

Complaint

30 F. T. C.

IN THE MATTER OF

LELAND F. BENHAM, TRADING AS LE FLOR COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4031. Complaint, Feb. 14, 1940—Decision, Apr. 29, 1940*

Where an individual engaged in sale and distribution of his "Le Flor Weight Reduction Tablets," together with so-called "deficient element" diet supplied therewith by him to purchasers of said tablets in various other States of the United States and in the District of Columbia; in advertisements of his said preparation which he disseminated and caused to be disseminated through the mails, through insertion in newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States, and by other means in commerce and otherwise, and which were intended and likely to induce purchase of his said product—

- (a) Represented that his so-called "Le Flor Method" treatment for obesity, consisting of said tablets and so-called "deficient element" diet, constituted a cure or remedy for said condition and a competent and scientific treatment therefor, containing no dehydration drugs, facts being said tablets did not constitute either a cure or remedy or competent or scientific treatment for said condition, and was of no value in treatment thereof, and, in presence therein of phenolphthalein, contained in effect dehydration drug, only therapeutic value of tablets in question was as a laxative or cathartic, and neither diet supplied by him as aforesaid, nor combination of tablets and diet, constituted cure or remedy or competent and scientific treatment for condition in question; and
- (b) Represented that price of \$1 per box, or 6 for \$5, at which product was being offered for sale, was a special price and that regular and customary one therefor was \$2 per box, facts being price at which he was offering and selling said tablets was the regular, customary, and usual one at which he offered and sold same, and was neither special reduced nor introductory;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements, representations, and advertisements were true, and of inducing portion of such public because of said erroneous and mistaken belief, to purchase his said medicinal preparation:

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 chase his said medicinal preparation:

Mr. Carrel F. Rhodes for the Commission.

Mr. Edward T. Morris, of Chicago, Ill., 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 Leland F. Benham, an individual trading as Le Flor Co., hereinafter referred to as respondent, has 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. Respondent, Leland F. Benham, is an individual with his principal office and place of business located at 620 North Orleans Street, Chicago, Ill. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of a medicinal preparation for the treatment of obesity. Respondent supplies to purchasers of said medicinal preparation a so-called "deficient element" diet. The medicinal preparation is described as "Le Flor Weight Reduction Tablets" and is sold under the name "Le Flor Method." Prior to August 1937, respondent conducted his business under the trade name Dixie Products Co. and subsequent to that time under the name Le Flor Co.

Respondent causes said preparation, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning this said preparation, by the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States and by 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 his said preparations; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the various advertise-

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ments, disseminated and caused to be disseminated as aforesaid, are the following:

Announcing an amazing, new, safe, different reducing method!

* * * No Dehydration Drugs! * * *

Here is good news for you—if you wish to reduce without starvation diet, strenuous exercise or harmful drugs. Do you want to know how modern women Lose Fat quickly and regain their stunning figures—at the same time feeling younger, enjoying better health and increased physical charm?

* * * * *

We do not ask you to believe, we merely ask you to try the Le Flor Method and judge for yourself. You may have become skeptical after trying other highly advertised methods that were not suited to you, but we ask that you do yourself the favor of trying the Le Flor Method with the certain knowledge that if you are not entirely satisfied with the results you obtain, your money will be refunded.

Words cannot describe the wonderful feeling you will have when, after a short time with the Le Flor Method, you step upon your scales and discover to your unbounded delight that you are at least on the road back to having again your slender girlish figures, such a figure that men always admire and women everywhere desire.

Our guarantee is positive—there are no strings attached. The Le Flor Method must satisfy you or you pay nothing.

Why be fat any longer? Lose that dangerous, disfiguring, excess weight! Look like the girl you used to be, with no danger to your health. * * * Read about the new, different Le Flor Method of fat reduction! Now you, too, may have a slender youthful figure! * * *

The usual price is \$2.00 per box. As an introductory feature we are offering the LE FLOR method as a six weeks' treatment at the price of 6 boxes for \$5.00. If you are skeptical, we offer a one week's supply of 84 tablets (one box) at the astoundingly low price of only \$1.00.

* * * our liberal offer of one-half price * * *.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set-out herein, respondent represents that his treatment for obesity, described as the Le Flor Method, consisting of Le Flor Weight Reduction Tablets and a so-called "deficient element" diet, is a cure or remedy for obesity and a competent and scientific treatment therefor, which does not contain any dehydration drugs, and that the price of \$1 per box or six boxes for \$5, at which the product is being offered for sale, is a special price, and that the regular and customary price therefor is \$2 per box.

PAR. 4. In truth and in fact, the medicinal preparation sold and distributed by the respondent, as aforesaid, designated Le Flor Weight Reduction Tablets, is not a cure or remedy for obesity and does not constitute a competent or scientific treatment therefor, and is of no therapeutic value in the treatment thereof. These tablets contain dextrose, phenophthalein, powdered extract of bladderwrack and talc. The drug phenophthalein, contained in said tablets, is a dehy-

dration drug and respondent's representation that the tablets contain no dehydration drugs is false. The quantity of bladderwrack contained in said tablets in the dosage prescribed by the respondent is insufficient to have any effect on the body, and if taken in sufficient doses to have any effect in the treatment of obesity, its use would so interfere with digestion as to injure the health of the user. The only therapeutic value in the tablets offered for sale and sold by respondent as a cure or remedy for obesity and as a competent and scientific treatment therefor, is as a laxative or cathartic.

The diet supplied by the respondent to purchasers of said medicinal preparation is not a cure or remedy for obesity or a competent or scientific treatment therefor, nor is the combination of the tablets and the diet a cure or remedy for obesity or a competent or scientific treatment therefor.

In truth and in fact, the price of \$1 per box or six boxes for \$5 at which respondent offers for sale and sells said tablets is the regular, customary and usual price at which said tablets are offered for sale and sold by the respondent. The price of \$1 per box or six boxes for \$5 is not a special, reduced, or introductory price.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said preparation, disseminated as aforesaid, 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 statements, representations and advertisements are true, and induces a portion of the purchasing public, because of said erroneous and mistaken belief to purchase respondent's medicinal preparation.

PAR. 6. 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 February 14, 1940, issued and thereafter served its complaint in this proceeding upon respondent Leland F. Benham, an individual, trading as Le Flor Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 14, 1940, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived

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all intervening procedure and further hearing as to the 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 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, Leland F. Benham, is an individual with his principal office and place of business located at 620 North Orleans Street, Chicago, Ill. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of a medicinal preparation for the treatment of obesity. Respondent supplies to purchasers of said medicinal preparation a so-called "deficient element" diet. The medicinal preparation is described as "Le Flor Weight Reduction Tablets" and is sold under the name "Le Flor Method." Prior to August 1937, respondent conducted his business under the trade name Dixie Products Co. and subsequent to that time under the name Le Flor Co.

Respondent causes said preparation, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said preparation, by the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States and by 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 his said preparations; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as

"commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the various advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Announcing an amazing, new, safe, different reducing method!

* * * No Dehydration Drugs! * * *

Here is good news for you—if you wish to reduce without starvation diet, strenuous exercise or harmful drugs. Do you want to know how modern women LOSE FAT quickly and regain their stunning figures—at the same time feeling younger, enjoying better health and increased physical charm?

We do not ask you to believe, we merely ask you to try the Le Flor Method and judge for yourself. You may have become skeptical after trying other highly advertised methods that were not suited to you, but we ask that you do yourself the favor of trying the Le Flor Method with the certain knowledge that if you are not entirely satisfied with the results you obtain, your money will be refunded.

Words cannot describe the wonderful feeling you will have when, after a short time with the Le Flor Method, you step upon your scales and discover to your unbounded delight that you are at least on the road back to having again your slender girlish figure, such a figure that men always admire and women everywhere desire.

Our guarantee is positive—there are no strings attached. The Le Flor Method must satisfy you or you pay nothing.

Why be fat any longer? Lose that dangerous, disfiguring, excess weight! Look like the girl you used to be, with no danger to your health. * * * Read about the new, different Le Flor Method of fat reduction! Now you, too, may have a slender youthful figure! * * *

The usual price is \$2.00 per box. As an introductory feature we are offering the LE FLOR method as a six weeks' treatment at the price of 6 boxes for \$5.00. If you are skeptical, we offer a one week's supply of 84 tablets (one box) at the astoundingly low price of only \$1.00.

* * * our liberal offer of one-half price * * *

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondent represents that his treatment for obesity, described as the Le Flor Method, consisting of Le Flor Weight Reduction Tablets and a so-called "deficient element" diet, is a cure or remedy for obesity and a competent and scientific treatment therefor, which does not contain any dehydration drugs, and that the price of \$1 per box or six boxes for \$5, at which the product is being offered for sale, is a special price, and that the regular and customary price therefor is \$2 per box.

PAR. 4. In truth and in fact, the medicinal preparation sold and distributed by the respondent, as aforesaid, designated Le Flor Weight Reduction Tablets, is not a cure or remedy for obesity and does not constitute a competent or scientific treatment therefor, and

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is of no therapeutic value in the treatment thereof. These tablets contain dextrose, phenolphthalein, powdered extract of bladderwrack and talc. The drug phenolphthalein, contained in said tablets, is a dehydration drug and respondent's representation that the tablets contain no dehydration drugs is false. The quantity of bladderwrack contained in said tablets in the dosage prescribed by the respondent is insufficient to have any effect on the body, and if taken in sufficient doses to have any effect in the treatment of obesity, its use would so interfere with digestion as to injure the health of the user. The only therapeutic value in the tablets offered for sale and sold by respondent as a cure or remedy for obesity and as a competent and scientific treatment therefor, is as a laxative or cathartic.

The diet supplied by the respondent to purchasers of said medicinal preparation is not a cure or remedy for obesity or a competent or scientific treatment therefor, nor is the combination of the tablets and the diet a cure or remedy for obesity or a competent or scientific treatment therefor.

In truth and in fact, the price of \$1 per box or six boxes for \$5 at which respondent offers for sale and sells said tablets is the regular, customary, and usual price at which said tablets are offered for sale and sold by the respondent. The price of \$1 per box or six boxes for \$5 is not a special, reduced, or introductory price.

PAR. 5. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his said preparation, disseminated as aforesaid, 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 statements, representations, and advertisements are true, and induces a portion of the purchasing public, because of said erroneous and mistaken belief to purchase respondent's medicinal preparation.

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 the respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint, and states that

he waives all intervening procedure and further hearing 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, Leland F. Benham, an individual trading as Le Flor Co., or trading under any other name or names, 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 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 preparation now designated "Le Flor Weight Reduction Tablets," or any other preparation composed of 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or through implication:

1. That respondent's preparation is a cure or remedy or a competent or effective treatment for obesity or overweight.

2. That the diet supplied by respondent in connection or conjunction with his said preparation constitutes a competent or effective or scientific treatment for obesity or overweight.

3. That the combination of respondent's preparation and the diet supplied by respondent constitutes a cure or remedy or a competent or effective treatment for obesity or overweight.

4. That respondent's preparation possesses any therapeutic value beyond that of a cathartic or laxative.

5. That respondent's preparation contains no dehydration drugs.

6. That the price at which respondent offers for sale and sells his preparation constitutes a discount to the purchaser, or that such price is a special or reduced or introductory price, or that such price is applicable for a limited time only, when in fact such price is the usual and customary price at which respondent sells said preparation in the normal and usual course of business.

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
FASCINATION CANDY COMPANY

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

Docket 3321. Complaint, Feb. 1, 1938—Decision, Apr. 30, 1940

Where a corporation engaged in manufacture and sale of packaged chocolate candy, including assortments which were suitable for distribution by use of punchboards and push cards packed by it in the containers of such candy and assortments in connection with which, on request, it had shipped to the customer by the manufacturer of said devices such boards or cards designed and intended for use in distribution of candies in question wholly by lot or chance, and which included, among others, card and plan by which ultimate purchaser or consumer received package of assorted chocolates in accordance with success or failure in selecting from list of 30 girls' names that corresponding with name concealed under card's large disk as disclosed after sale of all chances, and paid for chance from 1 to 5 cents in accordance with girls' names and accompanying disk selected, and included various other cards and boards designed and intended for use in distribution of products involved, wholly by lot or chance, and of same general nature and operated in substantially same manner as cards above described—

Sold to jobbers its said candies and articles of merchandise for use as special prizes in operation of said push cards and punchboards through resale by retail dealer purchasers of said jobbers of such candy and articles by use of said devices and in accordance with sales plans as above set forth, and thereby supplied to and placed in the hands of others means by which games of chance, gift enterprises, and lotteries involving game of chance or sale of a chance in resale of candies and articles in question were conducted, contrary to the established public policy of the United States Government and in violation of the laws of several of the States, and in competition with many who were unwilling to employ in sale and distribution of their candies and articles of merchandise dealt in by them, any method or sales plan involving games of chance, gift enterprises, or lottery schemes, and refrained from the use thereof, to their competitive disadvantage;

With the result that many purchasers of candy and articles of merchandise from it were attracted by element of chance involved in sale and distribution of such products through use of push cards and punchboards furnished by it and were thereby induced to purchase such candies and merchandise offered by it, in preference to similar candies and articles offered by its competitors who do not furnish therewith such or similar devices, and with result that jobbers purchased substantial amount of such candies and articles from it, and trade was thereby diverted unfairly to it from competitors aforesaid:

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