

Complaint

IN THE MATTER OF
LEWYN DRUG, INCORPORATEDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2934. Complaint, Mar. 9, 1939¹—Decision, June 6, 1939²*

Where a corporation engaged in sale of medicinal preparations designed for treatment of unnatural delayed menstruation, and known as "Dr. Haller's Prescription 5000" and "Dr. Haller's Prescription 2000," to purchasers in other States and in the District of Columbia; in advertisements which it disseminated through the mails and through newspapers and periodicals of general circulation, and which were calculated and intended to induce purchase of said preparations—

Made such statements and representations as "In Europe women are not distressed about abnormal unnatural periodic delay—they use Dr. Haller's famous prescriptions," "Works like magic—women say," "I believe it is the only successful treatment on the market," "Physicians recommend Dr. Haller's prescriptions," and "You can trust us because we have satisfactorily served women for over fifty years";

Facts being such representations were false, misleading and untrue, said preparation was not a competent, safe nor scientific treatment for aforesaid purpose, nor recommended by physicians, and advertisements in question were also false in failing to reveal that use of preparations in question, under conditions prescribed and under such conditions as are customary and usual, might result in serious illness and, in some cases, in death of user;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and of inducing portion of purchasing public, because of such erroneous and mistaken belief, to purchase its said medicinal preparations, with injurious drugs therein contained:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Charles P. Vicini* and *Mr. William C. Reeves*, trial examiners.

Mr. Reuben J. Martin for the Commission.

AMENDED AND SUPPLEMENTAL 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

¹ Amended and supplemental.

² Prior cease and desist order made as of November 6, 1937, and reported in 25 F. T. C. 1348 was vacated, and case remanded for the taking of further testimony on behalf of Commission and on behalf of respondent, by order made as of November 10, 1938, and reported in 27 F. T. C. 1483.

Complaint

29 F. T. C.

Trade Commission, having reason to believe that Lewyn Drug, 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lewyn Drug, Inc., is a corporation organized and created under and by virtue of the laws of the State of California, with its principal office and place of business located at 655 North Arden Boulevard, in the city of Hollywood, State of California. The respondent is now and for several years last past has been engaged in the sale of medicinal preparations designed for the treatment of unnaturally delayed menstruation and known as Dr. Haller's Prescription 5000 and Dr. Haller's Prescription 2000. Respondent causes said preparations, when sold by it, to be transported from its aforesaid place of business in the State of California to the purchasers thereof located in various States of the United States other than the State of California, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said drugs 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said preparations, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparations; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products; in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

In Europe women are not distressed about abnormal unnatural periodic delay—they use Dr. Haller's famous prescriptions.

Works like magic—women say.

I believe it is the only successful treatment on the market.

Physicians recommend Dr. Haller's prescriptions.

You can trust us because we have satisfactorily served women for over fifty years.

The representations hereinbefore set out, and other representations similar thereto but not set out herein, appearing in respondent's advertisements, are false, misleading, and untrue. This preparation is not a competent, safe nor scientific treatment for delayed menstruation. It is not recommended by physicians. Said advertisements of respondent are also false in that they fail to reveal that the use of these preparations under the conditions prescribed in said advertisements and under such conditions as are customary and usual may result in the serious illness and in some cases the death of the user.

The true facts are that the use of either of these preparations may result in gastro-intestinal disturbances such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with extension to other pelvic and abdominal structures causing septicemia or blood poison.

PAR. 3. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its preparations disseminated as aforesaid has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and induces a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's medicinal preparations containing injurious drugs.

PAR. 4. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 March 9, 1939, issued and served its amended and supplemental complaint upon respondent, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 11, 1939, respondent filed its answer in which it admitted all the material allegations

of fact set forth in said amended and supplemental complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental 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, Lewyn Drug, Inc., is a corporation organized and created under and by virtue of the laws of the State of California, with its principal office and place of business located at 655 North Arden Boulevard, in the city of Hollywood, State of California. Respondent is now and for several years last past has been engaged in the sale of medicinal preparations designed for the treatment of unnatural delayed menstruation and known as Dr. Haller's Prescription 5000 and Dr. Haller's Prescription 2000. Respondent causes said preparations, when sold by it, to be transported from its aforesaid place of business in the State of California to the purchasers thereof located in various States of the United States other than the State of California and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said drugs 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 its aforesaid business the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said preparations, by the United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparations; and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said adver-

tisements disseminated and caused to be disseminated, as aforesaid, are the following:

In Europe women are not distressed about abnormal unnatural periodic delay—they use Dr. Haller's famous prescriptions.

Works like magic—women say.

I believe it is the only successful treatment on the market.

Physicians recommend Dr. Haller's prescriptions.

You can trust us because we have satisfactorily served women for over fifty years.

The Commission finds that the representations hereinbefore set out and other representations similar thereto not set out herein, appearing in respondent's advertisements, are false, misleading and untrue. This preparation is not a competent, safe, nor scientific treatment for delayed menstruation. It is not recommended by physicians. Said advertisements of respondent are also false in that they fail to reveal that the use of these preparations under the conditions prescribed in said advertisements and under such conditions as are customary and usual may result in the serious illness, and in some cases, in the death of the user.

The true facts are that the use of either of these preparations may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with extension to other pelvic and abdominal structures causing septicemia or blood poisoning.

PAR. 3. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its preparations disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statement and representations are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations containing injurious drugs.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

29 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact 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 the respondent, Lewyn Drug, Inc., its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement, by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medicinal preparations now designated by the name of Dr. Haller's Prescription 5000 and Dr. Haller's Prescription 2000, or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act of said medicinal preparations which advertisements represent directly or through implication that the use of said medicinal preparations is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, and which advertisements fail to reveal that the use of these preparations may result in the serious injury to the health of the user.

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, the manner and form in which it intends to comply; and that, within 60 days after the 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.

Syllabus

IN THE MATTER OF
O. K. TAILORING 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 3404. Complaint, May 6, 1938—Decision, June 7, 1939*

Where a corporation engaged in sale and distribution to members of purchasing public in other States and in the District of Columbia of men's suits and garments, among other items of merchandise; in advertising its said suits and garments in newspapers and other advertising media circulating among the various States and in said District—

- (a) Represented that said garments and suits were made wholly of wool through such statements as "All Wool Made-To-Measure Clothes," "All Wool Fabrics" and "100% All Wool," facts being said products were not made wholly of wool, but, in the case of many, were made of wool and rayon, wool, and cotton, or wool, cotton and rayon;
- (b) Represented that suits were given away free of charge by it to salesmen selling its said products through such statements as "Wear This *Free Suit* given you as a bonus" and "Will You Accept Free as a bonus a complete wardrobe of Tailored Suits?" and "Chance to Get Made-To-Measure Suit Free as a bonus right away! Wear it!", facts being it did not give away free of charge suits to salesmen selling its said merchandise, but compensated its said salesmen under an arrangement by which agent or employee, in addition to commission paid him on each suit sold, was entitled to receive from it for sale of as many as seven suits, suit for self; and
- (c) Represented that its lines of garments and suits for men were "The Fastest Selling Lines in America," and that it paid a salesman as compensation for selling single suit \$7, suit of clothes and cash bonus through such statements as "The Fastest Selling Lines in America" and "Make up to \$7 per suit including Suit Free of cost plus Cash Bonus," facts being its said lines were not the fastest selling, it did not pay as high as \$7 in cash, and give salesman suit and cash bonus for sale of single suit, but compensated him through payment of commission ranging from \$3 to \$6.50 for each suit sold, with sale of seven suits, as above set forth, entitling him to suit for himself, and with order for 25 suits entitling him to \$25 cash bonus and certain additional commissions;

With effect of misleading substantial number of salesmen and their customers into erroneous and mistaken belief that all said representations were true and with result, as direct consequence, that number of salesmen and their customers purchased substantial number of its garments and suits, and trade was diverted unfairly to it from competitors likewise engaged in sale and distribution of such products and who do not misrepresent the quality or popularity of their merchandise and nature and amount of compensation paid to salesmen thereof:

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