

Syllabus

IN THE MATTER OF
JEAN FERRELL, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3950. Complaint, Nov. 14, 1939—Decision, Mar. 9, 1940

Where a corporation engaged in sale and distribution of its "Concentra" preparation as concentrated food product for obesity and as tonic, to purchasers in various other States and in the District of Columbia; in advertisements thereof which it disseminated through the mails, circulars and other printed or written matter distributed in commerce, and otherwise, and which were intended and likely to induce purchase of its said product—

- (a) Represented, directly or indirectly, that said "Concentra" food or preparation was a highly concentrated food, safe for use, and of which child at one time could take "several dozen capsules" with "no ill effects," and that said product, with addition of liquids, would constitute balanced diet and replace ordinary diet, facts being preparation in question was not a food but, by virtue of high content of rhubarb present therein, in fact a drug, from continued use of which, as recommended, serious injury to health might result, and did not constitute a balanced diet or have sufficient nutritive value to replace ordinary diet, and was not safe for use by either adults or children;
- (b) Represented that said product would supply deficiencies to the body and correct organic elements and cause natural elimination, and that use thereof would correct both underweight and overweight and restore and develop healthy normal figure and remove or eliminate poisons from body, by reason of action of rhubarb, and poisons from kidneys by reason of action of gravel root, facts being it would not supply deficiencies as aforesaid, nor correct organic elements nor accomplish other results above claimed therefor; and
- (c) Failed to reveal, in advertisements disseminated by it as aforesaid, to purchasers and prospective purchasers, that, under conditions prescribed in said advertisements or such conditions as are customary or usual, serious injury to health might be caused by use of said "Concentra," continued use of which over long period of time, as recommended by it, would, by reason of high percentage of rhubarb therein contained, cause excessive purgation and resulting serious injury, as aforesaid;

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 of inducing purchase by public of its preparation aforesaid:

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

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Charles L. Schwartz, of Chicago, Ill., for respondent.

Complaint

30 F. T. C.

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 Jean Ferrell, Inc., a corporation 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. Respondent, Jean Ferrell, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 112-114 East Walton Street, Chicago, Ill. Respondent, during the year last past, has been and still is engaged in the sale and distribution of a preparation known as "Concentra" which is offered for sale and sold as a concentrated food product for use as a treatment for obesity and as a tonic. In the course and conduct of its business, respondent causes said preparation, "Concentra," when sold to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned, has maintained, a course of trade in commerce in said product among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation "Concentra" by United States mails, in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation 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:

The normalizing period, from one to three months, according to the condition of the body, will compel the user of CONCENTRA FOOD to frequent eliminations from bowels and kidneys with resultant cramps and curious symptoms of the body. BE NOT DISTURBED during the normalizing period. CONCENTRA FOOD is a PURE FOOD. Several dozen capsules taken by a child at one time causes no ill effects. The greater the disturbance in the body the more CONCENTRA FOOD one should take. Never cut down on CONCENTRA FOOD because of disturbance during the normalizing period.

Take nothing for bodily ailments while on CONCENTRA FOOD.

4 capsules are found to be equal to the solids of one meal.

The RHUBARB corrects the elimination of poisons from the body. If there is poison in our body, then the rhubarb may act as a physic, but after the elimination of this poison it brings about a normal daily action. It is not what we eat that causes incorrect balance of our body, but what we do not eliminate properly.

The GRAVEL ROOT is a cleanser for the kidneys, thereby eliminating poisons accumulated in the kidneys, just as the rhubarb does for the alimentary tract.

CONCENTRA FOOD. Concentra Food is as the name implies, a highly concentrated, dehydrated food. This food is in capsule form and contains rhubarb, soya bean meal, Irish sea moss, gravel root and dehydrated cranberries.

There are 16 elements in the body: oxygen, carbon, hydrogen, calcium, nitrogen, phosphorous, chlorin, sulphur, fluorin, potassium, iodine, iron, magnesia, silicon manganese and sodium. These 16 elements must be furnished to the body in organic form through foods, for it is only through foods that the body is built and rebuilt. If there is an over-supply or a deficiency of these elements in the body, then that body is either too fat or too thin and needs correcting.

Concentra Food answers these requirements perfectly as a highly concentrated balanced dietetic aid for the furnishing of the corrective organic elements.

CONCENTRA FOOD aids the correcting of body elements. It will in time balance the diet by adding the deficient organic elements and vitamins, starting the elimination of gases, poisons, toxins and water deposits. Through the perfect balanced nutrition and proper elimination a natural, normal figure is developed and health is expressed in the hair, eyes, skin and voice.

As the system begins absorbing CONCENTRA the need for larger amounts of solid food at the evening meal will gradually decrease.

It is very important that plenty of liquids be consumed each day as the body is made up of more than 80% liquids.

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly and indirectly, that Concentra Food is a highly concentrated food, safe for use, which, with the addition of liquids, will constitute a balanced diet and replace the ordinary diet; that this preparation will supply deficiencies to the human body and correct organic elements and cause natural elimination; that the use of this preparation will correct both underweight and overweight and restore and develop a healthy, normal figure; that it will remove or eliminate poisons from the body by reason of the action of rhubarb and will

eliminate poisons from the kidneys by reason of the action of gravel root.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. Concentra Food is not a food but by reason of the high content of rhubarb present in this preparation it is in fact a drug. It is not safe for use by either adults or children but instead serious injury to health may result from its continued use, as recommended by respondent. This preparation will not constitute a balanced diet and does not have sufficient nutritive value to replace the ordinary diet. This preparation will not supply deficiencies to the human body, correct organic elements, or cause natural elimination. The use of this preparation will not correct either overweight or underweight and will not restore or develop a healthy, normal figure. Respondent's preparation will not remove or eliminate poisons from the body or kidneys.

PAR. 5. In addition to the false and misleading statements hereinabove set forth the respondent is also engaged in the dissemination of false advertisements as aforesaid in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said Concentra Food under the conditions prescribed in said advertisements or such conditions as are customary or usual may in some cases cause serious injury to health.

By reason of the presence of a high percentage of rhubarb in respondent's preparation, the continued use of this preparation over a long period of time, as recommended by the respondent would cause excessive purgation and result in serious injury to health.

PAR. 6. The use by 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 induces the purchase by the public of respondent's preparation "Concentra."

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 14, 1939, issued and

subsequently served its complaint in this proceeding upon respondent Jean Ferrell, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 5, 1939, the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interests 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, Jean Ferrell, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 112-114 East Walton Street, Chicago, Ill. Respondent, during the year last past, has been and still is engaged in the sale and distribution of a preparation known as "Concentra" which is offered for sale and sold as a concentrated food product for use as a treatment for obesity and as a tonic. In the course and conduct of its business, respondent causes said preparation, "Concentra," when sold to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned, has maintained, a course of trade in commerce in said product among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation "Concéntra" by United States mails, in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as commerce is defined

Findings

30 F. T. C.

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:

The normalizing period, from one to three months, according to the condition of the body, will compel the user of CONCENTRA FOOD to frequent eliminations from bowels and kidneys with resultant cramps and curious symptoms of the body. BE NOT DISTURBED during the normalizing period. CONCENTRA FOOD is a PURE FOOD. Several dozen capsules taken by a child at one time causes no ill effect. The greater the disturbance in the body the more CONCENTRA FOOD one should take. Never cut down on CONCENTRA FOOD because of disturbance during the normalizing period.

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The GRAVEL ROOT is a cleanser for the kidneys, thereby eliminating poisons accumulated in the kidneys, just as the rhubarb does for the alimentary tract.

CONCENTRA FOOD. Concentra Food is as the name implies, a highly concentrated, dehydrated food. This food is in capsule form and contains rhubarb, soya bean meal, Irish sea moss, gravel root, and dehydrated cranberries.

There are 16 elements in the body: oxygen, carbon, hydrogen, calcium, nitrogen, phosphorous, chlorine, sulphur, fluorin, potassium, iodine, iron, magnesia, silican manganese and sodium. These 16 elements must be furnished to the body in organic form through foods, for it is only through foods that the body is built and rebuilt. If there is an over-supply or a deficiency of these elements in the body, then that body is either too fat or too thin and needs correcting.

Concentra Food answers these requirements perfectly as a highly concentrated balanced dietetic aid for the furnishing of the corrective organic elements.

CONCENTRA FOOD aids the correcting of body elements. It will in time balance the diet by adding the deficit organic elements and vitamins, starting the elimination of gases, poisons, toxins and water deposits. Through the perfect balanced nutrition and proper elimination a natural, normal figure is developed and health is expressed in the hair, eyes, skin and voice.

As the system begins absorbing CONCENTRA the need for larger amounts of solid food at the evening meal will gradually decrease.

It is very important that plenty of liquids be consumed each day as the body is made up of more than 80% liquids.

PAR. 3. Through the use of the statements hereinabove set forth and other similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly or indirectly, that Concentra Food is a highly concentrated food, safe for use, which, with the addition of

liquids, will constitute a balanced diet and replace the ordinary diet; that this preparation will supply deficiencies to the human body and correct organic elements and cause natural elimination; that the use of this preparation will correct both underweight and overweight and restore and develop a healthy, normal figure; that it will remove or eliminate poisons from the body by reason of the action of rhubarb and will eliminate poisons from the kidneys by reason of the action of gravel root.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. Concentra Food is not a food but by reason of the high content of rhubarb present in this preparation it is in fact a drug. It is not safe for use by either adults or children but instead serious injury to health may result from its continued use, as recommended by respondent. This preparation will not constitute a balanced diet and does not have sufficient nutritive value to replace the ordinary diet. This preparation will not supply deficiencies to the human body, correct organic elements or cause natural elimination. The use of this preparation will not correct either overweight or underweight and will not restore or develop a healthy, normal figure. Respondent's preparation will not remove or eliminate poisons from the body or kidneys.

PAR. 5. In addition to the false and misleading statements hereinabove set forth the respondent is also engaged in the dissemination of false advertisements as aforesaid in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said Concentra Food under the condition prescribed in said advertisements or such conditions as are customary or usual may in some cases cause serious injury to health.

By reason of the presence of a high percentage of rhubarb in respondent's preparation, the continued use of this preparation over a long period of time, as recommended by the respondent would cause excessive purgation and result in serious injury to health.

PAR. 6. The use by 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 induce the purchase by the public of respondent's preparation "Concentra."

Order

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CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to the 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, Jean Ferrell, Inc., a corporation, its officers, 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 a preparation containing drugs now designated by the name of "Concentra," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, or disseminating or causing to be disseminated any advertisements 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 preparation, which advertisements represent, directly or through implication, that said preparation "Concentra" is a food or a concentrated food; that with or without the addition of liquids it will constitute a balanced diet, or replace the ordinary diet; that it will supply deficiencies to the human body; that it will correct organic elements; that it will cause "natural" elimination; that its use will correct underweight and overweight; that it will restore or develop a healthy or normal figure; that it will remove or eliminate poisons from the body and kidneys or that its use is safe; or which advertisements fail to reveal that the continued use of said preparation over a long period of time would cause excessive purgation and result in serious injury to health of the user.

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Order

It is further ordered, That the respondent shall within 10 days after service upon it of this order, file with the Commission an interim report in writing stating whether it intends to comply with this order, and if so, setting forth in detail the manner and form in which it intends to comply, and that within 60 days after the service upon it of this order, said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

30 F. T. C.

IN THE MATTER OF
CLAYTON L. WARDELL, TRADING AS WARDELL PIANO
COMPANY

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

Docket 3967. Complaint, Dec. 9, 1939—Decision, Mar. 9, 1940

Where an individual engaged in sale and distribution of musical instruments, including pianos, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products in commerce as aforesaid; in statements concerning character and price of his pianos disseminated among prospective purchasers through newspaper advertisements, postcards sent through the mails, and other printed and written matter, and through his agents or representatives—

Represented, directly and indirectly, that his said products were pianos which, having been previously sold on deferred payment plan and repossessed from original purchasers because of failure to meet payments due thereon, were offered for resale at prices representing only unpaid payments due, and prices substantially less than those at which said pianos would ordinarily be sold by him in customary and normal course of business, through such typical statements as “* * * Rather than reship to the factory, we would like to sell these to responsible parties for the balance due * * *,” and to do so would “accept terms of \$6 and \$8 per month”;

Facts being many pianos thus offered for sale by him were not products previously sold and repossessed as aforesaid, but were taken from his regular stock, and prices thereof were not in any sense sacrifice prices and did not represent any balance due thereon by former purchasers, but were usual prices at which such products were customarily offered for sale and sold by him in regular and normal course of business;

With effect of misleading and deceiving purchasing public into erroneous and mistaken belief that such statements and representations were true, and of causing substantial portion thereof, because of such beliefs, to purchase his said pianos in preference to products of those competitors aforesaid, who do not falsely represent that prices quoted by them are lower than their usual or customary prices:

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 and unfair and deceptive acts and practices in commerce.

Mr. Jesse D. Kash for the Commission.

Gill & Gill, of Sioux City, Ia., 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 Clayton L. Wardell,