

Complaint

27 F. T. C.

IN THE MATTER OF
GATES MEDICINE 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 3483. Complaint, July 9, 1938—Decision, Oct. 4, 1938

Where a corporation engaged in offer, sale, and distribution of "Rock-A-Water Tablets" for reduction of weight; in advertising its said product in newspapers and other advertising matter circulated among purchasers and prospective purchasers in the various States and in the District of Columbia—

Represented, under caption "*Reduce Safely Says Noted Authority*," that its said tablets would reduce 10 pounds in 11 days, and preparation was guaranteed to make user lose weight without dieting, facts being it did not constitute harmless agency for reduction of weight and could not be taken with impunity by all persons using same, and did not have approval of any noted authority and was not such a product as to assure anyone of any specific reduction within any definite period of time;

With effect of misleading and deceiving purchasers and prospective purchasers into false and erroneous belief that it constituted safe and harmless treatment for aforesaid purpose and had approval of a competent and noted authority, and that definite reduction, as aforesaid, could be assured through taking the same, and of thereby inducing its purchase in reliance upon such beliefs, and of diverting trade unfairly to it from those competitors who do not falsely or misleadingly represent the safety or efficacy of their products; to the substantial injury of competition in commerce:

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

Mr. Jay L. Jackson for the Commission.

Kay, Casto & Amos, of Charleston, W. Va., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Gates Medicine Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Gates Medicine Co., Inc., is a corporation organized, existing, and doing business, under and by virtue of the laws of the State of West Virginia, with its principal office and

place of business located in the city of Charleston, State of West Virginia. For more than 1 year last past said respondent has been, and now is, engaged in the business of offering for sale, selling, and distributing a prepared product for the reduction of fat and weight in human beings, called "Rock-a-Water Tablets," in commerce among and between the various states of the United States and in the District of Columbia. In the course and conduct of said business respondent has caused and causes said product, when sold or ordered, to be shipped and transported from its aforesaid place of business to purchasers thereof located in States other than the State of West Virginia, and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent has been and now is in competition with other corporations, and with partnerships, and individuals, engaged in the business of offering for sale, selling, and distributing products, used or useful for the reduction of body fat and as a treatment for obesity or overweight, in commerce among and between the various States of the United States, and in the District of Columbia. Among said competitors are many who truthfully represent the efficacy of their products.

PAR. 3. In the course and conduct of its business, as aforesaid, and for the purpose of inducing the purchase of its "Rock-a-Water Tablets," respondent has caused certain advertising to appear in newspapers, and in other forms of advertising matter, circulated among purchasers and prospective purchasers located in various States of the United States and in the District of Columbia, where the respondent makes, among others, the following statements and representations:

Reduce Safely

Says Noted Authority

Go to Nevins Drug Store and get a box of Rock-A-Water Tablets. Reduce 10 pounds in 11 days. Thirty day treatment only \$2.00, and guaranteed to make you lose fat without dieting.

In truth and in fact and contrary to the aforesaid statements and representations, the said "Rock-a-Water Tablets," so offered, represented and sold by the respondent, do not constitute a safe or harmless agency for the reduction of fat or body weight and cannot be taken with impunity by all persons who use the same. The said product does not have the approval of any "noted authority." The said product is such that it will not assure anyone of any definite reduction in fat or decrease in weight within any definite period of time.

PAR. 4. The aforesaid statements and representations made by the respondent in connection with the offering for sale and sale of its product have had and have the tendency and capacity to, and do, mislead and deceive purchasers and prospective purchasers thereof into the false and erroneous belief that the said statements and representations are true and that the said product constitutes a safe and harmless treatment for the reduction of body fat or weight, that the same has the approval of a competent and noted authority, and that a definite reduction of 11 pounds in 10 days can be and is assured as a result of the taking of said product, and thus into the purchase of said product in reliance upon such beliefs induced as aforesaid. As a result, trade has been and is diverted unfairly to respondent from those of its competitors who truthfully represent their products and who do not engage in the practices herein alleged. In consequence thereof, substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 9, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Gates Medicine Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 6, 1938, the respondent filed its answer, in which it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, 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, Gates Medicine Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and

place of business located in the city of Charleston, State of West Virginia. Respondent now is, and for more than 1 year immediately past has been, engaged in the business of offering for sale, selling, and distributing in commerce among and between the various States of the United States and in the District of Columbia, a prepared product, called "Rock-A-Water Tablets," for the reduction of fat and weight in human beings. In the course and conduct of the business aforesaid, respondent has caused and causes said product, when sold or ordered, to be shipped and transported from its said place of business in West Virginia to purchasers thereof located in States other than the State of West Virginia, and in the District of Columbia.

In the course and conduct of the business aforesaid, respondent has been, and now is, in competition with other corporations, and with partnerships, and individuals engaged in the business of offering for sale, selling and distributing, in commerce, among and between the various States of the United States and in the District of Columbia, products which are used or useful for the reduction of body fat or as a treatment for obesity or overweight. Among said competitors are many who truthfully represent the efficacy of their products.

PAR. 2. In the course and conduct of the business aforesaid, and for the purpose of inducing the purchase of its said product, respondent has caused and causes certain advertising to appear in newspapers and in other forms of advertising matter, circulated among purchasers and prospective purchasers located in various States of the United States and in the District of Columbia, wherein respondent has made and makes, among others, the following statements and representations:

Reduce Safely

Says Noted Authority

Go to Nevins Drug Store and get a box of Rock-A-Water Tablets. Reduce 10 pounds in 11 days. Thirty day treatment only \$2.00, and guaranteed to make you lose fat without dieting.

In truth and in fact and contrary to the aforesaid statements and representations, the product sold so represented by respondent does not constitute a safe or harmless agency for the reduction of fat or body weight and cannot be taken with impunity by all persons who use the same. The product does not have the approval of any "Noted Authority" and is such that it will not assure anyone of any definite reduction in fat or decrease in weight within any definite period of time.

The aforesaid statements and representations have the tendency and capacity to, and do, mislead and deceive purchasers and pros-

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pective purchasers of respondent's product into the false and erroneous belief that the said product constitutes a safe and harmless treatment for the reduction of body fat or weight, that the same has the approval of a competent and noted authority, and that a definite reduction of 10 pounds in 11 days can be assured as the result of the taking of said product, and thereby induces the purchase of said product in reliance upon such beliefs. As a result thereof, trade has been and is diverted unfairly to respondent from those of its competitors who do not falsely or misleadingly represent the safety or efficacy of their products. In consequence thereof substantial injury has been and is done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, Gates Medicine Co., Inc., are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact as set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Gates Medicine Co., Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution in interstate commerce and in the District of Columbia of the product now designated as "Rock-A-Water Tablets," or of any product or products of substantially the same or similar ingredients, or possessing the same or similar properties, under the same or any other name or names, do forthwith cease and desist, directly or indirectly, from representing:

1. That said product constitutes a safe or harmless agency, which may be taken with impunity by all persons, for the reduction of fat or decrease in body weight;

2. That the use of said product will cause the user to "reduce 10 pounds in 11 days" or result in any definite reduction of fat or decrease in body weight within any definite period of time;

3. That said product has the approval of a "noted authority" or any other authority, when such is not the fact.

It is further ordered, That the respondent shall, within 10 days after service upon it of this order, file with the Commission an interim report in writing stating whether it intends to comply with this order, and, if so, setting forth in detail the manner and form in which it intends to comply; and that, within 60 days after service upon it of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
**ADOLPH SPATER, INDIVIDUALLY AND TRADING AS
LEE SALES COMPANY**

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

Docket 3492. Complaint, July 14, 1938—Decision, Oct. 6, 1938

Where an individual engaged in sale and distribution of watches, cameras, china and silverware, razors, clothing, clocks, and various other articles of merchandise, and in the distribution in said connection to representatives and prospective representatives of advertising literature, including sales circular designating number of items of merchandise and prices thereof—

- (a) Supplied to its representatives and prospective representatives, as part of sales circular aforesaid and opposite listing of items and purported prices of such merchandise, pull card for use in distribution and sale of products in question under a plan in accordance with which article of merchandise secured and price paid therefor and value, or apparent value, secured were determined by chance in accordance with item and price disclosed under tab selected, and person or representative operating card was compensated, after sale of all tabs or chances and remission of amounts, by premium, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise, in accordance with plan hereinabove set forth, contrary to established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt game of chance to win by chance or any method contrary to public policy and refrain therefrom;

With result that many were attracted by his said method and element of chance involved in sale of merchandise, offering opportunity to procure by chance article of merchandise at price much less than apparent normal retail price thereof, and thereby induced to buy and sell his said products in preference to those offered and sold by competitors who do not use such or equivalent method, and with effect, by reason thereof, of unfairly diverting trade and custom to him from competitors who do not use such or equivalent method; and

- (b) Made such false, deceptive, and misleading statements in his advertising matter as "Gifts or cash *YOURS absolutely* without cost," "Big, valuable rewards at no cost to you," "Free gifts to everybody," and "No extra charge on any of our premiums," facts being none of his so-called premiums or gifts were given away free or without cost, but were purchased either with labor of representatives or prices thereof were included in those of other articles which representatives had to sell or procure sale of before they could obtain such so-called premiums or gifts, and, in a number of cases, certain money payments were required in addition to labor performed or services rendered;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such statements and representations were true, and into purchase of substantial quantities of his said products as a result thereof, and of unfairly diverting trade to him from competitor manu-