

IN THE MATTER OF
HARLAND L. HERB DOING BUSINESS AS NATIONAL
SCIENTIFIC PRODUCTS COMPANY

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

Docket 3240. Complaint, Oct. 8, 1937—Decision, Jan. 19, 1939

Where an individual engaged in manufacture, sale, and distribution of medicinal product known as "Prostories"; in advertising same in papers and magazines circulating among various States—

Represented that the same was a new medicinal principle and new medical discovery, and that it constituted a competent and effective remedy and cure

- for prostatitis, infection, and other disorders of the prostate gland and that it was a stimulant therefor and would restore, stimulate, or increase potency or sex power, and was a remedy or cure, or a competent and effective treatment for impotency;

Facts being it was not a new or scientific principle of stimulation of said gland, loss of power such as due to age and various diseases and conditions, treatment of diseases of said gland requires examination for purpose of determining cause of ailment, and said product was not an effective treatment for prostatitis and would not accomplish results claimed for it as above set forth, but only effect thereof would be by reason of irritant action of ingredients therein contained to act as an excitant and such irritant might be harmful, and it was not analgesic or pain-relieving;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that its said "Prostories" was an effective cure for diseases of prostate gland and would relieve pain and suffering caused thereby and increase power of user through stimulation thereof, and to induce number of purchasing public to buy said product because of aforesaid erroneous beliefs engendered by such false and misleading representations, and unfairly to divert trade to him from competitors who do not make use of such misrepresentations:

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. Arthur F. Thomas*, trial examiner.

Mr. Carrel F. Rhodes 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 Harland L. Herb, hereinafter referred to as respondent, has been for more than 1 year last past, and is now, using unfair methods of competition in

commerce as "commerce" is defined in said Act of Congress, 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. Harland L. Herb is an individual operating and doing business under the trade name "National Scientific Products Company," with his principal offices and place of business located at 644 Diversey Boulevard, Chicago, Ill.

PAR. 2. Respondent Harland L. Herb, trading as National Scientific Products Co., is now, and for more than 1 year last past has been engaged in the business of manufacturing, compounding, advertising, selling, and distributing medicaments and medicinal compounds allegedly for the relief and cure of diseases, infections, and disorders of the prostate gland; for relief from impotency, and for the restoration, stimulation, and increase of sex power in man.

Among the commodities so advertised and sold by respondent is a product known and advertised as "Prostories" recommended as a treatment and cure for prostatitis and for the increase of sex desire and sex power in man.

Said respondent now causes, and for more than 1 year last past has caused, his said product, when manufactured and sold, to be transported from his principal place of business in the city of Chicago, State of Illinois, to retail stores and other purchasers thereof at their respective points of location, in the several States of the United States other than the State of origin, and in the District of Columbia.

Respondent is now, and for more than 1 year last past has been, in substantial competition with other persons, firms, partnerships, and corporations engaged in the sale of medicaments and medicinal products like or similar to those sold by respondent, or in the sale of other medicaments, medicinal compounds, or other products designed, intended, sold, and used for the treatment of the same diseases, conditions, maladies, and disorders of the human body, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, as described in paragraphs 1 and 2 hereof, for the purpose of inducing and encouraging the sale of his said products, respondent now, and for more than 1 year last past, has made use in newspapers, magazines, pamphlets, circulars, letters, radio broadcasts, and other forms of advertising media having an interstate circulation—published and circulated under the trade name "National Scientific Products Company"—and in sales talks and on signs posted around retail stores

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located in the several States of the United States and in the District of Columbia of statements and representations among which the following are typical:

**SEXUAL POWER
DOUBLED IN ONE HOUR
with PROSTORIES**

—The Sex-Stimulating Suppositories—

An Amazing New Medical Discovery

These Suppositories strengthen and stimulate the Prostate Gland (which doctors consider the base of all men's sex power) by medicating the gland **DIRECT**—a natural and logical method. Ask your own doctor. No drugs are taken into the system. Prostories contain no narcotics, yet are so effective that they need to be used only an hour before the stimulation is wanted.

Originally developed to relieve the pain and sexual weakness of Prostate Sufferers, repeated tests have proved that Prostories bring greatly increased sexual power to any man—and in just one hour. Users report their power of retarding more than doubled.

There is nothing else on the market like Prostories. Don't confuse them with the harmful temporary drugs that must be taken constantly to get results.

Trial Box of 10—\$1.00; 24 for \$2.00 Sold on Absolute **MONEY-BACK GUARANTEE**. All orders mailed in plain wrapper, with complete directions.

**NATIONAL SCIENTIFIC PRODUCTS CO.
644 Diversey Boulevard, Dept. D-3 Chicago, Ill.**

**PROSTORIES
(Trade Mark)**

What they Are
And What They Will Do For
YOU

PROSTORIES

Prostories are prostate stimulating suppositories. The latest scientific development for the relief of sexual weakness, making use of an entirely new medical principle of stimulating the prostate gland direct.

* * * * *

HOW PROSTORIES HELP

As this gland (The Prostate Gland) is located close to the walls of the lower intestine, just inside the rectum, it is easy to understand how it can be medicated through this opening.

In use, the suppository slips past the muscles of the rectum and lodges in the lower bowel beside the prostate where it is melted by the heat of the body. The medicine contained is thus released to its work of stimulation."

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Do not use more than one (suppository) at a time as they contain just the right amount of medicine for the best results. In some case another may be used after a few hours if necessary."

Sold and Guaranteed by

NATIONAL SCIENTIFIC PRODUCTS CO.

The aforesaid statements and representations, together with other similar representations not herein set out in full, serve as representations on the part of respondent that said product constitutes a competent and effective remedy and cure for prostatitis and infections, diseases, and disorders of the prostate gland, and that its use will restore, stimulate, and increase potency or sex power in man.

PAR. 4. In truth and fact, the respondent's said product is not a new medical discovery or scientific development of a new medical principle and does not constitute a competent and effective remedy or cure for prostatitis, or any other infections, diseases, and disorders of the prostate gland. Its use will not cure or relieve impotency or sex weakness and does not stimulate the prostate gland or increase sex power in man.

PAR. 5. The said representations of said respondent, as aforesaid, are false and misleading and have had, and do have, the tendency and capacity to mislead and deceive a substantial number of retail dealers and the purchasing public into the mistaken and erroneous belief that the product so marked, branded, designated, advertised as Prostories and sold, and transported by respondent, is an effective cure for infections, diseases, and impairments of the prostate gland and will relieve pain and suffering caused thereby, and that it will restore, stimulate, and increase sex appetite and sex functioning in man by stimulating the prostate gland when such is not in fact the truth. The said representations of respondent have had, and do have, the capacity and tendency to induce retail dealers and members of the purchasing public to buy respondent's said product because of the aforesaid erroneous beliefs engendered by said false and misleading representations, and to unfairly divert trade from competitors who are engaged in the sale of like products to that sold by respondent, or in the sale of other medicaments, medicinal compounds, or other products designed, intended, sold, and used for the treatment of the same diseases, conditions, maladies, and disorders of the human body, in commerce in and among the various States of the United States and in the District of Columbia, who do not use such false and misleading representations. As a result thereof substantial injury is now being done, and has been done, by the respondent to competition in commerce among and between the various States of the United States and of the District of Columbia.

PAR. 6. The above alleged acts, practices, and representations of 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 Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers, and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 8, 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Harland L. Herb, an individual, trading as National Scientific Products Co., 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, acting at that hearing for Carrel F. Rhodes, attorney for the Commission, before Arthur F. Thomas, an examiner of the Commission, duly appointed to take testimony and receive evidence in said proceeding, and in opposition to the allegation of the complaint by Harland L. Herb, appearing on behalf of himself, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings 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. Respondent waived the filing of brief and oral argument; and the Commission having duly considered the same, 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, Harland L. Herb, is an individual doing business under the trade name and style of National Scientific Products Co., with his principal office and place of business located at 644 Diversey Parkway, Chicago, Ill. He is engaged in the manufacture and sale and distribution of a medicinal product known as "Prostories" and has caused said merchandise, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their

respective points of location. In the course and conduct of said business, respondent is and has been in substantial competition with other firms and corporations engaged in the sale of medicaments and medicinal products like or similar to those sold by respondent or other products intended to be sold and used for the treatment of the same diseases and disorders of the human body in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his said merchandise, has advertised in papers and magazines having a circulation between and among various States of the United States, said product "Prostories" and in said advertisements he has represented that this product is a new medicinal principle and a new medical discovery; in his advertisements he has further represented that the said product constitutes a competent and effective remedy and cure for prostatitis, infection, and other disorders of the prostate gland; and as (1) a stimulant of the prostate gland; (2) a relief to prostrate sufferers from pain and sex weakness; (3) a relief from impotency; (4) a prostate stimulator doubling sexual power in from 1 to 2 hours.

PAR. 3. All of these representations are false. Loss of sexual power is due to age, diseases of the nervous system, functional and organic; various forms of psychosis, psychoneurosis, degenerate and tonic neurosis; diabetes; local diseases of the genital tracts. Treatment of diseases of the prostate gland requires an examination of the individual affected, for the purpose of determining the cause of the ailment. There is no one effective treatment for all ailments of this gland. The suppository of respondent is not an effectual treatment for prostatitis and would not relieve sex weakness. The ingredients of the suppository known as "Prostories," as disclosed by respondent's formula for the compound, would not effect a cure, or relief, such as the advertisements claim for it. It is not a new or scientific principle of stimulation of the prostate gland. These ingredients would not stimulate the prostate gland, and, if it should be conceded that the ingredients contained such value, under respondent's plan or method of medication the medicament could not reach the prostate gland. The only effect this suppository has is that the ingredients act as irritants to certain parts of the body, as the mouth of the bladder, etc., and any suppository composed of any ingredients might act with the same effect. This irritant merely acts as an excitement of sexual appetite, but has no effect on sexual power, and it may be harmful. The compound is not analgesic or pain-relieving.

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PAR. 4. The said false and misleading representations of said respondent have had and do have the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the mistaken and erroneous belief that the product so marked and advertised as "Prostories" and sold and transported, in interstate commerce, by him is an effective cure for diseases of the prostate gland, and will relieve pain and suffering caused thereby, and that it will increase sex power in man by stimulating the prostate gland, when such is not in fact the truth. Said representations of respondent have had the capacity and tendency to induce members of the purchasing public to buy respondent's product because of the aforesaid erroneous beliefs engendered by said false and misleading representations, and unfairly to divert trade from competitors who are engaged in the sale of other medicinal compounds sold and used for the treatment of like diseases or disorders of the human body, in commerce in and among the various States of the United States and in the District of Columbia, who do not use such false and misleading representations.

CONCLUSION

The practices of the respondent, as set forth in the aforesaid Findings of Facts, are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in violation 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 Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by Carrol F. Rhodes, counsel for the Commission (respondent having waived the filing of brief and not having requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Harland L. Herb, individually, and trading as National Scientific Products Co., or trading under any other name, his agents, representatives, and employees, directly or through any device, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia

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of a medicinal preparation now known as "Prostories" or any other preparation containing substantially similar ingredients or possessing similar therapeutic properties, whether sold under that name or any other name, do forthwith cease and desist from:

Representing directly, or in any manner, that said preparation

1. Is a remedy or cure, or a competent and effective treatment, for prostatitis or any other infections, diseases, or disorders of the prostate gland.

2. Is a stimulant for the prostate gland.

3. Will restore, stimulate, or increase potency or sex power.

4. Is a remedy or cure, or a competent and effective treatment for impotency.

It is further ordered, That the respondent shall, within 60 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
ISIDORE STEIN DOING BUSINESS AS UNIVERSAL TRADING CO., EASTERN DISTRIBUTING CO., EMPIRE DISTRIBUTING CO., AND THE NATIONAL PRODUCTS

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

Docket 3554. Complaint, Aug. 24, 1938—Decision, Jan. 19, 1939

Where an individual engaged in sale and distribution of comb and brush sets, flashlights, jewelry, razor blades, pocketknives, and other articles of merchandise, in commerce among the various States and in the District of Columbia—

- (a) Sold and distributed said articles by means of a game of chance, gift enterprise, or lottery scheme, in accordance with which he distributed or caused to be distributed to representatives, and prospective representatives, advertising literature including a circular listing a number of items and prices thereon and including a pull card, tabs of which various concealed name of one of aforesaid items and price thereof, and under which scheme or plan purchaser received article of merchandise as aforesaid of varying retail value or apparent value in accordance with tab selected by chance, and operator or representative selling such tabs or chances was compensated by receipt of premium after sale of entire number thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with sales plan above set forth, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in sale of such merchandise and were thereby induced to buy and sell his said goods in preference to those offered and sold by competitors who did not use such or equivalent method, and with effect by reason of said game of chance of unfairly diverting trade and custom to him from his competitors aforesaid;

- (b) Represented that his merchandise was distributed free or without cost through such statements in his advertising matter as "Gifts for all. No cost to you," "How to get your free gifts," "Special offer. Two extra valuable surprise gifts free," facts being none of so-called premiums or gifts were given away free or without cost to representatives, but were either purchased with labor by them or prices thereof were included in those of other articles which they had to sell or procure sale of before they could procure so-called premiums or gifts, and in case of a number thereof certain sums of money in addition to labor performed or services rendered were required to be paid;

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 products as a result thereof, and of thereby unfairly diverting trade to him from manufacturer