

Complaint

IN THE MATTER OF

LOUIS COHEN, SOL COHEN AND MARVYN COHEN, INDIVIDUALLY, AND TRADING AS COHEN'S CUT RATE DRUG STORE, AND AS COHEN DRUG CO., AND AS COHEN'S

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

Docket 4202. Complaint, July 30, 1940—Decision, Sept. 18, 1940

Where three individuals who owned and operated a chain of drug stores in West Virginia and were engaged in sale and distribution of various medicinal preparations, including product designated as Soluble Gelatin Capsules No. 5, Apiol, and Ergotin Compound, and advertised and sold as Lady Lydia Capsules; in advertisements which they disseminated or caused to be disseminated concerning their said product through the mails and through various other means in commerce and through various means, and which were intended and likely to induce purchase thereof—

- (a) Represented that their said product designated and advertised and sold as above set forth constituted a competent and effective treatment for delayed menstruation and was safe and harmless, facts being it was not such a treatment, was not safe or harmless, but 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 advertisements in question, or such conditions as are customary or usual, and use thereof might result in a toxic condition and other serious consequences, including blood poisoning or septicemia; and
- (b) Failed to reveal in advertisements in question that use of said preparation under conditions prescribed therein, or 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 such preparation was safe, competent, and effective treatment for aforesaid condition, and to induce, directly or indirectly, purchase thereof by public:

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. Philip Angel and *Mr. Harry R. Angel*, of Charleston, W. Va., 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 Louis Cohen, Sol Cohen, and Marvyn Cohen, individually, and trading as Cohen's Cut

Complaint

31 F. T. C.

Rate Drug Store, and as Cohen Drug Co., and as Cohen's, hereinafter referred to as respondents, have 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. Respondents Louis Cohen, Sol Cohen, and Marvyn Cohen, are individuals trading and doing business under the names of Cohen's Cut Rate Drug Store, Cohen Drug Co., and Cohen's. The respondents own and operate a chain of drug stores in the State of West Virginia, with their warehouse and general offices located at 905 Virginia Street, East, in Charleston, W. Va., and their main store located at 160 Summers Street, Charleston, W. Va.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of various medicinal preparations. Among the various products sold and distributed by respondents is a drug preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound," and advertised and sold as "Lady Lydia Capsules."

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by the 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 their said product; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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 other advertising literature, are the following:

FOR DELAYED PERIODS

MODERN WOMEN USE

LADY LYDIA CAPS.

\$5 BOX * * * \$2.69

Complaint

FOR DELAYED PERIODS

LADY LYDIA CAPSULES

\$5 BOX * * * \$2.69

FOR DELAYED PERIODS—SMART WOMEN PREFER

LADY LYDIA CAPSULES—5.00 BOX * * * \$2.69

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not set out herein, the respondents have represented, directly and by implication, that their preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound" and advertised and sold as "Lady Lydia Capsules," 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 respondents as hereinabove set forth, are grossly exaggerated, false, and misleading. In truth and in fact, respondents' said preparation is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless, as 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 a toxic condition and excessive purgation, and may give rise to abortion, resulting in uterine infection with extension to other pelvic and abdominal structures, and even the blood stream, causing the condition known as blood poisoning or septicemia.

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 respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, 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 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 respondents' said preparation.

PAR. 7. The aforesaid acts and practices of the respondents 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 July 30, 1940, issued and on July 31, 1940, served its complaint in this proceeding upon respondents, Louis Cohen, Sol (Saul) Cohen, and Marvyn Cohen, individually, and trading as Cohen's Cut Rate Drug Store, and as Cohen Drug Co., and as Cohen's, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 15, 1940, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. In said answer, however, the respondents alleged that they had, since February 1940, ceased advertising the medicinal preparation involved herein. 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. Respondents Louis Cohen, Sol (Saul) Cohen, and Marvyn Cohen are individuals trading and doing business under the names of Cohen's Cut Rate Drug Store, Cohen Drug Co., and Cohen's. The respondents own and operate a chain of drug stores in the State of West Virginia, with their warehouse and general offices located at 905 Virginia Street, East, in Charleston, W. Va., and their main store located at 160 Summers Street, Charleston, W. Va.

PAR 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of various medicinal preparations. Among the various products sold and distributed by respondents is a drug preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound," and advertised and sold as "Lady Lydia Capsules."

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and have caused the dissemination of false advertisements concerning their said product, by the 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 their said product; and respondents have also disseminated

and have caused the dissemination of false advertisements concerning their said product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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 other advertising literature, are the following:

FOR DELAYED PERIODS

MODERN WOMEN USE

LADY LYDIA CAPS.

\$5 BOX * * * \$2.69

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LADY LYDIA CAPSULES

\$5 BOX * * * \$2.69

FOR DELAYED PERIODS—SMART WOMEN PREFER

LADY LYDIA CAPSULES—5.00 BOX * * * \$2.69.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not set out herein, the respondents have represented, directly and by implication, that their preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound" and advertised and sold as "Lady Lydia Capsules," 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 respondents as hereinabove set forth, are grossly exaggerated, false, and misleading. In truth and in fact, respondents' said preparation is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless, as 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 a toxic condition and excessive purgation, and may give rise to abortion, resulting in uterine infection with extension to other pelvic and abdominal structures, and

even the blood stream, causing the condition known as blood poisoning or septicemia.

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 their said preparation, disseminated as aforesaid, 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 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 respondents' said preparation.

CONCLUSION

The aforesaid acts and practices of the respondents 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Louis Cohen, Sol (Saul) Cohen, and Marvyn Cohen, individually, and trading as Cohen's Cut Rate Drug Store, and as Cohen Drug Co., and as Cohen's, or trading under any other name or names, their 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 designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound," and as "Lady Lydia Capsules," 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 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 advertisements represent, directly or through inference, that said preparation is a competent or effective treatment for delayed menstruation; that said preparation is safe or harmless; or which advertisements 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 preparation, which advertisements contain any of the representations prohibited in paragraph 1 hereof, or which 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 respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing, stating whether they intend to comply with this order and, if so, the manner and form in which they intend to comply; and that within 60 days after service upon them of this order, said respondents shall file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

31 F. T. C.

IN THE MATTER OF
QUEEN CITY CANDY 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 4220. Complaint, Aug. 6, 1940—Decision, Sept. 18, 1940

Where a corporation engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and which included (1) number of candy bars, together with push card for use in sale and distribution thereof to purchasers under a plan by which persons pushing by chance certain numbers received bar without cost, and others paid 1, 2, or 3 cents in accordance with number thus secured; and (2) various other similar assortments involving lottery or chance feature and varying only in detail from that described above—

Sold such assortments to dealer and retail purchasers by whom, as direct or indirect buyers, they were exposed and sold to purchasing public in accordance with aforesaid plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale and distribution of candy in accordance with sales plans or methods above set forth, involving game of chance or sale of a chance to procure bar of candy without cost or at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plans or methods involving game of chance or sale of a chance to win something by chance, or any other sales plans or methods contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate consumers of said candy were attracted by such plans or methods employed by it in sale and distribution of its candy and element of chance involved therein, and were thereby induced to buy its said products in preference to candy offered and sold by said competitors who do not use such or equivalent sales plans or methods, and with result, through use of such sales plans or methods and because of said game of chance, of unfairly diverting trade to it from its said competitors who do not use such plans or methods; to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel 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 Queen City Candy