

## Complaint

## IN THE MATTER OF

## LELAND F. BENHAM, TRADING AS THE ZELLE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

*Docket 3854. Complaint, July 17, 1939—Decision, Sept. 11, 1939*

Where an individual engaged in sale and distribution of two medical preparations for the relief of delayed menstruation, designated as "Zellets No. 1" and "Zellets No. 2," to purchasers in various other States and in the District of Columbia; 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 through other means, and which were intended and likely to induce purchase of his said preparations—

- (a) Represented that his said medicinal products, designated as "Zellets No. 1" and "Zellets No. 2," 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 such a competent and effective remedy for said condition, and would not accomplish results as aforesaid claimed, and were not safe and harmless in that said "Zellets No. 1" contained aloes and oil of savin, and said "Zellets No. 2" contained aloes, extract of cotton root bark, ergotin, black hellebore, and oil of savin, and aforesaid drugs were present in said preparations 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; and
- (b) Failed to reveal, in advertisements disseminated as above, that use of said preparation, under conditions prescribed therein or under conditions such as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and to induce, because of such belief, purchase of his said injurious, drug-containing, medicinal products:

*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

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 Leland F. Benham, an individual, trading as The Zelle Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing

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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 Leland F. Benham is an individual trading and doing business as The Zelle 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 two medical preparations for the relief of delayed menstruation, designated as "Zellets No. 1" and "Zellets No. 2," in commerce among and between the various States of the United States and in the District of Columbia.

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 Now

Delay is not necessary

Women may now find welcome relief from month to month uncertainty. When delayed you may have faith in our truly amazing Zellets Compound.

Marvelous, satisfying relief generally comes quickly. Absolutely harmless—easy to take. Desired results usually very prompt, without pain or inconvenience

For really obstinate cases try Zellets No. 2.

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 "Zellets No. 1" and "Zellets No. 2" 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 said preparation known as "Zellets No. 1" contains aloes and oil of savin and said preparation known as "Zellets No. 2" contains aloes, extract of cotton root bark, ergotin, black hellebore, and oil of savin. The afore-said drugs are present in said preparations 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 said 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 where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might 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 conditions

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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 17, 1939, issued, and on July 24, 1939, served, its complaint in this proceeding upon the respondent, Leland F. Benham, an individual, trading as The Zelle 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 respondent'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 Leland F. Benham is an individual trading and doing business as The Zelle 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 two medical preparations for the relief

of delayed menstruation, designated as "Zellets No. 1" and "Zellets No. 2," in commerce among and between the various States of the United States and in the District of Columbia.

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 preparation 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:

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For really obstinate cases try Zellets No. 2

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 "Zellets No. 1" and "Zellets No. 2" are a compe-

tent 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 said preparation known as "Zellets No. 1" contains aloes and oil of savin and said preparation known as "Zellets No. 2" contains aloes, extract of cotton root bark, ergotin, black hellebore, and oil of savin. The aforesaid drugs are present in said preparations 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 said 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 where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning. The use of said preparations might 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 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

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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 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, Leland F. Benham, an individual, trading as The Zelle 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 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 by the name of "Zellets No. 1" and "Zellets No. 2," or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or 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 either or both of said preparations constitute a safe, competent and scientific treatment for delayed menstruation and that their use will have no ill effect upon the human body, or which

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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 the 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

STERLING PRODUCTS CORPORATION, AND STERLING  
PRODUCTS CORPORATION TRADING AS PAUL HART-  
MANN AGENCY

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

*Docket 2779. Complaint, Apr. 23, 1936—Decision, Sept. 12, 1939*

Where a corporation engaged in sale by mail order of drugs, pharmaceuticals, surgical instruments, dressings, and surgical supplies, to purchasers thereof in other States; in advertising matter consisting of catalogs, folders, circulars, circular letters, post cards, and other forms of printed advertising mailed from New York City to some 16,000 customers and prospective customers in various other States—

- (a) Represented that ethyl chloride tubes, ethyl chloride, distilled water, and glass ampules used to hold distilled water, were being sold by competitors as wholly of domestic origin, although they had been made in and imported from a foreign country by competitors involved, notwithstanding fact number of competitors did in fact sell and offer for sale said various products made in United States and entirely of domestic origin, with capacity and tendency to mislead and deceive customers and prospective customers of such competitors and induce them to withhold contemplated orders for articles in question from said competitors and give such orders to it;
- (b) Represented that it was closing out its stock of foreign-made surgical instruments, and that in future it would deal only in such instruments made in the United States, notwithstanding fact it was then purchasing, and continued to purchase, for resale surgical instruments made in foreign country, and to accept and fill any orders that came to it for such instruments thus made, with capacity and tendency to deceive members of public into purchasing such instruments from it in the erroneous and mistaken belief that when it had thus closed out its foreign-made stock it would sell only such instruments made in the United States, as preferred by substantial portion of purchasing public in case of such products and medical supplies, etc.; and
- (c) Represented that all of the surgical and medical products listed in its said circulars were made in the United States, notwithstanding fact certain dressing so listed was not there made, but was made in foreign country and imported, with capacity and tendency to cause members of purchasing public to buy said merchandise in erroneous and mistaken belief that it was made in the United States, preferred as aforesaid by substantial part thereof;

With direct result that trade in commerce among the various States, by reason of said false and misleading statements and representations, was unfairly diverted to it from its competitors who deal only in surgical instruments of American manufacture and who do not falsely represent the place of manufacture of their respective merchandise or of the merchandise of their competitors: