

Syllabus

IN THE MATTER OF
WESTERN REFINING COMPANY, INC., TRADING AS THE
MOTEX COMPANY AND COTE PRODUCTS COMPANY

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

Docket 3355. Complaint, Mar. 11, 1938—Decision, Mar. 28, 1940

Where a corporation engaged in sale and distribution of certain medicinal preparations for use in treatment of diseases, ailments, and conditions peculiar to women, in substantial competition, in commerce among the various States and in the District of Columbia, with others engaged in sale and distribution of products used and useful in treatment of such diseases, ailments and conditions; in advertising and describing its so-called "Motex" and "Motex Pills" in advertising literature such as booklets, pamphlets, and circulars, and through labels containing statements purporting to be descriptive of products therein named and efficacy thereof in treatment of such diseases, etc., for which they were recommended as effective, and of which more than 400,000 copies monthly were, during periods involved, distributed among prospective purchasers in the various States and in the District of Columbia—

- (a) Represented, directly and by necessary implication, that its said products were safe, competent, and reliable remedies for all delay in fluctuation of the menses, and brought on, in few hours, desired results;
- (b) Represented, as aforesaid, that said products were harmless and safe and generally preventive of ill health, and remedy for various ailments and troublesome conditions associated with or related to menstrual function when due to unnatural causes; and
- (c) Represented, as aforesaid, that they were effective to tone up generative organs and whole system, and acted directly on circulation of uterus, and were effective abortifacients;

Facts being they were not effective as competent and reliable treatments or remedies for aforesaid various ailments and conditions, and had no value in such connection, did not tone up aforesaid organs or whole system, nor act directly on circulation of uterus, and, as aforesaid, were without value in various conditions and ailments indicated and suggested, were not safe or harmless, taken according to directions, which involved dosage in large and dangerous amount of ergotin and aloin, constituents thereof, and were not effective as abortifacients, but might, thus used, cause serious injury;

With effect of misleading and deceiving members of purchasing public into erroneous belief that said representations were true, and into purchase of substantial quantities of its various products by reason of such belief, and of thereby diverting trade in commerce to it from its competitors who do not, in sale and distribution of their products, make use of same or similar misrepresentations:

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.

Complaint

30 F. T. C.

Before *Mr. Randolph Preston*, trial examiner.

Mr. William L. Taggart for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Western Refining Co., Inc., trading as The Motex Co., and Cote Products Co., and other names, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in 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 Western Refining Co., Inc. is a Massachusetts corporation. The Motex Co. and Cote Products Co. are trade names used by Western Refining Co., Inc. in the sale and distribution of its products. Respondent is engaged in the sale and distribution of certain medical preparations for use in the treatment of diseases, ailments, and conditions peculiar to women. Respondent's office and place of business is located at 16 Robeson St., Lowell, Mass.

The respondent causes its products, when sold, to be transported from the aforesaid place of business in the State of Massachusetts to purchasers thereof located in various States other than the State of Massachusetts and in the District of Columbia. It maintains a course of trade and commerce in said products so distributed and sold by it between the State of Massachusetts and various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as aforesaid, the respondent has been and is in substantial competition in said commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with individuals and partnerships engaged in the sale and distribution of products used and useful in the treatment of the diseases, ailments, and conditions peculiar to women, for which the respondent represents and implies that its said preparations are competent and effective treatments.

PAR. 3. The products marketed by respondent are variously known and described as Motex and Motex Pills.

PAR. 4. In the operation of its business and for the purpose of inducing the purchase of said products by members of the purchasing public, the respondent has made use of certain advertising literature,

833

Complaint

such as booklets, pamphlets, circulars, and labels, containing statements purporting to be descriptive of the various products herein named, and statements as to the effectiveness of said products in the treatment of the diseases, ailments and conditions for which they are recommended. This advertising literature is distributed among prospective purchasers located in the various States of the United States and in the District of Columbia.

PAR. 5. With reference to the products known as Motex and Motex Pills, such statements as the following are made:

DELAYED? WOMEN!

Use Genuine Motex Pills. (There's Only One called Motex.) Women continually report Quick Results, without pain, harm, or inconvenience, in many unusual, long overdue, difficult, discouraging, abnormal delays, after many ordinary compounds failed. Motex Pills, liquid center, tasteless, easy to take, are of a type doctors often prefer, as quickly absorbed by body. Costs us over 300% more than ordinary compounds, Yet Costs You No More. J. B., "Was 3 months delayed. Everything now O. K." J. F., "Motex Pills a blessing to women. Got results with no pain." A. P., "Took Motex Pills and came around. They did the work." Motex Pills Are Our Highest Strength yet costs you only \$2.00 per box. Orders rushed same day received in plain, sealed box. Copy of "A Secret Every Woman Should Know" free with order. The Motex Co., Dept. 10-E 16 Robeson St., Lowell, Mass."

**FREE TO
WOMEN DELAYED
BEFORE ORDERING ELSEWHERE**

Rush your request at once for FREE COPY of "A Secret Every Woman Should Know" telling how women bring back return of the flow at home, in long overdue, discouraging abnormal delays, even after various home methods and relief compounds had failed them. You May Bless The Day You Sent For This Free Copy. Sent prepaid, in plain wrapper. The Motex Co., Dept. 1-B, 16 Robeson St., Lowell, Mass. Copr. 1936 M. Co.

**FREE TO
WOMEN
DELAYED!**

Before ordering elsewhere rush your request for Absolutely Free Copy of "A Secret Every Woman Should Know." Hundreds of women the nation over have reported safe, painless return of the flow in long overdue, discouraging, abnormal delays, after securing this knowledge free, and using it in their own homes themselves, even after various home methods and relief compounds had failed them! You May Bless The Day You Sent For This Free Copy, which will be rushed to you, postpaid, in plain wrapper. The Motex Co., Dept. 1-CW 16 Robeson St., Lowell, Mass., Copr. 1936, The M. Co.

Take one or two Motex Pills before each meal, and one at bedtime. If the pills seem to act too strongly in any way, reduce the dosage or discontinue until the nausea has passed away and there is no more distress. Only occasionally do we ever hear of Motex Pills acting too strongly, and then usually on very sensitive natures. There are 20 Motex Pills in a box. A box therefore lasts several days.

Complaint

30 F. T. C.

Each night just before retiring take a hot mustard "Sitz" bath, sitting in the hot water up to the hips until you perspire freely, though not over 20 minutes. Into this hot bath water pour a half cupful of dry, yellow, ground mustard, which you can obtain very cheaply at any drug store. Cover up the upper part of your body with a blanket to keep out the cold air while sitting in the sitz or hip bath. Then get into bed after a quick drying off, being careful not to catch cold. These hot mustard sitz or hip baths just before retiring are said to greatly aid the results from Motex Pills.

In said statements, together with other similar statements not herein set out with respect to the products named, respondent, directly and by implication, represents that said products are safe, competent and reliable remedies for all delay in the function of the menses; that menstruation is brought on in a few hours by the use of said products; that said products are harmless and absolutely safe; that they are a general preventative of ill health and that they are recommended by famous doctors; that they are a remedy for unnatural, sluggish, suppressed, irregular and delayed periods including painful, fetid, scanty, absent monthly flow and other similar troublesome conditions of the menstrual function when due to unnatural causes, and that they are effective to tone up the generative organs and the whole system and act directly on the circulation of the uterus, are effective abortifacients, and will prevent conception.

In truth and in fact said products are not effective as competent and reliable treatments or remedies for delay in functioning of the menses. Said products are not effective as remedies for unnatural, sluggish, suppressed, irregular or delayed periods. They are not effective to tone up the generative organs or the whole system, and they do not act directly on the circulation of the uterus. Neither of said products correct irregularities, relieve unnatural suppression or reestablish the monthly flow. They are not effective as reliable or efficient remedies in many of the most stubborn or longstanding causes of unnatural suppression of menstruation. Further, said products do not form absolutely safe or harmless treatments if taken according to directions and are not recommended by famous physicians or generally by physicians, are not always effective as abortifacients, will not prevent conception, and might cause serious injury physically if so used.

PAR. 6. There are among respondent's competitors in commerce, as herein set out, those who do not in any way misrepresent the character and nature of their products and who do not make use of any of the misleading representations herein set out and similar ones with respect to the therapeutic value of their respective products.

PAR. 7. The aforesaid false and misleading statements and representations used by the respondent in offering for sale and selling the various products as herein described in commerce as herein set out,

have had, and now have the tendency and capacity to, and do mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations and implications are true and into the purchase of substantial quantities of respondent's various products on account of said erroneous and mistaken belief.

As a result thereof, trade in said commerce is unfairly diverted to respondent from competitors who do not in the sale and distribution of their respective products make use of the same or similar misrepresentations. In consequence thereof substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 8. The methods, acts and practices of respondent herein set forth are to the prejudice of the public and of competitors of the respondent as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 11th day of March 1938, issued its complaint and caused same to be served upon the respondent, Western Refining Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced before Randolph Preston, 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, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and brief in support of the complaint, 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, the Western Refining Co., Inc., is a corporation duly organized and existing under the laws of the State of Massachusetts. Respondent, Western Refining Co., Inc., uses the

Findings

30 F. T. C.

trade names "The Motex Company" and "Cote Products Company" under which to do business in the sale and distribution of its products.

Respondent is, and has been, engaged in the sale and distribution of certain medical preparations for use in the treatment of diseases, ailments, and conditions peculiar to women, and has its office and place of business at 16 Robeson Street, Lowell, Mass.

PAR. 2. The respondent causes, and has caused, its products, when sold, to be transported from its aforesaid place of business in the State of Massachusetts, to purchasers of same located in various other States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been and is in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with other corporations, and with individuals and partnerships also engaged in the sale and distribution of products used and useful in the treatment of the same diseases, ailments, and conditions peculiar to women.

PAR. 4. The products which have thus been marketed by the respondents are variously known and described as "Motex" and "Motex Pills." The formula for said products is substantially as follows:

	<i>Grain</i>
Aloes	1
Ext. Cotton Root Bark	1
Ergotin (Bonjean)	1
Ferrous sulphate (Exissicated)	1
Ext. Black Hellebore	1
Oil Savin	¼

(2nd Stip. Par. 5)

In some instances, the respondent has used a formula consisting of Apiol, 5 min., Ergot, 2 grains, Oil of Savin, ½ minim, Aloin, ⅛ grain, the amount of Ergot being double the amount used in the ordinary Motex and Cote Pills. The effect of the combination of the drugs in said formula of respondent in some case, is to produce abortions, and in many instances the use of said products has been dangerous to that part of the public taking same. The dosage prescribed on the label of said product, to wit, two tablets before each meal and one before bed-time, making seven tablets per day, which included 7 grains of ergotin, is a very large and dangerous dose; 7 grains of ergotin a day, taken for a number of days, may and often does produce a very serious and dangerous condition known as acute ergotism which is a toxic and poisonous effect of an overdose of ergotin. Another constituent of said formula, to wit, aloin, is a

strong purgative, and the dosage as prescribed herein may, and often does, produce very harmful results to the patient.

PAR. 5. In the operation of its said business, and for the purpose of inducing the purchase of said products by members of the purchasing public, respondent has made use of certain advertising literature such as booklets, pamphlets, circulars and labels containing statements purporting to be descriptive of the various products therein named and statements as to the efficacy of said products in the treatment of the diseases, ailments and conditions for which same are recommended to be effective. This advertising literature, during the periods mentioned in the complaint, has been and is distributed among prospective purchasers located in the various States of the United States and in the District of Columbia; at times more than 400,000 copies per month of such advertising literature being so distributed, the same containing statements as to the value and effectiveness of respondent's products, as aforesaid.

PAR. 6. With reference to respondent's products known as "Motex" and "Motex Pills," it has made statements in the advertising literature herein above described as follows:

DELAYED WOMEN

Use genuine Motex Pills. (There's ONLY ONE called Motex.) Women continually report Quick Results, without pain, harm or inconvenience, in many unusual, long overdue, difficult, discouraging, abnormal delays, after many ordinary compounds failed. Motex Pills, liquid center, tasteless, easy to take, are of a type doctors often prefer, as quickly absorbed by body. Costs us over 300% more than ordinary compounds, Yet Costs You No More. J. J. "was 3 months delayed. Everything now O. K." J. F., "Motex Pills a blessing to women. Got results with no pain." A. P., "Took Motex Pills and came around. They did the work." Motex Pills Are Our Highest Strength yet costs you only \$2.00 per box. Orders rushed same day received in plain, sealed box. Copy of "A Secret Every Woman Should Know" free with order. The Motex Co., Dept. 10-E, 16 Robeson St., Lowell, Mass.

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Findings

30 F. T. C.

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In the said advertising literature hereinabove set out, and in other statements of a similar nature appearing in evidence, the respondent, directly and by necessary implication represents that its said products are safe, competent and reliable remedies for all delay in fluctuation of the menses; that menstruation is brought on in a few hours by the use of said products; that said products are harmless and safe; that said products are a general preventive of ill health; that such products are a remedy for unnatural, sluggish, suppressed, irregular and delayed menstrual periods, including painful, fetid, scanty, and absent monthly flow, and other similarly troublesome conditions of the menstrual function when due to unnatural causes; that they are effective to tone up the generative organs and the whole system, and act directly on the circulation of the uterus and are effective abortifacients.

PAR. 7. Said products are not effective as competent and reliable treatments or remedies for delay in functioning of the menses and have no value in this connection. They are not effective as remedies or as competent treatments for unnatural, sluggish, suppressed, irregular or delayed menstrual periods; they do not have the effect of toning up the generative organs, or the whole system, and they do not act directly on the circulation of the uterus. Neither of said products have any therapeutic value so as to correct irregularities, relieve unnatural suppression, or reestablish the monthly flow. They are not effective as reliable or efficient remedies in stubborn or long standing causes of unnatural suppression of menstruation. Said products are not safe or harmless treatments when taken according to directions. Respondent's products are not effective as abortifacients, and may cause serious injury if so used.

PAR. 8. There are, among respondent's competitors in commerce, those who do not in any way misrepresent the character and nature of their respective products, and who do not make use of any of the misleading representations as herein found to have been used by the

833

Order

respondent, with respect to the therapeutic value of their respective products.

PAR. 9. The aforesaid false and misleading statements and representations used by respondent in offering for sale and selling the various products as herein described, in commerce as herein set out, have had and now have the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of respondent's various products on account of such erroneous and mistaken belief. As a result thereof, trade in commerce, among and between the various States of the United States has been diverted to respondent from its competitors who do not, in the sale and distribution of their products, make use of the same or similar misrepresentations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint, brief in support of the complaint filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Western Refining Co. Inc., a corporation, trading as The Motex Co., Cote Products Co. or trading under any other trade name or names, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with offering for sale, sale and distribution of medical preparations now known as "Motex," "Motex Pills," "Cote Pills," or any other medical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under these names or under any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

Order

30 F. T. C.

1. Representing that respondent's products constitute safe, competent, or scientific remedies or treatments for delayed menstruation or have any value in the treatment thereof, or that their use will have no ill effects upon the human body.

2. Representing that respondent's products are safe, competent or reliable cures or remedies for delayed, sluggish, painful, or suppressed menstruation, or that they constitute competent and effective treatments therefor; or have any value in the treatment thereof.

3. Representing that respondent's products are effective in toning up the generative organs of the system or act directly on the circulation of the uterus.

4. Representing that respondent's products have any therapeutic value so as to correct irregularities, relieve unnatural suppression or reestablish the monthly flow, or that said products are effective in stubborn or long standing cases of unnatural suppression of menstruation.

5. Representing directly or by implication that the use of respondent's products will produce a miscarriage if taken by pregnant women.

6. Representing through the failure to reveal that the use of any of respondent's such products may result in serious or irreparable injury to health, or through any other means or device, or in any other manner that respondent's preparations contain no harmful or dangerous drugs or that the use of said products will have no ill effects upon the human body.

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

Syllabus

IN THE MATTER OF

MADAME MARGUERITE TURMEL, INC., ALSO DOING
BUSINESS AS MADAME MARGUERITE TURMEL AND
MADAME TURMELCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3513. Complaint, July 27, 1938—Decision, Mar. 28, 1940*

Where a corporation engaged in sale and distribution of its "Knogray" for gray or streaked or faded hair, to purchasers in various States and in the District of Columbia, in competition with others engaged in sale, in commerce as aforesaid, of preparations for same general purposes, and including many who do not in any manner misrepresent their products or properties thereof; in advertising its said preparation in newspapers, circulars, bulletins, and other publications of interstate circulation—

Represented that product in question, applied to scalp and hair, would color roots thereof and affect color of new growth and eliminate necessity for repeated applications to prevent such new growth from showing gray, streaked, or faded above scalp line, and that product in question was not a dye, and that use thereof would cause natural color to be restored to hair, through such statements, among others, as " * * * colors hair roots perfectly," " * * * do not confuse * * * with ordinary hair 'dyes' where you must ask for a specific color * * *" and "You can match the exact natural color of your hair perfectly";

Facts being changed color by application of preparation to gray, streaked or faded hair of user was not color produced by latter's bodily functions, but results of product's dyeing or staining properties, and application thereof to hair had no effect in changing, and could not change, color of new growth hair appearing upon head as such, subsequent to application, unless thereafter repeated, and it did not color roots of hair so as to have substantial effect on color of new growth, and use did not eliminate the necessity for repeated applications in order to prevent such growth from showing gray, streaked or faded above scalp line

With effect of confusing, misleading, and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such statements and representations relative to efficacy and effectiveness of product in question were true, and into purchase thereof because of such beliefs, thus engendered, and of thereby diverting unfairly substantial trade in commerce to it from its competitors engaged in the sale and distribution of similar preparations or products designed and intended for similar usage, and who truthfully advertise extent of value and effectiveness thereof; to the injury of competition in commerce:

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.