

Complaint

31 F. T. C.

IN THE MATTER OF
DR. PIERRE CHEMICAL COMPANY

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

Docket 4005. Complaint, Jan. 31, 1940—Decision, Sept. 27, 1940

Where a corporation engaged in the manufacture, sale and distribution in commerce among the various States and in the District of Columbia of its medicinal preparations known as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories and Dr. Pierre's Boro-Pheno-Form Vaginal Creme; in advertisements which it disseminated concerning its said medicinal preparations through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States, and through other means in commerce and otherwise, and which were intended and likely to induce purchase of its said product—

Represented directly or by implication that its said products constituted in all cases competent and effective contraceptives and were competent and effective germicides and possessed substantial therapeutic agents which healed irritated tissues and membranes and had been approved and accepted and were recommended by a substantial number of reputable physicians;

Facts being aforesaid products did not generally or in a majority of cases constitute competent or effective preventives for aforesaid purposes and while they possessed antiseptic ingredients of low toxicity were not competent or effective germicides generally; contained no substantial therapeutic agents or properties which would serve to heal irritated tissues or membranes and had not been approved, accepted, or recommended by any substantial number of reputable physicians;

With tendency and capacity to mislead and deceive substantial portion of the purchasing public into the erroneous belief that said representations were correct and constituted statements of fact, and with result, as direct consequence of such mistaken and erroneous beliefs induced by its said representations, that a number of the purchasing public bought substantial quantities of said Boro-Pheno-Form Vaginal Suppositories and Boro-Pheno-Form Vaginal Creme:

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. James L. Baker for the Commission.

Mr. Clinton Robb, of Washington, D. C., 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 Dr. Pierre Chemical Co., a corporation, 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. Dr. Pierre Chemical Co. is a corporation created, organized, and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 162 North Franklin Street, Chicago, Ill.

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 known as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories, and Dr. Pierre's Boro-Pheno-Form Vaginal Creme.

In the course and conduct of its business, the respondent causes said medicinal preparations, when sold, to be transported from its place of business in the State of Illinois 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 it 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 its 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 its 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 its 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:

So easy * * * One dainty Boro-Pheno-Form suppository—for Feminine Hygiene! How much easier and simpler than solutions and awkward apparatus! More and more modern wives are discovering this convenience and discovering too that Boro-Pheno-Form is soothing, odorless and perfectly harm-

less. In use for more than forty-seven years. Ask your druggist for enlightening booklet "The Answer." Dr. Pierre's BORO-PHENO-FORM for Feminine Hygiene. At all drug stores.

Ideal For more than forty-seven years Boro-Pheno-Form has given wives freedom from old-fashioned feminine hygiene methods. Today these convenient suppositories are widely accepted because they are so simple and dainty—ideal! They need no water nor accessories. No danger of "overdose" or "underdose." Soothing, harmless, odorless. Ask your druggists for enlightening free booklet—"The Answer." Dr. Pierre's BORO-PHENO-FORM for Feminine Hygiene. At all drug stores.

The answer: Personal Feminine Hygiene. The original BORO-PHENO-FORM Formula which has been approved and accepted by a substantial number of professional men, was developed by an eminent physician in 1890.

BORO-PHENO-FORM was formulated with a fundamental requirement in mind that a preparation which has no serious harmful effect on delicate tissue can be regarded as sufficient for its purpose; it must have a refreshing, astringent action, be soothing to irritated tissues and odorless.

In every sense of the word BORO-PHENO-FORM affords an accepted method for clean, scientific and convenient practice of Modern Feminine Hygiene.

The coca-butter base in BORO-PHENO-FORM melts rapidly at body heat, releasing the therapeutic agents shortly after the cone is inserted.

Many women, at one time or another, suffer from minor irritations of the vaginal tract.

The continued use, according to directions, of BORO-PHENO-FORM has always proved a safe procedure.

Here is convincing, * * * Final Proof of BORO-PHENO-FORM's effectiveness. SAFE—one dainty suppository is sufficient. No danger of "overdose" or "underdose."

EFFECTIVE—melts at body temperature, covering delicate inner tissues with a soothing coating.

The Answer to Modern Marriage Hygiene: the laboratory staff of the Dr. Pierre Chemical Company has devoted more than a generation to the study of this problem; the definite determination of the therapeutic values of various medicinal ingredients when placed in the vaginal canal; the elimination of caustic and tissue destroying drugs; and the determination of the properties which an efficient Feminine Hygiene agent must possess.

A Feminine Hygiene preparation must do the work expected of it.

But the problem must be looked upon broadly. There are many desirable properties which an efficient Feminine Hygiene agent should and must contain before the formula can be considered therapeutically sound. For more than 45 years BORO-PHENO-FORM cones have been supplying this need.

BORO-PHENO-FORM was formulated with these fundamental requirements in mind. The fact that a preparation has no harmful effect on delicate tissue is not enough. It must have a refreshing, soothing and astringent effect, it must cleanse and deodorize, but leave no tell-tale odor of its own.

Here is a simple, dainty and convenient method of Feminine Hygiene.

In every sense of the word, BORO-PHENO-FORM points the way to a scientific and convenient practice of Modern Marriage Hygiene.

BORO-PHENO-FORM is perfectly safe. The coca-butter base melts rapidly at body heat, releasing therapeutic agents within two minutes after the cone is inserted.

The action of BORO-PHENO-FORM is beneficial. The continued use according to directions, of BORO-PHENO-FORM will never prove harmful.

Two kinds of BORO-PHENO-FORM. Dr. Pierre's BORO-PHENO-FORM Vaginal Cones—The identical BORO-PHENO-FORM formula is now available in a tube. The same therapeutically as BORO-PHENO-FORM Suppositories.

Start now to enjoy the BORO-PHENO-FORM way to Modern Marriage Hygiene..

I recommend it to each and every married woman.

Additional copies of this booklet will be gladly supplied by the publisher on request. Furnished to married women only.

Dr. Pierre Chemical Co.

162 N. Franklin Street, Chicago, Ill.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein the respondent represents directly or by implication that its said products constitute in all cases competent and effective preventatives against conception; that said products are competent and effective antiseptics and germicides; that said products possess substantial therapeutic agents which heal and soothe irritated tissue and membranes; that respondent's products have been approved and accepted and are recommended by a substantial number of reputable physicians.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's products do not generally or in the majority of cases constitute competent or effective preventatives against conception. While said products possess antiseptic ingredients of a low toxicity such products are not competent or effective antiseptics or germicides. Said products do not contain any substantial therapeutic agents or properties which will serve to heal or soothe irritated tissue or membranes. Respondent's products have not been approved or accepted by nor are they recommended by any substantial number of reputable physicians.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its 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 substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparations.

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 the 31st day of January 1940, issued and on the 1st day of February 1940, served its complaint in this proceeding upon said respondent, Dr. Pierre Chemical 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 February 19, 1940, the 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 and its counsel, Clinton Robb, 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 argument 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, Dr. Pierre Chemical Co. is a corporation duly organized and existing under the laws of the State of Delaware with its office and principal place of business at 162 North Franklin Street in the city of Chicago, Ill.

PAR. 2. For several years, respondent has been and now is engaged in the business of manufacturing, selling, and distributing, in commerce among and between the various States of the United States and in the District of Columbia, medicinal preparations known as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories and Dr. Pierre's Boro-Pheno-Form Vaginal Creme.

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 advertisements concerning its said medicinal preparations by United States mails, by insertions in newspapers and periodicals, having a general circula-

tion, 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 its said medicinal preparations; and has disseminated, and is now disseminating, and has caused and is now causing, the dissemination of advertisements concerning its said medicinal preparations, by various means, for the purpose of inducing, directly or indirectly, the purchase of its said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

—So easy * * * One dainty Boro-Pheno-Form suppository—for Feminine Hygiene. How much easier and simpler than solutions and awkward apparatus! More and more modern wives are discovering this convenience and discovering too that Boro-Pheno-Form is soothing, odorless and perfectly harmless. In use for more than forty-seven years. Ask your druggist for enlightening booklet "The Answer." Dr. Pierre's BORO-PHENO-FORM for Feminine Hygiene. At all drug stores.

Ideal for more than forty-seven years Boro-Pheno-Form has given wives freedom from old-fashioned feminine hygiene methods. Today these convenient suppositories are widely accepted because they are so simple and dainty—ideal! They need no water nor accessories. No danger of "over-dose" or "underdose." Soothing, harmless, odorless. Ask your druggist for enlightening free booklet—"The Answer." Dr. Pierre's BORO-PHENO-FORM for Feminine Hygiene. At all drug stores.

The Answer: Personal Feminine Hygiene. The original BORO-PHENO-FORM Formula which has been approved and accepted by a substantial number of professional men, was developed by an eminent physician in 1890.

BORO-PHENO-FORM was formulated with a fundamental requirement in mind that a preparation which has no serious harmful effect on delicate tissue can be regarded as sufficient for its purpose; it must have a refreshing, astringent action, be soothing to irritated tissues and odorless.

In every sense of the word BORO-PHENO-FORM affords an accepted method for clean, scientific and convenient practice of Modern Feminine Hygiene.

The coca-butter base in BORO-PHENO-FORM melts rapidly at body heat, releasing the therapeutic agents shortly after the cone is inserted. Many women, at one time or another, suffer from minor irritations of the vaginal tract.

The continued use, according to directions, of BORO-PHENO-FORM has always proved a safe procedure.

Here is convincing * * * Final Proof of BORO-PHENO-FORM's effectiveness.

SAFE—one dainty suppository is sufficient. No danger of "overdose" or "underdose."

EFFECTIVE—melts at body temperature, covering delicate inner tissues with a soothing coating.

Findings

31 F. T. C.

The Answer to Modern Marriage Hygiene: the laboratory staff of the Dr. Pierre Chemical Company has devoted more than a generation to the study of this problem; the definite determination of the therapeutic values of various medicinal ingredients when placed in the vaginal canal; the elimination of caustic and tissue destroying drugs; and the determination of the properties which an efficient Feminine Hygiene agent must possess.

A Feminine Hygiene preparation must do the work expected of it.

But the problem must be looked upon broadly. There are many desirable properties which an efficient Feminine Hygiene agent should and must contain before the formula can be considered therapeutically sound. For more than 45 years BORO-PHENO-FORM cones have been supplying this need.

BORO-PHENO-FORM was formulated with these fundamental requirements in mind. The fact that a preparation has no harmful effect on delicate tissue is not enough. It must have a refreshing, soothing and astringent effect, it must cleanse and deodorize, but leave no tell-tale odor of its own.

In every sense of the word, BORO-PHENO-FORM points the way to a scientific and convenient practice of Modern Marriage Hygiene.

BORO-PHENO-FORM is perfectly safe. The coca-butter base melts rapidly at body heat, releasing therapeutic agents within two minutes after the cone is inserted.

The action of BORO-PHENO-FORM is beneficial. The continued use, according to directions, of BORO-PHENO-FORM will never prove harmful.

Two kinds of BORO-PHENO-FORM. Dr. Pierre's BORO-PHENO-FORM Vaginal Cones—The identical BORO-PHENO-FORM formula is now available in a tube. The same therapeutically as BORO-PHENO-FORM suppositories.

Start now to enjoy the BORO-PHENO-FORM way to Modern Marriage Hygiene.

I recommend it to each and every married woman.

Additional copies of this booklet will be gladly supplied by the publisher on request. Furnished to married women only.

Dr. Pierre Chemical Co. 162 N. Franklin Street, Chicago, Ill.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents directly or by implication that its said products constitute in all cases competent and effective preventives of conception; that said products are competent and effective germicides; that said products possess substantial therapeutic agents which heal irritated tissues and membranes; that respondent's products have been approved and accepted and are recommended by a substantial number of reputable physicians.

PAR. 5. The two medicinal preparations described herein, Dr. Pierre's BORO-PHENO-FORM Vaginal Suppositories and Dr. Pierre's BORO-PHENO-FORM Vaginal Creme, do not generally or in the majority of cases constitute competent or effective preventives against conception. Although these products possess antiseptic ingredients of low toxicity, they are not competent or effective germicides generally. • These products contain no substantial therapeutic agents or properties which will serve to heal irritated tissue or membranes. No sub-

1002

Order

stantial number of reputable physicians have approved, accepted or recommended these two products.

PAR. 6. The aforesaid acts and practices of this respondent have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that these representations are correct and constitute statements of fact. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the representations of respondent as aforesaid, a number of the purchasing public have purchased substantial quantities of respondent's preparations, Dr. Pierre's BORO-PHENO-FORM Vaginal Suppositories and Dr. Pierre's BORO-PHENO-FORM Vaginal Creme.

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, the answer of the respondent and a stipulation as to the facts entered into between the respondent herein and W. T. Kelly, 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 proceedings, 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, Dr. Pierre Chemical Co., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparations advertised as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories and Dr. Pierre's Boro-Pheno-Form Vaginal Creme, or of any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, 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 com-

Order

31 F. T. C.

merce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said products are generally or in the majority of cases competent or effective preventives of conception; that they are competent and effective germicides generally; that said products contain any substantial therapeutic agents or properties which will serve to heal irritated tissues or membranes; that said preparations have been approved, accepted or recommended by any substantial number of reputable physicians;

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 any of said preparations, 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.

Complaint

IN THE MATTER OF

MINNIN SHAPIRO AND JACK WINKLER, TRADING AS
A. S. BUTLER & COMPANY

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

Docket 4192. Complaint, July 18, 1940—Decision, Sept. 27, 1940

Where two individuals engaged in sale and distribution of second-hand fruit jars which they purchased as such second-hand, old, used, and discarded product, from junk dealers, and which they thereafter caused to be cleaned, and to which they caused to be attached new rubber bands and new caps and to be placed in new cardboard cartons with 12 jars in each, and which products, after being cleaned and packed as aforesaid had appearance of new fruit jars never used, and cost of which to them and aforesaid steps was much less than that to manufacturers and wholesalers of manufacturing and packing, or obtaining and packing, new fruit jars, so as to enable them to sell their said product to retailers, and through them to purchasing public, at prices substantially lower than those at which the new product could be sold; and as aforesaid engaged in sale and distribution thereof to purchasers in various other States, in substantial competition with others engaged in sale and distribution in commerce among the various States of fruit jars adapted to and used for same general purposes as their said product—

Sold their said jars, with appearance aforesaid and with no label, marking, or designation on or about them or rubber bands, caps, or cartons, or elsewhere, to indicate that they were in fact old, second-hand, used, and discarded products, to retailers who resold to public without disclosing fact that said jars were used or old, second-hand or discarded;

With effect of misleading and deceiving retailers and members of purchasing public, with both of whom it is common belief and understanding that fruit jars having appearance of being new and unused and bearing no marking indicating that they are not new and unused, are in fact new jars never previously made use of, into erroneous and mistaken belief that said products were new and unused fruit jars, and into purchase of substantial quantities thereof, and of thereby unfairly diverting trade to them from competitors, many of whom do not engage in such practices; to the substantial injury of competition:

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. Donovan R. Divet 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 Minnin Shapiro and