

IN THE MATTER OF
GEORGE EARL McKEWEN, ET AL., DOING BUSINESS AS
HERBAL MEDICINE COMPANY AND NATEX COMPANY

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

Docket 3075. Complaint, Mar. 12, 1937—Decision, Nov. 3, 1937

Where partners engaged in distribution and sale of "Herb Doctor Compound" and "Nutex," medicinal preparations, compounded from practically the same ingredients and sold and distributed between and among the various States and in the District of Columbia for substantially same use and conditions, in substantial competition with those likewise engaged in distribution and sale in commerce as aforesaid, of medicinal preparations, and including among its competitors many who distribute and sell preparations designed, intended and sold as aids or adjuncts in the treatment of the same or similar conditions and who do not in any way misrepresent the effectiveness of their respective products—

Represented, directly or through implication, in their advertising in newspapers of general interstate circulation and by circulars and pamphlets sent by mail into the various States, and by radio, that said preparations were new remedies and that they constituted competent and effective cures, remedies, or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, headaches due to constipation, general run-down condition, indigestion, constipation, dizziness, gastritis, colds, biliousness and similar maladies, ailments and conditions of the human body, facts being they were not new remedies and did not constitute competent cures, remedies or treatments for any of the ills, maladies and conditions named, or for any other similar ailments and maladies, and representations made by them with respect to the nature of their products, their therapeutic value and effectiveness in use, were grossly exaggerated, false, misleading, and untrue;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and that results claimed by them would be obtained by purchaser users of such products, and with result that substantial number of the consuming public, as a true consequence of the mistaken and erroneous beliefs induced by their said acts, advertisements, and representations, purchased substantial volume of their preparations, and trade in such commerce was unfairly diverted to them from those engaged in the distribution and sale of products intended for similar usage, and who truthfully advertise their respective products; to the substantial injury of competitors in commerce;

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

Mr. Wm. T. Chantland for the Commission.

Mr. Clinton Robb, of Washington, D. C., for respondents.

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Complaint

COMPLAINT¹

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex Company, hereinafter referred to as "respondents," have been, and are now, 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. Respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex Company, have their principal office and place of business in the city of Baltimore, State of Maryland. Respondents are now, and for some time have been engaged in the business of distributing and selling, in commerce as herein set out, certain medicinal preparations designated "Herb Doctor Compound" and "Natex."

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said products, when sold, to be transported from their office and place of business in the State of Maryland to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondents now maintain a constant current of trade in commerce, in said products distributed and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling medicinal preparations for use in connection with treatment for various human ailments, in com-

¹ The complaint as published omits, in the interest of brevity, quoted statements, claims and representations set forth at length in Par. 3 thereof, as allegedly made by respondent in advertising the asserted qualities or properties of its preparations here involved, said various quoted matter being set forth verbatim in Par. 4 of the findings, *infra*, at page 1301.

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

In the course and operation of said business, and for the purpose of inducing the purchase of said medicinal preparations as a remedy for persons suffering from any one or more of numerous ailments, respondents, in their advertising in newspapers of general interstate circulation, by circulars and pamphlets sent by mail into various States of the United States, and by radio, have made, published, or caused to be published, among others, the following statements, claims and representations:²

Similar and almost identical representations to those set forth above are being made by respondents for their preparation Natex, which is compounded from practically the same ingredients as Herb Doctor Compound, and both preparations are sold for substantially the same use and conditions.

The aforesaid statements, together with other similar statements not herein set out with reference to respondents' products "Herb Doctor Compound" and "Natex," purport to be descriptive of said products, their therapeutic value and their effectiveness in use. All of said statements serve as representations, either directly or through implication, that said products form competent and effective cures, remedies or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, headaches due to constipation, general run-down condition, indigestion, constipation, dizziness, gastritis, colds, biliousness and similar maladies, ailments and conditions of the human body.

PAR. 4. The representations made by respondent, as above set out, with respect to the nature of its products, their therapeutic value and effectiveness in use are grossly exaggerated, false, and misleading and untrue. Said products are not new remedies and they do not constitute competent cures, remedies or treatments for any of the ills, maladies and conditions of the human body named in paragraph 3 above, or for any other similar ailments and maladies of the human body.

PAR. 5. There are among respondents' competitors many who distribute and sell preparations, designed, intended and sold as aids or adjuncts in the treatment of the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

² The quoted matter which follows here at length, dealing with the qualities or properties claimed by respondent for its said preparations, and therapeutic value and effectiveness in use, are set forth verbatim in the findings, *infra*, at page 1301, and are accordingly omitted here in the interest of brevity.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondents as to the effectiveness of their said products, as hereinabove set out, in their advertising in the course of distributing their products, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondents will be obtained by the purchasers thereof upon the use of said products. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondents as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' preparations with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling products intended for similar uses, who truthfully advertise their respective products. As a result thereof, substantial 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 in the District of Columbia.

PAR. 7. The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition 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 the 12th day of March 1937, issued, and on the 13th day of March, 1937, served, its complaint in this proceeding upon respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex Company, 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, the Commission, by order entered herein, granted respondents' motion for per-

mission 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 substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute 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. Respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex Company, have their principal office and place of business in the city of Baltimore, State of Maryland. Respondents are now, and for some time have been engaged in the business of distributing and selling, in commerce as herein set out, certain medicinal preparations designated "Herb Doctor Compound" and "Natex."

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said products, when sold, to be transported from their office and place of business in the State of Maryland to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondents now maintain a constant current of trade in commerce, in said products distributed and sold by them, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling medicinal preparations for use in connection with treatment for various human ailments, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of said business, and for the purpose of inducing the purchase of said medicinal preparations as a remedy for persons suffering from any one or more of numerous ailments, respondents, in their advertising in newspapers of general

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interstate circulation, by circulars and pamphlets sent by mail into various States of the United States, and by radio, have made, published, or caused to be published, among others, the following statements, claims, and representations:

For sufferers from

STOMACH TROUBLES

RHEUMATISM

NEURITIS

LIVER TROUBLES

DERANGED KIDNEYS

LOSS OF SLEEP

NERVOUSNESS

HEADACHES DUE TO CONSTIPATION

GENERAL RUNDOWN CONDITIONS

THE BIRTH OF A NEW MEDICINE

ENDS INDIGESTION

Neutralized acidity

Quick relief from * * * indigestion, that stuffy feeling around the heart, and other simple pains in the stomach.

Regulates Bowels

* * * * *

Furthermore, HERB DOCTOR contains certain elements which not only move the bowels, but *tend to regulate them so that they remain normal.*

A TONIC FOR WHOLE SYSTEM

Herb Doctor acts as a tonic for the whole system. It has been the means of restoring health and strength to thousands who have suffered the agonies of *stomach troubles, constipation, rheumatic pains, sleepless nights, lack of pep and vigor and other ailments due to poisonous waste matter in the system and general rundown condition.*

* * * Herb Doctor contains two special ingredients which when acting together not only quickly move the bowels and give the entire system a thorough cleansing, but also tend to regulate them so that the continuous use of laxatives becomes unnecessary.

Herb Doctor is different from ordinary medicines and tonics. Herb Doctor *gets to the roots* of your trouble, *relieves the cause*, and in this way builds up sound health that does not disappear as soon as you have stopped the treatment.

Herb Doctor flushes the bowels and the blood of impurities in a mild, pleasant yet highly efficient manner. It tones up the stomach so that you can once more eat heartily and digest every mouthful. It acts as a diuretic to the kidneys and is a valuable alterative and tonic.

In this way *Herb Doctor ends the suffering caused by constipation, indigestion, gas on the stomach, nervousness, poor sleep, bad breath, rheumatism, neuritis, headaches, dizzy spells, general weakness* and lack of vitality and the many other complaints caused by the failure of the stomach, kidneys, liver and bowels to function properly.

NEW MEDICINE ENDED 20 YEARS STOMACH MISERY IN ONE MONTH.

* * * * *

Also *ended* Liver Trouble and Nervousness.

* * * * *
Persons suffering with indigestion, gastritis, blood impurities, rheumatic pains, shattered nerves, bilious attacks, dizziness and similar complaints *need suffer no longer*.

There is a wonderful new way to win that glorious health, the clear complexion, the vigor and vitality that everyone so greatly desires, * * * .

HERB DOCTOR COMPOUND * * * restoring rundown, ailing people to health and strength.

If you are suffering with annoying pains and aches throughout the body, if you are troubled with indigestion or sudden sharp pains; if you suffer with dizziness * * * if you are * * * nervous, then it is time for you to consider better health. You will find HERB DOCTOR COMPOUND just the medicine that you need.

HERB DOCTOR is being used with great success by sufferers from many ailments which can be traced to liver complaint. HERB DOCTOR'S most enthusiastic users have taken it for such complaints and are pleased to testify to the relief they have obtained.

HERB DOCTOR COMPOUND is compounded especially for people who suffer from indigestion, headaches, poor sleep, dizziness, constipation and lack of vitality.

A four weeks' treatment of HERB DOCTOR built up health quickly, relieved of biliousness, dizzy spells and indigestion, and made the patient no longer subject to colds.

HERB DOCTOR helps in the case of indigestion, so it will when it comes to faulty elimination, rheumatic pains, dizziness, headaches, and many other ailments.

Persons who suffered continuously day and night, with various ailments, including disorders and indigestion, gas on stomach, faulty elimination, severe headaches interfering with sleep, improve daily after beginning to take HERB DOCTOR, and are made to feel like new persons.

Similar and almost identical representations to those set forth above are being made by respondents for their preparation Natex, which is compounded from practically the same ingredients as Herb Doctor Compound, and both preparations are sold for substantially the same use and conditions.

The aforesaid statements, together with other similar statements not herein set out with reference to respondents' products "Herb Doctor Compound" and "Natex," purport to be descriptive of said products, their therapeutic value and their effectiveness in use. All of said statements serve as representations, either directly or through implication, that said products form competent and effective cures, remedies or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, headaches due to constipation, general run-down condition, indigestion, constipation, dizziness, gastritis, colds, biliousness, and similar maladies, ailments, and conditions of the human body.

PAR. 5. The representations made by respondents, as above set out, with respect to the nature of their products, their therapeutic value and effectiveness in use are grossly exaggerated, false, and misleading and untrue. Said products are not new remedies and they do not constitute competent cures, remedies, or treatments for any of the ills, maladies and conditions of the human body named above, or for any other similar ailments and maladies of the human body.

PAR. 6. There are among respondents' competitors many who distribute and sell preparations, designed, intended and sold as aids or adjuncts in the treatment of the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents as to the effectiveness of their said products, as hereinabove set out, in their advertising, in the course of distributing their products, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondents will be obtained by the purchasers thereof upon the use of said products. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondents as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' preparations with the result that trade in said commerce has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling products intended for similar uses, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in said commerce, among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The above and foregoing acts, practices, and representations of the respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex Company, are to the prejudice of the public and of respondents' 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 and the answer filed herein 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 respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm name of Herbal Medicine Company and Natex Company, themselves, their representatives, agents and employees, in connection with the offering for sale, sale and distribution of "Herb Doctor," "Herb Doctor Compound" and "Natex," or any preparation or compound composed of the same or similar ingredients and possessing the same or similar therapeutic properties, under the same or any other name or designation, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparations, or any of them, are competent or effective cures, remedies or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, general run-down condition, indigestion, dizziness, gastritis, colds, biliousness and other similar maladies, ailments and conditions of the human body; or that said preparations, or any of them, will cure constipation or headaches due to constipation;

2. Representing that said preparations, or any of them, are new remedies.

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.

Complaint

IN THE MATTER OF

ELITE GLOVE COMPANY, INC.

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

Docket 3187. Complaint, July 24, 1937—Decision, Nov. 3, 1937

Where a corporation engaged in manufacture, sale, and distribution of gloves, in commerce among the various States and in the District of Columbia, in substantial competition with others similarly engaged, and including among such competitors manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and origin of their respective products and refrain from advertising or representing, through catalogs, brand marks, or other advertising media, that the merchandise offered by them has a merit, value, and origin which it does not have; in advertising its said product through price lists, newspapers, periodicals and other advertising matter circulated through the mails to its customers and prospective customers—

Represented, through used of word "British," and through sale and distribution of gloves with such brands as "Lady Daphne A British Doeskin MADE IN U. S. A." and "Lady Daphne A British Suede MADE IN U. S. A.," that the leather used in the manufacture thereof was processed or made into the finished leather in England, such as long distinctly preferred by a substantial part of the consuming public in gloves, shoes, and other personal wearing effects, and was imported therefrom into the United States, facts being the hides used in making its said products were imported from the Sudan of Egypt into the United States, and there tanned and processed into finished leather product;

With result of misleading customers and prospective customers into the belief that leather in question was processed into finished leather product in England and imported therefrom into the United States and there made into gloves, and with tendency and capacity to mislead substantial portion of consuming public into erroneous belief that all of its said representations were true with respect to its said products, and source or origin of materials entering into manufacture thereof, and into purchase thereof on account of such belief, and with result that trade was diverted to it from competitors engaged in similar businesses as hereinbefore set forth; 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. S. Brogdyn Teu, II for the Commission.

Mr. H. Andrew Schlusberg, of Gloversville, N. Y., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"