

## Syllabus

IN THE MATTER OF  
MENTHO-MULSION, INCORPORATED (FORMERLY M. L.  
CLEIN & COMPANY), AND MAX L. CLEIN AND SADIE B.  
CLEIN

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

*Docket 3674. Complaint, Dec. 23, 1938—Decision, Jan. 16, 1940*

Where a corporation, and two individuals who were president and vice president thereof and had dominant control of its advertising policies and business activities and cooperated with one another and acted in concert in doing acts and things below set forth, engaged in sale and distribution of certain cough and cold medicines under designation "Mentho-Mulsion" and "Malco Cold Tablets," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar and other medicinal products intended and sold for relief of such ailments and conditions, and including many who do not make any misrepresentations or false statements concerning the therapeutic value or efficacy of their respective products; in advertisements which they disseminated through the mails, newspapers and periodicals of general circulation, through circulars and other printed matter distributed in commerce among the various States, through continuities broadcast from radio stations of extrastate audience, and through various means, and which were intended and likely to induce purchase of their said preparations—

- (a) Represented that their said "Mentho-Mulsion" was a cure or remedy for coughs and would stop cough spasms, and remedy, cure or relieve every cough, irrespective of the cause thereof, through such statements as "\* \* \* quick, safe remedy for coughs", "The proven remedy for bad coughs," "\* \* \* stops cough spasms immediately" and others of similar tenor, facts being it did not constitute a cure or remedy for coughs generally, and would not stop cough spasms or relieve every cough, irrespective of cause thereof, and, while having a palliative effect in cases of coughs due to common colds, was not effective in frequent cases in which coughs are manifestations of certain serious physical disorders; and
- (b) Represented that their "Malco Cold Tablets" would drive common colds out of the system, and constituted a cure or remedy for colds, irrespective of the cause thereof, through such statements as "\* \* \* fight colds five ways" and "\* \* \* designed to drive common colds completely out of your system", facts being they would not accomplish such last result and, while having a palliative effect in partially relieving symptoms commonly encountered in colds, did not constitute remedies or cures therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that all such representations were true, and with consequence, as direct result thereof, that number of consuming public purchased their products and trade was diverted unfairly to them from competitors aforesaid, engaged in sale and distribution of similar and other products designed and sold for relief of such ailments and conditions, and who truthfully advertise their respective products and effectiveness thereof:

## Complaint

30 F. T. C.

*Held*, That such acts and practices, under the circumstances set forth, were all of 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.

Before *Mr. John W. Addison*, trial examiner.

*Mr. Morton Nesmith* and *Mr. John M. Russell* for the Commission.

*Mr. Clarence H. Calhoun*, of Atlanta, Ga., 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 M. L. Clein & Co., a corporation, and Max L. Clein and Sadie B. Clein, individuals, 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. M. L. Clein & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, and respondents, Max L. Clein and Sadie B. Clein, individuals, are president and vice president, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business is located at 219 Norris Building, Atlanta, Ga.

PAR. 2. Respondents now are and for more than 2 years last past have been engaged in the sale and distribution of certain cough and cold medicines known as Mentho-Mulsion and Malco Cold Tablets, respectively. Respondents cause said products, when sold, to be transported from their place of business in the State of Georgia to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Mentho-Mulsion and said Malco Cold Tablets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business respondents are now and for the time mentioned herein have been in substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar and other medicinal products intended and sold for the relief of coughs

and colds, respectively, in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations or false statements concerning the therapeutic value or efficacy of their respective products.

PAR. 4. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have and do now cause to be disseminated, false advertisements for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of respondents' said medicinal preparations. Said false advertisements were and are disseminated by the use of the United States mails; by insertion in newspapers, and periodicals having a general circulation and also in circulars and other printed 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 programs emanating therefrom to listeners thereto located in the various States of the United States other than the State from which said broadcast originates. Various means have been and are used by respondents to disseminate or cause the dissemination of said false advertisements for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States of respondents' said medicinal preparations. Among, and typical of, the statements and representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Mentho-Mulsion is a quick safe remedy for coughs

The proven remedy for bad coughs

The only creosote mixture that stops cough spasms immediately

\* \* \* And do not let the children hang on to a nagging cough—Mentho-Mulsion will stop coughs of children or grown-ups immediately

Metho-Mulsion is a mild sure remedy

Smokers

Cough

Mentho-Mulsion

Don't cough your head off—ask your druggist about Mentho-Mulsion \* \* \*  
the sure fire cough relief

Malco Cold Tablets fight colds five ways

Malco Cold Tablets are designed to drive common colds completely out of your system.

PAR. 5. All of said statements, together with similar statements occurring in respondents' aforesaid advertising literature and radio broadcasts, purport to be descriptive of respondents' products and

## Complaint

30 F. T. C.

of their effectiveness when taken. In all of such advertising, respondents represent through the statements and representations herein set out and through other statements of similar import and effect that Mentho-Mulsion is safe; that it constitutes a remedy or cure for every cough irrespective of the cause thereof; that it stops cough spasms and that it will relieve every cough irrespective of the cause thereof.

In all of such advertisements, respondents represent, through the statements and representations herein set out and through other statements of similar import and effect that Malco Cold Tablets constitute a remedy or cure for colds irrespective of the cause thereof and will drive colds completely out of the system.

PAR. 6. The representations and implications so made and used by respondents with respect to the nature and properties of their said products and of their effectiveness when taken are grossly exaggerated, false, and misleading. In truth and in fact Mentho-Mulsion is not entirely safe because of the presence of chloroform therein. The preparation known as Mentho-Mulsion does not constitute a cure or remedy for coughs generally and its use will not stop cough spasms. This preparation will not relieve every cough irrespective of the cause thereof but may have a palliative effect in cases of coughs due to common colds. Coughs are frequently manifestations of certain serious physical disorders of a systemic character and respondents' preparation is not effective in such cases.

Malco Cold Tablets do not constitute remedies or cures for colds though such preparation may have a palliative effect in partially relieving symptoms commonly encountered in colds. Malco Cold Tablets will not drive common colds out of the system.

PAR. 7. Respondents' 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 respondents of the foregoing false and misleading representations, disseminated as aforesaid, in describing their said medicinal preparations and the effectiveness thereof, has had, and has, a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this mistaken and erroneous belief, a number of the consuming public have purchased respondents' products with a result that trade has been diverted unfairly to the respondents from competitors hereinabove described who are engaged in the business of selling and distributing similar and other products designed and sold for the relief of coughs and colds and who truthfully advertise their re-

spective products and the effectiveness thereof when used. As a result of respondents' acts and practices as herein described injury has been done and is now being done by respondents to their competitors 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 the respondents as herein alleged are all to the prejudice of the public and of respondents' 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.

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

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 23, 1938, issued and subsequently caused its complaint to be served in this proceeding upon respondents M. L. Clein & Co., a corporation, and Max L. Clein and Sadie B. Clein, individuals, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Morton Nesmith, attorney for the Commission, and in opposition thereto by Clarence H. Calhoun, attorney for respondents, before John W. Addison, an examiner 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 said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint, 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, M. L. Clein & Co., the name of which has now been changed to Mentho-Mulsion, Incorporated, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia. Respondents, Max L. Clein and Sadie B. Clein, individuals, are president and vice president, respec-

tively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business was located at 219 Norris Building, Atlanta, Ga., but is now located at 409 Commercial Exchange Building, Atlanta, Ga.

PAR. 2. Respondents now are and for more than 2 years last past have been engaged in the sale and distribution of certain cough and cold medicines known as Mentho-Mulsion and Malco Cold Tablets, respectively. Respondents cause said products when sold, to be transported from their place of business in the State of Georgia to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Mentho-Mulsion and said Malco Cold Tablets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business respondents are now and for the time mentioned herein have been in substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar and other medicinal products intended and sold for the relief of coughs and colds, respectively, in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations or false statements concerning the therapeutic value or efficacy of their respective products.

PAR. 4. In the course and conduct of the aforesaid business, the respondents have disseminated and are now disseminating, and have and do now cause to be disseminated, false advertisements for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of respondents' said medicinal preparations. Said false advertisements were and are disseminated by use of the United States mails; by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed 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 programs emanating therefrom to listeners thereto located in the various States of the United States other than the State from which said broadcast originates. Various means have been and are used by respondents to disseminate or cause the dissemination of

said false advertisements for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States of respondents' said medicinal preparations. Among and typical of the statements and representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Mentho-Mulsion is a quick, safe remedy for coughs

The proven remedy for bad coughs

The only creosote mixture that stops cough spasms immediately

\* \* \* And do not let the children hang on to a nagging cough—Mentho-Mulsion will stop coughs of children or grown-ups immediately

Mentho-Mulsion is a mild sure remedy

Smokers

Cough

Mentho-Mulsion

Don't cough your head off—ask your druggist about Mentho-Mulsion \* \* the sure fire cough relief

Malco Cold Tablets fight colds five ways

Malco Cold Tablets are designed to drive common colds completely out of your system.

Respondents have discontinued the advertising hereinabove set out, both in their radio continuity, and newspapers, magazine and other periodical publications, except where such statements are coupled with and used in juxtaposition with phraseology which indicates clearly that such coughs are due to colds.

PAR. 5. All of said statements, together with similar statements occurring in respondents' aforesaid advertising literature and radio broadcasts, purport to be descriptive of respondents' products and of their effectiveness when taken. In all of such advertising, respondents represent through the statements and representations herein set out and through other statements of similar import and effect that Mentho-Mulsion is safe; that it constitutes a remedy or cure for every cough irrespective of the cause thereof; that it stops cough spasms and that it will relieve every cough irrespective of the cause thereof.

In all of such advertisements, respondents represent, through the statements and representations herein set out and through other statements of similar import and effect that Malco Cold Tablets constitute a remedy or cure for colds irrespective of the cause thereof and will drive colds completely out of the system.

PAR. 6. The representations and implications so made and used by respondents with respect to the nature and properties of their said products and of their effectiveness when taken are grossly exaggerated, false, and misleading. In truth and in fact Mentho-Mulsion does not constitute a cure or remedy for coughs generally and its use will not stop cough spasms. This preparation will not relieve every cough

## Order

30 F. T. C.

irrespective of the cause thereof but may have a palliative effect in cases of coughs due to common colds. Coughs are frequently manifestations of certain serious physical disorders of a systemic character and respondents' preparation is not effective in such cases.

Malco Cold Tablets do not constitute remedies or cures for colds though such preparation may have a palliative effect in partially relieving symptoms commonly encountered in colds. Malco Cold Tablets will not drive common colds out of the system.

The formula for Mentho-Mulsion indicates the presence of chloroform but not in sufficient quantity to render it unsafe if taken in accord with the directions on its container.

PAR. 7. Respondents' 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 respondents of the foregoing false and misleading representations, disseminated as aforesaid, in describing their said medicinal preparations and the effectiveness thereof, has had and now has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this mistaken and erroneous belief, a number of the consuming public have purchased respondents' products with the result that trade has been diverted unfairly to the respondents from competitors hereinabove described who are engaged in the business of selling and distributing similar and other products designed and sold for the relief of coughs and colds and who truthfully advertise their respective products and the effectiveness thereof when used.

## CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' 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, the answer of respondents, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by John M. Russell, counsel for the Commission, 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 the respondents Mentho-Mulsion, Incorporated (formerly M. L. Clein & Co.), a corporation, and its officers, and Max L. Clein and Sadie B. Clein, individuals, and their respective agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement by means of the United States mails, or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of the medicinal preparations known as Mentho-Mulsion and Malco Cold Tablets, or any other medicinal preparation possessing substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent, directly or through implication:

1. That respondents' preparation Mentho-Mulsion is a cure or remedy for coughs, or that it will stop cough spasms or that it will have any therapeutic value in the treatment of coughs due to physical disorders of a systemic character, or that it has any therapeutic value in the treatment of coughs in excess of providing temporary relief in cases of coughs due to common colds.

2. That respondents' preparation Malco Cold Tablets will drive common colds out of the system or that said preparation constitutes a cure or remedy for colds or has any therapeutic value in the treatment thereof in excess of providing a palliative relief from some of the symptoms commonly encountered in colds.

*It is further ordered,* That the respondents shall, within 60 days from the date of 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.

## IN THE MATTER OF

PITTSBURGH PLATE GLASS CO., STEWART-CAREY GLASS CO., CAPITOL GLASS CO., BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPER HANGERS OF AMERICA, DISTRICT COUNCIL NO. 27, ETC., AND GLAZIERS' LOCAL UNION NO. 1165, ETC., AND VARIOUS INDIVIDUALS AS OFFICERS, AGENTS, AND REPRESENTATIVES

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

*Docket 3858. Complaint, July 22, 1939—Decision, Jan. 16, 1940*

Where corporate manufacturer and two other concerns, together with certain officers and employees thereof, engaged in the sale and distribution of glass to dealers and consumers in State of Indiana from Indianapolis branch or place of business therein and in conducting in said State glazing contracting business, namely—

I. Corporation engaged in manufacture of glass and in sale and distribution thereof and in conducting glazing contracting business throughout the United States, with factories or manufacturing plants in several States and some 75 warehouses or jobbing branches in various cities including Indianapolis one from which it sold and distributed its said product to dealers therein and consumers thereof in State of Indiana exclusively, and conducted therein also glazing contracting business; and

II. Two corporations respectively engaged in said city as wholesale distributors of glass purchased by them from various manufacturers in different States of the United States other than Indiana and in reselling such glass to dealers in or retailers and consumers of said product in Indianapolis trade area and in the State of Indiana exclusively and in also carrying on exclusively within said State glazing contracting business.

In carrying on, as aforesaid engaged, their businesses in competition with one another in sale and distribution of glass and in glazing contracting business within State of Indiana, and in competition also, as case might be with—

(1) Other jobbers and distributors of glass and glazing contractors with places of business in said State and in other States who undertook to sell and distribute glass and make contracts and installation thereof within same parts of Indianapolis trade area within which aforesaid concerns or distributors conducted their respective businesses and did in some instances thus sell, etc., and who were in competition in so doing with one another and with one or more of distributors aforesaid in area in question, and who, in some instances and in case of distributors with places of business in other States shipped or caused to be shipped glass for jobs secured in said trade area by glazing contractors located within and without such area, and who bid successfully thereon in competition with concerns above described; and