said product, are exaggerated, misleading, and deceptive, and preparation, in many cases, will not accomplish results claimed therefor;

With capacity to mislead and deceive purchasers and prospective purchasers into erroneous belief that such representations were true and into purchase of substantial quantities of product in question, on account of such belief induced as aforesaid, and with result that trade was unfairly diverted to him from competitors who do not similarly advertise their respective products; to the substantial injury of competition in commerce:

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

Mr. Joseph C. Fehr 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 Louis