

IN THE MATTER OF
MICHAEL S. CHIOLAK, TRADING AS TONE COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4003. Complaint, Jan. 30, 1940—Decision, June 25, 1940

Where an individual engaged in sale and distribution of his Silver Label Formula No. 6 and Gold Label Formula No. 8 medicinal preparations, or Tone Periodic Compound, to purchasers in other States and in the District of Columbia; in advertisements of his said preparations which he disseminated and caused to be disseminated through the mails, insertions in periodicals of general circulation and in circulars and other printed or written matter distributed in commerce among the States, and by other means in commerce and otherwise, and which were intended and likely to induce purchase of his said products—

(a) Represented that said preparations were cures or remedies for delayed menstruation and competent and effective treatments therefor, and that they were safe and harmless, facts being they were not such cures or remedies and did not constitute competent or effective treatments for said condition, and were not safe and harmless in that they contained ergotin, aloes, extract black hellebore, and extract cotton root bark, which were present 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 gastro-intestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and, in those cases where used to interfere with normal course of pregnancy, might result in uterine infection, causing condition known as septicemia or blood poisoning, and use thereof, as aforesaid, might also produce very severe circulatory condition tending to produce abortion in some instances, often with violent poisonous effects upon human system, and severe toxic conditions and, in some instances, a gangrenous condition in lower limbs or other serious or irreparable injury to health; and

(b) Failed to reveal in said advertisements that use of said preparations under the conditions prescribed therein or under such conditions as are customary or usual, might result in serious or irreparable injury to health;

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 substantial portion of said public, because of such belief, to purchase his said medicinal preparations:

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.

Before *Mr. Arthur F. Thomas*, trial examiner.
Mr. William L. Taggart 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 Michael S. Chiolak, trading as Tone Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof, would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Michael S. Chiolak, is an individual trading as Tone Co., with his office and principal place of business at 64 West Randolph Street, Chicago, Ill., from which address he transacts business under the above trade name.

PAR. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of certain medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound.

In the course and conduct of his business the respondent causes said medicinal preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in other States of the United States, and in the District of Columbia.

At all times mentioned herein, the respondent has maintained a course of trade in said medicinal preparations sold and distributed by him 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 respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisement concerning his said medicinal preparations by United States mails, by insertions in 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 medicinal preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal

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preparations in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

WOMEN * * * Delayed

When abnormally DELAYED try Tone Periodic Compound that has produced SENSATIONAL RESULTS to many women all over the country. Quick acting, easy to take. One woman writes, "DELAYED 2½ MONTHS, BROUGHT BACK REGULAR MENSTRUATION ON 2ND DAY WITHOUT ANY ILL EFFECTS." Tone Compound boxed fresh daily.

SILVER LABEL FORMULA No. 6—\$2.00 a box. For Longer Standing Cases.

GOLD LABEL FORMULA No. 8—\$5.00 a box.

MONEY BACK Agreement of Satisfaction on First Order. Full directions with every box. All orders strictly confidential and mailed in plain wrapper. TONE CO., 64 W. Randolph St., Dept. 310, CHICAGO.

Sophisticated WOMEN!

When Abnormally DELAYED try TONE Periodic Compound, which has proven successful to thousands of Women all over the country. Many Women report sensational results obtained. One woman writes, "Delayed 2½ months, brought back my flow on 2nd day without any ill effects." Quick Acting, easy to take. Confidence in our product enables us to make this money-back agreement. Formula No. 6—\$2.00 per box. Trial Size 25¢. All orders sent same day in plain wrapper. SEND NO MONEY! If you prefer—just pay Postman on delivery plus Postage. MONEY BACK AGREEMENT of Satisfaction on First Order. TONE CO., 64 W. Randolph St., Dept. 314, Chicago.

No pain or ill effects whatsoever.

DIRECTIONS FOR USE OF TONE PERIODIC COMPOUND. Take one capsule every four hours. Continue PERSISTENTLY until desired results are obtained. The important thing to remember is to keep up the treatment without a break or a lapse until desired results are evident. Tone Periodic Compound Gold Label Formula No. 8. Tone Periodic Compound Silver Label Formula No. 6. Tone Company, 64 W. Randolph St., Chicago, Ill.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein the respondent represents, directly or by implication, that his medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, are cures or remedies for delayed menstruation and are competent and effective treatments therefor and that said preparations are safe and harmless.

PAR. 5. In truth and in fact, the medicinal preparations sold and distributed by the respondent, as aforesaid, designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, and are not cures or remedies

for delayed menstruation and do not constitute competent or effective treatments therefor. Furthermore, said preparations are not safe and harmless, in that they contain ergotin, aloes, extract black hellebore and extract cotton root bark.

The aforesaid drugs are present in said medicinal preparations in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said medicinal preparations may result in gastro-intestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and in those cases where these preparations are used to interfere with the normal course of pregnancy, their use may result in uterine infection with extension to other pelvic and abdominal structures, and to the bloodstream, causing the condition known as septicemia or blood poisoning.

The use of said preparations as aforesaid may also produce a very severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, tending to produce abortion in some instances often with violent poisonous effects upon the human system. Such use as aforesaid may also produce severe toxic conditions such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious or irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations, 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 substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute

unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 30, 1940, issued, and on February 1, 1940, served its complaint in this proceeding upon respondent Michael S. Chiolak, an individual, trading as Tone Co., charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. On June 5, 1940, the respondent filed his answer, in which answer he admitted all of 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. Respondent, Michael S. Chiolak, is an individual, trading as Tone Co., with his principal office and place of business at 64 W. Randolph Street, Chicago, Ill., from which address he transacts business under the above trade name.

PAR. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of certain medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound.

In the course and conduct of his business the respondent causes said medicinal preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in other States of the United States, and in the District of Columbia.

At all times mentioned herein, the respondent has maintained a course of trade in said medicinal preparations sold and distributed by him 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 respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparations by United States mails,

by insertions in periodicals having a general circulation on, 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 medicinal preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

WOMEN * * * Delayed

When abnormally DELAYED try Tone Periodic Compound that has produced SENSATIONAL RESULTS to many women all over the country. Quick acting, easy to take. One woman writes, "DELAYED 2½ MONTHS, BROUGHT BACK REGULAR MENSTRUATION ON 2ND DAY WITHOUT ANY ILL EFFECTS!" Tone Compound boxed fresh daily.

SILVER LABEL FORMULA No. 6—\$2.00 a box. For Longer Standing Cases.

GOLD LABEL FORMULA No. 8—\$5.00 a box.

MONEY BACK agreement of Satisfaction on First Order. Full directions with every box. All orders strictly confidential and mailed in plain wrapper. TONE CO., 64 W. Randolph St., Dept. 310, CHICAGO.

Sophisticated WOMEN!

When Abnormally DELAYED try TONE Periodic Compound, which has proven successful to thousands of Women all over the country. Many Women report sensational results obtained. One woman writes "Delayed 2½ months, brought back my flow on 2nd day without any ill effects." Quick acting, easy to take. Confidence in our product enables us to make this money-back agreement. Formula No. 6—\$2.00 per box. Trial size 25¢. All orders sent same day in plain wrapper. SEND NO MONEY! If you prefer—just pay Postman on delivery plus postage. MONEY BACK AGREEMENT of Satisfaction on First Order. TONE CO., 64 W. Randolph St., Dept. 314, Chicago.

No pain or ill effects whatsoever.

DIRECTIONS FOR USE OF TONE PERIODIC COMPOUND. Take one capsule every four hours. Continue PERSISTENTLY until desired results are obtained. The important thing to remember is to keep up the treatment without a break or lapse until desired results are evident. Tone Periodic Compound Gold Label Formula No. 8. Tone Periodic Compound Silver Label Formula No. 6. Tone Company, 64 W. Randolph St., Chicago, Ill.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein the

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respondent represents, directly or by implication, that his medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, are cures or remedies for delayed menstruation and are competent and effective treatments therefor and that said preparations are safe and harmless.

PAR. 5. In truth and in fact, the medicinal preparations sold and distributed by the respondent, as aforesaid, designated as Silver Label Formula No. 6, and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, are not cures or remedies for delayed menstruation and do not constitute competent or effective treatments therefor. Furthermore, said preparations are not safe and harmless, in that they contain ergotin, aloes, extract black hellebore, and extract cotton root bark.

The aforesaid drugs are present in said medicinal preparations in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said medicinal preparations may result in gastro-intestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and in those cases where these preparations are used to interfere with the normal course of pregnancy, their use may result in uterine infection with extension of other pelvic and abdominal structures, and to the bloodstream, causing the condition known as septicemia or blood poisoning.

The use of said preparations as aforesaid may also produce a very severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, tending to produce abortion in some instances, often with violent poisonous effects upon the human system. Such use as aforesaid may also produce severe toxic conditions such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs or other serious or irreparable injury to health.

In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal that the use of Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious or irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to his preparations, 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 substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations.

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 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Michael S. Chiolak, an individual trading as Tone Co., or trading under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are known and sold under the name of Tone Periodic Compound, or of any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparations are cures or remedies for delayed menstruation or constitute competent or effective treatments therefor; that said

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preparations are safe or harmless; or which advertisements fail to reveal that the use of said preparations may result in serious and irreparable injury to the health of the user.

2. 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 preparations, which advertisements contain any of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of said preparations may result in serious and irreparable injury to the health of the user.

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

Syllabus

IN THE MATTER OF
JACK PUZES, TRADING AS THE NOVELTY HOME
FURNISHER

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

Docket 4023. Complaint, Feb. 7, 1940—Decision, June 25, 1940

Where an individual engaged in sale and distribution of clocks, coffee makers, silverware, cameras, lamps, and other articles of merchandise to purchasers in the various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar articles of merchandise in commerce as aforesaid; in soliciting sale of and selling and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of products in question to ultimate consumers wholly by lot or chance, and distribution to purchasing public of certain literature and instructions, including, among other things, push cards, order blanks, illustrations of goods, and circulars explaining his plan of selling merchandise and allotting it as premiums or prizes to operators of such cards and to purchasing and consuming public through the use of (1) push cards under plan in accordance with which purchaser selecting by chance from list of feminine names displayed on card name corresponding with that concealed under card's master seal received premium or prize, and under which, as above described, retail value of articles of merchandise being sold and distributed was greater than amount paid by purchasers for privilege of making punch, and through use of (2) other push cards accompanied by such order blanks, instructions and other printed matter for use in sale and distribution of his goods through means of game of chance, gift enterprise, or lottery scheme, and in accordance with sales plan or method in case of all similar to that herein described and varying therefrom in detail only; and

Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise, in accordance with sales plan above set forth, by persons to whom he furnished and who used such push cards in purchasing, selling, and distributing said products in accordance with such plan, under which articles, retail value of which was greater than amount paid therefor by purchasers, were distributed to purchasing and consuming public wholly by lot or chance, and involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use any or said method involving game of chance or sale of a chance to secure something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and element of chance involved therein, and were thereby induced to buy and sell his said