

Complaint

IN THE MATTER OF
JOSIAH L. JONESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3450. Complaint, June 2, 1938—Decision, Dec. 13, 1938*

Where an individual engaged in manufacture, distribution, and sale of so-called "Venereal Air Syringe," in substantial competition with others engaged in sale and distribution of similar appliances and appliances intended and designed for similar use, in commerce among the various States and in the District of Columbia, and including those who do not in any way misrepresent the character and nature of their products, nor effect thereof; in advertising and describing his said product in bulletins, pamphlets, circulars, labels, and folders distributed among prospective customers—

Represented that use thereof protected women against pregnancy, and acted as a deodorant, and constituted a competent and effective remedy, cure, or treatment for ills and diseases peculiar to women, including leucorrhea, inflamed membranes, vaginal and pelvic inflammation, and nervous conditions, and would insure health and youth to women, and might be used by them safely and without deleterious effects, facts being it was not generally effective for aforesaid purposes and would not act as above set forth, nor accomplish said results, and was not a treatment for all sub-normal and unhealthful conditions as above represented, would not prevent nervousness, and had potentialities of death to user, and statements made by him on direction slips, circulars, and in advertising thereof were false and fraudulent and applied to said article knowingly and in reckless and wanton disregard of their truth or falsity;

With effect of misleading and deceiving members of the purchasing public into erroneous belief that said representations were true and into purchase of his said appliance on account of such erroneous belief, and of diverting trade unfairly to him from competitors who do not misrepresent their products:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. William L. Taggart for the Commission.

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 Josiah L. Jones, 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:

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PARAGRAPH 1. Respondent, Josiah L. Jones, is engaged in the manufacture, and in the sale and distribution thereof in commerce, as herein described of a certain appliance which he describes as a "Venereal Air Syringe." His place of business is located at 824 Central Avenue, St. Petersburg, Fla. Said product is composed of a rubber bulb with an outlet or neck. Within said neck is a check valve and fitted over the exterior of said neck is a nipple for the purpose of being placed in a receptacle containing a solution. There is attached to said valve a syringe tube and air vent tube which is inserted through the vagina into the uterus and having at its extreme end small openings for the release of the solution.

The respondent causes said product, when sold, to be transported from his aforesaid place of business in the State of Florida, or from other points, to purchasers and customers located in States other than the State from which said shipments originate and in the District of Columbia. Respondent maintains a course of trade in said product so manufactured and sold by him in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business as herein described, respondent has been and is in competition in commerce between and among the various States of the United States and in the District of Columbia with corporations, partnerships, firms, and other individuals engaged in the sale and distribution of products which are advertised, intended, designed, and used for the purposes for which the respondent recommends his said product.

PAR. 3. For the purpose of inducing the purchase by members of the public of the product or contrivance known as the "Venereal Air Syringe," respondent has made use of various means and ways of advertising said product, among which is the interstate distribution of booklets, pamphlets, and circulars. Some of respondent's advertising literature makes certain representations as to the efficacy of the product. On the frontispiece of a typical pamphlet, which purports to be copyrighted by the respondent, the following title and table of contents appear:

LADIES
THE TRUTH
about
LIFE, BIRTH CONTROL
and
FEMININE HYGIENE

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Tables of Contents

What Causes Sexual Desire?

Caution against haphazard methods of Birth Control.

What takes place during Sexual Intercourse?

What is Menstruation? And clearly showing the beginning of life.

What are the Whites, and how are they cleared up?

And showing the causes, and beginnings of Disease.

Instructions for the use of The Venereal Air Syringe for the prevention of disease, and pregnancy while the womb is being built up in preparation for healthy normal child birth.

Added information concerning certain methods, and showing why they are not reliable.

Sold by

(Dealers, Druggists or Doctor stamp name and address here)

(Copyright 1937 by Josiah L. Jones.)

In referring to the product in the aforesaid pamphlet and other advertising, such statements as the following appear:

INSTRUCTIONS FOR THE USE OF
THE "VENEREAL AIR SYRINGE"

This instrument is sold to you for prevention purposes only. IF YOU ARE ALREADY PREGNANT DON'T USE IT FOR IT IS DANGEROUS * * *.

* * * Be sure that you insert it into the womb, and do not use any force at all. Don't hurry or get excited; just take your time and be careful not to hurt yourself.

* * * You cannot afford to go to a doctor every few days for him to keep you cleaned out and as THE VENEREAL AIR SYRINGE is the only known method for you to keep your own womb in a clean, healthy, active stage, and to prevent conception until you are prepared and ready for it, get one right away and use it.

There are quite a few so-called BIRTH CONTROL remedies on the market, but AFTER INTERCOURSE IS ALWAYS TOO LATE TO USE THEM, and beforehand, or at the time, they are so much bother that you often neglect to use them, and as none of them tend to prevent disease to any great extent, when you do use them to prevent pregnancy, you use them and HOPE they will work. With the VENEREAL AIR SYRINGE, you absolutely know that you can thoroughly clean yourself.

Said literature is illustrated with pictures of the generative and other organs of the female anatomy in making the said claims as to the efficacy of said product or contrivance.

Through said statements, together with other statements and representations not herein set out with respect to said product, and in his general advertising, respondent represents directly and through implication, that:

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Said device is generally effective as a preventative against conception and pregnancy.

Said device will act as a prophylactic in cases of vaginal discharges, such as leucorrhea (whites), and other female irregularities and is a general preventative against disease.

Said device will insure health to females and aid them in retaining their youth.

Said device acts as a deodorant and will cause the rapid elimination of all bacteria from the system.

Said device is generally safe to use and is a general and effective treatment for all subnormal and unhealthful conditions of the uterus, vagina, and will prevent nervousness, pain, discomfort, burning sensation, and mental depression generally.

PAR. 4. In truth and in fact, each and all of the aforesaid statements and representations are false and grossly misleading. The product or contrivance, described herein, is not generally effective as a preventative against conception and pregnancy. It will not act as a prophylactic in cases of vaginal discharge, such as leucorrhea (whites) and other female irregularities and is not a general preventative against disease. The said product will not insure health to females and will not aid them in retaining their youth; nor will it act as a deodorant nor cause rapid elimination of all bacteria from the system. It is not an effective treatment for any subnormal and unhealthy conditions of the uterus and vagina, nor will it prevent nervousness, pain, discomfort, burning sensation, and mental depression generally. Further, said device is not safe to use, and it has potentialities for producing serious injury to the users thereof.

PAR. 5. The so-called "Venereal Air Syringe," herein described, when manufactured, advertised, and distributed, is then and there misrepresented to the public in that the statements, designs, and advice regarding the therapeutic, curative, and other benefits and effects thereof borne on the direction slip, circulars, and in the advertising, as aforesaid, are false and fraudulent and the same are applied to said articles in reckless and wanton disregard of their truth or falsity.

PAR. 6. There are among respondent's competitors in commerce, as herein described, many who do not in any way misrepresent the character and nature of their respective businesses and who do not misrepresent in any way the nature, character, and efficacy of their respective products, and who do not make use of any of the misleading and deceptive representations herein set out or make others similar thereto.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing

his product and the effectiveness of said product or contrivance for preventing, curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human body herein named, in offering for sale and selling his said product was, and is, calculated to, and had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that said product will, in truth, accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent, as hereinabove detailed, a number of the consuming public has purchased a substantial volume of respondent's product with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended, and sold for use in the cure, relief, treatment, or prevention of the various diseases, ailments, afflictions, and conditions named herein, and who truthfully represent the effectiveness of their respective products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above alleged acts and practices of respondent 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 June 2, 1938, issued, and on June 4, 1938, served its complaint in this proceeding upon respondent, Josiah L. Jones, charging him 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 substitute answer, 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. The respondent Josiah L. Jones is an individual with his principal place of business located at 824 Central Avenue, St. Petersburg, Fla., and is engaged in the business of manufacturing, distributing, and selling a certain appliance which he calls "Venereal Air Syringe."

PAR. 2. The respondent causes said appliance to be transported from his place of business in the State of Florida to purchasers thereof in various States other than the State of Florida and in the District of Columbia, and maintains, and for more than a year last past has maintained, a course of trade and commerce in said appliance so sold and distributed between the State of Florida and various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, respondent has been and is in substantial competition with other individuals and with firms, corporations, and partnerships engaged in the sale and distribution of similar appliances, and other appliances intended and designed for similar use, in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. Respondent's appliance, the "Venereal Air Syringe," is composed of a rubber bulb with an outlet or neck. Within said neck is a check valve, and fitted over the exterior of said neck is a nipple for the purpose of being placed in a receptacle containing a solution. There is attached to said valve a syringe tube and air vent tube, which is inserted through the vagina into the uterus, and having at its extreme end small openings for the release of the solution. No particular solution is recommended or suggested to be used in the jar that is contained in the box as a part of the appliance, and none is delivered with the appliance.

PAR. 5. For the purpose of inducing members of the public to purchase said appliance, respondent advertises said appliance known as the "Venereal Air Syringe" in bulletins, pamphlets, circulars, labels, and folders distributed among prospective purchasers, circulated among said prospective customers. In said advertisements appear statements purporting to be descriptive of said appliance and to effectiveness and value for the uses and purposes for which it is advertised. Some of the advertising literature makes certain representations as to the efficacy of the appliance. On the frontispiece of a typical pamphlet, which purports to be copyrighted by the above respondent, the following title and table of contents appear:

LADIES, THE TRUTH about LIFE, BIRTH CONTROL and FEMININE HYGIENE—Table of Contents—What Causes Sexual Desire? Caution against

haphazard methods of Birth Control. What takes place during Sexual Intercourse? What is Menstruation? And clearly showing the beginning of life. What are the Whites, and how are they cleared up? And showing the causes, and beginnings of disease. Instructions for the use of The Venereal Air Syringe for the prevention of disease, and pregnancy while the womb is being built up in preparation for healthy normal child birth. Added information concerning certain methods, and showing why they are not reliable.—Sold by (Dealers, Druggist, or Doctor stamp name and address here) (Copyright 1937 by Josiah L. Jones.)

In referring to the appliance in the aforesaid pamphlet and other advertising, such statements as the following appear:

INSTRUCTIONS FOR THE USE OF THE "VENEREAL AIR SYRINGE."

This instrument is sold to you for prevention purposes only. IF YOU ARE ALREADY PREGNANT DON'T USE IT FOR IT IS DANGEROUS * * * .

* * * Be sure that you insert it into the womb, and do not use any force at all. Don't hurry or get excited; just take your time and be careful not to hurt yourself.

* * * You cannot afford to go to a doctor every few days for him to keep you cleaned out and as THE VENEREAL AIR SYRINGE is the only known method for you to keep your own womb in a clean, healthy, active stage, and to prevent conception until you are prepared and ready for it, get one right away and use it.

There are quite a few so-called BIRTH CONTROL remedies on the market, but AFTER INTERCOURSE IS ALWAYS TOO LATE TO USE THEM, and beforehand, or at the time, they are so much bother that you often neglect to use them, and as none of them tend to prevent disease to any great extent, when you do use them to prevent pregnancy, you use them and HOPE they will work. With the VENEREAL AIR SYRINGE, you absolutely know that you can thoroughly clean yourself.

Said literature is illustrated with pictures of the generative and other organs of the female anatomy.

PAR. 6. In said statements, as well as other statements and misrepresentations not herein set out with respect to said appliance, and in his general advertising, respondent represents directly and through implication that:

The product is generally effective as a preventative against conception and pregnancy; it will act as a prophylactic in cases of vaginal discharges such as leucorrhea (whites) and of other female irregularities, and is a general preventative against disease; it will insure health to females and aid them in retaining their youth; it acts as a deodorant and will cause the rapid elimination of all bacteria from the system; it is generally safe to use and is a general and effective treatment for all subnormal and unhealthful conditions of the uterus, vagina, and will prevent nervousness, pain, discomfort, burning sensation, and mental depression generally.

PAR. 7. The Commission finds that the use of the appliance as set forth in the different means of advertising is not generally ef-

fective as a preventative against conception and pregnancy; it will not act as a prophylactic in cases of vaginal discharge such as leucorrhea (whites) and other female irregularities and is not a general preventative against disease. The said appliance will not insure health to females and will not aid them in retaining their youth; nor will it act as a deodorant nor cause rapid elimination of all bacteria from the system. It is not a treatment for all subnormal and unhealthful conditions of the uterus and vagina, nor will it prevent nervousness, pain, discomfort, burning sensation, and mental depression generally. Further, said appliance has potentialities for producing death to the user.

PAR. 8. The so-called "Venereal Air Syringe," herein described, when manufactured, advertised, and distributed, is then and there misrepresented to the public in that the statements, designs, and advice regarding the therapeutic, curative, and other benefits and effects thereof borne on the direction slip, circulars, and in the advertising, as aforesaid, are false and fraudulent and the same are applied to said articles knowingly and in reckless and wanton disregard to their truth or falsity.

PAR. 9. There are among respondent's competitors in commerce, as herein set out, those who do not in any way misrepresent the character and nature of their products nor the effect thereof when used.

PAR. 10. The aforesaid false and misleading statements and representations used by the respondent in offering for sale and selling the appliance in commerce, as herein mentioned and described, have had, and now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous belief that the said representations are true, and into the purchase of respondent's appliance on account of said erroneous belief. And as a result thereof, trade is diverted unfairly to respondent from competitors who do not misrepresent their products.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury 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 the

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respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he 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 the respondent, Josiah L. Jones, his agents, servants, and employees, in connection with the offering for sale, sale, and distribution of a device or appliance called "Venereal Air Syringe," whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the use of said device or appliance protects women against pregnancy.

2. Representing that the use of the device or appliance will act as a deodorant, and constitutes a competent and effective remedy, cure, or treatment for ills and diseases peculiar to women, including leucorrhea, inflamed membranes, vaginal and pelvic inflammation, and nervous conditions.

3. Representing that the use of the device will insure health and youth to women.

4. Representing that said device or appliance may be used by women safely and without deleterious effects.

5. Making other representations of similar character and like import.

It is further ordered, That the respondent shall, within 30 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
COLUMBIA ALKALI CORPORATION, DOW CHEMICAL
COMPANY, MICHIGAN ALKALI COMPANY, SOLVAY
SALES CORPORATION, SOLVAY PROCESS COMPANY,
AND CALCIUM CHLORIDE ASSOCIATION

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

Docket 3519. Complaint, July 30, 1938—Decision, Dec. 13, 1938

Where three corporations which (1), along with fourth, constituted only manufacturers of flake calcium chloride in the United States, and also manufacturers of over 75 percent of all other forms of such substance, and which (2), together with sales subsidiary of said fourth corporation, controlled sale and distribution of a substantial majority of the entire output of all forms of calcium chloride in commerce among the various States and in the District of Columbia; and said selling subsidiary; in active and substantial competition with one another in making and seeking to make sales of calcium chloride in various forms in commerce as aforesaid, prior to, and but for, acts and practices below set forth—

- (a) Entered into and carried out understandings, agreements, combinations, and conspiracies with intent and effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in sale of said product in trade and commerce as aforesaid; and in pursuance of said understandings, etc., and in furtherance thereof—

1. Agreed to and did fix and maintain uniform prices in sale of said substance in various forms in the United States; and, in order better to effectuate such agreement—

2. Agreed to and did maintain uniform zoning system therein, and suggest retail prices to individual dealers or distributors, and exchange information with respect to prices each was to charge for said substance as aforesaid; and

3. Agreed to and did exchange information with respect to prices each charged therefor as aforesaid, and did change, simultaneously, their sales prices for such substance as aforesaid, and offer identical bids for carload and less than carload lots thereof to prospective purchasers; and

- (b) Agreed to and did, during period aforementioned, eliminate cash discounts for prompt payment by purchasers of such products as aforesaid, and agreed to and did couple with increase of budget for 1938 of their trade association identical raises in prices of said substance as aforesaid;

With dangerous tendency to hinder and prevent, and with effect of hindering and preventing, price competition between and among them in sale of said calcium chloride in various forms, and of placing in them power to control and enhance prices:

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