

IN THE MATTER OF
WILLIAM EVERETTE, DOING BUSINESS AS W. E. & M. E.
MEDICINE COMPANY

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

Docket 3087. Complaint, Mar. 24, 1937—Decision, Sept. 18, 1939

Where an individual engaged in selling and marketing medicinal preparation designated by him as "W. E. & M. E. Herb Tonic," to purchasers in other States, in substantial competition with others engaged in sale and distribution of like and similar products, or other products and treatments designed, intended, and used for similar purposes, in commerce among the various States; in advertising matter circulated, as aforesaid, to promote sale of his said "Herb Tonic," and which contained drugs prescribed by doctors for some of ills which it was represented to relieve, but with indicated dosage which did not give users amounts of such drugs, even as laxative, as recommended by medical profession in most cases—

- (a) Represented that use of said preparation purified the blood and relieved all acute pains, and that it contained no harmful ingredients, facts being protracted use thereof might be injurious to health and cause undesirable results, and said preparation would not purify the blood, but therapeutic value thereof was limited to the efficacy of its laxative properties, and it would not relieve all acute pains;
- (b) Represented that said product relieved constipation, facts being it had no therapeutic value in treatment of said condition other than affording, in some cases, temporary relief therefrom;
- (c) Represented that said preparation was a male and female body builder, facts being it was not such a body builder in the sense that it would stimulate sexual organs or sex systems;
- (d) Represented that said preparation had therapeutic value in treatment of hemorrhoids, facts being it had no therapeutic value in treatment of said condition, other than affording, in some cases, temporary relief therefrom;
- (e) Represented that said preparation had therapeutic value in treatment of chills, fever, and disorders of the skin, facts being it had no such value, other than affording in some cases, temporary relief therefrom when such conditions were due to constipation;
- (f) Represented that said preparation was a remedy for and would relieve backache or disorders of the liver or kidneys, facts being it was not such a remedy and would not accomplish such results, and had no substantial therapeutic value in affording relief from such conditions; and
- (g) Represented that said preparation was a remedy for disorders of the stomach, indigestion and cramp, and constituted a cure for the menopause, and would relieve sufferings caused thereby, facts being it was not such a remedy or cure for said condition and would not relieve such sufferings;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that said representations were true, and to induce number of said public to buy substantial quantity of said product, which they would not, absent such belief, purchase, and, as

direct consequence of such belief induced by said representations, to cause number of said public to buy substantial quantities, with result of thereby diverting trade unfairly to said individual from his competitors aforesaid, who truthfully advertise and represent their respective preparations:

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

Before *Mr. John W. Addison* and *Mr. E. J. Hornibrook*, trial examiners.

Mr. Floyd O. Collins and *Mr. George Foulkes* for the Commission.

Mr. Henry Drizin, of Philadelphia, Pa., 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 William Everette, an individual, doing business under the trade name of W. E. & M. E. Medicine Co., hereinafter referred to as respondent, has been, and now 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 thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. William Everette is an individual, doing business under the trade name of W. E. & M. E. Medicine Co., and his principal place of business is located at 509 North Fifty-eighth Street, Philadelphia, Pa.

PAR. 2. Respondent is now, and has been for more than 1 year last, engaged in the sale and distribution of a medicinal preparation designated "W. E. & M. E. Herb Tonic," and recommended for various and sundry diseases and ailments, as will be more fully set out hereinafter. The respondent causes said product when sold, to be shipped and transported in interstate commerce from his place of business, located in Philadelphia, Pa., to purchasers thereof located at various points in States of the United States other than the State of Pennsylvania. He now maintains, and has at all times mentioned herein maintained a constant current of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of his business as aforesaid, is now, and at all times herein referred to has been, in

active, substantial competition with other individuals and corporations, firms, and partnerships likewise engaged in the sale and distribution of other preparations prepared, manufactured, advertised, and sold for substantially the same purpose and use for which respondent's product is advertised and sold in commerce among and between the various States of the United States.

PAR. 4. Respondent, in the course and conduct of his business as aforesaid, and for the purpose of inducing individuals to purchase said preparation, W. E. & M. E. Herb Tonic, has caused advertisements to be inserted in newspapers and other periodicals of general circulation throughout the United States, and has printed and circulated throughout the several States of the United States, by United States mail and otherwise, to customers and prospective customers, certain advertising folders and literature and other advertising matter, in all of which the respondent has caused his trade name and the name of said product to be prominently and conspicuously displayed, and in which the following statements are made:

W. E. & M. E. Herb Tonic improves circulation—purifies the blood—male and female body builder—relieves constipation, piles, chills and fever, backache, kidney, liver, stomach, and skin disorders.

For years I have suffered with indigestion, nervousness, and loss of appetite. I became pallid from loss of sleep and was much underweight. After taking W. E. & M. E. for about four weeks I was greatly surprised at the results.

For years I suffered through change of life. After taking two bottles of W. E. & M. E. Herb Tonic I have been completely cured.

No harmful ingredients.

Relieves all acute pains.

It relieves indigestion, pains, or cramps in five to ten minutes; also liver, kidney, stomach, and blood disorders, constipation, headache, and sleepiness.

All of said statements, together with many other similar statements appearing in respondent's advertising and literature, purport to be descriptive of respondent's product, W. E. & M. E. Herb Tonic. In all of respondent's advertising matter and literature the respondent represents, through the statements herein set out and through other statements of like import and effect, that said product will purify the blood and is a male and female body builder; that the use of said product will relieve constipation, piles, chills and fever, backache, kidney disorders, liver disorders, stomach and skin disorders, indigestion, pains or cramps and all acute pains; that it is very effective as a cure for change of life; and that no ingredient in said preparation is harmful.

PAR. 5. The claims and representations made by the respondent with respect to the therapeutic value of the preparation, W. E. & M. E. Herb Tonic, are grossly exaggerated, false, and misleading.

In truth and in fact, respondent's product, W. E. & M. E. Herb Tonic will not improve circulation. It is not a blood purifier. Said preparation has no value as a tonic and is not a male and female body builder. It is not an adequate remedy for constipation, piles, chills and fever, backache, kidney disorders, liver disorders, stomach and skin disorders, indigestion, backache, or cramps. Neither will it relieve the suffering caused by any of said ailments. It is not a competent treatment for, and has no effect on, change of life. There are some ingredients in said preparation that are harmful if present in sufficient quantities.

PAR. 6. There are, among respondent's competitors, many who prepare, distribute, and sell to the purchasing public medicines or treatments for bad circulation, impure blood, constipation, piles, chills and fever, backache, kidney disorders, liver disorders, stomach and skin disorders, indigestion, pains and cramps, and tonics for those suffering through change of life, who in no way misrepresent the quality, efficacy, or therapeutic value of their product, and with these competitors respondent is in active, substantial competition.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing his product, W. E. & M. E. Herb Tonic, and its effectiveness, as hereinabove set out, in offering for sale and selling said product, were and are calculated to, and had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true.

As a direct consequence of said mistaken and erroneous beliefs induced by respondent's acts and representations, as hereinabove set out, trade has been unfairly diverted to the respondent from competitors likewise engaged in the preparation, selling, and distributing of preparations sold and distributed for substantially the same purpose and use for which respondent's product is sold and distributed; and as a result of the false and misleading representations of the respondent, injury has been, and is now being done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are all to the injury and prejudice of the public and respondent's competitors, and have been and are unfair methods in commerce, within the meaning and intention of section 5 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 24, 1937, issued and served its complaint in this proceeding upon respondent, William Everette, an individual doing business under the trade name of W. E. & M. E. Medicine Co., charging him 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 the complaint were introduced by Floyd O. Collins, attorney for the Commission and in opposition to the allegations of the complaint by Henry Drizin, attorney for the respondent, before John W. Addison and E. J. Hornibrook, examiners of the Commission theretofore duly designated by it, 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 brief in support of the complaint, respondent not having filed brief, and oral argument not having been requested; 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. William Everette, 509 North Fifty-eighth Street, Philadelphia, is an individual, trading at this address as W. E. & M. E. Medicine Co.

PAR. 2. Respondent is engaged in the business of selling and marketing a medicinal preparation designated by him as W. E. & M. E. Herb Tonic.

PAR. 3. Respondent causes said product, when sold, to be transported from his place of business in Pennsylvania to purchasers thereof at their respective points of location in other States of the United States. Respondent maintains and has maintained a course of trade in said product in commerce between and among the various States of the United States.

PAR. 4. Respondent is in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar products or other products and treatments intended, designed and used for similar purposes in commerce between and among the various States of the United States.

PAR. 5. Respondent, to promote the sale of said herb tonic, represents in advertising matter circulated among the several States that said tonic, when used by men and women purifies the blood; is a male and female body builder; relieves constipation, piles, chills and fever, backache, disorders of kidneys, liver, stomach and skin, indigestion, pains and cramps, and all acute pains; is an effective cure for change of life and contains no harmful ingredients.

PAR. 6. In truth and in fact said preparation is made of Epsom salts (the only nonvolatile part) and essence of peppermint, added to caramel, powdered rhubarb, whole Cape Aloes, lily of the valley, roots (blacksnake, Virginia snake, blood, queen, ginger, golden seal, poke, dandelion), barks (oak, wild cherry), and leaves (bachu, rosemary) boiled for 9 hours. Protracted use of said preparation may be injurious to health, as for example, when used for stomach pains caused by ulcers; the use of said preparation may also cause congestion of the pelvis and it may irritate hemorrhoids and make menstruation more painful. Said preparation is a simple laxative, sedative, and tonic and as such may have incidental benefits for some of the ailments it is represented to relieve. Said preparation does not purify the blood. The therapeutic value of said preparation in the treatment of the blood is limited to the efficacy of the laxative properties of said preparation. Said preparation has no therapeutic value in the treatment of constipation other than affording, in some cases, temporary relief from such condition. Said preparation will not relieve all acute pains. Said preparation is not a male or female body builder in the sense that it will stimulate sexual organs of the sex systems. Said preparation has no therapeutic value in the treatment of piles other than the affording, in some cases, temporary relief from the suffering incident thereto. Said preparation has no therapeutic value in the treatment of chills or fever or disorders of the skin other than affording, in some cases, temporary relief when such conditions are due to constipation. Said preparation is not a remedy for, and will not relieve, backache and is not a remedy for disorders of the liver or kidneys and has no substantial therapeutic value in affording relief from such conditions. Said preparation is not a remedy for disorders of the stomach or for indigestion or cramps. Said preparation is not a cure for change of life or menopause and will not relieve the sufferings caused by such condition. Said preparation contains drugs prescribed by doctors of medicine for some of the ills it is represented to relieve, but the dosage indicated by respondent does not give users the amounts of these drugs, even as a laxative, that are recommended by the medical profession in most cases.

Order

29 F. T. C.

PAR. 7. Each and all of the false and misleading representations so made by respondent, as set forth above, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and false belief that said representations are true; and to induce a number of the purchasing public to buy a substantial quantity of said preparation which they would not buy except for such erroneous and false belief. Further, said representations have the capacity and tendency, as a direct consequence of such erroneous and false belief induced by the representations of respondent as aforesaid, to cause a number of the purchasing public to buy substantial quantities of said preparation with the result that trade has been diverted unfairly to respondent from his said competitors who truthfully advertise and represent their respective preparations.

CONCLUSION

The aforesaid acts and representations of respondent, William Everette, have been, and are, to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition 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 respondent, testimony and other evidence taken before John W. Addison and E. J. Hornibrook, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, the brief of counsel for the Commission filed herein (respondent not having filed a brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent William Everette, individually and doing business under the trade name of W. E. & M. E. Medicine Co., his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his medical preparation now designated as W. E. & M. E. Herb Tonic, or any other medical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties whether sold under that

name or any other name in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of said preparation purifies the blood or relieves all acute pains or contains no harmful ingredients.

2. Representing that said preparation has any therapeutic value in the treatment of constipation unless such representation is limited to statements to the effect that said preparation may, in some cases, afford temporary relief from such condition.

3. Representing in any manner that said preparation will stimulate the sexual organs or system.

4. Representing that said preparation has any therapeutic value in the treatment of piles unless such representation is limited to statements to the effect that said preparation may, in some cases, afford temporary relief from the suffering caused by such condition.

5. Representing that said preparation has any therapeutic value in the treatment of chills or fever or disorders of the skin unless such representations are limited to statements to the effect that said preparation may, in some cases, afford temporary relief therefrom when such conditions are due to constipation.

6. Representing that said preparation is a remedy for, or will relieve, backache or disorders of the liver or kidneys.

7. Representing that said preparation is a remedy for disorders of the stomach, indigestion or cramps, or is a cure for the menopause or will relieve the sufferings caused by such condition.

It is further ordered, That respondent shall, within 60 days after the service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Complaint

29 F. T. C.

IN THE MATTER OF
MARTIN CUSTOM MADE TIRES CORPORATION

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

Docket 3585. Complaint, Sept. 14, 1938—Decision, Sept. 18, 1939.

Where a corporation engaged in manufacture and sale of pneumatic automobile and truck tires to purchasers in various other States and in the District of Columbia, in substantial competition with those engaged in sale and distribution of similar products in commerce as aforesaid, and including many who sell and distribute such tires and do not misrepresent manner and quality of construction or number of plies contained therein—

Placed on the wrappings encasing its tires certain representations intended to portray, represent, and indicate, among other things including manufacturer's name, size, etc., numerical ply structure, and fact that tires were custom built, and affixed or molded into the side walls of its tires words, letters, or phrases stating tires were built as aforesaid, and colored permanent marks, brands, or insignia with certain words, letters, figures, or phrases intended to be representative and indicative of number of plies contained and existing in structure of products in question, facts being certain of the tires marked by it as aforesaid were not truthfully marked and branded, and did not contain number of plies thus indicated, in accordance with well-known and accepted custom and usage, but substantially smaller number; With tendency and capacity to mislead and deceive substantial portion of purchasing public as to number of plies actually contained in tires in question, and with result, as direct consequence of such erroneous and mistaken belief, that number of the public purchased substantial volume of its said tires, and trade was diverted unfairly to it from its competitors aforesaid, likewise engaged in selling and distributing such products, and with effect of placing in hands of unscrupulous or uninformed retailers means and instrumentality whereby they might mislead purchasing public into erroneous belief that its said tires contained actual number of plies as indicated by its said representations:

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 in commerce and unfair and deceptive acts and practices therein.

Mr. B. G. Wilson for the Commission.

Strauss, Riech & Boyer, of New York City, 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 Martin Custom Made Tires Corporation, a corporation, hereinafter referred to as