

IN THE MATTER OF

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

COMPLAINT, MODIFIED 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, June 26, 1939

Where an individual engaged in sale of number of baby foods and alleged health preparations purchased by her from various manufacturing druggists and chemists throughout the United States and thereafter packed, bottled, labeled, and sold, under various trade names, through medium of wholesale houses, 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 "Alberty's Food Regular" and "Alberty's Food Instant (new style)" rendered milk more readily digestible, and constituted a competent remedy, cure, or treatment for cancer or ulcer, and that her "Alberty's Food Instant (old style)" had therapeutic or medicinal value in treatment of many human ailments, and that her "Alberty's Food" rebuilt the intestinal tract and was the only food which accomplished such result, and that it eliminated rickets and other calcium starvation diseases in children, adults, and animals, and modified milk so that calcium element thereof was assimilated, and that through taking it more calcium and phosphorous were stored up in the body than would be accomplished through use of three or four times the quantity of ordinary milk, and that it was the only food discovered that offset acidosis, and was the most powerful alkaline food known, facts being preparations referred to had nutritional, rather than therapeutic, value, if any, did not render milk readily digestible and were without therapeutic or medicinal value in treatment of cancer or ulcer, and said new style preparation had no therapeutic or medicinal value in treatment of any other ailment, and said old style product possessed no more therapeutic value than that had by ordinary milk, and representations made by her, as aforesaid, were extravagant, misleading, and deceptive;
- (b) Falsely represented that her said "Laxative Blend" affected the muscles of the intestines and was a new laxative blend which had therapeutic value, facts being said preparation was an irrational combination of materials, many of

which had folklore and household reputation as remedial agents several centuries ago, and majority of which were omitted from the Pharmacopeia as of no significant value in medicine, only active constituent contained therein was cathartic senna, and said product did not stimulate muscles of the intestines in a physiological sense and was without therapeutic value and not recognized by medical profession as proper medication;

- (c) Falsely represented that her "Special Formula Tablets" constituted a tonic and would produce blood regeneration and increase sexual activities, and that her "Phenix Pluri-Gland Tablets for Men" and similarly designated preparation for women contained ingredients which would increase or stimulate such activity, facts being none of such various tablet preparations would increase such activity, and her said "Special Formula" would not act as a tonic or produce blood regeneration, all said various tablet preparations were without medicinal or therapeutic value, and Nux Vomica ingredient in "Special Formula" preparation, and thyroid and Ex-Nux Vomica content of latter, rendered their use potentially dangerous;
- (d) Falsely represented that her "Phosphate Pellets" and "No. 3 Tablets" had medicinal or therapeutic value in the treatment of various human ailments, facts being former was a polypharmaceutical mixture of insoluble phosphates of calcium, iron, soda, and potassium, doses contained therein were too small to do any good, such combination is not recognized generally by doctors of either allopathic or homeopathic school as competent medication, latter was similar mixture of number of obsolete drugs, containing number of materials with no recognized or significant action on living tissues, contained unrelated and counteracting or incompatible materials in physiological sense, and was not recognized generally by medical profession as competent medication, and neither product possessed therapeutic or medicinal value;
- (e) Falsely represented that her "Cheno Combination Tablets" and her "Cheno Herb Tea" contained ingredients, in case of former, which would have influence on fat metabolism and, in case of latter, which would also produce weight reduction, facts being former contained no ingredient which would have significant influence on said metabolism, and latter contained no ingredient which, in and of itself, caused or produced any reduction in weight or had any such effect, but was an irrational, unjustified combination of materials which might produce undesired effects on sensitive person if taken in self-medication, neither was recognized by medical profession as competent medication, and only reduction in weight caused by former would be such as was due to increased bowel movement, and it was without medicinal or therapeutic value, and only such value of latter would be that of its mild laxative action due to senna contained therein;
- (f) Represented that her "Diabetic" constituted a competent remedy, cure, or treatment for diabetes, facts being said preparation consisted of a dehydrated vegetable mixture of watercress, spinach, lettuce, celery, cauliflower, beet leaves, and asparagus, was not a remedy for diabetes, had no relation to said ailment or condition, and had no therapeutic or medicinal value, but food value, chiefly;
- (g) Misrepresented cause of and effect of excess of magnesium in the body and character and properties of said substance, and effect on 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

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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;

- (h) 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;
- (i) 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;
- (j) Represented that her various products had a value and efficacy which they did not possess, through citing case histories of users thereof which were not true, and through use of testimonials which were untrue in fact or which were not given by person alleged to have given such testimonial; and
- (k) Represented, through use of word "laboratory" and references to discoveries by her said "laboratories" and through other references thereto, and the alleged part in the discovery, etc., of preparations in question, in 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 public into erroneous and mistaken belief that the various preparations sold and distributed by her had the therapeutic value represented by her, and that the use of such products would result in the benefits indicated to the user, and to induce such 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, by reason of the use of such false, deceptive, and misleading representations, of diverting unfairly trade in commerce to her from distributors of other preparations for use in in treating the various ailments for which her respective products were recommended, and who do not misrepresent the character and quality of their 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

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 3 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 3 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 the said respondent is now and for more than 3 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 food 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).

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).

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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.

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:

It rebuilds the intestinal tract and is the only food yet discovered that does. Laboratory tests show that magnesium and not calcium is the mineral which deposits itself wherever convenient, it being a sedative, sluggish, lazy mineral.

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.

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

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.

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.

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 Food 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.

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.

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.

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

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

PAR. 5. Said respondent, Adah Albany, in the regular course and conduct of her said business trades under various names, among which are Albany's Food Lab., Albany's Food Laboratories, The Albany 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 labeling the said preparations which are bought by her in bulk from various manufacturers.

PAR. 6. The use by the said respondent, Adah Albany, trading as Albany's Food Products, Albany's Food Lab., Albany's Food Laboratories, The Albany 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 various 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, MODIFIED 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 fully advised in the premises, found that this proceeding was in the interest of the public and made its findings as to the facts and its conclusion drawn therefrom. Thereafter, on motion of counsel for the respondent the Commission reopened the case for the taking of further testimony as to the therapeutic value of the various preparations sold by the respondent, and additional testimony and other evidence in support of the allega-

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tions of the 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 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 modified 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 Los Angeles within the State of California. The respondent is now, and for more than 3 years last past has been, engaged in the sale of a number of baby foods and alleged 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 alleged 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 3 years last past has been a constant current of trade and commerce by respondent in said baby foods and alleged health preparations between and among the various States of the United States. In the course and conduct of her business the respondent is now, and for more than 3 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 alleged 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 (for-

merly 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, and Diabetic.

All of said preparations are manufactured for said respondent by various manufacturing druggists and chemists located throughout 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 alleged 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 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 alleged 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 alleged 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.

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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 food is the combination that unlocks this wonder-working calcium, exposing the "Guarded Treasure" to be 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 sexorganism 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.

Tests have proved conclusively that more calcium and phosphorous 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 alleged health preparations and contained in her advertisements thereof are extravagant and deceptive and misleading.

PAR. 5. Respondent does not own, operate, maintain, or control, any laboratories, and she does not manufacture or test any of the various baby foods and alleged 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. Respondent represents in her advertising that said preparation is of medicinal or therapeutic value in the treatment of various human ailments. These pellets are a polypharmacial mixture of insoluble phosphates of calcium, iron, soda and potassium, the doses contained therein are too small to do any good, and the preparation is without therapeutic value. Such a combination is not recognized generally by either allopathic or homeopathic doctors as competent medication.

Respondent's preparation Alberty's Laxative Blend (formerly called German Herb Lax-Tonic) consists of senna, fennel seed, uva-ursi leaves, licorice root, buckthorn, dog grass, anise seeds, nettle leaves, sassafras bark, shave grass, yarrow, peppermint, althea wood, guaiac wood, elder flowers, ononis root, and buchu leaves. Respondent represents said preparation to be a new Laxative blend which has a therapeutic value. This preparation is an irrational combination of materials, many of which had a folklore and household reputation as remedial agents in the fifteenth and sixteenth centuries. A majority of the ingredients contained in this preparation have been omitted from the United States Pharmacopeia as being of no significant value in medicine. The only active constituent contained therein is Senna, which is a cathartic. The remainder of the constituents are obsolete and are without additional value. The cathartic action of the preparation is due to Senna, but the Senna contained therein does not stimulate the muscles of the intestines in a physiological sense of stimulation, and the preparation is without therapeutic value, and is not recognized by the medical profession as proper medication.

Respondent's preparation Cheno Combination Tablets (formerly called Restorex Cheno Tablets) are composed of spinach, celery and leaves, okra, Irish moss, rhubarb root, rhubarb stock, Dulse, calcium mix, and water mixed with glucose. Respondent represents that said preparation has a medicinal or therapeutic value in the treatment of obesity and that its use will bring about a reduction in weight. This preparation contains no ingredient which would have a sig-

nificant influence on fat metabolism, and the only reduction in weight caused by the preparation would be such a reduction as was due to increased bowel movement. The preparation is not accepted by the medical profession as proper medication, and is without medicinal or therapeutic value.

Respondent's preparation **Alberty's No. 3 Tablets** (formerly known as **Alberty's Spleen and Iron Tablets**) are composed of Spleen substance desiccated, 1 grain; Gaduol, $\frac{3}{8}$ grain; Reduced iron, 1 grain; Zinc Phosphate, $\frac{1}{20}$ grain; Berberine Sulphate neutral, $\frac{1}{32}$ grain; Powdered ginger $\frac{1}{4}$ grain; Strychnine Sulphate, $\frac{1}{960}$ grain. Respondent represents in her advertising that said preparation has a medicinal or therapeutic value in the treatment of various human ailments. This preparation is a polypharmaceutical mixture of a number of obsolete drugs. The preparation contains a number of materials which have no recognized or significant action on living tissues and is not recognized generally by the medical profession as competent medication. The preparation contains unrelated and counteracting or incompatible materials in the physiological sense, and has no therapeutic or medicinal value.

Respondent's preparation **Cheno Tea** is composed of kelp, bean shells, senna, peppermint, black alder bark, sassafras, chic weed, rest hara, ivy leaves, licorice root, fennel, anise, and coriander. Respondent represents that said preparation has a medicinal or therapeutic value in the treatment of obesity and that its use will bring about a reduction in weight. Said preparation does not contain any ingredient which in, or of, itself causes or produces any reduction in the weight of the user, nor does it have any effect on the metabolism of fat. It is an irrational, unjustified combination of materials which may produce undesired effects on a sensitive person if taken in self medication, and is not generally recognized by the medical profession as competent medication. Its only therapeutic value would be that of a mild laxative action due to the presence of senna in the preparation.

Respondent's preparation **Diabetic** is a dehydrated vegetable mixture of watercress, spinach, lettuce, celery, cauliflower, beet leaves and asparagus. Respondent represents that said preparation has a medicinal or therapeutic value in the treatment of diabetes. This preparation has no relation to diabetes. The preparation is not a remedy for diabetics, and has no therapeutic or medicinal value. Its value would be chiefly a food value.

Respondent's preparation **Pluri-Gland Tablets for Men** are composed of orchic substance, 3 grains; thymus, 1 grain; thyroid U. S. P., $\frac{1}{16}$ grain; pituitary whole, $\frac{1}{4}$ grain; ex-nux vomica, $\frac{1}{16}$ grain. Re-

spondent's preparation Pluri-Gland Tablets for Women are composed of ovarian residue, 3 grains; pituitary whole, $\frac{1}{4}$ grain; thyroid U. S. P., $\frac{1}{10}$ grain; ex-nux vomica, $\frac{1}{10}$ grain; orchic substance, 2 grains. Respondent represents that said preparations possess a therapeutic or medicinal value and that the use of said preparations will serve to increase or stimulate sex activity. Said preparations are not generally accepted by the medical profession as proper medication. The preparations contain nothing which would increase sex activity. Said preparations are without medicinal or therapeutic value, and their use may be dangerous due to the thyroid and the ex-nux vomica contained therein.

Respondent's preparation Alberty's Special Formula is composed of orchic substances, spleen substances, pancreatin substance, calcium phosphate, manganese, hemoglobin, and nux vomica. Respondent represents that said preparation is a tonic, that it will produce blood regeneration, will increase sexual activity and that it has a medicinal or therapeutic value. Said preparation is not commonly accepted by the medical profession as proper medication. The preparation would not increase sexual activity, it would not act as a tonic, nor would it produce blood regeneration, and it has no medicinal or therapeutic value. Its use might be dangerous because of the presence of nux vomica therein.

Respondent's preparation Alberty's Food Regular is a special grind of cereals, wheat and barley. To each pound of cereal is added one ounce organized calcium and phosphate. This special cereal mix may be used as a milk modifier, or may be used as a cooked cereal, or to thicken gravy, etc. Respondent represents that said preparation has medicinal or therapeutic value in the treatment of a variety of human ills and maladies including cancer and ulcer and that its use in conjunction with milk renders the milk more readily digestible. Alberty's Food Regular has no therapeutic value. It is a food rather than a remedy. Any value possessed by said preparation would be nutritional rather than therapeutic. Its use in conjunction with milk would not render the milk more readily digestible, and it has no therapeutic or medicinal value in the treatment of cancer or ulcer.

Respondent's preparation Alberty's Food Instant (new style) is made from low butterfat condensed milk. The curd is subdivided by Regular Alberty Food, to which two ounces of organized calcium phosphate has been added to each pound of cereal. The condensed milk is first heated to 180° before the Regular Alberty Food is added. Then the mixture is pumped through a homogenizer at 3,000 pound pressure through a visculizer. It is then spray-dried

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and vitamin D is added. Respondent represents in her advertising that the use of said preparation in conjunction with milk renders the milk more readily digestible and that it has a therapeutic or medicinal value and is an effective treatment for cancer or ulcer. Alberty's Food Instant (new style) has a nutritional rather than a therapeutic value. Its use in conjunction with milk does not render the milk more readily digestible and it has no therapeutic or medicinal value in the treatment of cancer, ulcer, or any other ailment of the human body.

Respondent's preparation Alberty's Food Instant (old style) is no longer made. It was formerly prepared in the same manner as the New Style Instant Alberty Food except that the condensed milk was dried on rollers and no vitamin D was added. Respondent in her advertising directly and indirectly represented that said preparation had a therapeutic or medicinal value in the treatment of many human ailments. Said preparation in fact possessed no more therapeutic value than would be possessed by ordinary milk.

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, exhibit 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 3 weeks' time to go to work, in 2 months' time he had gained 8 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 3 weeks after starting to use 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 2 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 1 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 no 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 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 mistaken belief that the various preparations sold and distributed by the respondent have the therapeutic value represented by the respondent and that the use of said products will result in the benefits indicated 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 the use of such false, deceptive, and misleading representations on the part of said respondent is to unfairly divert trade in commerce between and among the several States of the United States and in the District of Columbia to the respondent from 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 the Federal Trade Commission Act.

MODIFIED 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, 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 Alberty's Food Regular and Alberty's Food Instant (new style), or any other preparations composed of the same or similar ingredients and possessing similar properties, under whatever name sold, render milk more readily digestible, constitute a competent remedy, cure, or treatment for cancer or ulcer, or have any therapeutic or medicinal value.

2. Representing that the preparation Alberty's Food Instant (old style) or any other preparation composed of the same or similar ingredients and possessing similar properties, has any therapeutic value in excess of the therapeutic value possessed by ordinary 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 preparation is a cathartic.

4. Representing that the preparation now designated as Alberty's Special Formula Tablets, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, is a tonic and will produce blood regeneration or will increase sexual activity, or that it has any medicinal or therapeutic value.

5. Representing that the preparations now designated as Alberty's Phosphate Pellets and Alberty's No. 3 Tablets, or any other preparations composed of the same or similar ingredients and possessing similar properties, under whatever name sold, have any therapeutic value.

6. Representing that the preparation now designated as Cheno Combination Tablets, or any other preparation composed of the same or similar ingredients and possessing similar properties, under whatever name sold, contains any ingredient which would have an influence on fat metabolism or that the use of said preparation will cause any weight reduction other than the reduction due to the laxative properties of said preparation, or that said preparation has a therapeutic value.

7. Representing that the preparation now designated as Cheno Herb Tea, 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 any weight reduction, or that by the use thereof the user will bring about a reduction in weight, or that said preparation has any effect on the metabolism of fat, or that it has any therapeutic value other than that of a mild laxative.

8. Representing that the preparation now designated as Diabetic is a competent remedy, cure, or treatment for diabetes, or that it has any therapeutic or medicinal value.

9. Representing that the preparations now designated as Alberty's Phenix Pluri-Gland Tablets For Men and Alberty's Phenix Pluri-Gland Tablets For Women contain any ingredient which would in-

crease or stimulate sex activity, or that said preparations have any medicinal or therapeutic value,

10. 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.

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

12. 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.

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

14. 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.

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

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

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

18. Representing that the gall bladder should never be removed.

19. Representing 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.

20. 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,

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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.

21. 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.

IN THE MATTER OF
MORRIS L. RAUER, TRADING AS EARL CHROME
MANUFACTURING COMPANY

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

Docket 3426. Complaint, May 13, 1938—Decision, June 26, 1939

Where an individual engaged in sale and distribution of radios, clocks, cocktail shakers, coffee sets, and novelty merchandise, to purchasers in other States—

- (a) Furnished with his said products, for use in sale thereof by his merchant customers, punchboards for sale and distribution in accordance with a plan by which person securing, out of 2,500 tubes on board, certain number as result of 5-cent chance purchased by him, became entitled to or won the radio, or other article being thus sold or disposed of by said individual to or through particular merchant, 8 other designated numbers entitled winners each to 50 cents in trade, and 30 other numbers entitled winners each to 25 cents in trade, and person punching last available punch in each of 25 sections into which board was divided received 50 cents in trade, and merchant was reimbursed for such trade furnished from his general stock, and said individual's agent called upon and collected for said individual from merchant about every 2 weeks from 50 to 60 percent of amount received by merchant for punches; and

Placed thereby in hands of others means of conducting lotteries in the sale of his said merchandise, contrary to the established public policy of the United States Government and in violation of the criminal laws, and in competition with those who do not use the same or similar methods of distribution;

With result that many persons, because of element of chance involved, were induced to buy and sell his said products in preference to merchandise offered and sold by competitors who, as aforesaid, do not use such or similar method of distribution, and from whom, as a result, trade was thereby diverted to said individual; and

- (b) Represented, through inclusion of word "manufacturing" in trade name used by him, that he was the manufacturer of products which he sold, facts being he did not make such merchandise and neither owned, operated, nor controlled any plant in which such merchandise was made;

With result of causing purchasing public to believe that he was the manufacturer of the products sold by him and was a manufacturer for the purchase of the products of whom there is a preference on the part of a considerable portion of purchasing public as securing them thereby lower prices, superior quality, and other advantages, and with result that trade was diverted to said individual from his competitors who do not falsely represent that they are the manufacturers of the products which they sell:

Held, That such practices, as above set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.