

Syllabus

IN THE MATTER OF

LOU STERLING AND WALTER FEHR GARDNER, TRADING
AS KIRK MEDICINE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3770. Complaint, Apr. 20, 1939—Decision, Oct. 30, 1939*

Where two individuals engaged in sale of their variously designated "Kirk's Tablets," "Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound," to purchasers in various other States; in advertisements which they disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce, and through continuities broadcast from radio stations of extrastate audience, and through other means, and which were intended and likely to induce purchase of their said products—

- (a) Represented that there was an alkaline content in said tablets which aided nature in neutralizing and eliminating acid accumulations in digestive system, and that stomach distress, headaches, backaches, dizzy spells, indigestion, and excessive accumulation of gas were very often direct result of accumulation of toxic poison in digestive system, and that almost immediate relief from such ailments was secured through use of said tablets, facts being there was no alkalinizing substance in said tablets and such preparation was not cure or remedy for, or effective in treatment of, stomach distress, headaches, and other ailments and conditions mentioned and including excessive accumulation of gas in the stomach, and would not give relief therefrom;
- (b) Represented that headachy, listless, worn-out feeling, backaches, upset stomach, and lack of appetite, were caused by acid indigestion due, in great many cases, to an accumulation of bacteria in the digestive system, and that for such ailments and conditions almost immediate relief had been found by thousands of users of said tablets, as attested by thousands of letters received by said individuals from such users, facts being thousands of users had not attested to beneficial results secured from use of tablets as asserted by them, and their preparation would not relieve the digestive system of bacteria and would not give relief by neutralizing and eliminating bacterial action therein; and
- (c) Represented that their tablets would give relief by neutralizing and eliminating bacterial action, caused, in most cases, by absence of enough bile and pancreatic acidity, and that they were highly recommended for use in all cases of disorders of defective digestion, and in all cases of chronic undernourishment, facts being they would not correct disorders of defective digestion, nor give relief in all cases of chronic undernourishment;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and inducing said portion of

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such public, because of said belief, to buy their drug-containing medicinal preparation:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. George E. Stoddard, of Los Angeles, Calif., for respondents.

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 Lou Sterling and Walter Fehr Gardner, copartners, trading as Kirk Medicine Co., hereinafter referred to as respondents, have 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, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Lou Sterling and Walter Fehr Gardner, are copartners trading as Kirk Medicine Co., and their principal place of business is located in Hollywood, Calif. The respondent Lou Sterling resides at 12024 Addison Street, North Hollywood, Calif., and the respondent Walter Fehr Gardner maintains a business address at c/o Allied Advertising Agency, Harth Building, 3d and Western Avenue, Los Angeles, Calif.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the sale and distribution of a medicinal or pharmaceutical preparation variously designated as "Kirk's Tablets," "Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound." In the course and conduct of their business the respondents cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of California to the purchasers thereof at their respective points of location in the various States of the United States other than the State of California. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said preparation among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by 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 continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State or country in which such broadcasts originate, 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 their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. The alkaline content of Kirk's Tablets aid nature in neutralizing and eliminating the acid accumulated in the digestive system.

2. Stomach distress, headaches, back aches, dizzy spells, indigestion, excessive accumulation of gas are very often the direct result of accumulated toxic poisons in the digestive system. Almost immediate relief is found through use of Kirk's Tablets. * * *

3. Do you have that headachy, listless, worn out feeling, back aches, upset stomach and no appetite— * * * acid indigestion. The accumulation of bacteria in the digestive system is the answer in a great many cases, as is attested in the thousands of letters we have received from users of Kirk's Tablets, who have found almost instant relief from their use.

4. The bacterial action is caused, in most cases, by an absence of enough bile and pancreatic acidity and, in such cases, this condition must be neutralized and eliminated before you get relief. Kirk's Tablets do this.

5. Their use is highly recommended for all symptoms of inactive gall bladder and liver action, in all disorders of defective digestion, in all cases of chronic under nourishment, so . . . if you suffer from any of the symptoms of these stomach and digestive disorders . . . try Kirk's Tablets at once.

PAR. 4. Through use of the statements and representations hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondents have represented, directly and by implication, among other things, the following:

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1. That there is an alkaline content in Kirk's Tablets which aids nature in neutralizing and eliminating the acid accumulation in the digestive system.

2. That stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas are very often the direct result of accumulated toxic poisons in the digestive system, and that almost immediate relief from such ailments is secured through the use of Kirk's Tablets.

3. That headachy, listless, worn out feeling, back aches, upset stomach, and lack of appetite, are caused by acid indigestion, due in a great many cases to an accumulation of bacteria in the digestive system, and that for such ailments and conditions almost immediate relief has been found by thousands of users of Kirk's Tablets as attested by thousands of letters received by the respondents from such users.

4. That Kirk's Tablets give relief by neutralizing and eliminating bacterial action which, in most cases, is caused by absence of enough bile and pancreatic acidity.

5. That Kirk's Tablets are highly recommended for use in all cases of disorders of defective digestion, and in all cases of chronic under nourishment.

PAR. 5. The aforesaid representations, used and disseminated by the respondents in the manner above described, are gross exaggerations, which are misleading and untrue, and constitute false advertisements.

In truth and in fact the representations that there is an alkaline content in Kirk's Tablets which will aid nature in eliminating the acid accumulations in the digestive system, are untrue in that Kirk's Tablets contain no alkalizing substance. Said preparation would not be a cure or remedy for, or effective in the treatment of, or give relief from, stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas in the stomach.

Furthermore, thousands of users have not attested to the beneficial results secured from the use of the tablets as asserted by the respondents. Respondents' preparation will not relieve the digestive system of bacteria and will not give relief by neutralizing and eliminating bacterial action in the digestive system.

Said preparation will not correct disorders of defective digestion, and will not give relief in all cases of chronic under nourishment.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to said medicinal preparation,

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 false statements, representations and advertisements are true, and induces a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' medicinal preparation containing drugs.

PAR. 7. The aforesaid acts and practices of respondents, 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 April 20, 1939, issued and served its complaint in this proceeding upon the respondents Lou Sterling and Walter Fehr Gardner, copartners, trading as Kirk Medicine Co., charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 8, 1939, the respondents filed their answers to said complaint. Thereafter, at a regularly scheduled hearing, a stipulation as to the facts was entered of record and it was agreed that said stipulation of facts should become the evidence in this proceeding. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulation as to the facts (no briefs having been filed 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. Respondents, Lou Sterling and Walter Fehr Gardner, are copartners trading as Kirk Medicine Co., and their principal place of business is located in Hollywood, Calif. The respondent Lou Sterling resides at 12024 Addison Street, North Hollywood, Calif., and the respondent Walter Fehr Gardner maintains a business address at c/o Allied Advertising Agency, Harth Building, 3d and Western Avenue, Los Angeles, Calif.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the sale and distribution of a medicinal or pharmaceutical preparation variously designated as "Kirk's Tablets,"

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"Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound." The quantitative formula for said product is as follows:

Pancreatic Enzymes.....	2 grains.
Sodium Glycocholate.....	$\frac{1}{2}$ grain.
Sodium Taurocholate.....	$\frac{1}{2}$ grain.
Extract Cascara Sagra.....	$1\frac{1}{4}$ grains.
Extract Nux Vomica.....	$\frac{1}{20}$ grain.
Oleoresin Ginger.....	$\frac{1}{16}$ grain.

In the course and conduct of their business the respondents cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of California to the purchasers thereof at their respective points of location in the various States of the United States other than the State of California. Respondents maintain, and at all times mentioned herein, have maintained, a course of trade in commerce in said preparation among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by 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 continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State or country in which such broadcasts originate, any 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 their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. The alkaline content of Kirk's Tablets aid nature in neutralizing and eliminating the acid accumulated in the digestive system.

2. Stomach distress, headaches, back aches, dizzy spells, indigestion, excessive accumulation of gas are very often the direct result of accumulated toxic poisons in the digestive system. Almost immediate relief is found through use of Kirk's Tablets. * * *

3. Do you have that headachy, listless, worn out feeling, back aches, upset stomach and no appetite— * * * acid indigestion. The accumulation of bacteria in the digestive system is the answer in a great many cases, as is attested in the thousands of letters we have received from users of Kirk's Tablets, who have found almost instant relief from their use.

4. The bacterial action is caused, in most cases, by an absence of enough bile and pancreatic acidity and, in such cases, this condition must be neutralized and eliminated before you get relief. Kirk's Tablets do this.

5. Their use is highly recommended for all symptoms of inactive gall bladder and liver action, in all disorders of defective digestion, in all cases of chronic under nourishment, so * * * if you suffer from any of the symptoms of these stomach and digestive disorders * * * try Kirk's Tablets at once.

PAR. 4. Through use of the statements and representations hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondents have represented, directly and by implication, among other things, the following:

1. That there is an alkaline content in Kirk's Tablets which aids nature in neutralizing and eliminating the acid accumulation in the digestive system.

2. That stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas are very often the direct result of accumulated toxic poisons in the digestive system, and that almost immediate relief from such ailments is secured through the use of Kirk's Tablets.

3. That headachy, listless, worn out feeling, back aches, upset stomach, and lack of appetite, are caused by acid indigestion, due in a great many cases to an accumulation of bacteria in the digestive system, and that for such ailments and conditions almost immediate relief has been found by thousands of users of Kirk's Tablets as attested by thousands of letters received by the respondents from such users.

4. That Kirk's Tablets give relief by neutralizing and eliminating bacterial action which, in most cases, is caused by absence of enough bile and pancreatic acidity.

5. That Kirk's Tablets are highly recommended for use in all cases of disorders of defective digestion, and in all cases of chronic under nourishment.

PAR. 5. The aforesaid representations, used and disseminated by the respondents in the manner above described, are gross exaggerations, which are misleading and untrue, and constitute false advertisements.

In truth and in fact the representations that there is an alkaline content in Kirk's Tablets which will aid nature in eliminating the acid accumulations in the digestive system, are untrue in that Kirk's Tablets contain no alkalizing substance. Said preparation would not be a cure or remedy for, or effective in the treatment of, or give relief from, stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas in the stomach.

Furthermore, thousands of users have not attested to the beneficial results secured from the use of the tablets as asserted by the respondents. Respondents' preparation will not relieve the digestive system of bacteria and will not give relief by neutralizing and eliminating bacterial action in the digestive system.

Said preparation will not correct disorders of defective digestion, and will not give relief in all cases of chronic under nourishment.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said medicinal preparation, 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 false statements, representations and advertisements are true, and induces a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' medicinal preparation containing drugs.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice 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, the answers of respondents and a stipulation as to the facts entered upon the record (no briefs having been filed and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

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Order

It is ordered, That the respondents, Lou Sterling and Walter Fehr Gardner, copartners, trading as Kirk Medicine Co., or trading under any other name or through any corporate or other device, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a medicinal preparation now designated and sold as "Kirks Tablets," "Kirks Pancreatin Compound Tablets," and "Kirks Tablets Pancreatin Compound," or of any other medicinal preparation containing substantially the same ingredients or possessing substantially the same 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 representing:

1. That said preparation will aid nature in eliminating the acid accumulations in the digestive system or that said preparation contains an alkalizing substance.

2. That said preparation is a cure or remedy for, or that it is effective in the treatment of, or that it will give relief from, stomach distress, headaches, back aches, dizzy spells, indigestion, and excessive accumulations of gas in the stomach.

3. That thousands of users have attested to the beneficial results obtained from the use of said preparation.

4. That said preparation will relieve the digestive system of bacteria or that it will give relief by neutralizing and eliminating bacterial action in the digestive system.

5. That said preparation will correct disorders of defective digestion or that it will give relief in all cases of chronic under-nourishment.

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

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IN THE MATTER OF

E. A. MORGAN AND COMPANY, AND E. A. MORGAN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3771. Complaint, Apr. 24, 1939—Decision, Oct. 31, 1939*

Where a corporation and an individual, who was president and owner thereof and directed and controlled its sales policies and other activities with respect to acts and practices below set out, engaged in packaging powdered preparation, variously designated as "Run-Safe," "Run-Free," and "Runless," for improving, as represented, wearing qualities of hosiery and lingerie, and in selling and distributing said product through direct selling methods and sales persons and representatives who solicited orders therefor from prospective purchasers in the various States and in the District of Columbia, and also in thus selling and distributing said product in response to orders received at their place of business—

- (a) Represented, through statements on labels affixed to containers of such product, and through their agents and sales representatives, and otherwise, and through use of names "Run-Safe," "Run-Free," and "Runless," that their said preparation prevented runs, snags, and breaks in silk hosiery and lingerie; and
- (b) Represented that use of their said product would reduce hosiery and lingerie cost approximately 50 percent, and would set and hold the color of such products and prevent rotting and fading, and render such products "Rain-Spot Proof";

Facts being product in question would not prevent runs, snags, and breaks in silk hosiery and lingerie, nor prevent rotting or fading, nor set or hold the color thereof, nor render them "Rain-Spot Proof," and would not save for users approximately 50 percent of hosiery and lingerie costs, though it might increase resistance to runs in certain types of hosiery;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of their said preparation because of such belief:

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

Mr. R. P. Bellinger for the Commission.

Mr. Edward H. Brink, Jr., of Cincinnati, Ohio, for respondents.

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 E. A. Morgan & Co., a corporation, and E. A. Morgan, individually, hereinafter re-