

IN THE MATTER OF

ADAH ALBERTY, TRADING AS ALBERTY'S FOOD
PRODUCTS, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2875. Complaint, July 11, 1936—Decision, Nov. 8, 1937*

Where an individual engaged in sale, under various trade names, of numerous baby foods and health preparations purchased by her from various manufacturing druggists and chemists throughout the United States and thereafter packed, bottled, labeled and sold through medium of wholesale houses, and through doctors and health food stores, principally, located throughout the various States, and, as thus engaged in distribution of her said preparations in commerce among the various States, in substantial competition with others engaged in interstate sale of such foods and preparations recommended for use in treatment of various conditions and ailments for which her respective products were sold and recommended; in extensively advertising the same through newspapers in various cities and health magazines, and through booklets and pamphlets describing her said products and furnished to food stores and by them distributed to public, and through advertising cuts furnished to recognized dealers for use in local newspaper advertising, expense of which she assumed in whole or half, as case might be—

- (a) Falsely represented that her "Regular Alberty's Food," "Phosphate Pellets," "Calcatine Pellets," "Cheno Combination Tablets," and "Spleen and Iron Tablets" had therapeutic value, facts being such preparations, by virtue of the composition thereof, were without therapeutic value and might, in the case of two of said products, have detrimental effect in certain cases or result in strychnine poisoning if long continued in use, and especially in case of children;
- (b) Falsely represented that her "Laxative Blend" and "Hemoglobin Tonic Tablets" had therapeutic value, and that former affected the muscles of the intestines and latter would produce blood regeneration, facts being former did not thus stimulate such muscles in the physiological sense, or affect said muscles, other than as they might be affected by the cathartic Senna ingredient, and only active constituent thereof, latter preparation would not produce blood regeneration nor act as a tonic, and both were without therapeutic value;
- (c) Falsely represented that her said preparation "Cheno," by virtue of the composition thereof, would bring about weight reduction, notwithstanding preparation in question contained no ingredient which, in and of itself, caused or produced any reduction in weight of person using the same;
- (d) Falsely represented that her "Old Style" Food and other Food, sold under her personal trade name, were foods with special therapeutic values, and that latter rebuilt the intestinal tract, was only food so to do, eliminated rickets and other calcium starvation diseases in people, and so modified milk that calcium element was assimilated, and that through use thereof

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more calcium and phosphorus were stored in the body than through use of three or four times the quantity of ordinary milk, and that it was the only food discovered which offsets acidosis, and was most powerful alkaline food known, notwithstanding fact former preparation, composed in part of skimmed milk, had no special therapeutic value beyond such value as ordinary milk might have as food, and use thereof could possibly cause gastrointestinal disturbances, her said so-called "New Style" Food was made from condensed milk combined under certain process with her so-called Food, and her said Food was not necessarily such and had no special therapeutic value beyond that of ordinary milk;

- (e) Misrepresented cause and effect of excess of magnesium in the body and character and properties of said substance, and effect on the system of a lack thereof, and results and benefits accruing from the taking thereof, and falsely represented that she was the first person in the United States to recognize its value, and that it was a great rejuvenative agency and that the taking of her said Food supplied the necessary calcium to the body in proper quantities, and that stunted growth, tooth decay, acidosis, sickness, suffering, premature old age and death were due either to lack of, or inability to assimilate, calcium;
 - (f) Deceptively represented that the spleen controls the sex organs, and that acid fruits or vinegar, as "foreign acids," destroy red blood corpuscles and have detrimental effect on the spleen, and that acidosis is one of the contributing causes of waning sex life, and that her gland treatment would produce or bring about beneficial results to user;
 - (g) Deceptively represented that bismuth subnitrate had a soothing effect on the digestive tract and was a valuable harmless remedy, and that gall bladder should never be removed;
 - (h) Represented that her various products had a value and efficacy which they did not possess, through citing case histories of supposedly disinterested parties relating to such matters as asserted value of calcium and her said Food and treatment and reducing preparation, without disclosing fact that subjects thereof were parties in interest, and through citing such cases, histories of which were not true, and through use of testimonials which were untrue in fact or not given by persons alleged to have given testimonials in question; and
 - (4) Represented, through use of word "laboratory" and references to discoveries by her said "laboratories" and through other references thereto, and their alleged part in discovery, etc., of preparations in question, and through her trade name and otherwise, that she conducted, operated, or maintained a laboratory for the purpose of manufacturing, testing and experimenting with the various preparations sold by her, notwithstanding fact she did not own, operate or maintain any laboratories or manufacture or test any of her said various preparations;
- With capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that the various preparations sold and distributed by her had great therapeutic value, and that use thereof would result in benefit to the user, and to induce purchasing public to buy said preparations in preference to others designed and sold for the treatment of the various ailments for which her respective products were recommended and offered, by manufacturers, retailers, and distributors, and with result of unfairly diverting trade to her from such manufacturers, retailers, or

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distributors of such other preparations, and who do not misrepresent the character and quality of their own respective products or the results to be obtained from the use thereof:

Held, That such acts and 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.

Mr. W. I. Gilbert, Jr., of Los Angeles, Calif., for respondent.

COMPLAINT ¹

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 Adah Alberty, trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, 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. Said respondent, Adah Alberty, is an individual trading and doing business under the names and styles of Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, with her office and place of business located at 729 Seward Avenue in the city of Hollywood, within the State of California. Said respondent is now and for more than three years last past has been engaged in the sale of a number of baby foods and health preparations under various trade names, and in the distribution thereof between and among the various States of the United States. Respondent causes said baby foods and health preparations, when sold by her, to be transported in interstate commerce to the purchasers thereof located in the various States of the United States. There is now, and for more than three years last past has been, a constant current of trade and commerce by respondent in said baby foods and health preparations between and among the various States of the United States. In the course and conduct of her business

¹ The complaint as published omits, in the interest of brevity, numerous quoted, alleged, false, deceptive and misleading statements set forth at length in Par. 4 thereof, allegedly made by respondent concerning the therapeutic value and benefits to be achieved by using the same, said various quoted matter, thus omitted, being set forth verbatim in correspondingly numbered paragraph of the findings, *infra*, at page 1372.

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the said respondent is now and for more than three years last past has been in substantial competition in commerce between and among the various States of the United States with various other individuals, firms, partnerships, and corporations, engaged in the interstate sale of baby foods and health preparations.

PAR. 2. Among the various baby foods and health preparations sold by said respondent are preparations known and designated as follows:

- Regular Alberty's Food
- Instant Alberty's Food—(old form)
- Instant Alberty's Food—(new form)
- Alberty's Phosphate Pellets—(formerly called Nerve Food Pellets)
- Alberty's CA—MO—(formerly called Calcatine products)
- Alberty's Laxative Blend—(formerly called German Herb Lax-Tonic)
- Cheno Combination Tablets—(formerly called Restorex Cheno Tablets)
- Chena Phytolacca Berry Juice
- Cheno Herb Tea
- Alberty's No. 3 Tablets—(formerly called Alberty's Spleen and Iron Tablets)
- Alberty's Special Formula Tablets—(formerly called Hemoglobin Tonic Tablets)
- Alberty's Labara Tablets—(formerly called Labara cell salts)
- Alberty's Herb Laxative
- Alberty's Vegetable Compound Capsules
- Alberty's Phenix Pluri-Gland Tablets for Women
- Alberty's Phenix Pluri-Gland Tablets for Men
- Malto-De
- Alberty's Dextrose
- Concentrated Meloripe Banana Powders
- Alberty's Cero-Fig Coffee

All of said preparations are manufactured for said respondent by various manufacturing druggists located throughout the United States and are purchased from said manufacturers by said respondent. Said preparations are packed and bottled by said respondent and are then labelled and sold by said respondent throughout the United States through wholesale houses and doctors and principally through health food stores located throughout the various States of the United States.

PAR. 3. In the regular course and conduct of her business, as hereinbefore set out in paragraph 1, said respondent has been and now is engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of the various baby foods and health preparations sold and distributed by her. As media of advertising said respondent has used and is now using newspapers located in various cities throughout the United States, health magazines, booklets, and pamphlets.

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In advertising the various preparations sold by her, said respondent furnishes booklets and pamphlets describing said products to the various food stores and these booklets and pamphlets are in turn distributed by the said food stores to the public. Respondent also furnishes advertising cuts to certain recognized dealers who insert the advertisements in local newspapers in the cities in which they are located. In some instances said respondent pays the entire expense of the newspaper advertisements, and in other instances said respondent pays one-half of the expense of the advertising.

PAR. 4. Said respondent, in her said advertisements of baby foods and health preparations sold by her, has made and is now making various false, deceptive, and misleading statements concerning the therapeutic value and benefits to be achieved by using said baby foods and health preparations sold and distributed by said respondent, among which said false, misleading, and deceptive statements are the following:²

PAR. 5. Said respondent, Adah Alberty, in the regular course and conduct of her said business trades under various names, among which are Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, and Cheno Laboratories, whereas in truth and in fact said respondent does not maintain or operate any laboratory, does not manufacture the products sold and distributed by her, and does not test any of the said products, but confines her activities to packing, bottling, and labelling the said preparations which are bought by her in bulk from various manufacturers.

PAR. 6. The use by the said respondent, Adah Alberty, trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, of the foregoing false, deceptive, and misleading representations alleged to be used by the said respondent in paragraph 4 hereof, and the use by the said respondent of said vari-

² The quoted matter which follows here at length, dealing with the asserted therapeutic value and benefits to be obtained by using said preparations, is, with the five exceptions below set forth, reproduced verbatim in the correspondingly numbered paragraph of the findings, *infra*, at page 1372, and is accordingly omitted here in the interest of brevity, the five exceptions referred to being as follows, namely:

Laboratory tests show that magnesium and not calcium is the mineral which deposits itself wherever convenient, it being a sedative, sluggish, lazy mineral.

Calcium is the most difficult, being a "peppy," quick-acting mineral.

Mrs. Alberty, of the Alberty Laboratories, who has spent her life in the study of dietetics, discovered the "missing link."

Today our streets are filled with men and women of small stature—many of them less than five feet tall. They are weak, prematurely old, toothless, and bald-headed, and yet many are not old in years.

Sickness, suffering, premature old age, and death, is due to either a lack of calcium in the daily diet, or else the inability to assimilate it.

ous trade names containing the words "laboratory" and "laboratories" as alleged in paragraph 5 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that the various baby foods and health preparations sold by said respondent have great therapeutic value and that the use of the same will result in material benefit to the user, and that the said respondent maintains and operates laboratories where said products are manufactured and tested by her, and has thereby induced, and does now induce, the consuming public and especially that portion of the public which purchases baby foods and health preparations, acting in said erroneous belief, to purchase the baby foods and health preparations sold and distributed by said respondent in preference to baby foods and health preparations offered for sale by manufacturers and other distributors of baby foods and health preparations who do not falsely, deceptively and misleadingly advertise their said products. As a result of such false, deceptive, and misleading representations on the part of said respondent, and contained in various books and pamphlets, instrumentalities are placed in the hands of food stores and dealers throughout the country who, by distributing the same to the public, thereby are enabled to dispose of respondent's products in preference to products which are truthfully advertised. As a result of such false, deceptive and misleading representations on the part of said respondent, trade has been diverted to respondent from such manufacturers and distributors of baby foods and health preparations who do not falsely, deceptively, and misleadingly advertise their products, and thereby injury has been done, and is being done, by said respondent.

PAR. 7. Said false, deceptive, and misleading representations of said respondent contained in her advertising have resulted in injury to respondent's competitors and to retail dealers and distributors, 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 the 11th day of July 1936, issued and served its complaint in this proceeding upon the respondent,

Adah Alberty, an individual trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, charging her 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, and in opposition to the allegations of the complaint by W. I. Gilbert, Jr., attorney for the respondent; 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 briefs in support of the complaint and in opposition thereto, counsel for the respondent having not 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. The respondent, Adah Alberty, is an individual trading and doing business since September 1935, under the name and style of Alberty's Food Products. Prior to September 1935, said respondent conducted her said business under the names of Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey. Respondent maintains her office and place of business at 729 Seward Avenue in the city of Hollywood within the State of California. The respondent is now, and for more than three years last past has been, engaged in the sale of a number of baby foods and health preparations under various trade names, and in the distribution thereof in commerce between and among the various States of the United States. Respondent causes said baby foods and health preparations, when sold by her, to be transported from her aforesaid place of business in the State of California to the purchasers thereof located in the various States of the United States other than California. There is now, and for more than three years last past has been a constant current of trade and commerce by respondent in said baby foods and health preparations between and among the various States of the United States.

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In the course and conduct of her business, the respondent is now, and for more than three years last past has been, in substantial competition in commerce between and among the various States of the United States with various other individuals, firms, partnerships, and corporations engaged in the interstate sale of baby foods and health preparations recommended for use in the treatment of the various conditions or ailments for which respondent's respective products are sold and recommended.

PAR. 2. Among the various baby foods and health preparations sold by said respondent are preparations known and designated as follows: Regular Alberty's Food; Instant Alberty's Food (Old Form); Instant Alberty's Food (New Form); Alberty's Phosphate Pellets (formerly called Nerve Food Pellets); Alberty's Ca-Mo (formerly called Calcatine Products); Alberty's Laxative Blend (formerly called German Herb Lax-Tonic); Cheno Combination Tablets (formerly called Restorex Cheno Tablets); Cheno Phytolacca Berry Juice; Cheno Herb Tea; Alberty's No. 3 Tablets (formerly called Alberty's Spleen and Iron Tablets); Alberty's Special Formula Tablets (formerly called Hemoglobin Tonic Tablets); Alberty's Labara Tablets (formerly called Labara Cell Salts); Alberty's Herb Laxative; Alberty's Vegetable Compound Capsules; Alberty's Phenix Pluri-Gland Tablets for Women; Alberty's Phenix Pluri-Gland Tablets for Men; Malto-De; Alberty's Dextrose; Concentrated Meloripe Banana Powder; Alberty's Cero Fig Coffee.

All of said preparations are manufactured for said respondent by various manufacturing druggists and chemists located through the United States, and are purchased by the respondent from said manufacturers. Respondent packs, bottles, and labels said preparations, and sells them throughout the United States through the medium of wholesale houses and doctors, and principally through health food stores located throughout the various States of the United States.

PAR. 3. In the regular course and conduct of her business, respondent has been, and now is, engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of the various baby foods and health preparations sold and distributed by her. As media of advertising, said respondent has used, and is now using, newspapers located in various cities throughout the United States, health magazines, booklets, and pamphlets. In advertising the various preparations sold by her, said respondent furnishes booklets and pamphlets describing said products to the various food stores, and these booklets and pamphlets are in turn

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distributed by the said food stores to the public. Respondent also furnishes advertising cuts to certain recognized dealers who insert the advertisements in local newspapers in the cities in which they are located. In some instances, said respondent pays the entire expense of the newspaper advertisements, and in other instances said respondent pays one-half of the expense of the advertising.

PAR. 4. The respondent, in her said advertisements of baby foods and health preparations sold by her, has made, and is now making, various statements concerning the therapeutic value and benefits to be achieved by using said baby foods and health preparations sold and distributed by respondent, among which said statements are the following:

It (Alberty's Food) rebuilds the intestinal tract and is the only food yet discovered that does.

It was proved that magnesium excess is caused either by certain home remedies, or dietary errors, foods rich in magnesium and low in protein and calcium.

Magnesium gradually accumulates in every portion of the body as calcium lessens—causing acid excess and a dormant condition of cells, tissues and nerve shafts.

The gall bladder should never be removed.

The Alberty Laboratories were the first concern in the United States to recognize the real value of this wonderful life-giving substance—calcium.

Over 800,000 people will die this year from preventable diseases caused by faulty diet!

The spleen seems to take first place in connection with the sex organism. For instance, when women in advanced cases of anemia cease to menstruate, the spleen is the first organ in the body involved. The spleen must first be aroused into activity before normal sex life can fully be restored.

Acidosis is one of the contributing causes of waning sex life.

Acid fruits or vinegar being "foreign acids", have a detrimental effect on the spleen, destroying red blood corpuscles.

Alberty's foods is the combination that unlocks this wonder-working calcium, exposing the "Guarded Treasure" to the digestive juices.

Never before has anyone thought of, or attempted to combine a nerve restorer with a gland rejuvenator.

It has been said that Mrs. Alberty's discovery will revolutionize gland treatment.

Sperum (from the interstitial cells of Leydig). It increases dynamos—muscular, nervous and sexual, and it hemostimulates the gonads. Its effect on the sex organism is very marked and never fails to give satisfactory results.

The cause of stunted growth, tooth decay, acidosis, sickness, suffering, premature old age and death, is due to either a lack of calcium in the daily diet, or else the inability to assimilate it.

That Alberty's Food eliminates rickets and other calcium-starvation diseases in both children, adults and animals, is now being recognized by many physicians throughout the United States.

That Alberty's Food does modify milk so that the calcium element is assimilated is a proven fact beyond dispute.

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Tests have proved conclusively that more calcium and phosphorus are stored up in the body in normal amounts, by using *Alberty's Food* even when the intake of ordinary milk is three or four times greater than the quantity of *Alberty's Food* used.

Long ago, the Alberty Laboratories discovered that calcium was a great rejuvenating agency. People taking the Alberty Treatment looked years younger and felt that way.

Alberty's Food is the only food ever discovered that does offset acidosis. Acidosis can only be neutralized by a powerful alkaline—the Alberty Combination makes the most powerful alkaline food known.

Bismuth subnitrate has a soothing effect on the digestive tract and is a valuable harmless remedy.

The above and foregoing representations made by said respondent concerning her said baby food and health preparations and contained in her advertisements thereof are extravagant and misleading and, therefore, necessarily deceptive.

PAR. 5. Respondent does not own, operate or maintain any laboratories, and she does not manufacture or test any of the various baby foods and health preparations which are sold and distributed by her in interstate commerce.

PAR. 6. Respondent's preparation, Labara Pellets are homeopathic pellets known as "Natrurn Sulphate."

Respondent's preparation, Alberty's Phosphate Pellets are homeopathic pellets composed of $\frac{1}{1000}$ grain each of potassium phosphate, sodium phosphate, iron phosphate, and calcium phosphate. Medical testimony is that these pellets are a polypharmaceutical mixture of insoluble phosphates of calcium, iron, soda and potassium and that the doses contained therein are too small to do any good and the preparation is without therapeutic value.

Respondent's preparation, Calcantine Pellets, are homeopathic pellets known as Calca-Phosphate. Medical testimony shows that said pellets contain a trace of calcium phosphate which is the least soluble form of calcium and that they do no good and have no therapeutic value.

Respondent's preparation, Alberty's Laxative Blend (formerly called German Herb Lax-Tonic) consists of Elder flowers, Ononis root, Buchu Leaves, Gnaia wood, Shave grass, Yarrow, Althea leaves, Buck thorn, Uva-Ursi leaves, Dog grass, Nettle leaves, Licorice root, Peppermint, Sassafras bark, Anise seed, Fennel seed, and Senna leaves. Medical testimony is that this preparation is a mixture of ten crude drugs and that the only active constituent is Senna which is a cathartic. The remainder of the constituents of the preparation are obsolete and are without additional value. The cathartic action of the preparation is due to Senna but the Senna contained therein does

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not stimulate the muscles of the intestines in the physiological sense of stimulation and the preparation is without therapeutic value.

Respondent's preparation, Cheno Combination Tablets, (formerly called Restorex Cheno Tablets) are composed of dehydrated vegetables containing Dulse, Okra, Irish moss, Rhubarb root, Celery, Spinach, Homeopathic calca phos, and combined phosphates. Medical testimony is that this preparation is without any therapeutic value.

Respondent's preparation, Alberty's Spleen and Iron Tablets, now known as Alberty's No. 3 Tablets, are composed of Spleen substance, 1 grain, Reducing Iron, $\frac{1}{4}$ grain, Gadual, $\frac{3}{5}$ grain, Zinc Phosphate, $\frac{1}{20}$ grain, Berberine Sulphur Neutral, $\frac{1}{32}$ grain, Ginger, $\frac{1}{4}$ grain, Strychnine, $\frac{1}{960}$ grain. Medical testimony is that said preparation is a polypharmaceutical mixture of a number of obsolete drugs. The only ingredient claimed to be present in the preparation which would in any way have some value is iron but the quantity claimed to be present is too small to be of any significance and the preparation is without therapeutic merit or value. While the strychnine contained therein is claimed to be only $\frac{1}{960}$ of a grain, strychnine is a powerfully acting drug when used in sufficient doses and if the preparation were used over a long period continually and especially by children, it could result in strychnine poisoning.

Respondent's preparation, Alberty's Special Formula Tablets (formerly called Hemoglobin Tonic Tablets) according to medical testimony have no therapeutic value. Its use will not produce blood regeneration and the use of it would not act as a tonic.

Respondent's preparation, Regular Alberty's Food, is composed of cereals, mainly wheat, which is combined with organized calcium phosphate which is prepared from finely ground beef bone. Medical testimony is that the composition of the preparation is such as to indicate that the mixture is not necessarily a food and that it has no therapeutic value. The use of the preparation might have a detrimental effect on some persons, especially if the wheat claimed to be therein is whole wheat.

Respondent's preparation, Old Style Instant Alberty's Food is partially skimmed milk prepared with Alberty's Food dried on steam rollers. Medical testimony is that said preparation would not have any special therapeutic value any more than ordinary milk might have as a food and that its use could possibly cause gastro-intestinal disturbances.

Respondent's preparation, New Style Alberty's Food, is made from condensed ordinary milk combined with Alberty's Food run through

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a homogenizer and visculized spray dried. Medical testimony is that Alberty's Food is not necessarily a food and that it has no special therapeutic value beyond that of ordinary milk.

Respondent's preparation, Cheno Herb Tea, is composed of Kelp bean shells, Licorice, Peppermint, Black elder bark, Anise Seed, Coriander seed, Fennel seed, Chickwood, Sassafras bark, Rest-harrow, Senna, and Ivy. Medical testimony is that said preparation does not contain any ingredient which in and of itself causes or produces any reduction in weight in the person using said preparation.

PAR. 7. Respondent, in a booklet entitled "Calcium—The Staff of Life", which said booklet was written by the respondent and is distributed by her in aid of the sale of her said preparations, in connection with various photographs contained therein, gives the case history of various users of her said preparations and states what are purported to be the results obtained by the respective users of her said preparations. The photographs exhibit persons either in apparent health or for the purpose of contrasting the apparent comparative health of the person, exhibits the persons before and after using the preparations.

In one case respondent misrepresents the condition of the patient after taking her preparation in that she represents the patient to have been suffering with ulcers in the duodenum and pylorus, as being forced to live on a liquid diet and being unable to work, and that after taking Alberty's Food he was able in three weeks' time to go to work, in two months' time he had gained eight pounds, and can now eat solid food and works every day. As a matter of fact, the patient, after using her treatment, is still suffering with ulcers in the duodenum and pylorus, he was unable to go to work within three weeks after starting Alberty's Food, and although he gained some weight he was, at the same time during which he took respondent's treatment, living on a diet and following practices that would naturally tend to increase his weight, and he was unable in two months to work every day and eat solid food.

In said pamphlet, respondent also represented that a certain Albert Smith, suffering from an advanced case of tuberculosis which had produced a large cavity in his lung, was treated by the use of Alberty's Food, and that after one week's use of said Food there was such an improvement in the patient that the attending physician was amazed, that the improvement continued, and that the patient was now "back home established in business." She also represented that prior to the beginning of the treatment, a noted lung specialist had stated that the patient Smith's case was hopeless. As a matter of

fact, the patient was not visited by a lung specialist, and the person referred to in respondent's statement as a lung specialist was, in fact, a doctor of osteopathy and a doctor of divinity. There was not such improvement as to "amaze" the attending physician, and said product, Alberty's Food, did not and could not have produced the therapeutic effects and benefits represented in respondent's booklet.

In said pamphlet, respondent gives the case history of a child using the Alberty treatment who, at the age of thirteen years, was 4 feet 9 inches in height and weighed 77 pounds, and at the age of fourteen years was 5 feet in height and weighed 93 pounds, which case history purports to be the history of a disinterested person whereas, in truth and in fact, the history reported is that of the grandchild of said respondent. Further, the said Alberty's treatment did not and could not have produced the therapeutic benefit and effect claimed for it in this case.

In the booklet "Cheno—Keep or Regain that Youthful Figure," written by said respondent and distributed by her in aid of the sale of her said products, respondent gives the case history of a patient who took Cheno Tablets for the purpose of reducing her weight. Said booklet contains a testimonial purported to have been written by the user of said preparation. In truth and in fact, the said testimonial was not written by the user of said preparation, nor were the results claimed to have been obtained by the said testimonial in truth and in fact so obtained. The use of the preparation Cheno did not and could not have produced the beneficial and therapeutic results and effects attributed to it by said testimonial and, in truth and in fact, the loss in weight brought about was produced by a strict diet, extending over a period of months, and strenuous exercise.

PAR. 8. The advertisements and representations made to the purchasing public by the respondent, as hereinbefore set out in paragraph 4, are false and misleading. They have had, and do now have, the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that the various preparations sold and distributed by the respondent have great therapeutic value and that the use of said products will result in benefit to the user, and to induce such purchasing public to purchase said preparations in preference to other preparations designed and sold for the treatment of the various ailments for which respondent's respective products are recommended and offered for sale by manufacturers, retail dealers and distributors. The result of such false, deceptive and misleading representations on the part of said respondent is to unfairly divert trade to said respondent from such manufacturers, retailers, or dis-

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tributors of other preparations for use in treating the various ailments for which respondent's respective products are recommended, who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, Adah Alberty trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, 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 and in opposition thereto and the briefs filed herein, the respondent not having requested oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondent, Adah Alberty, 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, Adah Alberty, an individual, individually, and trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, or trading under any other name, her representatives, agents and employees, in connection with the offering for sale, sale and distribution of various baby foods and health preparations now sold by her under various and sundry names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the preparations now designated as Regular Alberty's Food, Alberty's Phosphate Pellets, Calcatine Pellets, Cheno Combination Tablets and Alberty's Spleen and Iron Tablets, or any other preparations composed of the same or similar ingredients and

possessing similar properties under whatever name sold, have any therapeutic value;

2. Representing that the preparations now designated as Old Style Instant Alberty's Food and Alberty's Food, or any other preparations composed of the same or similar ingredients and possessing similar properties under whatever name sold, are foods and have any special therapeutic value over and beyond the ordinary value of milk;

3. Representing that the preparation now designated as Alberty's Laxative Blend, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, has any therapeutic value or affects the muscles of the intestines, other than that the Senna contained in the compound is a cathartic;

4. Representing that the preparation now designated as Hemoglobin Tonic Tablets, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, is a tonic, will produce blood regeneration or has any therapeutic value;

5. Representing that the preparation now designated as Cheno, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, contains any ingredient which will cause or produce a weight reduction or that by the use thereof the user will bring about a reduction in weight;

6. Representing that the preparation now designated as Alberty's Food, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, rebuilds the intestinal tract and is the only food which accomplishes this result; that it eliminates rickets and other calcium-starvation diseases in children, adults and animals; that it modifies milk so that the calcium element is assimilated; that by taking it more calcium and phosphorus are stored up in the body than would be by the use of three or four times the quantity of ordinary milk; that it is the only food discovered that offsets acidosis and is the most powerful alkaline food known;

7. Misrepresenting the cause of and the effect of an excess of magnesium in the human body;

8. Misrepresenting the character and properties of calcium, the effect on the system of a lack of calcium content, and the results and benefits accruing from the taking of calcium;

9. Representing that respondent was the first person in the United

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States to recognize the value of calcium; that calcium is a great rejuvenating agency; that the taking of Alberty's Food supplies the necessary calcium to the body in the proper quantities; and that stunted growth, tooth decay, acidosis, sickness suffering, premature old age, and death are due either to a lack of calcium or the inability to assimilate it;

10. Representing that the spleen controls the sex organism and that acid fruits or vinegar, being "foreign acids", have a detrimental effect on the spleen, destroying red blood corpuscles;

11. Representing that acidosis is one of the contributing causes of waning sex life;

12. Representing that respondent's gland treatment will produce or bring about any beneficial results to the user;

13. Representing that bismuth subnitrate has a soothing effect on the digestive tract and is a valuable, harmless remedy;

14. Representing that the gall bladder should never be removed;

15. Representing by citing case histories of supposedly disinterested parties without disclosing the fact that the subjects of the case histories are parties in interest, by citing purported case histories of users thereof which said case histories are not true, and by the use of testimonials which are untrue in fact or which were not given by the person alleged to have given the testimonial that the various products sold by her have a value and efficacy which they do not possess;

16. Representing through the use of the word "laboratory," or any other term of similar meaning or like import, as a part of her trade name, or in any other manner or through any other means or device, that she conducts, operates or maintains a laboratory for the purpose of manufacturing, testing or experimenting with the various preparations sold by her, until and unless she actually owns and operates, or directly and absolutely controls, a laboratory maintained for said purposes;

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

It is further ordered, That the respondent, Adah Alberty, an individual, shall, within 60 days after service upon her of this order, file with the Commission a report in writing setting forth in detail the manner and form in which she has complied with the order hereinbefore set forth.

Syllabus

IN THE MATTER OF
LAVOPTIK 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 3188. Complaint, July 24, 1937—Decision, Nov. 8, 1937*

Where a corporation engaged in sale and distribution of its "Lavoptik," alleged remedy for diseases and ailments of the eye, to consumers in other states and in the District of Columbia, through medium of direct sales to druggists, optometrists, oculists, and ophthalmologists, for resale to retail trade and thus to ultimate consumer and general public, in competition with those similarly engaged, including among such competitors those engaged in sale of preparations recommended for use in treatment of such diseases, ailments or conditions as those mentioned in its advertising, but who truthfully represent their products and the therapeutic value which may be attributed thereto, and honestly vend the same; in advertising its said "Lavoptik" through the radio, magazines, newspapers and mails—

- (a) Represented that the same had been endorsed by "6,000 eyesight specialists," notwithstanding fact it had not been and was not recommended by 6,000 graduate medical doctors especially trained in the treatment of the eyes; and
- (b) Represented, directly or by inference, that said preparation would restore strength to the eyesight, and that use thereof would be a constant protection for the eyes, and that it constituted a cure or remedy for, and would heal, diseases of the eye, facts being preparation was composed of a boric base combined in distilled water with certain substances, and constituted an astringent lotion or eyewash for use in local, non-systemic, non-functional, non-constitutional, non-refractive ailments, and diseases of the eye, and would not heal or cure infections and diseases thereof due to constitutional, functional, systemic, or refractive ailments, diseases, and causes, nor restore sight to, nor strengthen, the eyes, nor heal, cure, or rejuvenate strained or impaired eyesight, nor protect the eyes from strain;

With tendency and capacity to cause members of purchasing public to form erroneous beliefs and impressions as above indicated, and with result that many thereof, acting under such erroneous beliefs, bought its said preparation, and with capacity and tendency further to unfairly divert to it trade of competitors engaged in selling, in interstate commerce, preparations or remedies truthfully advertised, represented and recommended for use in connection with treatment of various diseases and ailments enumerated by it; to the substantial injury of competitors in commerce:

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

Mr. Carrel F. Rhodes for the Commission.

Sanborn, Graves, Appel, Andre & Morton, of St. Paul, Minn., for respondent.