

Complaint

30 F. T. C.

IN THE MATTER OF

HOWARD L. BREWER AND ALBERT L. TRIBBETT, TRADING AS B & T SALES COMPANY

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

Docket 4057. Complaint, Mar. 12, 1940—Decision, May 13, 1940

Where two individuals engaged, under trade name and with only address post office box in certain city, in sale and distribution therefrom, to purchasers in various other States and in the District of Columbia, of their "Menstru-Eze" medicinal preparation; in advertisements thereof which they disseminated and caused to be disseminated through the mails, by insertions in magazines and periodicals of general circulation, and in circulars and other printed matter distributed in commerce, and by other means, and which were intended or likely to induce, directly or indirectly, purchase of their said preparation—

Represented that their said medicinal preparation designated as "MENSTRU-EZE" possessed curative and remedial properties which made it beneficial for use in treating cases of delayed, difficult, painful, and irregular menstruation, and for use in the menopause, and in relieving pain incident to such disorders or conditions;

Facts being their said product possessed no properties which were of any therapeutic value in treatment of disorders and conditions above set forth, and was of no therapeutic value for use in the menopause or in relieving any pains incident to such disorders or conditions, and representations above set forth were grossly exaggerated, false, and misleading; With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and of inducing, because of such erroneous and mistaken belief, portion of such public to purchase their said medicinal preparation:

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

Mr. R. P. Bellinger 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 Howard L. Brewer, and Albert L. Tribbett, individually, and trading as B & T Sales Co., hereinafter referred to as respondents, have 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 issued its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Howard L. Brewer and Albert L. Tribbett are individuals trading as B & T Sales Co. The address of respondent Howard L. Brewer is 4421 East Washington Street, Indianapolis, Ind., and of respondent Albert L. Tribbett is 967 Bolton Avenue, Indianapolis, Ind. The only address of the said B & T Sales Co. is Post Office Box 334, Indianapolis, Ind.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in selling, distributing, and transporting from the city of Indianapolis in the State of Indiana to the purchasers thereof located in other States and in commerce between and among the various States of the United States and in the District of Columbia, a certain medicinal preparation designated as "Menstru-Eze." Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said medicinal preparation, by United States mails, by insertions in magazines and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce between and among the various States of the United States and in the District of Columbia, 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 their said medicinal preparation, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said medicinal preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparation in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in the advertisements disseminated and caused to be disseminated as aforesaid are the following:

WOMEN

Delayed

Why worry when it is possible to get a reliable remedy which has proved to be so successful over a long period? * * * we are offering this remarkable remedy to suffering women in general.

This is not an experiment, it is tried and we believe has a larger percentage of success than any other medicine we know of offered for this purpose. Use

Complaint

30 F. T. C.

Menstru-Eze for speedy results in many unusual, overdue, difficult, abnormal delays, without pain or inconvenience.

MENSTRU-EZE FOR PERIOD SUFFERERS

By the use of Menstru-Eze it is possible to not only get relief from period suffering quickly, but to get permanent relief by using this remedy for a short period as per directions; this is not a pain relief medicine but effects the parts which cause the suffering; * * * prepared to relieve the cause. It is positively safe.

Many women report the success of Menstru-Eze when other remedies have failed; no need of staying home from work or going to bed when taking Menstru-Eze, it works quickly and with great success, * * *.

When ordering Menstru-Eze at \$5.00 per bottle, you are ordering all that is needed; you will not be asked to purchase a larger supply to get results, or some other remedy to take with this, as one bottle is all that is required, and we have no other associate package to go with Menstru-Eze, none is needed. If your druggist cannot supply you, send direct to P. O. Box 334, B & T SALES CO., Indianapolis, Ind., Dept. No. D. A'.

MENSTRU-EZE is not a narcotic or sedative to relieve the pain in these cases, but a treatment to relieve the cause. It is a mild treatment and requires a little time to function. Considerable relief can be expected the first month if taken according to directions; this is in hourly doses starting two days before the expected period and continued until a good flow has been secured. This treatment should be repeated the second and third month. Its use can be stopped for twelve months, and in many cases will never again be necessary.

MENSTRU-EZE is an excellent aid for relieving the discomfort of pain caused by Amenorrhea, Dysmenorrhea and irregularity of menstruation, when due to cold, exposure, or other temporary conditions.

If menstruation is customarily painful or of scant flow, MENSTRU-EZE should be begun two days before the expected period and taken according to the directions. If used in this manner for three successive periods it may produce permanent relief.

MENSTRU-EZE is extremely helpful to women in their change of life period. There is nothing in this treatment that will produce any harmful results. It has been proved in actual use for over twenty years.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent that their medicinal preparation designated as "Menstru-Eze" possesses curative and remedial properties which make such product beneficial for use in treating cases of delayed, difficult, painful, and irregular menstruation, and for use in the menopause, and for use in relieving pain incident to such disorders or conditions.

The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation possesses no properties which are of any therapeutic value in the treatment of delayed, or difficult, or painful, or irregular menstruation. Said

preparation is without any therapeutic value for use in the menopause, or for use in relieving any pains incident to such disorders or conditions.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said medicinal 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 and representations are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

PAR. 6. The aforesaid acts and practices of the respondents 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 March 12, 1940, issued, and on March 14, 1940, served its complaint in this proceeding upon the respondents, Howard L. Brewer and Albert L. Tribbett, individually and trading as B & T Sales Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondents filed an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, 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. Respondents, Howard L. Brewer and Albert L. Tribbett are individuals trading as B & T Sales Co. The address of respondent Howard L. Brewer is 4421 East Washington Street, Indianapolis, Ind., and of respondent Albert L. Tribbett is 967 Bolton Avenue, Indianapolis, Ind. The only address of the said B & T Sales Co. is Post Office Box 334, Indianapolis, Ind.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in selling, distributing, and transporting from

Findings

30 F. T. C.

the city of Indianapolis, in the State of Indiana to the purchasers thereof located in other States and in commerce between and among the various States of the United States and in the District of Columbia, a certain medicinal preparation designated as "Menstru-Eze." Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said medicinal preparation, by United States mails, by insertions in magazines and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce between and among the various States of the United States and in the District of Columbia, 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 their said medicinal preparation, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said medicinal preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparation in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in the advertisements disseminated and caused to be disseminated as aforesaid are the following:

WOMEN

Delayed

Why worry when it is possible to get a reliable remedy which has proved to be so successful over a long period? * * * we are offering this remarkable remedy to suffering women in general.

This is not an experiment, it is tried and we believe has a larger percentage of success than any other medicine we know of offered for this purpose. Use Menstru-Eze for speedy results in many unusual, overdue, difficult, abnormal delays, without pain or inconvenience.

MENSTRU-EZE FOR PERIOD SUFFERERS

By the use of Menstru-Eze it is possible to not only get relief from period suffering quickly, but to get permanent relief by using this remedy for a short period as per directions; this is not a pain relief medicine but affects the parts which cause the suffering; * * * prepared to relieve the cause. It is positively safe.

Many women report the success of Menstru-Eze when other remedies have failed; no need of staying home from work or going to bed when taking Menstru-Eze, it works quickly and with great success, * * *.

When ordering Menstru-Eze at \$5.00 per bottle, you are ordering all that is needed; you will not be asked to purchase a larger supply to get results, or some other remedy to take with this, as one bottle is all that is required, and we have no other associate package to go with Menstru-Eze, none is needed. If your druggist cannot supply you, send direct to P. O. Box 334, B & T Sales Co., Indianapolis, Ind., Dept. No. D. A.

Menstru-Eze is not a narcotic or sedative to relieve the pain in these cases, but a treatment to relieve the cause. It is a mild treatment and requires a little time to function. Considerable relief can be expected the first month if taken according to directions; this is in hourly doses starting two days before the expected period and continued until a good flow has been secured. This treatment should be repeated the second and third month. Its use can be stopped for twelve months, and in many cases will never again be necessary.

Menstru-Eze is an excellent aid for relieving the discomfort of pain caused by Amenorrhea, Dysmenorrhea and irregularity of menstruation, when due to cold, exposure, or other temporary conditions.

If menstruation is customarily painful or of scant flow, Menstru-Eze should be begun two days before the expected period and taken according to the directions. If used in this manner for three successive periods it may produce permanent relief.

Menstru-Eze is extremely helpful to women in their change of life period. There is nothing in this treatment that will produce any harmful results. It has been proved in actual use for over twenty years.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent that their medicinal preparation designated as "Menstru-Eze" possesses curative and remedial properties which make such product beneficial for use in treating cases of delayed, difficult, painful, and irregular menstruation, and for use in the menopause, and for use in relieving pain incident to such disorders or conditions.

The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation possesses no properties which are of any therapeutic value in the treatment of delayed, or difficult, or painful, or irregular menstruation. Said preparation is without any therapeutic value for use in the menopause, or for use in relieving any pains incident to such disorders or conditions.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said medicinal 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 and representations are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

Order

30 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondents 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Howard L. Brewer and Albert L. Tribbett, individually, and trading as B & T Sales Co., or trading under any other name or names, their agents, servants, 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 medicinal preparation designated as "Menstru-Eze," 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 advertisement represents, directly or through implication, that said medicinal preparation is a cure or remedy for delayed, difficult, painful, or irregular menstruation or that it has any therapeutic value in the treatment of such conditions or in relieving the pain which may be incident thereto, or that said preparation is of any therapeutic or beneficial value to women during the menopause period.

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

Syllabus

IN THE MATTER OF

S. M. LABORATORIES COMPANY

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

Docket 4062. Complaint, Mar. 12, 1940—Decision, May 13, 1940

Where a corporation engaged in compounding, selling and distributing medicinal and therapeutic preparations, including its "Neofem Liquid," "Neofem Capsules," and "Cerene," to purchasers in various other States and in the District of Columbia, in advertisements thereof which it disseminated and caused to be disseminated through the mails, by insertion in newspapers and periodicals having general circulation, and in circulars and other printed or written matter distributed in commerce, and by various means and otherwise, and which were intended and likely to induce, directly or indirectly, purchase of its said products—

(a) Represented, directly and by implication, that its said "Neofem Capsules," "Neofem Liquid," and "Cerene" were cures or remedies for painful and delayed menstruation, and constituted competent and effective treatments therefor, and that their use constituted safe, sane ways of self-medication and relief from such condition, and that said "Neofem Capsules" were designed to give relief from painful menstruation or slight delay, that said "Neofem Liquid" provided a potent, direct and positive relief for cases of delayed menstruation that were past the first stages, and that said "Cerene" would give relief for stubborn cases of such condition and was dependable where other medicines had been tried and had failed;

Facts being said various preparations were not cures or remedies for said condition, and did not constitute competent and effective treatments therefor, and would not accomplish results which it claimed for them, and were not safe and harmless, by virtue of ergot, oil of savin, and aloin therein contained in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and might result in gastrointestinal disturbances such as catharsis, nausea, vomiting with pelvic congestion of the uterus leading to excessive uterine hemorrhage and, in those cases where either of said preparations is used to interfere with normal course of pregnancy, might result in uterine infection with extension to pelvic and abdominal structures and even to the bloodstream, causing condition known as septicemia or blood poisoning; and

(b) Failed to reveal, in aforesaid advertisements, facts material with respect to consequences which might result from use of said preparations under conditions prescribed or under such conditions as are customary or usual;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said statements, representations and advertisements were true, and to induce portion of such public to purchase said preparations containing drugs because of such erroneous and mistaken belief: