

Syllabus

IN THE MATTER OF

HARRY S. BENHAM, TRADING AS AMERICA'S MEDICINE
AND NU-MODE COMPANY

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

Docket 3851. Complaint, July 15, 1939—Decision, Sept. 9, 1939

Where an individual engaged in sale and distribution of various medicinal preparations, in commerce among the various States and in the District of Columbia, including certain medicinal preparations for the relief of delayed menstruation, designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound"; in advertisements which he disseminated through the mails through insertions in newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States and in other ways, and which were intended and likely to induce purchase of said various preparations—

- (a) Represented that said products, thus variously designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound," were a competent and effective remedy for delayed menstruation, and were harmless and would accomplish results without pain or inconvenience, facts being they were not a competent and effective remedy for said condition and would not accomplish such results as above set forth, and were not safe and harmless in that said "XX Compound" contained aloes and oil of savin, and said "XXX Compound" contained extract of cotton root bark, ergotin and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual; and
- (b) Failed to reveal, in advertisements disseminated as aforesaid, that use of said preparations, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect, through use of such false, deceptive, and misleading statements and representations, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and of inducing portion of purchasing public, because of such belief, to buy its said injurious, drug-containing preparations:

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

Mr. R. P. Bellinger for the Commission.

Mr. Edward T. Morris, of Chicago, Ill., for respondent.

Complaint

29 F. T. C.

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 Harry S. Benham, an individual, trading as America's Medicine & Nu-Mode Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Harry S. Benham is an individual trading and doing business as America's Medicine & Nu-Mode Co., with his principal office and place of business located at 620 Orleans Street, Chicago, Ill. The respondent is now, and for more than one year last past has been engaged in the sale and distribution of various medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

Among the preparations so sold and distributed by the respondent are certain medicinal preparations for the relief of delayed menstruation, designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound" or "Kotess Periodic Relief Compound."

Respondent causes said preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by the United States mails, by insertions in newspapers and periodicals, having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations; and has disseminated and is now disseminating, and has caused and is

now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Married Secrets Told.—When delayed, don't be alarmed, discouraged or unprepared! You can now depend on this wonderful A. M. Periodic Relief Compound (Double XX Strength). Quick in action. Powerful, yet absolutely Safe, harmless, easy to take without pain or inconvenience. Produces unbelievable remarkable results, some say magic-like! Generally relieves the most puzzling, overdue, discouraging, suppressed, scanty, unnatural delays.

Triple XXX Strength for obstinate cases—\$5.00.

When Nature Fails.—Nature may fail you and cause a long, overdue, unusual, unnatural, suppressed period—but don't fear, despair, or become despondent. Now at last you can rely on this amazing Nu-Mode Periodic Relief Compound for safe, secure, desired results generally quick, without pain or inconvenience. No longer need you be uncertain from month to month. Easy to take—absolutely harmless.

Triple XXX Strength for most puzzling obstinate cases only \$4.00.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations known and designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound," are a competent and effective remedy for delayed menstruation; that said preparations are harmless and will accomplish results without pain or inconvenience.

PAR. 4. In truth and in fact said preparations are not a competent and effective remedy for delayed menstruation and will not accomplish results without pain or inconvenience. Furthermore, said preparations are not safe and harmless in that America's Medicine XX Compound and Nu-Mode XX Compound contains aloes and oil of savin and said preparations, America's Medicine XXX Compound and Nu-Mode XXX Compound contain extract of cotton root bark, ergotin and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of these preparations under the conditions prescribed in said advertisements or under such conditions as are customary or

Findings

29 F. T. C.

usual may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage and in those cases when either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations may also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 5. In addition to the representations hereinabove set forth the respondent is also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparations containing injurious drugs.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 15, 1939, issued, and on July 18, 1939, served its complaint in this proceeding upon the respondent, Harry S. Benham, an individual, trading as America's Medicine & Nu-Mode Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respond-

ent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Harry S. Benham is an individual trading and doing business as America's Medicine & Nu-Mode Co., with his principal office and place of business located at 620 Orleans Street, Chicago, Ill. The respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of various medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

Among the preparations so sold and distributed by the respondent are certain medicinal preparations for the relief of delayed menstruation, designated as "America's Medicine XX Compound," "Nu-Mode XX Compound" or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound."

Respondent causes said preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by the United States mails, by insertions in newspapers and periodicals, having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission

Findings

29 F. T. C.

Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparation; and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Married Secrets Told.—When delayed, don't be alarmed, discouraged or unprepared! You can now depend on this wonderful A. M. Periodic Relief Compound (Double XX Strength.) Quick in action. Powerful, yet absolutely Safe, harmless, easy to take without pain or inconvenience. Produces unbelievable remarkable results, some magic-like! Generally relieves the most puzzling, overdue, discouraged, suppressed, scanty, unnatural delays.

Triple XXX Strength for obstinate cases—\$5.00.

When Nature Fails.—Nature may fail you and cause a long, overdue, unusual, unnatural, suppressed period—but don't fear, despair, or become despondent. Now at last you can rely on this amazing Nu-Mode Periodic Relief Compound for safe, secure, desired results generally quick, without pain or inconvenience. No longer need you be uncertain from month to month. Easy to take—absolutely harmless.

Triple XXX Strength for most puzzling obstinate cases only \$4.00.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations known and designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound," are a competent and effective remedy for delayed menstruation; that said preparations are harmless and will accomplish results without pain or inconvenience.

PAR. 4. In truth and in fact said preparations are not a competent and effective remedy for delayed menstruation and will not accomplish results without pain or inconvenience. Furthermore, said preparations are not safe and harmless in that America's Medicine XX Compound and Nu-Mode XX Compound contains aloes and oil of savin and said preparations, America's Medicine XXX Compound and Nu-Mode XXX Compound contain extract of cotton root bark, ergotin and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of these preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage and in those cases when either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations may also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles, often with violent poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

PAR. 5. In addition to the representations hereinabove set forth the respondent is also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparations containing injurious drugs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of

Order

29 F. T. C.

respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Harry S. Benham, an individual, trading as America's Medicine & Nu-Mode Co., or trading under any other name or names, his agents, servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

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

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing, stating whether he intends to comply with this order and if so, the manner and form in which he intends to comply; and that, within 60 days after the service upon him of this order said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

AVERBACH COMPANY, INC., MAID-O-BEST, INC., G. M. MOSES, AND ESTHER AVERBACH, MORRIS AVERBACH AND JEROME AVERBACH TRADING AS THE MURIEL COMPANY AND AMERICAN CHEMICAL COMPANY

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

Docket 3342. Complaint, Mar. 1, 1938—Decision, Sept. 11, 1939

Where a corporation which engaged in sale and distribution in interstate commerce of flavoring compounds, food stuffs, toilet articles, and novelties, and business of which was taken over by a corporation organized and financed by an individual who was the moving and dominant spirit in connection with the conduct, affairs and operations of several trade name businesses, of said corporation, and of said acquiring corporation, organized and financed, as aforesaid set forth, by said individual and members of his family, who (1) were officers thereof and who, (2) along with president of said corporation first referred to, were variously engaged in direct and substantial competition with others engaged in sale and offer in interstate commerce of flavoring compounds, food stuffs, toilet articles, and novelties of various kinds;

In selling products through medium of traveling salesmen, agents and solicitors, among whom they variously distributed bulletins and circulars as instructions in connection with sales talks to be made to housewives, customers and consumers throughout the various States—

(a) Represented that a fictitious person was its "Director of Sales," and that it had a national sales organization, through depictions in bulletins, circulars and instructions, as such "Director of Sales," of a supposed "J. M. Gebhardt," and through invitation to prospective salesmen to join its "national sales organization without risking one penny"; and

(b) Represented, as aforesaid, through use of words "Manufactured only by," followed by name and address of said corporation, and through such statements in such circulars as "Long-established manufacturer makes startling announcement," etc., "We are large manufacturers of food flavorings. We purchase our ingredients in tremendous quantities," that it or they were the manufacturers of the products sold by them, and purchased as aforesaid;

Facts being individual depicted was not said supposed and fictitious "J. M. Gebhardt," but the then president and moving spirit in said corporation, and said corporation did not have, as thus implied or inferred, large selling organization, national in scope and character, nor own, operate, or control any mills, factory or laboratory wherein products which it sold and distributed were made or compounded, but such products were made or packed by individual who, as aforesaid, acquired control thereof and was engaged in such manufacture under separate trade name, and said corporation was not long-established manufacturer or business, had no manufacturer-backer, and did not purchase ingredients in tremendous quantities nor pack products distributed by it, but merely furnished bottles and labels