

IN THE MATTER OF
PITTSBURGH CUT RATE 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 4154. Complaint, June 4, 1940—Decision, July 6, 1940

Where a corporation engaged in sale and distribution of various medicinal preparations, including drug preparation advertised as "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also designated as "Genuine Mayco English Crown Female Capsules Double Strength," and as "Genuine Mayco English Crown Female Capsules Triple Strength," to purchasers thereof 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 by various other means in commerce, and including newspapers, circulars, and other advertising literature and which advertisements were intended and likely to induce purchase of its said product—

- (a) Represented, directly and by implication, that its preparation designated as above set forth was a competent and effective treatment for delayed menstruation and that it was safe and harmless, facts being said preparation was not a competent and effective treatment for such condition and was not safe or harmless, in that it contained drugs apiol green, ergotin, oil of savin, and aloin 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 and, in those cases where used to interfere with normal course of pregnancy, in uterine infection, with extension to other pelvic and abdominal structures and even to blood stream, causing condition known as septicemia or blood poisoning, and use thereof might also produce severe circulatory condition, often with poisonous effects and tending to cause abortion in some instances, and might result in severe toxic conditions, producing, in some cases, gangrenous condition in lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health; and
- (b) Failed to reveal, in advertisements disseminated by it as aforesaid, that use of said 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 of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and that said preparation was a safe, competent, and effective treatment for delayed menstruation, and with further effect of inducing, directly or indirectly, purchase by such public of 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. R. P. Bellinger for the Commission.

Mr. David D. Blumenstein, of Pittsburgh, Pa., for respondent.

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 Pittsburgh Cut Rate Drug Co., 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, Pittsburgh Cut Rate Drug Co., is a corporation, organized, existing, and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 329 Fifth Avenue, McKeesport, Pa.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is a drug preparation advertised as "Genuine Mayco English Crown Female Capsules for Delayed Periods," also designated "Genuine Mayco English Crown Female Capsules Double Strength," and as "Genuine Mayco English Crown Female Capsules Triple Strength."

Respondent causes its said preparation, when sold, to be transported from its place of business in the State of Pennsylvania to 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 its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of 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 its said product; 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,

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as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

GENUINE
MAYCO
ENGLISH CROWN
FEMALE CAPSULES
for
DELAYED PERIODS
DOUBLE STRENGTH \$5.
PITTSBURGH CUT RATE DRUG COMPANY,
THE SUPER CUT RATE,
329 FIFTH AVENUE

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated "Mayco English Crown Female Capsules for Delayed Periods," also designated "Mayco English Crown Female Capsules Double Strength," and as "Mayco English Crown Female Capsules Triple Strength" is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin 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 preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result

in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

Said advertisements are also false in that they fail to reveal that the use of said preparation 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 use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has the capacity and tendency to 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 that such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said preparation.

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 June 4, 1940, issued and on June 5, 1940, served its complaint in this proceeding upon respondent, Pittsburgh Cut Rate Drug Co., 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 June 24, 1940, the respondent filed its answer, in which answer it 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, Pittsburgh Cut Rate Drug Co., is a corporation, organized, existing, and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 329 Fifth Avenue, McKeesport, Pa.

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PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is a drug preparation advertised as "Genuine Mayco English Crown Female Capsules for Delayed Periods," also designated "Genuine Mayco English Crown Female Capsules Double Strength," and as "Genuine Mayco English Crown Female Capsules Triple Strength."

Respondent causes its said preparation, when sold, to be transported from its place of business in the States of Pennsylvania to 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 its said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of 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 its said product; 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 by circulars and other advertising literature, are the following:

GENUINE
MAYCO
ENGLISH CROWN
FEMALE CAPSULES
for
DELAYED PERIODS
DOUBLE STRENGTH \$5.
PITTSBURGH CUT RATE DRUG COMPANY,
THE SUPER CUT RATE,
329 FIFTH AVENUE

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated "Mayco English Crown Female Capsules for Delayed Periods," also designated "Mayco English Crown Female Capsules Double Strength," and as "Mayco English Crown Female Capsules Triple Strength" is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin 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 preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

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

Said advertisements are also false in that they fail to reveal that the use of said preparation 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 use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that

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such statements, representations, and advertisements are true, and that such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said preparation.

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 it 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, Pittsburgh Cut Rate Drug Co., a corporation, its officers, agents, representatives, servants, employees, and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparation designated and advertised as "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also designated as "Genuine Mayco English Crown Female Capsules, Double Strength," and as "Genuine Mayco English Crown Female Capsules, Triple Strength," or of any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other name or 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 advertisement represents, directly or by implication, that said preparation is a safe, competent, and effective preparation for use in the treatment of delayed menstruation; that said preparation is a cure or remedy for delayed menstruation; or which advertisement fails 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 preparation, which advertisement contains any representations prohibited in Paragraph 1 hereof, or which fails 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 it of this order, file with the Commission an interim report in writing, stating whether it intends to comply with this order and, if so, the manner and form in which it intends to comply; and that within 60 days after service upon it of this order, said respondent shall 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

J. E. BERNARD & 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 3534. Complaint, Aug. 12, 1938—Decision, July 8, 1940

Where a corporation engaged in purchase, chiefly, of used and discarded spark plugs which were originally made and sold by manufacturers thereof under well-known and widely advertised brand names and trade marks "Champion" and "AC," and which had been refurbished under process so as to give them appearance of new and unused "Champion" and "AC" spark plugs, respectively, and in sale and distribution of such refurbished and processed plugs, for use in automotive gasoline engines, to dealers in foreign countries, and in competition, as thus engaged, with those engaged in manufacture and sale of such products to dealers purchasing for resale and to members of the public purchasing for use, in the various States, the District of Columbia, and in foreign countries, principally non-English speaking, including Brazil, British India, and others in which it made sales as above set forth of its said reconditioned products, cleaning of which was substantially equivalent to that available to car owners generally through garages and service stations at charge of 5 cents a plug before abandonment of product—

Sold such spark plugs, which were originally obtained by its vendors, as discarded products and junk and at small cost, from garages, service stations and other places where they had been abandoned by owners as worthless, and which, as above set forth, were thereafter treated and refurbished by process giving them, as above described, appearance of new plugs, and which, in some instances, continued to carry aforesaid brand names originally placed thereon by manufacturers thereof, displayed, under common practice of installation for owner by mechanic or other garage or service station employee on only visible remaining part of product; with no individual marking on individual plugs to indicate its connection therewith or used character thereof, to dealers in foreign countries, as above described, and in which purchasers who did not understand English were compelled to rely solely on appearance of plug itself and trade mark or brand name appearing thereon;

Facts being process employed resulted in important impairment of functional quality of product, some of plugs were obsolete and often did not contain type indicated in accordance with manufacturers' practice of making such products in very large numbers of types adapted to different makes and models of cars for which made and sold, and were not of type or in condition to render satisfactory or adequate service in accordance with manufacturers' further practice of subjecting to rigid tests various plugs made by them for different makes and models and recommending discarding thereof after certain specified use, and said reconditioned products did not compare with blue prints and specifications of original manufacturers thereof and were not considered by them as a satisfactory product;

With tendency and capacity, through sale of such discarded and much less costly refurbished spark plugs, with their greater profit incentive to dealer for substitution for new product, to deceive purchasers into erroneous and