

Syllabus

IN THE MATTER OF
MONTICELLO DRUG COMPANY

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

Docket 3455. Complaint, June 13, 1938—Decision, June 29, 1940

Where a corporation engaged in making its "666" medicinal preparations for fevers, common colds, and malaria, and including its preparation known as "666," and also other products similarly designated, including its "666 Liquid," "666 Tablets," "666 Salve," and "666 Nose Drops," and in sale and distribution thereof to purchasers in various other States, in substantial competition with others engaged in sale and distribution in both foreign commerce and that among the States and in the District of Columbia, of preparations for use in connection with treatment of said ailments and conditions, and including many who make, sell, and distribute, preparations designed and intended as aids or treatment for same or similar conditions, and do not in any way misrepresent the effectiveness of their respective products; in advertisements of its said preparation in newspapers having interstate circulation and through radio broadcasts:

- (a) Represented directly or by inference that its said preparations would check or cure colds and constituted the only complete treatment therefor and one which could not be improved on and would cure malaria and that millions of users thereof had obtained permanent relief from and been cured of colds thereby; and
- (b) Represented that said preparations were the speediest remedies known for colds, malaria, chills and fever, or bilious fever, due to malaria, and that they would check colds and fever the first day used and malaria in 3 days, and that they were commonly prescribed by doctors;

Facts being they were not commonly thus prescribed and did not constitute cures or complete remedies for colds or for malaria and, while containing quinine which will, if administered in the proper doses, generally alleviate symptoms of malaria, such as chills and fever, they did not constitute cure therefor, there is no single preparation in common use generally recognized as specific for colds nor standard preparation or treatment used therefore by doctors, fever is not a disease but symptom of many and various ailments, and should not be treated as an ailment or disease, and claims and representations made as above set forth were otherwise false, grossly exaggerated, misleading, and untrue;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true and with direct result, as consequence of such belief, that number of consuming public purchased substantial volume of its preparations, and trade was thereby diverted unfairly to it from competitors, also engaged in manufacturing, selling, and distributing preparations and treatments for colds, malaria and fever, and who truthfully advertise their respective products, and the effectiveness and therapeutic value thereof; to the injury of competition in commerce:

Complaint

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

Before *Mr. Edward E. Reardon* and *Mr. John W. Addison*, trial examiners.

Mr. R. P. Bellinger and *Mr. Charles S. Cox* 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 Monticello Drug Co., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in 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, Monticello Drug Co., is a corporation created by and existing under the laws of the State of Florida, with its principal office and place of business at Riverside Viaduct, in the city of Jacksonville, State of Florida, with other plants in New York, Louisiana, and the Republic of Mexico. Respondent is now, and has been for some time last past, engaged in the business of making, selling and distributing in commerce, as herein set out, certain preparations known as "666," intended by respondent as a treatment and cure for fevers, common colds, and malaria.

PAR. 2. Respondent, being engaged in business as aforesaid, causes said preparations, when sold, to be transported from its office and place of business in the State of Florida to purchasers thereof located at various points in States of the United States other than the State of Florida. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparations, sold and distributed by it in commerce between and among the various States of the United States, in the District of Columbia and in foreign countries.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of selling and distributing in commerce, both foreign and among and between the various States of the United States and in the District of Columbia, preparations for use in connection with treatment for fever, common colds, and malaria.

In the course and conduct of said business, and for the purpose of inducing the purchase of said preparations, respondent has made, by means of advertisements inserted in newspapers having an interstate circulation and by means of radio broadcasts, representations concerning said preparations and the results obtained from their use. Among said representations made by respondent are the following:

- (a) 666 checks colds and fever first day.
- (b) For years this famous cold treatment has offered relief to millions of persons.
- (c) Because the products are doctor's prescriptions * * * you can be certain of complete treatment.
- (d) Early treatment will stop the common cold.
- (e) Remember, for the only COMPLETE cold treatment, always ask for the three sixes—Six Sixty Six.
- (f) COMBINED TREATMENT: There are two methods for treating Colds—internal and external treatments. Each have their merits and 666 offers both. The use of 666 Liquid or 666 Tablets with 666 Salve or 666 Nose drops makes a complete treatment which cannot be improved upon.
- (g) MALARIA: 666 Liquid and Tablets is a Doctor's prescription and is the speediest remedy known for Malaria, Chills and Fever, and Billous Fever due to Malaria. 666 will check Malaria in three days when taken according to directions.

All of said statements together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's preparations and of their effectiveness in use. In all of its advertising literature and through other means respondent, directly or by inference, through such statements and representations as herein set out, and through other statements of similar import and effect, represents: that its preparations are commonly prescribed by doctors; that millions of users of said preparations have obtained permanent relief from colds; that is, have been cured of colds by the use of said preparations; that treatment with respondent preparations will stop the common cold; that these preparations constitute the only complete treatment for colds and that this treatment cannot be improved upon; that treatment with said preparations is the speediest remedy known for malaria, colds, and fever; that said preparations will check colds and fever the first day they are used and will check malaria in 3 days.

PAR. 4. The representations made by the respondent with respect to the nature and effect of its preparations when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent's preparations are not commonly prescribed by doctors, nor have millions of users obtained permanent relief and been cured of colds by the use of these preparations. These preparations do not constitute a complete treatment for colds and can be improved upon. Treatment with these preparations is not the speediest remedy known for malaria,

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colds, and fever. Said preparations will not check colds and fever the first day used, nor will they check malaria in 3 days.

The true facts are that no single preparation in common use today is generally recognized as a specific for colds and no standard prescription or treatment is used by doctors for colds. Fever is now recognized to be not a disease but a symptom of many and various ailments and should not be treated as an ailment or a disease. Respondent's preparations do not contain the specifics for malaria in sufficient quantities to obtain the results claimed by respondent for said preparations.

PAR. 5. There are among respondent's competitors many who make, sell, and distribute preparations designed and intended as aids or treatments for the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in describing its preparations, and their effectiveness when used, as hereinabove set out, was and is calculated to, and has had and now has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparations with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of making, selling, and distributing preparations for the treatment of fevers, colds, and malaria, who truthfully advertise their respective preparations and the effectiveness thereof when used. As a result thereof, injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 June 13, 1938, issued and subsequently served its complaint in this proceeding upon respondent, Monticello Drug Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of

respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto were introduced before examiners of the Commission theretofore duly designated by it, and a stipulation as to the facts was entered into and dictated into the record herein, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer, stipulation as to the facts, testimony, and other evidence, brief in support of the complaint, 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, Monticello Drug Co., is a corporation created by and existing under the laws of the State of Florida, with its principal office and place of business at Riverside Viaduct, in the city of Jacksonville, State of Florida, with other plants in New York, Louisiana, and the Republic of Mexico. Respondent is now, and has been for 10 years last past, engaged in the business of making, selling, and distributing in commerce, as herein set out, certain medicinal preparations known as "666," intended by respondent as a treatment for fevers, common colds, and malaria.

PAR. 2. Respondent, being engaged in business as aforesaid, causes and has caused said preparations when sold to be transported from its place of business in the State of Florida to purchasers thereof located at various points in the States of the United States other than the State of Florida. Respondent also ships said preparations from its various plants in the States of New York, Louisiana, and in the Republic of Mexico to purchasers located in the States of the United States other than the point of shipment. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations sold and distributed by it in commerce between and among the various States of the United States, in the District of Columbia, and in foreign countries. Among the preparations manufactured, sold, and distributed by respondent and known as the preparation "666" are "666 Liquid," "666 Tablets," "666 Salve," and "666Nose Drops."

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals also engaged in the business of selling and distributing in commerce, both foreign and among and between

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the various States of the United States and in the District of Columbia, preparations for use in connection with treatment for fever, common colds, and malaria.

In the course and conduct of said business, and for the purpose of inducing the purchase of said preparations, respondent has made, by means of advertisements inserted in newspapers having an interstate circulation and by means of radio broadcasts, representations concerning said preparations and the results obtained from their use. Among said representations made by respondent are the following:

- (a) 666 checks colds and fever first day.
- (b) For years this famous cold treatment has offered relief to millions of persons.
- (c) Because the products are doctor's prescriptions * * * you can be certain of complete treatment.
- (d) Early treatment will stop the common cold.
- (e) Remember, for the only COMPLETE cold treatment, always ask for the three sixes—Six Sixty Six.
- (f) COMBINED TREATMENT: There are two methods for treating Colds—internal and external treatments. Each have their merits and 666 offers both. The use of 666 Liquid or 666 Tablets with 666 Salve or 666 Nose Drops makes a complete treatment which cannot be improved upon.
- (g) MALARIA: 666 Liquid and Tablets is a Doctor's prescription and is the speediest remedy known for Malaria, Chills and Fever, and Bilious Fever due to Malaria.

666 will check Malaria in 3 days when taken according to directions.

All of said statements together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's preparations and of their effectiveness in use. In all of its advertising literature and through other means respondent, directly or by inference, through such statements and representations as herein set out, and through other statements of similar import and effect, represents: That its preparations are commonly prescribed by doctors; that millions of users of said preparations have obtained permanent relief from colds; that is, have been cured of colds by the use of said preparations; that treatment with respondent's preparations will stop the common cold; that these preparations constitute the only complete treatment for colds and that this treatment cannot be improved upon; that treatment with said preparations is the speediest remedy known for malaria; colds and fever; that said preparations will check colds and fever the first day they are used and will check malaria in 3 days.

PAR. 4. The representations made by the respondent with respect to the nature and effect of its preparations when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent's preparations are not commonly prescribed by doctors; they are not cures for nor do they constitute a complete remedy or cure for

colds; they are not a cure for malaria, and they are not the speediest remedy known for malaria, colds, and fever. Said preparations will not check colds the first day used, nor will they if used in the early or late treatment thereof, check, stop, or cure the common cold. The use of one of respondent's preparations, either singly or in conjunction with one or more of the others, does not constitute a complete treatment for colds which cannot be improved upon.

In truth and in fact there is no single preparation in common use today which is generally recognized as a specific for colds, and no standard preparation or treatment is used by doctors for colds. Fever is now recognized to be, not a disease, but a symptom of many and various ailments, and should not be treated as an ailment or disease.

The respondent's products "666" contain quinine which will, if administered in the proper doses, generally alleviate the symptoms of malaria such as chills and fever but respondent's products do not constitute a cure for malaria.

PAR. 5. There are among respondent's competitors many who make, sell, and distribute preparations designed and intended as aids or treatments for the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. The foregoing misleading and untrue statements and representations made by the respondent in describing its preparations and their effectiveness when used, as hereinabove set out, has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's preparations, with the result that trade has been diverted unfairly to respondent from competitors also engaged in the business of manufacturing, selling and distributing preparations for the treatment of colds, malaria, and fever who truthfully advertise their respective preparations and the effectiveness and therapeutic value thereof when used. As a result thereof, injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony, and other evidence taken before examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and a stipulation as to certain facts read into the record herein, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Monticello Drug Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its various medicinal preparations designated and known as "666," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That said preparations will check, cure or stop the common, or any other, cold.
2. That said preparations constitute a complete treatment for colds, whether taken or administered singly or in conjunction with each other.
3. That said preparations will cure malaria.
4. That said preparations are the speediest remedies known for colds, malaria, chills and fever, or bilious fever due to malaria.
5. That said preparations are commonly prescribed by doctors.

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

Syllabus

IN THE MATTER OF
BETTY WELLS FOWLER, TRADING AS BETTY WELLS
COSMETIC COMPANY

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

Docket 3538. Complaint, Aug. 17, 1938—Decision, June 29, 1940

Where an individual engaged in compounding, under name "Tissuefane," cosmetic preparation consisting essentially of water, alcohol, gum, perfume, small amount of benzoate of soda, and coal-tar dye, and in compounding, under name "Tissuefane Preparatory Oil," preparation consisting essentially of a pure scented olive oil, and in sale and distribution of said preparations to purchasers in various other States, in substantial competition with others also engaged in sale and distribution of similar products designed and intended for similar usage, in commerce also among the various States and in the District of Columbia; in advertising her said products in newspapers and other publications, pamphlets, magazines, etc., having general circulation and reaching members of purchasing public in various States—

- (a) Represented that said "Tissuefane" would nourish skin and build tissue and strengthen facial muscles and remove lines, pimples, or crow's-feet and blackheads, facts being it would have no effect on blackheads in excess of removing superficial dirt on surface thereof, and it would not, by its effect upon circulation of blood supply or otherwise, render firmer or strengthen or nourish skin, muscles, or tissues, or build tissue, and would not accomplish, otherwise, results claimed therefor as above set forth;
- (b) Represented that said preparation would rejuvenate, preserve, and stimulate or beautify skin, and reduce and clean pores, and increase circulation and supply of blood, facts being effect upon circulation of blood at place of application was transitory and had no physiological significance, it would not beautify, revitalize, or rejuvenate user or her skin, and neither stimulated pores nor reduced their size nor cleansed same, in excess of removing superficial dirt from openings thereof;
- (c) Represented that said product was made wholly of fruit and vegetable products and was an innovation in the cosmetic field and constituted a bleaching agent and skin tonic and was healing to skin and possessed beneficial value in treatment of acne, facts being it was not composed entirely as aforesaid set out, did not constitute an unparalleled innovation in cosmetic world, had no bleaching qualities, was not a skin tonic in any sense that permanent beneficial results may be obtained from its persistent use, and was not healing nor helpful nor beneficial in treatment of acne, and would not erase years from appearance of user; and
- (d) Represented that her said "Tissuefane Preparatory Oil" would nourish or feed skin and pores and make skin soft and prevent or remove wrinkles or lines from face, facts being it did not remove wrinkles or lines other than that very fine lines due solely to dryness of skin might be temporarily removed by its use, any softness which it might impart to skin was temporary only, and it would not nourish or feed same or tissues;