

Syllabus

IN THE MATTER OF
THE MURINE COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4076. Complaint, Mar. 30, 1940—Decision, June 29, 1940*

Where a corporation engaged in manufacture of its Murine medicinal preparation, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails and through various other means in commerce, and otherwise, and including advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, and which were intended and likely to induce purchase of its said preparation—

Represented that said Murine was a cure or remedy for eyestrain and constituted a competent and effective treatment therefor, and that use thereof would prevent or ward off eyestrain due to driving, attendance at movies, reading, sewing, or other excessive use of the eyes, and would prevent irritation of eyes due to exposure to dust, sun, or light glare, through such statements, among others, as "Quick relief from eyestrain due to dust, sun, light glare, driving, movies, reading, etc.," "*Millions Know This Relief For Eye Strain*," "Here's safe, easy way to end discomfort of tired eyes," and "Sewing and reading hold no terrors for the eyes of those who use Murine * * * helps to ward off eyestrain";

Facts being said product was not a cure or remedy for eyestrain caused by excessive use of eyes, nor a competent or effective treatment therefor, and in those cases in which such strain is due to uncorrected defects in focusing of eyes, instillation of said products or one of substantially similar properties into eyes thus afflicted would not provide cure or remedy therefor or competent treatment, or possess any therapeutic value with respect thereto in excess of furnishing refreshment to eyes and relief from irritation and discomfort of eye associated with such eye strains, would not prevent such strain due to driving, movies, reading, sewing, or other excessive use of eyes nor prevent irritation caused by exposure to dust, sun, or light glare as distinguished from eyestrain, and it possessed no therapeutic value with respect to such irritations in excess of furnishing refreshment to eyes and relief therefrom;

With capacity and tendency to and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and to induce portions of said public, because of such belief, to purchase its said preparation:

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

Mr. Robert Mathis, Jr., for the Commission.

Rogers, Hoge & Hills, of New York City, for respondent.

Complaint

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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 The Murine Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of 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, The Murine Co., Inc., is a corporation organized and existing under the laws of the State of Illinois, with its general offices and principal place of business located at 660-678 North Wabash Avenue, in the city of Chicago, and State of Illinois.

PAR. 2. Respondent is now and has been for several years last past engaged in the business of manufacturing, selling, and distributing a medicinal preparation containing drugs, known and designated as "Murine." Respondent causes said preparation when sold to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by United States mails and by various 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 said products; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodi-

cals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Quick relief from eyestrain due to dust, sun, light glare, driving, movies, reading, etc.

2. *Millions Know This Relief For Eye Strain.* Here's safe, easy way to end discomfort of tired eyes. Do your eyes smart and burn? Feel tired, uncomfortable? Then you should try the safe modern Murine way to cleanse and refresh them.

3. Close work, reading and sewing put a heavy strain on your eyes but MURINE quickly relieves that tired smarting feeling your eyes so often have when you have been using them steadily for hours.

4. Driving an automobile puts a heavy strain on your eyes. * * * MURINE makes short work of the irritation resulting from this cause.

5. Sewing and reading hold no terrors for the eyes of those who use MURINE for an application of this famous lotion helps to ward off eyestrain.

6. Do you, too, suffer from eyestrain after driving? So did I until I found Murine's amazing relief.

PAR 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondent has represented directly and by implication that respondent's preparation "Murine" is a cure or remedy for eyestrain caused by excessive use of the eyes and constitutes a competent and effective treatment therefor; that said preparation will prevent eyestrain due to dust, sun, light glare, driving, movies, reading, sewing, and other excessive uses of the eyes, and will quickly relieve and eliminate the irritation and eyestrain caused thereby.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact respondent's preparation "Murine" is not a cure or remedy for eyestrain caused by excessive use of the eyes and is not a competent or effective treatment therefor. Eyestrain is due to or caused by excessive use of the eyes or eye muscles or by uncorrected defects in the focusing of the eyes. After the eye muscles have been strained by excessive use or from uncorrected defects in the focusing of the eyes, the instillation of respondent's preparation or one of substantially similar therapeutic properties into the conjunctival sac of eyes so afflicted will have no effect other than that of affording a sensation of refreshment to such eyes. Respondent's preparation will not prevent eyestrain due to dust, sun, light glare, driving, movies, reading, sewing, and other excessive uses of the eyes, and will not relieve or eliminate the irritations caused by such eyestrain in excess of affording a temporary sensation of refreshment to the eyes.

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PAR. 6. The use by the respondent of the foregoing false and deceptive statements and representations with respect to its 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, representations, and advertisements are true, and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's preparation containing drugs.

PAR. 7. The aforesaid acts and practices of 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 the 30th day of March 1940, issued, and on the 1st day of April 1940, served its complaint upon respondent, The Murine Company, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 5th day of April 1940, respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by the respondent's counsel, Rogers, Hoge and Hills, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Murine Co., Inc., is a corporation organized and existing under the laws of the State of Illinois, with its general offices and principal place of business located at 660-678 North Wabash Avenue, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now and has been for several years last past engaged in the business of manufacturing, selling, and distributing a medicinal preparation containing drugs, known and designated as "Murine." Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business the respondent has disseminated and is now disseminating, and has caused, and is now causing the dissemination of, advertisements concerning its said product by United States mails and by various 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 its said product; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product, in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Quick relief from eyestrain due to dust, sun, light glare, driving, movies, reading, etc.

2. *Millions Know This Relief For Eye Strain.* Here's safe, easy way to end discomfort of tired eyes. Do your eyes smart and burn? Feel tired, uncomfortable? Then you should try the safe modern Murine way to cleanse and refresh them.

3. Sewing and reading hold no terrors for the eyes of those who use MURINE for an application of this famous lotion helps to ward off eyestrain.

4. Do you, too, suffer from eyestrain after driving? So did I until I found Murine's amazing relief.

PAR. 4. The foregoing statements, representations and advertisements and others of similar import have the capacity and tendency to cause purchasers to mistakenly believe that respondent's preparation Murine is a cure or remedy for eyestrain caused by excessive use of the eyes and that said product constitutes a competent and effective treatment therefor; that said preparation will prevent irritation of the eyes due to dust, sun and light glare and prevent eyestrain due

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to driving, movies, reading, sewing, and other excessive uses of the eyes.

PAR. 5. Respondent's preparation Murine is not a cure or remedy for eyestrain caused by excessive use of the eyes and is not a competent or effective treatment therefor. Eyestrain is due to or caused by excessive use of the eyes or eye muscles or by uncorrected defects in the focusing of the eyes. True eyestrain may be due to such actions, among others, as driving, attendance at movies, reading, or sewing. After the eye muscles have been strained by excessive use or by uncorrected defects in the focusing of the eyes, the instillation of respondent's preparation or one of substantially similar properties into the conjunctival sac of the eyes so afflicted will not provide a cure or remedy for such eyestrain or provide a competent treatment therefor, or possess any therapeutic value with respect to eyestrain in excess of furnishing refreshment to the eyes and furnishing relief from irritation and discomforts of the eyes associated with such eyestrain. Respondent's preparation will not prevent eyestrain due to driving, movies, reading, sewing, or other excessive uses of the eyes. Exposure to dust, sun, or light glare may cause irritation to the eyes as distinguished from eyestrain. Respondent's preparation will not prevent irritation caused by such exposure or possess therapeutic value with respect to such irritation in excess of furnishing refreshment to the eyes and furnishing relief from such irritation.

PAR. 6. The use by the respondent of the foregoing statements and representations with respect to its 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, representations, and advertisements are true, and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's preparation containing drugs.

CONCLUSION

The aforesaid acts and practices of 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, the answer of the respondent, and a stipulation as to the facts entered into between the

respondent herein and W. T. Kelley, chief counsel for the Commission, 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 The Murine Co., Inc., its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their medicinal preparation advertised as "Murine" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisements by means of the United States mails, or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent directly or through inference.

(a) That respondent's preparation "Murine" is a cure or remedy for eyestrain, or that it constitutes a competent or effective treatment therefor or possesses any therapeutic value with respect to eyestrain in excess of furnishing relief from irritation and discomforts of the eyes incident thereto.

(b) That the use of respondent's preparation will prevent or ward off eyestrain due to driving, attendance at movies, reading, sewing, or other excessive uses of the eyes.

(c) That the use of respondent's preparation will prevent irritation of the eyes due to exposure to dust, sun, or light glare, or possess any therapeutic value with respect to irritation of the eyes in excess of furnishing relief therefrom.

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 of said medicinal preparation in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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.

IN THE MATTER OF

GEORGE D. MOORMAN AND ROY C. STOCKBRIDGE, INDIVIDUALLY AND TRADING AS MAYOS PRODUCTS COMPANY AND AS M. P. COMPANY

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

Docket 4147. Complaint, May 31, 1940—Decision, June 29, 1940

Where two individuals engaged in sale and distribution of a medicinal preparation designated and described as "Mayos Periodic Compound," to purchasers in various other States and in the District of Columbia; in advertisements thereof which they disseminated and caused to be disseminated through the mails, and by various other means in commerce, and which were intended and likely to induce purchase of their said product—

- (a) Represented, directly and by implication, that their said medicinal preparation was a cure or remedy for delayed, scanty, irregular and painful menstruation, and constituted competent and effective treatment therefor, and that it was entirely safe and harmless and might be used without danger of ill effects upon health of user, facts being their said preparation was not a cure or remedy for such conditions as above set forth, and did not constitute competent or effective treatment for any of said ailments, and it was not safe or harmless, in that it contained ergotin, aloes, extract cotton root bark, extract black hellebore, and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual, and use thereof might result in gastro-intestinal disturbances, with pelvic congestion and other conditions, leading to excessive uterine hemorrhage, and in those cases where used to interfere with normal course of pregnancy, such use might result in uterine infection with extension to other parts of the body and to the blood stream, causing condition known as septicemia or blood poisoning, and might also produce very severe circulatory condition, tending to produce abortion in some instances, often with violent poisonous effects upon system, and also produce severe toxic conditions, and, in some instances lead to gangrenous condition in lower limbs or other serious or irreparable injury to health; and
- (b) Failed to reveal, in their said advertisements, disseminated as above set forth, that use of said medicinal preparation, under conditions prescribed in such 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 mistaken belief that such statements, representations and advertisements were true, and of inducing portion of said public, because of such erroneous and mistaken belief, to purchase their said medicinal preparation:

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

Mr. William L. Taggart for the Commission.