

Complaint

25 F. T. C.

IN THE MATTER OF
LEWYN DRUG, INC.

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

Docket 2934. Complaint, Sept. 30, 1936—Decision, Nov. 6, 1937

Where a corporation engaged in the sale and distribution of various pharmaceutical preparations including, in tablet and capsule form, so-called "Dr. Haller's Prescription 5000," made for it by others and sold and distributed by it, through wholesale and retail druggists and direct to the consuming public on mail order, to purchasers in other States, in active competition with those engaged in manufacture and sale, or sale, of various preparations for treatment of conditions similar to those for which it recommended its aforesaid preparation—

(a) Represented, in advertisements thereof in newspapers and periodicals of general circulation, and in circular letters distributed among its customers and prospective customers, that preparation in question was a safe and dependable remedy for delayed or suppressed menstruation, and that through the use thereof women suffering therefrom would end such condition and obtain relief safely, quickly and dependably, and that preparation in question had been dispensed to American women through ethical channels for almost half a century; and

(b) Represented, as aforesaid, that said preparation was best product in the world for cases of unnaturally delayed menstruation and successfully relieved some of the longest and most stubborn cases, and that with it countless women had obtained and were obtaining most gratifying results; Facts being it would not bring about such relief or end such delay safely, quickly, and dependably, and was completely ineffectual in many cases, and use thereof was always dangerous, it was not best product in such unnaturally delayed cases, and did not successfully relieve some of the longest and most stubborn cases, and was not a dependable product nor a safe or competent abortifacient, and various representations aforesaid were false;

With effect of misleading and deceiving many members of the purchasing public and causing them erroneously to believe that said representations were true, and, because of such erroneous belief, to purchase substantial quantities of its said preparation, and of thereby diverting trade in such commerce to it from its competitors who truthfully represent their products; to their substantial injury and to that of public:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Reuben J. Martin 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 Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Lewyn Drug Incorporated 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Lewyn Drug Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of California with its principal office and place of business located at 1928 Taft Avenue in the city of Hollywood, within the State of California. Said respondent is now and for more than one year last past has been engaged in the sale of a preparation recommended for the treatment of unnaturally delayed menstruation and known and designated as "Dr. Haller's Famous Prescription 5000," and the distribution thereof in commerce between and among the various States of the United States. It causes said "Dr. Haller's Famous Prescription 5000" when sold by it to be transported to the purchasers thereof located in the State of California and in various States of the United States other than the State of California. There is now and has been for a long time, to wit, for more than one year last past, a constant current of trade and commerce by respondent in said "Dr. Haller's Famous Prescription 5000" between and among the various States of the United States.

In the course and conduct of its said business, said respondent is now and for a long time, to wit, for more than one year last past has been in substantial competition in commerce between and among the various States of the United States with sundry other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of other preparations recommended for the treatment of unnaturally delayed menstruation.

PAR. 2. The preparation "Dr. Haller's Famous Prescription 5000" is manufactured for said respondent by several manufacturers and is sold and distributed by said respondent through drug stores located in the various States of the United States and also directly to consumers located in the various States of the United States.

PAR. 3. Said respondent, in the course and conduct of its said business as hereinbefore set out in paragraphs 1 and 2, has been and now is engaged in extensive advertisement of its said product as a means of furthering and aiding in the interstate sale and distribution of "Dr. Haller's Famous Prescription 5000," and as a medium of advertising it has been and now is using various magazines of national circulation and distribution.

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Said respondent in its said advertisements of the preparation known as "Dr. Haller's Famous Prescription 5000," sold and distributed by it, has made and is now making various false, deceptive and misleading statements concerning said preparation. Among the said statements which said respondent has used and is now using in its advertisements in magazines and in its circulars distributed with its said preparation are the following:

In Europe women are not distressed about unnatural delay—when the calendar passes the danger mark. They use Dr. Haller's Famous Prescription 5000, and end delay safely, quickly, dependably.

For almost half a century Prescription 5000 has also been dispensed to American women through ethical channels.

Dr. Haller's Prescription 5000 is the best product in the world for cases of unnaturally delayed menstruation.

Whereas in truth and in fact "Dr. Haller's Famous Prescription 5000" does not end delay safely, quickly, dependably, has not been dispensed to American women through ethical channels for almost a half a century, and is not the best product in the world for cases of unnaturally delayed menstruation.

Respondent in its said advertising has created and is now creating upon the public the impression and the belief that "Dr. Haller's Famous Prescription 5000" is a safe and dependable preparation for use in ending cases of unnaturally delayed menstruation, whereas in truth and in fact said "Dr. Haller's Famous Prescription 5000" is not safe and dependable and its use may produce serious results, and it will not end cases of unnaturally delayed menstruation.

PAR. 4. The use by said respondent, Lewyn Drug Incorporated, of the foregoing false, deceptive, and misleading representations has had and does now have the capacity and tendency to and does mislead and deceive the public into the erroneous and untrue belief that "Dr. Haller's Famous Prescription 5000" is in truth and in fact a safe and harmless preparation which will end unnaturally delayed menstruation. Acting in such erroneous belief, the consuming public and especially women suffering from delayed menstruation, have been induced and are now induced to purchase "Dr. Haller's Famous Prescription 5000" in preference to other preparations designed to end delayed menstruation offered for sale by manufacturers, retail dealers, and distributors. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade is unfairly diverted to respondent from such manufacturers, retail dealers, or distributors of other preparations for ending delayed menstruation who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

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PAR. 5. Said false, deceptive, and misleading representations of said respondent contained in its advertisements have resulted in injury to respondent's competitors and to retail dealers and in prejudice to the buying public 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, and 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 September 30, 1936, issued and served its complaint in this proceeding upon respondent Lewyn Drug, Inc., charging it 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 Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it (no testimony or other evidence being introduced by the respondent 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 (no brief having been filed on behalf of respondent and respondent not having requested oral argument); 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, Lewyn Drug, Inc., is a corporation, organized under the laws of the State of California with its principal place of business at 655 North Arden Blvd., in the city of Hollywood, State of California, and with a branch office or place of business at Steubenville, Ohio. Respondent, in 1934, succeeded to the business of a partnership conducted under the name and style of Lewyn Drug Company. Respondent is engaged in the sale and distribution of

various pharmaceutical preparations, including a preparation in tablet and capsule form designated "Dr. Haller's Prescription 5000." Said preparation is manufactured for respondent by others and is sold and distributed by the respondent through wholesale and retail druggists and direct to the consuming public on mail orders. Respondent causes the preparation, "Dr. Haller's Prescription 5000," when sold by it, to be transported from its principal place of business or its branch office through and into various other States of the United States to the respective purchasers thereof, located at various points in such States of the United States other than the States of California and Ohio. In the course and conduct of its said business, respondent has been, and is now, in active competition with various persons, partnerships, and corporations, engaged in the manufacture and sale, or the sale, of various preparations for the treatment of conditions similar to those for which respondent recommends the use of its said preparation, "Dr. Haller's Prescription 5000."

PAR. 2. Respondent, in the course and conduct of its business, represents and recommends its preparation, "Dr. Haller's Prescription 5000," as a safe, dependable remedy for delayed or suppressed menstruation, and claims that, by its use, women suffering from delayed or suppressed menstruation will obtain relief safely, quickly, and dependably.

PAR. 3. In the course and conduct of its business, respondent has caused and is causing advertisements in aid of the sale of its said preparation, "Dr. Haller's Prescription 5000," to be published in newspapers and magazines of general circulation in various States of the United States and has also used and is using advertising in the form of circular letters which it causes to be distributed among its customers and prospective customers. In its said advertisements, respondent has made and is making numerous claims and representations concerning the therapeutic qualities of and the benefits accruing to the users of said preparation, "Dr. Haller's Prescription 5000," and the uses for which said preparation is recommended by the respondent. Among said representations so made by said respondent are representations to the effect:

That in Europe women are not disturbed about unnatural delay, for in such cases they use said prescription and end the delay safely, quickly, and dependably;

That for almost half a century the prescription has been dispensed to American women through ethical channels;

That said preparation, "Dr. Haller's Prescription 5000," is the best product in the world for cases of unnaturally delayed menstruation;

That "Dr. Haller's Prescription 5000" successfully relieves some of the longest and most stubborn cases; and

That with this dependable product countless women have obtained most gratifying results.

PAR. 4. The claims made by the respondent for its preparation "Dr. Haller's Prescription 5000" are false, deceptive, and misleading. Said preparation does not have a wide distribution through the usual wholesale and retail drug channels and it has not been dispensed to American women through ethical channels for almost half a century.

Respondent's said preparation, "Dr. Haller's Prescription 5000" consists of tablets, capsules and ampules, whose respective contents are as follows:

Each white tablet contains:

Ext. Cotton Root Bark-----	1	Grain
Ext. Black Hellebore-----	$\frac{1}{2}$	"
Ergotin (Bonjean)-----	1	"
Aloes (Curacao)-----	$2\frac{1}{2}$	"
Iron Sulphate dried-----	1	"
Oil Pennyroyal-----	$\frac{1}{4}$	Minim
Oil Savin-----	$\frac{1}{4}$	"

Each red tablet contains:

Quinine Sulphate-----	5	Grains
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Each capsule contains:

Ergotin (Bonjean)-----	1	Grain
Oil Savin-----	$\frac{1}{2}$	Minim
Aloin-----	$\frac{1}{8}$	Grain
Apiol Green q. s. to-----	5	Minims

Each ampule contains:

Pituitary Extract-----	$\frac{1}{2}$	cc
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The ingredients composing said preparation are known to the medical profession and to pharmacists as "emmenagogues."

Delayed menstruation may be functional due to a misbalance of the endocrine glands. Delayed menstruation may be due to or caused by any of the severe major diseases, such as tuberculosis, cancer, pneumonia, or hyperthyroidism, or it may be due to pregnancy.

Medical testimony is that where the delayed menstruation is functional due to a misbalance of the endocrine glands or where it is due to such diseases as tuberculosis, cancer, pneumonia or hyperthyroidism, the use of "Dr. Haller's Prescription 5000" would in no way correct the situation, end the delay and bring about menstruation, and

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its use would be definitely dangerous. If the user is suffering from high blood pressure, its use would be dangerous due to the adverse effect on the pressure caused by some of the ingredients, notably pituitary extract, contained in the preparation. In cases where pregnancy exists it would be definitely dangerous because the drugs contained in said preparation are entirely too potent to be administered without the attendance of a physician, and when given without the attendance of a physician and in an overdose it will possibly produce excessive uterine hemorrhage or rupture of the uterus with the invariable danger of puerperal sepsis or secondary infection of the uterine contents with resulting high mortality rate. In many cases said preparation will not expel the uterine contents.

The use of "Dr. Haller's Prescription 5000" will not bring about relief in cases of delayed or suppressed menstruation. It will not end delay safely, quickly and dependably, but is completely ineffectual in many cases and its use is always dangerous. It is not the best product in cases of unnaturally delayed menstruation and it does not successfully relieve some of the longest and most stubborn cases of delayed menstruation. It is not a dependable product and it is not a safe or competent abortifacient.

PAR. 5. Respondent, in its newspaper and magazine advertisements, has made use of various letters of the alphabet preceding its corporate name so that the corporate name would appear to be V. B. Lewyn Drug, Inc., U. S. Lewyn Drug, Inc., etc. Different letters or combinations of letters of the alphabet are used in each advertisement and a number of different combinations were used and are so being used. This was done and is being done for identification purposes in order that respondent might be able to tell which of its advertisements were producing the most results, but each of said advertisements so used were and are published on the authority of the respondent.

PAR. 6. The representations and implications used by the respondent, as above set out, in connection with the offering for sale and sale of the preparation herein described in said commerce, are false, misleading and deceptive and have had, and now have, the tendency and capacity to, and do, mislead and deceive many members of the purchasing public and cause them erroneously to believe that said representations are true and cause them, because of said erroneous belief, to purchase substantial quantities of respondent's said preparation, thereby unfairly diverting trade in said commerce to the respondent from its competitors who truthfully represent their product, to the substantial injury of said competitors in said commerce and to the injury of the public.

Order

CONCLUSION

The aforesaid acts and practices of the respondent, Lewyn Drug, Inc., are to the prejudice of the public and competitors of the respondent, 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 Charles P. Vicini, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint (no testimony or other evidence having been introduced by the respondent), and the brief filed herein (respondent having filed no brief and not having requested an oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent, Lewyn Drug, Inc., 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, Lewyn Drug, Inc., its officers, agents, employees, representatives, or successors, whether acting under said name of Lewyn Drug, Inc., or under any other name or in any other manner, in connection with the offering for sale, sale and distribution of the preparation now known and sold under the name "Dr. Haller's Prescription 5000," or any other preparation, under whatever name sold, composed of the same or similar ingredients, and possessing similar properties, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparation is a safe, dependable remedy for delayed or suppressed menstruation;
2. Representing that by the use of said preparation women suffering from delayed or suppressed menstruation will end such delay or suppression and will obtain relief safely, quickly and dependably;
3. Representing that said preparation has been dispensed to American women through ethical channels for almost a half century;
4. Representing that said preparation is the best product in the world for cases of unnaturally delayed menstruation;
5. Representing that said preparation successfully relieves some of the longest and most stubborn cases of delayed menstruation, and

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that with this said preparation countless women have obtained and are obtaining most gratifying results;

6. And from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation or the benefits accruing from the use thereof.

It is ordered, That the respondent, Lewyn Drug, Inc., 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 the order hereinabove set forth.

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IN THE MATTER OF
AL HARTMAN, INC.

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

Docket 3241. Complaint, Oct. 9, 1937—Decision, Nov. 6, 1937

Where a corporation engaged in manufacture of dresses and sale and distribution thereof to retail dealers and other customers in the various States and in the District of Columbia, in substantial competition with others engaged in such sale and distribution of dresses; in advertising the same in newspapers of interstate circulation—

- (a) Represented, designated and referred thereto as "Indo China Washable Crepe Prints"; and
- (b) Set forth on tags attached to dresses thus advertised, offered and sold, language stating that "Owing to the peculiar delicacy of all silk weaves, manufacturers will not guarantee them as flawless," etc., and that "There are certain characteristics appearing in the weave of all silks that should not be considered as imperfections," etc.;

Notwithstanding fact dresses thus advertised and offered were not composed of silk, product of cocoon of silk worm, as long definitely understood in mind of retail dealers and consuming public from word "silk," products of which have long held, and still hold, great public esteem and confidence for their preeminent qualities, and as understood from word "crepe" without descriptive qualification, as applied to dress goods and other items of wearing apparel, as meaning one of terms applied to fabrics resulting from different types of weaving silk fiber, and fabric made from cocoon of silk worm, and as commonly known and understood by public generally, "silk";

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such dresses were made of silk, and to cause them to purchase said dresses by reason of such erroneous beliefs, thus engendered, and to divert trade unfairly to it from competitors engaged in manufacture and sale of silk dresses who do not misrepresent the kind of dresses made and offered for sale by them; 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. Astor Hogg 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 Al Hartman, Inc., a corporation, hereinafter referred to as respondent, has