

Syllabus

IN THE MATTER OF

CHARLES L. KLAPP, TRADING AS THE CARDINAL CO.
AND AS THE CARDINAL COMPANY OF ST. LOUISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3879. Complaint, Aug. 26, 1939—Decision, June 26, 1940*

Where an individual engaged in sale and distribution of certain medicinal preparations, consisting of two formulae known as FEMALADE, to purchasers in various other States and in the District of Columbia; in advertisements of his said products which he disseminated and caused to be disseminated through the mails, by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter distributed in commerce among the various States, and by other means in commerce, and which were intended and likely to induce purchase of his said products—

- (a) Represented that his said medicinal preparations, consisting of tablet formula and liquid formula, were cures or remedies for delayed menstruation and competent and effective treatments therefor, and would accomplish desired results without fail, facts being said medicinal preparation consisting of tablet formula was not a cure or remedy for such condition and did not constitute competent or effective treatment therefor and would not accomplish results claimed by him as above set forth, and was not safe and harmless, in that it contained aloes, extract cotton root bark, extract black hellebore, oil savin, and extract ergot 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 use thereof might result in gastro-intestinal disturbances leading to excessive uterine hemorrhage, and, in those cases where used to interfere with normal course of pregnancy, might result in uterine infection causing septicemia or blood poisoning, might also produce very severe circulatory condition tending to produce abortion in some instances, often with violent poisonous effects upon system, and result in severe toxic conditions, in some instances producing gangrenous condition in lower limbs or other serious or irreparable injury to health, and said liquid preparation, "for obstinate cases," contained insufficient quantities of liquid ingredients to be of any therapeutic or curative value, if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and would not accomplish results claimed and was not a cure or remedy for delayed menstruation and did not constitute competent or effective treatment therefor; and
- (b) Failed to reveal in his said advertisements that use of FEMALADE tablets, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect, through use of aforesaid false, deceptive, and misleading statements and representations, disseminated as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous and

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mistaken belief that such statements, representations, and advertisements were true, and of inducing portion of said public, because of such belief, to purchase his said 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. John W. Addison*, 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 Charles L. Klapp, trading as The Cardinal Co. and as The Cardinal Company, of St. Louis, 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, Charles L. Klapp, is an individual trading as The Cardinal Co. and as The Cardinal Company, of St. Louis, with his office and principal place of business at 406 Market Street, St. Louis, Mo., from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain medicinal preparations, consisting of two formulae known as FEMALADE.

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 Missouri to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, 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 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 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

Here is a message to bring happiness and peace of mind to end the worry and dread of a delayed monthly period.

FEMALADE Treatment gives relief quickly and harmlessly, usually one to three days, stubborn unnatural delays. FEMALADE Treatment is not just a box of pills, but consists of two separate prescriptions, and sent to you with a legally binding guarantee of satisfaction. Positively no risk—positively will not fail you.

Space forbids quoting testimonials, but our thousands of satisfied users will tell you of the wonderful results—your neighbor may be one of them.

To know that you are protected—to know that you will be safe and not sorry—to know that satisfaction is guaranteed you—is your right. Accept nothing less.

Send no money * * * Pay the postman or remit the reduced price of \$1.95 for the regular; \$2.95 for the double strength for obstinate cases.

"FEMALADE WILL NOT FAIL YOU"

THE CARDINAL CO., 406 Market St.

ST. LOUIS, MISSOURI

Free literature and booklet Feminine Hygiene.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations, consisting of a tablet formula and a liquid formula, known and designated as FEMALADE, are cures or remedies for delayed menstruation and competent and effective treatments therefor, and will accomplish the desired results without fail.

PAR. 5. In truth and in fact, the medicinal preparation sold and distributed by the respondent as aforesaid known as FEMALADE and consisting of the tablet formula, is not a cure or remedy for delayed menstruation and does not constitute a competent or effective treatment therefor. Said preparation will not accomplish the results claimed by the respondent. Furthermore, said preparation is not safe and harmless in that said preparation contains aloes, extract cotton root bark, extract black hellebore, oil savin, and extract ergot.

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The aforesaid drugs are present in said medicinal preparation 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 preparation may result in gastrointestinal 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 this preparation is used to interfere with the normal course of pregnancy, it may result in uterine infection with extension to other pelvic and abdominal structures, and to the blood stream, causing a condition known as septicemia or blood poisoning.

The use of said preparation 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 FEMALADE tablets, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 6. The said medicinal preparation sold and distributed by the respondent as aforesaid known as FEMALADE and consisting of the liquid formula, contains powdered hydrastis, powdered viburnum opulus, powdered viburnum prunifolium, blue cohosh, with the addition of ovarian substance and pituitary extract desiccated "for obstinate cases" in quantities insufficient to be of any therapeutic or curative value, if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Said preparation will not accomplish the results claimed by the respondent and is not a cure or a remedy for delayed menstruation and does not constitute a competent or an effective treatment therefor.

PAR. 7. 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 induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations.

PAR. 8. 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 August 26, 1939, issued, and on August 28, 1939, served, its complaint in this proceeding upon the respondent, Charles L. Klapp, an individual trading as The Cardinal Co. and as The Cardinal Company of St. Louis, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor 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, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute 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. Respondent, Charles L. Klapp, is an individual trading as The Cardinal Co. and as The Cardinal Company of St. Louis, with his office and principal place of business at 406 Market Street, St. Louis, Mo., from which address he transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain medicinal preparations, consisting of two formulae known as FEMALADE.

In the course and conduct of his business the respondent causes said medicinal preparations when sold to be transported from his

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place of business in the said State of Missouri to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, 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 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 medicinal preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its 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

Here is a message to bring happiness and peace of mind to end the worry and dread of a delayed monthly period.

FEMALADE Treatment gives relief quickly and harmlessly, usually one to three days, stubborn unnatural delays. FEMALADE Treatment is not just a box of pills, but consists of two separate prescriptions, and sent to you with a legally binding guarantee of satisfaction. Positively no risk—positively will not fail you.

Space forbids quoting testimonials, but our thousands of satisfied users will tell you of the wonderful results—your neighbor may be one of them.

To know that you are protected—to know that you will be safe and not sorry—to know that satisfaction is guaranteed you—is your right. Accept nothing less.

Send no money * * * Pay the postman or remit the reduced price of \$1.95 for the regular; \$2.95 for the double strength for obstinate cases.

"FEMALADE WILL NOT FAIL YOU"

THE CARDINAL Co., 406 Market St.

ST. LOUIS, MISSOURI

Free literature and booklet *Feminine Hygiene*.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations, consisting of a tablet formula and a liquid formula, known and designated as FEMALADE, are cures or remedies for delayed menstruation and competent and effective treatments therefor, and will accomplish the desired results without fail.

PAR. 5. In truth and in fact, the medicinal preparation sold and distributed by the respondent as aforesaid known as FEMALADE and consisting of the tablet formula, is not a cure or remedy for delayed menstruation and does not constitute a competent or effective treatment therefor. Said preparation will not accomplish the results claimed by the respondent. Furthermore, said preparation is not safe and harmless in that said preparation contains aloes, extract cotton root bark, extract black hellebore, oil savin and extract ergot.

The aforesaid drugs are present in said medicinal preparation 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 preparation may result in gastrointestinal 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 this preparation is used to interfere with the normal course of pregnancy, it may result in uterine infection with extension to other pelvic and abdominal structures, and to the blood stream, causing a condition known as septicemia or blood poisoning.

The use of said preparation 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 FEMALADE tablets, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 6. The said medicinal preparation sold and distributed by the respondent as aforesaid known as FEMALADE and consisting

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of the liquid formula, contains powdered hydrastis, powdered viburnum opulus, powdered viburnum prunifolium, blue cohosh, with the addition of ovarian substance and pituitary extract desiccated "for obstinate cases" in quantities insufficient to be of any therapeutic or curative value, if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Said preparation will not accomplish the results claimed by the respondent and is not a cure or a remedy for delayed menstruation and does not constitute a competent or an effective treatment therefor.

PAR. 7. 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 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 hearings 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, Charles L. Klapp, an individual trading as The Cardinal Co. and as the Cardinal Company of St. Louis 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, or distribution of his medicinal preparations designated "Femalade Tablets" and "Femalade Liquid," or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar prop-

erties, 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; or which advertisements with respect to said preparation "Femalade Tablets" fail to reveal that the use of said preparation 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 advertisements with respect to the preparation "Femalade Tablets" fail to reveal that the use of said preparation 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.

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IN THE MATTER OF

JOHNS-MANVILLE CORPORATION AND JOHNS-MANVILLE SALES CORPORATION

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

Docket 3899. Complaint, Sept. 26, 1939—Decision, June 26, 1940

Where a corporation and sales subsidiary thereof engaged, as case might be, in manufacture, and in sale, of various lines of building and insulating materials, including certain low temperature insulating product sold under registered trade-mark "Rock Cork," to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution, in commerce as aforesaid, of low temperature insulating materials; in advertisements and advertising matter relating to said "Rock Cork" in magazines, newspapers, circulars, pamphlets, booklets, catalogs, leaflets, and other printed and illustrated material, widely circulated and distributed by them among prospective purchasers of their said insulating material—

Represented that said product was composed entirely of mineral matter, through such statements as "Make Sure Of Lasting Insulating Efficiency with this MINERAL INSULATION! * * * is entirely mineral, rotproof, vermin-proof * * *," "The reason for their long life is the fact that * * * is entirely mineral in composition * * * The efficient insulation material that cannot rot or decay. Mineral—Not Vegetable Composition," facts being said product was not, and for some time last past had not been, composed entirely of mineral matter, but was, and had for some time, been composed of approximately 88 percent mineral matter and 12 percent vegetable matter, and vegetable fiber was not that vegetable matter known to public as, and properly designated, "cork";

With effect of misleading and deceiving substantial portion of purchasers and prospective purchasers of said product into erroneous and mistaken belief that it was entirely of mineral composition, and of inducing such purchasers and prospective purchasers to buy said "Rock Cork" on account of such belief, and of unfairly diverting thereby trade in commerce to them from their competitors, who do not use misrepresentations with respect to their low temperature insulating materials:

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.

Mr. Curtis C. Shears for the Commission.

Mr. William E. Lamb, of Washington, D. C., for respondents.

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 Johns-Manville Cor-