

## Syllabus

## IN THE MATTER OF

## E. W. KNOWLTON, TRADING AS OLD MISSION TABLET COMPANY

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

*Docket 3664. Complaint, Dec. 15, 1938—Decision, Nov. 7, 1939*

Where an individual engaged in compounding, selling, and distributing his "Old Mission Tablets" or "O-M Tablets" to purchasers in various other States; in advertisements which he disseminated through periodicals, newspapers, and other publications circulating throughout the various States and through continuities broadcast from radio stations of extrastate audience, and through other means—

- (a) Represented, directly or through implication, that his said preparation was identical with that which helped build up the reputation of one of the greatest stomach and kidney specialists in the United States, and was prepared and used by such specialist, and one of the greatest tablets offered the public for general run-down stomach condition, and that, wherever known, it was one of the largest selling and most favored tablets therefor; and
- (b) Represented, as aforesaid, that such tablets constituted an effective treatment for stomach and digestive troubles caused by costive weakened digestive system and for congestive stomach soreness, sick headaches, backaches, dizzy spells, and gastric stomach attacks, and that one or two tablets would ordinarily relieve congestive stomach soreness, sick headaches, backaches, dizzy spells, and gastric stomach attacks;

Facts being said tablets were not effective for congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks unless such ailments or conditions were caused primarily by constipation, and use of one or two of said tablets would not ordinarily relieve such ailments and conditions, even though primarily thus caused, and said products did not constitute effective treatment for ailments and conditions variously set forth above, were not the identical form of tablets which helped build up reputation of one of greatest specialists, as aforesaid, and were not prepared or used by such specialist, and said individual's claims as to therapeutic value or efficacy of preparation in question were grossly exaggerated, false, and deceptive and greatly exceeded any claims as to the therapeutic value and efficacy thereof which might truthfully be made;

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 that product in question possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of purchasing public, because of such belief, to buy substantial quantities of said product, and of thereby diverting trade unfairly to him from his competitors in commerce who truthfully advertise the effectiveness of their medical and other preparations and products for use in treatment of ailments and conditions for

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which said individual recommended his preparation in question; to the injury of competition in commerce:

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

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

*Mr. J. D. Kash* for the Commission.

*Mr. James A. Norman*, of Washington, D. C., for respondent.

## COMPLAINT

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

PARAGRAPH 1. The respondent, E. W. Knowlton, is an individual trading as Old Mission Tablet Co. and having his office and principal place of business in the city of Pasadena, State of California.

PAR. 2. The respondent is now, and has been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated as "Old Mission Tablets" or "O-M Tablets." Respondent sells said preparation to members of the purchasing public situated in various States of the United States, and causes the said preparation, when sold by him, to be transported from his aforesaid place of business in the State of California to the purchasers thereof at their respective points of location in various States of the United States other than the State of California. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals, and with firms, partnerships, and corporations selling and distributing medicinal and other preparations and products designed and intended for use and used in the treatment of ailments and conditions of the human body for which respondent recommends the use of his said preparation. Among such competitors in said commerce are many

who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

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

When you take O-M Tablets you are taking the identical form of tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States.

One of the greatest tablets of its kind ever offered to the public for general run-down stomach conditions.

O-M Tablets are one of the largest selling and most favored tablets wherever they are known. Try O-M Tablets and see for yourself how quickly they will relieve your stomach and digestive troubles, frequently caused by costive weakened digestive system. Try them for congestive stomach soreness—try them for sick headache, backache, dizzy spells or gastric stomach attacks. O-M Tablets often relieve these conditions almost from the first tablet or two.

PAR. 5. Through the use of the statement and representations hereinabove set forth and other similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that O-M Tablets are the identical tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States; that O-M Tablets are one of the greatest tablets offered to the public for general run-down stomach conditions; that O-M Tablets are one of the largest selling, most favored tablets wherever they are known; that O-M Tablets will quickly relieve the stomach and digestive troubles frequently caused by costive weakened digestive system; that they will relieve congestive stomach sore-

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ness, sick headache, backache, dizzy spells, and gastric stomach attacks; and that relief from the above conditions is often attained from the use of the first tablet or two.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertisements. In truth and in fact, the representation that O-M Tablets are the identical form of tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States is untrue; it is not the preparation prepared or used by the greatest stomach and kidney specialist in the United States; O-M Tablets are not one of the greatest tablets ever offered the public for general run-down stomach conditions; O-M Tablets are not one of the largest selling and most favored tablets wherever they are known for general run-down stomach conditions; O-M Tablets are not an effective treatment for the stomach and digestive troubles frequently caused by costive weakened digestive system, nor are they effective for congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks unless such ailments or conditions are caused primarily by constipation; and the use of one or two of said tablets will not ordinarily relieve such ailments or conditions even though primarily caused by constipation.

Respondent's claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive and greatly exceed any claims as to the therapeutic value and efficacy of said preparation which might truthfully be made.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to said 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 that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products as

described in Paragraph Three. In consequence thereof, 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 in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 15, 1938 issued, and on December 19, 1938 served its complaint in this proceeding upon respondent, E. W. Knowlton, an individual trading as Old Mission Tablet Co., charging him with the use of unfair methods of competition and 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 thereto, the Commission granted respondent's motion for the 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. The respondent, E. W. Knowlton, is an individual trading as Old Mission Tablet Co. and having his office and principal place of business in the city of Pasadena, State of California.

PAR. 2. The respondent is now and has been for more than 1 year last past engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated Old Mission Tablets or O-M Tablets. Respondent sells said preparation to members of the purchasing public situated in various States of the United States and causes said preparation when sold by him to be transported from his aforesaid place of business in the State

of California to the purchasers thereof at their respective points of location in various States of the United States other than the State of California. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals, firms, partnerships, and corporations selling and distributing medical and other preparations and products designed and intended for use and used in the treatment of ailments and conditions of the human body for which respondent recommends the use of his said preparation. Among such competitors in commerce are many who do not in any manner misrepresent their preparations and products or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

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

When you take O-M Tablets you are taking the identical form of tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States.

One of the greatest tablets of its kind ever offered to the public for general run-down stomach conditions.

O-M Tablets are one of the largest selling and most favored tablets wherever they are known. Try O-M Tablets and see for yourself how quickly they will relieve your stomach and digestive troubles, frequently caused by costive weakened digestive system. Try them for congestive stomach soreness—try them for sick headache, backache, dizzy spells or gastric stomach attacks. O-M Tablets often relieve these conditions almost from the first tablet or two.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that O-M Tablets are the identical tablets which helped to build up the reputation of one of the greatest stomach and kidney specialists in the United States; that O-M Tablets are one of the greatest tablets offered to the public for general run-down stomach conditions; that O-M Tablets are one of the largest selling, most favored tablets wherever they are known; that O-M Tablets will quickly relieve the stomach and digestive troubles frequently caused by costive weakened digestive system; that they will relieve congestive stomach soreness, sick headache, backache, dizzy spells and gastric stomach attacks; and that relief from the above conditions is often attained from the use of the first tablet or two.

PAR. 6. The aforesaid representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading and untrue, and constitute false advertisements. In truth and in fact, the representation that O-M Tablets are the identical form of tablets which helped to build the reputation of one of the greatest stomach and kidney specialists in the United States is untrue; it is not the preparation prepared or used by the greatest stomach and kidney specialist in the United States; O-M Tablets are not one of the greatest tablets ever offered the public for general run-down stomach conditions; O-M Tablets are not one of the largest selling and most favored tablets wherever they are known for general run-down stomach conditions; O-M Tablets are not an effective treatment for the stomach and digestive troubles frequently caused by costive weakened digestive system, nor are they effective for congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks unless such ailments or conditions are caused primarily by constipation; and the use of one or two of said tablets will not ordinarily relieve such ailments or conditions even though primarily caused by constipation.

Respondent's claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false, and deceptive and greatly exceed any claims as to the therapeutic value and efficacy of said preparation which might truthfully be made.

PAR. 7. The use of the aforesaid false advertisements disseminated in the manner above described induces or is likely to induce, directly or indirectly, the purchase of a drug.

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PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said 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 that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 3. In consequence thereof, 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 in the District of Columbia.

## CONCLUSION

The aforesaid acts and practices of the respondent, E. W. Knowlton, an individual trading as Old Mission Tablet Co., are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission 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 hearings 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, E. W. Knowlton, individually and trading as Old Mission Tablet Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is

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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 respondent's medicinal preparation now designated as Old Mission Tablets and O-M Tablets, or any other preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names or other 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 preparation, which advertisements represent, directly or through implication, that said preparation is identical to the preparation which helped build up the reputation of one of the greatest stomach and kidney specialists in the United States or that said preparation was prepared or used by the greatest kidney and stomach specialist in the United States; that said preparation is one of the greatest tablets offered to the public for general run down stomach condition, or that, wherever it is known, said preparation is one of the largest selling or most favored tablets for such condition; that said preparation is an effective treatment for stomach or digestive troubles caused by costive weakened digestive system; or that said preparation is an effective treatment for congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks unless such representations disclose that such effectiveness is limited to those cases wherein such conditions are caused primarily by constipation, or that one or two tablets of said preparation will ordinarily relieve congestive stomach soreness, sick headaches, backaches, dizzy spells, or gastric stomach attacks irrespective of whether such conditions are caused primarily by constipation.

*It is further ordered,* That the respondent shall, within 60 days after 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.

## IN THE MATTER OF

C. C. JOHNSON, TRADING AS SUPREME MANUFACTURING  
COMPANY, CARLYLE SERVICE, MARVO MANUFACTUR-  
ING COMPANY AND PEERLESS MANUFACTURING  
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 3712. Complaint, Feb. 14, 1939—Decision, Nov. 7, 1939*

Where an individual engaged in sale and distribution of product represented as preservative of silk hosiery and lingerie, under trade names "Supreme," "Marvel," "Marvo," and "Peerless," through direct selling methods and through sales persons and representatives who traveled from State to State and canvassed cities and towns therein and in the District of Columbia, and made general house-to-house canvass soliciting orders therefor through stereotyped sales talk furnished by him, and in substantial competition, as thus engaged, with others selling and distributing preparations for treating such products and increasing their durability and resistance to snags and runs, and including many who do not misrepresent that they manufacture products sold by them and do not misrepresent quality and effectiveness of their respective products or make any other similar false statements in connection with sale and distribution thereof—

- (a) Represented, through statements on labels affixed to containers of product in question, and through sales talks made to prospective purchasers by his agents, directly or by implication, that use of his said product would prevent runs and snags in, or the rotting and fading of, hosiery and lingerie, and that through such use purchaser could save approximately 50 per cent of the cost of such articles; and
- (b) Represented, as aforesaid, that such use strengthened heels and toes of silk hosiery and that hosiery treated therewith would last four or five times longer than it would without being so treated;

Facts being product in question would not stop runs or snags, prevent rotting or fading, make such a saving, or strengthen, as aforesaid, silk hosiery, with increase in durability or life thereof as above set forth; and

- (c) Represented, as aforesaid, and through use of word "manufacturing" in various trade names employed by him, that he was manufacturer of the product in question, notwithstanding fact he was not such manufacturer;

With result that many members of the purchasing public, who are of opinion that advantage in price, service, or other respects is to be secured by purchasing direct from manufacturer without intervention of middlemen, were led, through use of trade names aforesaid, to believe that said individual was manufacturer of product in question and were caused to purchase same, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief his said representations as to efficacy of such product were true, and that he was manufacturer thereof, and of causing such substantial portion of public in question to buy his said product in preference to that of competitors, and of thereby diverting trade unfairly to him from competitors; to their injury and that of public: