

IN THE MATTER OF

WILLIAM S. McClymonds, Trading as Oxol Laboratories and Western Research Laboratories

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

Docket 4035. Complaint, Feb. 17, 1940—Decision, May 1, 1940

Where an individual engaged in compounding, selling and distributing a medicinal preparation designated "Quinox Capsules" and intended for use by women suffering from delayed menstruation, to purchasers located in various other States and in the District of Columbia; in advertisements of his said "Quinox Capsules" which he disseminated and caused to be disseminated by United States mails, by insertion in newspapers and periodicals having general circulation, and in circulars and other printed or written matter distributed in commerce among and between the various States and by other means in commerce, and which were intended or likely to induce purchase of his said product—

Represented that his said preparation was a cure or remedy for and constituted competent and effective treatment in cases of delayed menstruation, and that it possessed therapeutic value in treatment of, and would relieve, such condition, facts being it did not constitute such a cure or remedy, irrespective of cause of said condition, and was not a competent or effective treatment therefor, and was without any substantial therapeutic value aside from its effect as an ordinary laxative, and would not relieve such condition or have any beneficial effect thereon;

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 claims were true, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of 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 acts and practices in commerce.

Mr. Jesse D. Kash for the Commission.

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 William S. McClymonds, an individual trading as Oxol Laboratories and Western Research Laboratories, 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. William S. McClymonds is an individual trading and doing business under the names of Oxol Laboratories and Western Research Laboratories, with his principal place of business located at 1046 Santa Fe Street, Denver, Colo.

Respondent is now and has been for more than 1 year last past engaged in the business of compounding, selling and distributing a medicinal preparation designated "Quinox Capsules," intended for use by women suffering from delayed menstruation.

Respondent causes his said preparation when sold by him to be transported from his aforesaid place of business in the state of Colorado 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 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 respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination, of false advertisements concerning his said product by 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 product, and has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product by various means for the purpose of inducing and which are likely to induce directly or indirectly the purchase of his said product 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:

Smart women need not suffer monthly pain or delay caused by nervous strain, exposure, etc. The harmless palliative action of Quinox Capsules brings Quick Relief. See your local druggist.

PAR. 3. Through the use of the representations hereinabove set forth, and others not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondent's product, the respondent has represented and does

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now represent, that his said product is a cure or remedy for, and constitutes a competent and effective treatment in cases of delayed menstruation and that said product possesses therapeutic value in the treatment of delayed menstruation and relieves such condition.

PAR. 4. The foregoing representations are grossly exaggerated, misleading, and untrue. In truth and in fact, respondent's preparation does not constitute a cure or remedy for delayed menstruation irrespective of the cause thereof, or a competent or effective treatment therefor. Said preparation is without any substantial therapeutic value aside from its effect as an ordinary laxative and will not relieve such condition or have any beneficial effect thereon.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading statements, representations, and claims with respect to his said preparation, disseminated as aforesaid, has had, and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true, and causes, and has caused, a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase substantial quantities of 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 17, 1940, issued and on February 19, 1940, served its complaint in this proceeding upon respondent, William S. McClymonds, an individual, trading as Oxol Laboratories and Western Research Laboratories, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On March 11, 1940, the respondent filed his answer, in which answer he 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 interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, William S. McClymonds, is an individual trading and doing business under the name of Oxol Laboratories and Western Research Laboratories, with his principal office and place of business at 1046 Santa Fe Drive, in the city of Denver, State of Colorado.

Respondent is now and has been for more than 1 year last past engaged in the business of compounding, selling, and distributing a medicinal preparation designated "Quinox Capsules" intended for use by women suffering from delayed menstruation.

Respondent causes his said preparation when sold by him to be transported from his aforesaid place of business in the State of Colorado 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 mentioned herein has maintained a course of trade in said medicinal preparations in commerce between and among 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 product, by 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 product, and has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product 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:

Smart women need not suffer monthly pain or delay caused by nervous strain, exposure, etc. The harmless palliative action of Quinox Capsules brings Quick Relief. See your local druggist.

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PAR. 3. Through the use of the representations hereinabove set forth, and others not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's product, the respondent has represented and does now represent, that his said product is a cure or remedy for, and constitutes a competent and effective treatment in cases of delayed menstruation and that said product possesses therapeutic value in the treatment of delayed menstruation and relieves such condition.

PAR. 4. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation does not constitute a cure or remedy for delayed menstruation irrespective of the cause thereof, or a competent or effective treatment therefor. Said preparation is without any substantial therapeutic value aside from its effect as an ordinary laxative and will not relieve such condition or have any beneficial effect thereon.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading statements, representations, and claims with respect to his said preparation, disseminated as aforesaid, has had, and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William S. McClymonds, individually and trading as Oxol Laboratories or as Western Research

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Laboratories, 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 respondent's medicinal preparation now designated by the name "Quinox Capsules" or any other medicinal 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 medicinal preparation, which advertisements represent directly or by implication:

1. That respondent's preparation is a cure or remedy or a competent or effective treatment for delayed menstruation, or that said preparation will relieve delayed menstruation or have any beneficial effect thereon.

2. That respondent's preparation possesses any substantial therapeutic value aside from its effect as an ordinary laxative.

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
MAX LEVIN, TRADING AS WESTERN NOVELTY COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4055. Complaint, Mar. 11, 1940—Decision, May 1, 1940

Where an individual engaged in the sale and distribution of knives, cameras, razors, and various other articles of merchandise to dealer purchasers in various other States and in the District of Columbia—

Sold and distributed certain assortments thereof which were so packed and assembled as to involve the use of game of chance, gift enterprise, or lottery scheme, when sold and distributed to consumers thereof and included (1) in the case of one such assortment, along with other articles of merchandise involved, a punchboard for use in sale and distribution of such articles under a plan and in accordance with said board's explanatory legend, by which those securing for the 5 cents paid certain numbers became entitled to \$2.50 in cash, others became thus entitled to \$1.00, still others became thus entitled to 25 cents in trade, while holders of certain other specified numbers were entitled to receive articles of merchandise attached to board, and purchasers who did not qualify by obtaining one of the numbers thus specified received nothing for their money, and (2) various other assortments, together with various push cards and punchboard devices for use in sale and distribution of merchandise concerned to the purchasing public by means of game of chance, gift enterprise or lottery scheme, and involving sales plans or methods substantially the same as those above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in sale of his merchandise to purchasing public by dealer purchasers thereof who used such punchboard and push card devices in sale and distribution of its said product in accordance with the aforesaid sales plan or methods involving games of chance or sale of a chance to procure an article of merchandise, a sum of money or a credit in trade of much greater value than price to be paid therefor, contrary to an established policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt said or any method involving use of game of chance or sale of chance to win something by chance, or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said method and by element of chance involved in sale of said merchandise as above described, and were thereby induced to buy and sell his said goods in preference to those offered and sold by said competitors who did not use same and equivalent methods, and with effect through use of such method and because of said game of chance of unfairly diverting trade in commerce to him from his competitors aforesaid who do not use such or equivalent method, to the substantial injury of competition in commerce: