

Syllabus

IN THE MATTER OF
THE KNOX COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3597. Complaint, Sept. 19, 1938—Decision, Aug. 1, 1939*

Where a corporation engaged in sale and distribution of "Cystex" and "Mendaco," proprietary preparations respectively advertised and sold as remedies for kidney and bladder disorders and for asthma; in advertisements which it disseminated in commerce through newspapers and periodicals of general circulation throughout the various States, and through continuities broadcast from radio stations of extrastate audience—

- (a) Represented that said "Cystex" was an adequate remedy or cure for ailments, disorders and diseased conditions of the kidneys and bladder, irrespective of the cause or condition thereof, both through direct statements to that effect and indorsements attributed to various doctors; and
- (b) Represented that the presence of symptoms, including swollen joints, leg and rheumatic pains, backaches, nervousness, dizziness, circles under the eyes, excess acidity, or loss of energy, and others, were indicative of ailments or diseased conditions which could be successfully treated by use of said preparation;

Facts being ailments, disorders, and diseased conditions of the kidneys or bladder often arise from, are due to, or persist because of systemic or organic derangement of some character, said preparation, in such cases, does not constitute cure or remedy for such ailments and disorders and is not adequate or competent treatment therefor, nor for all nonorganic or nonsystemic cases due to such conditions, irrespective of cause, and various symptoms mentioned in its advertising as being indicative of kidney or bladder derangement may also be symptoms of conditions disassociated from said organs, and presence of such symptoms does not positively indicate derangement of kidney or bladder, and functional disorders of said organs may sometimes arise from organic disturbances, and said preparation is not cure or remedy or adequate treatment for such disorders; and

- (c) Represented, as aforesaid, that said "Mendaco" was a cure or remedy or effective treatment for asthma, and permanently relieved symptoms thereof, such as choking, etc., and possessed therapeutic value in treatment of said ailment; and
- (d) Represented that said "Mendaco" stimulated and refreshed the blood and promoted body metabolism;

Facts being said ailment is caused by sensitization to some foreign protein or other varying causes which may not be readily determined, effective and adequate treatment thereof necessitates determination of cause or causes of disorder, and direct treatment thereof, and said "Mendaco" does not constitute such remedy or cure or adequate or effective treatment for said condition, and does not permanently remove the symptoms thereof, or possess therapeutic value in excess of furnishing, in some cases, temporary relief from said symptoms, and does not purify, stimulate, refresh, or have any beneficial effect on blood, or promote body metabolism;

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With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of its said products as result of such erroneous belief, and with effect of thereby diverting trade unfairly to it from its competitors engaged in manufacture, sale, and distribution, or in sale and distribution of remedies and treatments for same ailments, disorders, and conditions of the body listed in its advertising, and who do not misrepresent the therapeutic values and qualities of their said products:

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

Mr. DeWitt T. Puckett for the Commission.

Mr. James A. Taylor, of Washington, D. C., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, The Knox Co., a corporation doing business under the laws of the State of Missouri, with its principal office and place of business located at 811 West Seventh Street, city of Los Angeles, State of California, is now and has been for more than 1 year last past engaged in the sale and distribution of a proprietary preparation called "Cystex," advertised and sold as a remedy for kidney and bladder disorders and a proprietary preparation called "Mendaco" advertised and sold as a remedy for asthma.

Respondent now causes, and for more than 1 year last past has caused, its said proprietary preparations, when sold by it, to be shipped from its said place of business in Los Angeles, Calif., to the purchasers thereof, located in the various States of the United States, other than the State of California, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said proprietary products so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business as aforesaid, respondent has been, and is now, in substantial competition with other corporations and with partnerships and individuals likewise engaged in the

sale and distribution in interstate commerce of like and similar products or other products and treatments intended, designed and used for similar purposes.

PAR. 2. In the course and conduct of its said business, and for the purpose of inducing the purchase of its proprietary product, "Cystex," respondent has caused false advertisements containing representations and claims with respect to the properties of said proprietary product, "Cystex," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

If functional disorders of the kidneys or bladder make you suffer from getting up nights, nervousness, leg pains, circles under eyes, dizziness, backache, swollen joints, excess acidity, or burning passages, don't rely on ordinary medicines, fight such troubles with the doctors prescription Cystex.

Dr. Goodall says: "More than 5 million men and women in all parts of the world have used Cystex for functional kidney disorders."

I shall quote from a letter recently received from the head of the Health Department of an important city: "I am happy to say that in my opinion Cystex is the best remedy for functional kidney ailments."

Dr. Walter R. George, former Health Commissioner of Indianapolis, U. S. A. says: "I unhesitatingly recommend Cystex to sufferers from functional kidney ailments."

Dr. Martin Grunschlag says: "In my opinion Cystex is one of the finest formulas which has come to my notice for the treatment of many common functional disorders of the kidneys."

A common cause of kidney ailments is germs which are developed in the body during colds, or by bad teeth or tonsils, or through bacterial diseases.

Dr. George B. Knight, physician, Camden, says: "Yet Cystex contains no harmful or injurious ingredients."

The doctors formula Cystex starts fighting kidney germs in 3 hours, checks pains, stimulates and tones the kidneys and bladder.

Cystex quickly combats germs in the kidneys.

Fight such germs with the Dr.'s prescription Cystex.

Dr. Goodall says: "Cystex acts in three ways to help combat these troubles. First, it fights the germs which may cause the kidneys to function poorly, second it soothes and tones kidneys, * * *"

Dr. C. Van Straubenzee, a noted European physician wrote: "I consider Cystex one of the most meritorious formulae of its kind that I have ever been privileged to examine and recommend it most highly."

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Thank you, Doctor. (This misleading phrase used in Cystex radio broadcasting programs, although as a matter of fact there is no doctor on the program.)

The aforesaid advertising claims for "Cystex" serve as representations on the part of respondent that said product is an effective remedy and cure for the various ailments, disorders, and diseased conditions of the human kidneys and bladder and that said product is endorsed and recommended by competent medical authorities.

PAR. 3. In truth and in fact, "Cystex" is not effective remedy and cure for the various ailments, disorders and diseased conditions of the human kidneys and bladder enumerated in the respondent's advertising matter irrespective of the cause or causes of the said ailments and disorders, or the condition thereof. Ailments and disorders of the kidneys and bladder arise from many causes and there is no specific remedy or treatment that is effective in all cases and under all conditions. The proper method of treatment and the kind of medicine to be used in the treatment of diseased conditions of the human kidneys and bladder are determined by many factors and a thorough diagnosis by a competent physician is always advisable and in many instances essential to the proper and adequate treatment of such ailments and disorders. Respondent's product is not endorsed or recommended by competent medical authorities as an effective remedy and cure for the various disorders and ailments of the human kidneys and bladder.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its proprietary product, "Mendaco," respondent has caused false advertisements containing representations and claims with respect to the properties of said proprietary product, "Mendaco," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Asthma Cause Dissolved in 1 Day. Thanks to the Prescription of a physician with 30 years experience, it now is possible to get rid of those terrible spells of choking, gasping, coughing and wheezing Asthma by dissolving the true cause which is mucus or phlegm. No more burning of powders, no more hypodermic injections. This prescription, Mendaco, starts to work in 3 min-

utes, removing the mucus cause of Asthma attacks, also helping to purify the blood and restore vitality so that you can sleep soundly all night, eat anything, and work and enjoy life. Mendaco is so successful it is guaranteed to give you free, easy breathing in 3 hours and to stop your Asthma attacks and satisfy completely in 8 days or money back on return of empty package. Get Mendaco from your druggist today. The guarantee protects you.

It dissolves, releases and helps remove the mucus or phlegm that causes choking, gasping attacks of asthma. Second, it relaxes thousands of tiny contracted muscles in the bronchial tubes; and third, it stimulates and refreshes the blood.

It promotes body metabolism, stimulating and refreshing the blood.

The aforesaid advertising claims for "Mendaco" serve as representations on the part of respondent that said product is an effective remedy and cure for asthma.

PAR. 5. In truth and in fact "Mendaco" is not an effective remedy and cure for asthma. It will not dissolve the cause of asthma in one day or any other period of time irrespective of the cause or causes of the disorder, thus permanently relieving the symptoms such as choking, gasping, coughing, and wheezing. It will not stimulate or refresh the blood or promote body metabolism and does not remove the cause of asthma.

Asthma is caused, in the majority of cases, by sensitization to some foreign protein, such as horse dander, rabbit fur, pollens, and other minute protein particles. In order to effectively and adequately treat asthma, therefore, it is necessary to determine the cause or causes of the disorder and treat such cause or causes. No specific remedy or type of treatment is effective in all cases and under all conditions and respondent's product is nothing more than a palliative in any case and under any condition.

PAR. 6. The use of the aforesaid false advertisements, disseminated in the manner above described, induce or is likely to induce, directly or indirectly, the purchase of respondent's drugs, to wit, Cystex and Mendaco.

PAR. 7. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals engaged in the manufacture, sale, and distribution or in the sale and distribution of remedies and treatments for the same ailments, disorders, and diseased conditions of the human body listed in the respondent's advertising matter who do not misrepresent the therapeutic values and qualities of their said products.

PAR. 8. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such repre-

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sentations are true and into the purchase of substantial quantities of respondent's said products as a result of such erroneous belief. By the representations aforesaid, trade is diverted unfairly to respondent from its aforesaid competitors and as a result thereof injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition and 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 the 19th day of September 1938, issued and served its complaint in this proceeding upon said respondent, The Knox Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 10, 1939, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Knox Co., is a Missouri corporation, engaged in the sale and distribution of a proprietary preparation called "Cystex," advertised and sold as a remedy for

kidney and bladder disorders, and a proprietary preparation called "Mendaco," advertised and sold as a remedy for asthma. Its principal office is at 811 West Seventh Street, Los Angeles, Calif. Its warehouse and manufacturing plant are located at Buffalo, N. Y., from which its products are distributed by its sales agent, a partnership by the same name.

Respondent now causes, and for more than 1 year last past has caused, its said proprietary preparations, when sold by it, to be shipped from its said place of business in Buffalo, N. Y., to the purchasers thereof, located in the various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said proprietary products so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals and partnerships, engaged in the sale and distribution of like or similar proprietary products or other products designed and intended for similar usage 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 said business, and for the purpose of inducing the purchase of its proprietary product, "Cystex," respondent has caused misleading advertisements containing representations and claims with respect to the properties of said proprietary product, "Cystex," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said misleading advertisements so used and disseminated as aforesaid are the following:

If functional disorders of the kidneys or bladder make you suffer from getting up nights, nervousness, leg pains, circles under eyes, dizziness, back-ache, swollen joints, excess acidity or burning passages, don't rely on ordinary medicines, fight such troubles with the doctors prescription Cystex.

Dr. Goodall says: "More than 5 million men and women in all parts of the world have used Cystex for functional kidney disorders."

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I shall quote from a letter recently received from the head of the Health Department of an important city: "I am happy to say that in my opinion Cystex is the best remedy for functional kidney ailments."

Dr. Walter R. George, former Health Commissioner of Indianapolis, U. S. A. says: "I unhesitatingly recommend Cystex to sufferers from functional kidney ailments."

Dr. Martin Grunschlag says: "In my opinion Cystex is one of the finest formulas which has come to my notice for the treatment of many common functional disorders of the kidneys."

A common cause of kidney ailments is germs which are developed in the body during colds, or by bad teeth or tonsils, or through bacterial diseases.

Dr. George B. Knight, physician, Camden, says: "Yet Cystex contains no harmful or injurious ingredients."

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Cystex quickly combats germs in the kidneys.

Fight such germs with the Dr's. prescription Cystex.

Dr. Goodall says: "Cystex acts in three ways to help combat these troubles. First, it fights the germs which may cause the kidneys to function poorly, second it soothes and tones kidneys, * * *."

Dr. C. Van Straubenzee, a noted European physician wrote: "I consider Cystex one of the most meritorious formulas of its kind that I have ever been privileged to examine and recommend it most highly."

Thank you, Doctor. (This misleading phrase used in Cystex radio broadcasting programs, although as a matter of fact there is no doctor on the program.)

Everyone at times may have functional kidney disorders. That may be your trouble too. Symptoms, often due to functional kidney disorders, are getting up nights, leg pains, nervousness, dizziness, rheumatic pains, swollen ankles, dark circles under your eyes and loss of energy. If you are suffering from these functional troubles, get Cystex, Cystex, from your druggist today. A money back guarantee protects you.

Some of the aforesaid advertising claims for "Cystex" serve as representations on the part of respondent that said product is an adequate remedy or cure for ailments, disorders, and diseased conditions of the human kidneys and bladder, irrespective of the cause or condition thereof.

PAR. 3. Ailments, disorders, and diseased conditions of the human kidneys or bladder often arise from, or are due to, or persist because of a systemic or organic derangement of some character. In such cases, while urinary antiseptics and diuretics frequently are used for temporary relief, "Cystex" does not constitute a cure or remedy for such ailments and disorders nor is it an adequate or competent treatment therefor. Such ailments, disorders, and diseased conditions may also arise from other causes requiring various types of treatment, depending upon the particular cause of the condition in such case. "Cystex" does not constitute a cure or remedy for, or an adequate

or competent treatment for, all nonorganic or nonsystemic cases due to such conditions, irrespective of the cause.

The various symptoms mentioned in respondent's advertising inatter as being indicative of kidney or bladder derangement also may be symptoms of conditions dissociated from the kidneys and bladder, and the presence of such symptoms does not positively indicate kidney or bladder derangement. Swollen joints, leg pains and so-called rheumatic pains may be and sometimes are symptoms of organic kidney and bladder disturbances. These symptoms, when present in cases of kidney or bladder troubles, may be and generally are of a systemic or organic origin. Backache, nervousness, dizziness, burning of the urinary passage, and "getting up nights" may be and sometimes are symptoms of kidney or bladder ailments that are systemic or organic in character.

Functional disorders of the kidneys and bladder may, and sometimes do, arise from organic disturbances. For such functional disorders, while urinary antiseptics and diuretics frequently are used for temporary relief, "Cystex" is not a cure or remedy, nor is it an adequate treatment therefor.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its proprietary product, "Mendaco," respondent has caused misleading advertisements containing representations and claims with respect to the properties of said proprietary product, "Mendaco," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through use of advertisements in newspapers, magazines and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Among, and typical of, the representations contained in said misleading advertisements so used and disseminated as aforesaid are the following:

Asthma Cause Dissolved in 1 Day. Thanks to the Prescription of a physician with 30 years experience, it now is possible to get rid of those terrible spells of choking, gasping, coughing and wheezing Asthma by dissolving the true cause which is mucus or phlegm. No more burning of powders, no more hypodermic injections. This prescription, Mendaco, starts to work in 3 minutes, removing the mucus cause of Asthma attacks, also helping to purify the blood and restore vitality so that you can sleep soundly all night, eat anything, and work and enjoy life. Mendaco is so successful it is guaranteed to give you free, easy breathing in 3 hours and to stop your Asthma attacks and satisfy

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completely in 8 days or money back on return of empty package. Get Mendaco from your druggist today. The guarantee protects you.

It dissolves, releases and helps remove the mucus or phlegm that causes choking, gasping attacks of asthma. Second, it relaxes thousands of tiny contracted muscles in the bronchial tubes; and third, it stimulates and refreshes the blood.

It promotes body metabolism, stimulating and refreshing the blood.

The aforesaid advertising claims for "Mendaco" serve as representations on the part of respondent that said product is an effective remedy and cure for asthma.

Asthma is caused by sensitization to some foreign protein, such as horse dander, rabbit fur, pollens, and other minute protein particles, or other varying causes which may not be readily determined. In order to effectively and adequately treat asthma, it is necessary to determine the cause or causes of the disorder and directly treat such cause or causes.

PAR. 5. "Mendaco" does not constitute a remedy or cure for asthma. It is not an adequate or effective treatment therefor and does not permanently relieve the symptoms thereof such as choking, gasping, coughing, or wheezing, or possess therapeutic value in excess of furnishing, in some cases, temporary relief from the symptoms of asthma.

"Mendaco" does not purify, stimulate, refresh or have any beneficial effect on the blood or promote body metabolism.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals engaged in the manufacture, sale, and distribution or in the sale and distribution of remedies and treatments for the same ailments, disorders, and diseased conditions of the human body listed in the respondent's advertising matter who do not misrepresent the therapeutic values and qualities of their said products.

PAR. 7. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such representations are true and the purchase of substantial quantities of respondent's said products as a result of such erroneous belief. By the representations aforesaid, trade is diverted unfairly to respondent from its aforesaid competitors.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in com-

merce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, The Knox Co., its officers, representatives, agents, 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 containing drugs now designated by the names "Cystex" and "Mendaco," or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names, 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 said preparation "Cystex" is an adequate remedy or cure or competent treatment for ailments, disorders, diseased conditions of the human kidneys and bladder, unless such representations are restricted to those cases of such disorders as are nonorganic and nonsystemic in character; or that said preparation is a cure or remedy for, or an effective treatment for, all ailments and disorders of the human kidneys and bladder which are non-systemic and nonorganic; or that the presence of any of the following symptoms—swollen joints, leg and rheumatic pains, backache, nervousness, dizziness, burning of the urinary passage, "getting up nights,"

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circles under the eyes, excess acidity or loss of energy—is necessarily indicative of ailments or diseased conditions which can be successfully treated by use of said preparation; or that the preparation “Mendaco” is a cure or remedy or an effective treatment for asthma or permanently relieves the symptoms thereof such as choking, gasping, coughing, or wheezing, or possesses any therapeutic value in the treatment of asthma in excess of furnishing, in some cases, temporary relief from the symptoms of asthma; or that “Mendaco” purifies, stimulates, refreshes or has any beneficial effect on the blood or promotes body metabolism.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, 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

SAM BELL, DOING BUSINESS AS LONGWEAR PAINT &
VARNISH WORKS

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

Docket 3632. Complaint, Oct. 18, 1933—Decision, Aug. 1, 1939

Where an individual engaged in manufacture and sale of mixtures or compounds by him described as paints, and in purchase of such mixtures or compounds from others, and in resale thereof, and in selling such products to peddlers who resold same direct to consumers from automobile trucks in other States, and in selling same to purchasers in States other than State of origin—

- (a) Sold said mixtures and compounds in containers to which he caused labels to be affixed with purported statements of qualitative and quantitative analysis of contents thereof, and which indicated that such mixtures and compounds were paints of good quality and composed of usual ingredients, and in proper proportions, from which such paints are made, facts being mixtures or compounds therein contained were of no protective value as paints, but had calcium carbonate content of 65 percent to 75 percent, and white lead or zinc sulphate content of only 1 percent or less, and could not properly be classified as paints, and were not made of proper pigments and suitable liquids and were incapable of forming solid adherent covering when spread on surface for purposes of decoration or protection, or both; and
- (b) Sold said mixtures or compounds in containers to which were affixed labels, in some cases, setting forth what appeared to be name of manufacturer of contents, such as "Eagle Paint and Color Works," together with brand name "Eagle," and, in some cases, setting forth what appeared to be name and address of such manufacturer, such as "Crown White Lead & Zinc Corporation, Detroit, Michigan," together with brand name "Crown," facts being such firm and brand names printed on said labels as aforesaid, were fictitious and contents in question had not been produced by manufacturers thus indicated;

With capacity and tendency to mislead and deceive members of purchasing public, and to induce them to buy such mixtures or compounds in mistaken belief that they were composed of the ingredients shown in what purported to be the analysis printed upon the labels affixed to the containers, and had been produced by a manufacturer whose name was printed thereon, and of unfairly diverting trade to him from those of his competitors who sell paints of good quality and who do not falsely represent nature and quantity of the ingredients of which such paints are made, and origin of manufacturers of their products; to competitors' substantial injury:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the purchasing public and competitors, and constituted unfair methods of competition.