

Syllabus

IN THE MATTER OF

THE SOLVOTONE COMPANY, AND JESSIE ROGERS,
INDIVIDUALLY AND AS PRESIDENT THEREOF

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3082. Complaint, Mar. 18, 1937—Decision, Aug. 17, 1937

Where a corporation engaged in sale and distribution of its "Solvotone" medicines or preparations, in commerce among the various States, direct to members of the consuming public and also to wholesale and retail druggists for resale, in substantial competition with others engaged in sale and distribution, among the various States and in the District of Columbia, of medicines of the same general kind and adapted to and used for same general purposes; and its president and principal owner, in active charge of its business and responsible for its policies and conduct in relation to acts and practices as herein set forth; in promoting sale of said medicines—

- (a) Represented, in newspaper advertisements and in publications of general circulation, and in various other advertising matter circulated and distributed direct to members of the purchasing public, both directly and through reproduction of testimonials or purported testimonial statements, that its said preparations constituted a cure, remedy, or competent and adequate treatment for gall-stones and ailments of the gall-bladder and diseases of the stomach or liver, and that said preparations were effective in treatment of stomach ulcers or cancer of the stomach, and that use thereof would remove gall-stones and prevent operations in such various conditions above indicated, including appendicitis; and

- (b) Represented, as aforesaid, that use of such preparations would relieve tightness around the waist or pain in the right side, regardless of cause thereof, including serious pathological conditions, and would end suffering;
- Facts being medicines in question were not a cure, remedy or competent and adequate treatment for gall-stones, ailments of the gall-bladder, or stomach and liver diseases, would not remove or relieve such stones or prevent an operation where they had developed, were of no material use in treatment thereof or ailments of gall-bladder, or of value in treatment of stomach ulcers or cancers, and would not relieve tightness around waist, etc., when due to any serious pathological condition, were of no value, and might do great harm, where such pain was symptom of appendicitis, and would not end suffering nor prevent operation in aforesaid various cases, ordinarily evidenced by one or more of such symptoms as set forth by it;

With tendency to confuse, mislead, and deceive members of the public into the erroneous belief that said medicines were a cure, remedy, or competent and adequate treatment for gall-stones and such various ailments and conditions as above stated, and that they would accomplish results above set forth, regardless of cause thereof, and that they were useful and effective in treatment of such various conditions and would end suffering and prevent operations as above noted, and of inducing members of the public to purchase its said medicines because of erroneous belief thus

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engendered, and to divert trade to it from competitors engaged in sale in interstate commerce of medicines of the same general kind as those sold by it, as well as those thus engaged in such sale of medicines adapted to and used for treatment of various ailments and conditions for which its said medicines were adapted, and with effect of diverting to it business from competitors who do not misrepresent the therapeutic properties and effects of their medicines, but truthfully and accurately state such effects; to their substantial injury and prejudice:

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

Mr. Harry D. Michael for the Commission.

Mr. Charles E. Jensby, of Chicago, Ill., for respondents.

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 Solvotone Company, a corporation, and Jessie Rogers, individually and as president of said corporation, have been and are 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. The said respondent, The Solvotone Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 4303 Cottage Grove Avenue in the city of Chicago in said State. The respondent, Jessie Rogers, is president and principal owner of said corporation, and is, and has been, in active charge of, and responsible for the policies, and the conduct of the corporation in the acts and practices hereinafter set forth.

PAR. 2. The said respondent, The Solvotone Company, is now, and has been since October 1, 1935, engaged in the sale and distribution of a medicine known and described as "Solvotone." Said respondent, in the course and conduct of its business, during the time aforesaid, causes and has caused its said medicine to be transported from its said place of business in Illinois to, into, and through States of the United States other than Illinois to the various purchasers thereof in such other States. Said respondent's usual method of sale of said medicine is direct to members of the consuming public, but it is also sold to wholesale and retail druggists through whom it is in turn sold to members of the public.

PAR. 3. Other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution of medicines of the same general kind as that sold by respondent corporation, or adapted to and used for the same general purposes for which said medicine is adapted. Said respondent corporation has been, during the aforesaid time, in substantial competition in commerce between and among the various States of the United States in the sale of said medicine with such other individuals, firms, and corporations.

PAR. 4. Respondents, in promoting the sale of said medicine, make use of advertisements published in newspapers and other publications of general circulation, as well as circulars and other advertising matter circulated and distributed direct to members of the purchasing public. In all of said advertisements it is represented that said medicine is a cure, remedy, or competent and adequate treatment for gallstones, ailments of the gall bladder, and stomach and liver diseases; and for tightness around the waist, and pain in the right side, regardless of the cause thereof, and that its use in such conditions will end suffering and avoid operations. Examples of such statements and representations are the following:

STOMACH PAINS, COLIC ATTACKS, PAIN IN RIGHT SIDE, arising functional disorders of the Liver, Gallbladder, Indigestion, heavy load in stomach, tightness around waist, or constipation, often quickly relieved with this *Safe Home Treatment*. Avoid operation if possible. Don't suffer longer. Send today for FREE trial. There's no obligation. Write Quick. SOLVOTONE CO., 67-S, 4303 Cottage Grove, Chicago.

FREE trial box

* * * Dr. Rogers' safe home treatment for stomach distress, liver, and bile symptoms, * * *

Solvotone is a combination of medicinal agents designed to act indirectly on the bile, liver, and gall-bladder, tending to restore the solvent power of the bile, * * *

There is no need for you to suffer any longer. Dr. Rogers' Solvotone, the medicine that has brought relief to thousands upon thousands of stomach and gallstone sufferers, * * *

Practically every form of stomach and gall bladder trouble arising from functional disturbances of the liver and bile yields to Solvotone.

* * * Solvotone relieved their pains and made an operation unnecessary.

Relieved of gallstone suffering after 13 years.

Gallstone & Stomach Ailment Prescription.

Dr. Rogers' Solvotone * * * for Stomach Distress—Gallstones—Liver Troubles—Colic Pains.

PAR. 5. That respondents, in advertisements and circular matter, published and distributed as aforesaid, represent directly or by implication or by use of the statements of others, that said medicine is a cure for serious and dangerous conditions of the human body such

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as gallstones, appendicitis, ulcer of the stomach, cancer of the stomach, etc., and that its use prevents the necessity for surgical operations to relieve such conditions. Examples of such representations are the following:

If you have a deep-seated case of long standing and suffer from frequent attacks of colic, pain in the right side or in the pit of the stomach, a feeling like a heavy load in the stomach or like a band drawn tightly around the waist, Solvotone may give you the relief you have been looking for * * *

* * * I was preparing for an operation for gallstones * * * The first dose of SOLVOTONE relieved me * * *

People from all over America tell how Solvotone relieved their pains and made an operation unnecessary.

Saved from Dangerous Operation.

* * * I thought myself it was an operation or death, but thanks to your wonderful remedy I am now well.

* * * the doctors advised an operation, but thanks to Solvotone, it was avoided * * *

To you who suffer from * * * that sharp pain and burning sensation around the waist, pain in the right side * * * Do you know that these symptoms, if neglected, often lead directly to the operating table.

* * * * *

Solvotone is a Safe Home Treatment for just such conditions * * *

Avoid An Operation if Possible—Try Solvotone First.

Let them tell you how SOLVOTONE made it unnecessary to submit to an operation, how they were relieved from agonizing colic pains and terrible stomach distress.

Solvotone * * * saved me from an operation and entirely relieved me.

Solvotone * * * in hundreds of cases on record has completely ended the need of an operation, even in very aggravated cases.

PAR. 6. In truth and in fact, said medicine is not a cure, remedy or competent and adequate treatment for gallstones, ailments of the gall bladder, or stomach and liver diseases. It will not relieve tightness around the waist, or pain in the right side when such conditions are due to any one of many causes. It will not remove gallstones nor will its use prevent an operation where gallstones have developed. It is of no material use in the treatment of gallstones or ailments of the gall bladder. It is of no value, and may do great harm, when used for a pain in the right side where such symptom is occasioned by appendicitis, as is often the case. It is of no value in the treatment of stomach ulcers or in the treatment of cancer of the stomach. Its use will not end suffering nor will it prevent operations in cases of appendicitis or of stomach ulcers or of cancer of the stomach, one or more of which conditions may, and usually do, show some of the symptoms listed by respondents as set forth in paragraphs 4 and 5 hereof.

PAR. 7. The use by respondents of the foregoing statements and representations, and other similar thereto, in offering for sale and selling said medicine has had, and now has, the tendency and capacity to, and does, in fact, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true and induces them to purchase said medicine on account thereof. The result of respondents' said practices is to unfairly divert trade to respondent corporation from competitors engaged in the sale, between and among the various States of the United States, of medicines of the same kind, or similar to that sold by respondents, as well as those adapted to and used for the treatment of various bodily conditions for which respondents' said medicine is adapted.

There are among the competitors of said respondent corporation those who do not make the same or similar misleading representations as those made by respondents, as herein set out, but who truthfully and accurately state the facts in regard to the therapeutic effects of the medicines sold by them. As a result of respondents' practices, as herein set forth, injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 8. The above acts and things done by respondents are all to the injury and prejudice of the public and of competitors of respondent corporation and constitute unfair methods of competition 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 March 18, 1937, issued and served its complaint in this proceeding upon respondents, The Solvotone Company, a corporation, and Jessie Rogers, individually and as president of said corporation, charging them 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 thereto, a stipulation as to the facts was agreed upon by and between W. T. Kelley, Chief Counsel for the Commission, and the respondents by which it was agreed that the

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statement of facts so agreed upon should be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto. It was further agreed that said Commission might proceed upon such statement of facts to make its report stating its findings as to the facts (including inferences from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Said stipulation as to the facts has been 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, and the statement of facts agreed to, as aforesaid, in lieu of testimony, 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. The said respondent, The Solvotone Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, and its office and principal place of business at 4303 Cottage Grove Avenue in the city of Chicago in said State. The respondent, Jessie Rogers, is president and principal owner of said corporation, and is and has been in active charge of the business thereof, and is and has been responsible for its policies and its conduct in relation to the acts and practices hereinafter set forth.

PAR. 2. The said respondent, The Solvotone Company, is now and has been since October 1, 1935, engaged in the sale and distribution in commerce between and among the various States of the United States of a medicine known and described as "Solvotone." Said respondent, in the course and conduct of its business, during the time aforesaid, causes and has caused its said medicine to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to the various purchasers thereof in such other States. Said respondent's usual method of sale of said medicine is direct to members of the consuming public, but said medicine is also sold to wholesale and retail druggists through whom it is in turn sold to members of the public.

PAR. 3. During the time aforesaid, 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 medicines of the same general kind as that sold by respondent corporation or adapted to and used for the same general purposes for which said medicine is adapted. Said respondent corporation has been, during the aforesaid time, in substantial competition in commerce between and among the various States of the United States in the sale of said medicine with such other individuals, firms, and corporations.

PAR. 4. Respondents, in promoting the sale of said medicine, make use of advertisements published in newspapers and other publications of general circulation, as well as circulars and other advertising matter circulated and distributed direct to members of the purchasing public.

Examples of statements and representations contained in said advertising matter are the following:

STOMACH PAINS, COLIC ATTACKS, PAIN IN RIGHT SIDE, arising functional disorders of the Liver, Gallbladder, Indigestion, heavy load in stomach, tightness around waste, or constipation, often quickly relieved with this *Safe Home Treatment*.

FREE trial box

 Avoid operation if possible. Don't suffer longer. Send today for FREE trial. There's no obligation. Write Quick. SOLVOTONE CO. 67-S, 4303 Cottage Grove, Chicago.

Solvotone is a combination of medicinal agents designed to act indirectly on the bile, liver and gall-bladder, tending to restore the solvent power of the bile, * * *

Practically every form of stomach and gall bladder trouble arising from functional disturbances of the liver and bile yields to Solvotone.

Relieved of gallstone suffering after 13 years.

Dr. Rogers' Solvotone * * * for Stomach Distress-Gallstones — Liver Troubles—Colic Pains.

PAR. 5. Respondents, in advertisements and circular matter, published and distributed as aforesaid, also make representations of which the following are examples:

If you have a deep-seated case of long standing and suffer from frequent attacks of colic, pain in the right side or in the pit of the stomach, a feeling like a heavy load in the stomach or like a band drawn tightly around the waist, Solvotone may give you the relief you have been looking for * * *

* * * I was preparing for an operation for gallstones * * * The first dose of SOLVOTONE relieved me * * *

* * * I thought myself it was an operation or death, but thanks to your wonderful remedy I am now well.

To you who suffer from * * * that sharp pain and burning sensation around the waist, pain in the right side * * * Do you know that these symptoms, if neglected, often lead directly to the operating table * * *

Solvotone is a Safe Home Treatment for just such conditions * * *

Avoid An Operation if Possible — Try Solvotone First.

Let them tell you how SOLVOTONE made it unnecessary to submit to an operation, how they were relieved from agonizing colic pains and terrible stomach distress.

Solvotone * * * saved me from an operation and entirely relieved me.

Solvotone * * * in hundreds of cases on record has completely ended the need of an operation, even in very aggravated cases.

PAR. 6. Respondents' said medicine consists of three preparations which are referred to herein as No. 1, No. 2, and No. 3, respectively. The qualitative formulae, with quantitative formulae per tablet, are as follows:

No. 1.	Ext. Nux Vomica-----	1/10	gr.
	Ext. Rhubarb-----	1/4	gr.
	Powd. Ipecac-----	1/8	gr.
	Powd. Capsicum-----	1/4	gr.
	Ext. Gentian-----	1	gr.
	Pancreatin Ext-----	1	gr.
	Pepsin-----	1	gr.
	Sugar coated olive green		
No. 2.	Sodium Phosphate-----	15	grs.
	Oil Peppermint-----	1/8	gr.
No. 3.	Ext. Cascara Sagrada-----	1	gr.
	Ext. Belladonna Leaves-----	1/8	gr.
	Powdered Ipecac-----	1/8	gr.
	Podophyllum-----	1/8	gr.
	Aloin-----	1/10	gr.
	Chocolate coated -----	1/10	gr.

Respondents' said preparations are directed to be taken together in the treatment of the conditions for which they are recommended. It is directed that said medicine be taken as follows:

No. 1.—One tablet before each meal.

No. 2.—One tablet after each meal—either swallowed whole or dissolved in hot water.

No. 3.—One to four tablets each day if constipated.

PAR. 7. The representations of respondent as aforesaid, import and imply and serve as representations to the effect that respondents' said medicine is a cure, remedy, or competent and adequate treatment for gall-stones, ailments of the gall-bladder, and stomach and liver diseases, and for tightness around the waist, and pain in the right side, regardless of the cause thereof, and that the use thereof in such conditions will end suffering and avoid operations; that it will remove gall-stones; and that its use will make operations unnecessary in serious conditions referred to generally by references to symptoms and organs and parts of the body which, by implication, include appendicitis, ulcers of the stomach and cancer of the stomach.

PAR. 8. In truth and in fact said medicine is not a cure, remedy or competent and adequate treatment for gall-stones, ailments of the gall, bladder, or stomach and liver diseases. It will not relieve tightness around the waist, or pain in the right side, when such conditions are due to any serious pathological condition. It will not remove or relieve gall-stones nor will its use prevent an operation where gall-stones have developed. It is of no material use in the treatment of gall-stones or ailments of the gall-bladder. It is of no value, and may do great harm, when used for pain in the right side where such symptom is occasioned by appendicitis, as is often the case. It is of no value in the treatment of stomach ulcers or in the treatment of cancer of the stomach. Its use will not end suffering nor will it prevent operations in cases of appendicitis or of stomach ulcers or of cancer of the stomach, one or more of which conditions may and usually do show some of the symptoms as set forth in the representations of the respondent as aforesaid.

PAR. 9. The representations of respondents as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that said medicine is a cure, remedy or competent and adequate treatment for gall-stones, ailments of the gall-bladder, and stomach and liver diseases; that it will relieve tightness around the waist and pain in the right side, regardless of the cause thereof, and when such conditions are due to serious pathological conditions; that it will remove gall-stones and that its use will prevent an operation where gall-stones have developed; that it is useful and effective in the treatment of gall-stones, appendicitis, stomach ulcers, and cancer of the stomach, and that its use will prevent operations for such conditions as well as other serious pathological conditions; and that its use will end suffering, when such are not the facts. Said representations of respondents have had and do have the tendency and capacity to induce members of the public to purchase said medicine because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent corporation from competitors engaged in the sale, in interstate commerce, of medicines of the same general kind as that sold by respondent corporation as well as those so engaged in such sale of medicines adapted to and used for the treatment of the various ailments and conditions for which said medicine is adapted. There were and are among the competitors of the respondent corporation those who do not misrepresent the therapeutic properties and effects of the medicines sold by them but who truthfully and accurately state the therapeutic effects thereof. Respondents' said acts and

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practices tend to and do in fact divert business to respondent corporation from its said competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondents, The Solvotone Company, a corporation, and Jessie Rogers, individually and as president of said corporation, are to the prejudice of the public and of the competitors of the respondent corporation, 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 respondents, and an agreed statement of facts in lieu of testimony, briefs and oral argument having been waived, 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 respondents, The Solvotone Company, a corporation, its officers, and Jessie Rogers, an individual, and their respective representatives, agents, and employees, in connection with the offering for sale, sale and distribution of certain medicinal preparations now known and described as "Solvotone," or of said preparations, or any other preparations of the same or similar formulae or therapeutic effect, sold under that name, or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or by implication, or by use of the statements, endorsements or testimonials of others:

1. That said preparations constitute a cure, remedy, or competent and adequate treatment for gall-stones, ailments of the gall-bladder, or for diseases of the stomach or liver.

2. That the use of said preparations will relieve tightness around the waist or pain in the right side regardless of the cause thereof or when such symptoms are due to any serious pathological condition.

3. That the use of said preparations will remove gall-stones or will prevent an operation where gall-stones have developed.

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4. That said preparations are useful or effective in the treatment of gall-stones, stomach ulcers, or cancer of the stomach or any other serious pathological condition or will prevent an operation in any such condition.

5. That the use of said preparations will end suffering.

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

IN THE MATTER OF

KEELEY'S, INC.

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

Docket 3112. Complaint, Apr. 24, 1937—Decision, Aug. 17, 1937

Where a corporation engaged in manufacture and sale of candy, including numerous assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and some of which, along with punchboard supplied, were composed of a number of boxes or packages of candy of varying size, for sale and distribution to customers under a plan or scheme, and in accordance with said board's explanatory legend, by which purchaser received, for the five cents paid, one of said boxes or nothing other than privilege of making a punch, dependent upon number punched by chance, or the making of the last punch in each of the sections into which board was divided, or the making of the last punch of the entire board—

Sold, to wholesalers and jobbers and to retailers for display and resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of such products in accordance with such plan, and thus sold, itself, in retail establishment of its own, such assortments, contrary to public policy long recognized by the common law and criminal statutes, 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, as above described, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

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

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