

Syllabus

IN THE MATTER OF
HOWARD DECKELBAUM, TRADING AS SUN CUT RATE
STORE

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

Docket 4213. Complaint, Aug. 2, 1940—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of various medicinal preparations, including drug-containing product variously advertised as "Harmless Prescription Capsules" and "Special Prescription Capsules," and otherwise designated as "Prescription Female Capsules—Double Strength," and as "Prescription Female Capsules—Triple Strength"; in advertisements of his said product which he disseminated and caused to be disseminated through the mails, in newspaper advertisements, circulars, other advertising literature, and in commerce and otherwise, and which were intended and likely to induce purchase thereof—

- (a) Represented, directly and by implication, that his said preparation, designated as above set forth, constituted a competent and efficient treatment for delayed menstruation, and that it was safe and harmless, facts being his said statements and representations, used and disseminated as above, were grossly exaggerated, false, and misleading, such preparation was not a competent or efficient treatment for said purpose and was not safe or harmless by virtue of inclusion therein of 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; and
- (b) Failed to reveal, in said advertisements thus disseminated, facts material in the light thereof, and that use of said product, under the conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in injury to health, and might cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy might cause uterine infection and blood poisoning and other serious conditions and complications;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and that such preparation was a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, purchase by such public of his 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. William L. Taggart, for the Commission.

Complaint

31 F. T. C.

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 Howard Deckelbaum, trading as Sun Cut Rate Store, 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, Howard Deckelbaum, is an individual trading and doing business as Sun Cut Rate Store, with his principal office and place of business located at 817 Fourth Avenue, Huntington, W. Va.

PAR. 2. Respondent is now, and for more than 1 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 "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength."

Respondent causes its said preparation, when sold, to be transported from its place of business in the State of West Virginia 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 dissem-

1183

Complaint

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

WOMEN
DELAYED!
Use Genuine Harmless
Prescription Capsules
DON'T WAIT—START TODAY
Don't Be Discouraged

Don't be alarmed over delayed, unnatural, suppressed periods. A new discovery, Special Prescription Capsules, the fast acting, safe aid to women, acts without discomfort or inconvenience, even in obstinate cases. Ask today for Special Prescription Capsules.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated as "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength" is a competent and efficient treatment for delayed menstruation and that said preparation is safe and harmless.

PAR. 5. The aforesaid 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 efficient 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 described in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, 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 congestion of the blood vessels, contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and

Findings

31 F. T. C.

in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations and 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 injury to health.

PAR. 7. 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. 8. 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 August 2, 1940, issued, and on August 5, 1940, served, its complaint in this proceeding upon the respondent, Howard Deckelbaum, trading as Sun Cut Rate Store, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On August 16, 1940, the respondent filed his answer, in which answer he admitted all 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 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, Howard Deckelbaum, is an individual trading and doing business as Sun Cut Rate Store, with his principal office and place of business located at 817 Fourth Avenue, Huntington, W. Va.

PAR. 2. Respondent is now, and for more than 1 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 "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength." Said preparation contains the drugs apiol green, ergotin, oil of savin, and aloin.

Respondent causes his said preparation, when sold, to be transported from his place of business in the State of West Virginia 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 his 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 his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his 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 his said product, and respondent has also disseminated, and is now disseminating, and has caused, and is now causing the dissemination of, false advertisements concerning his said product by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his 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:

WOMEN

DELAYED!

Use Genuine Harmless
Prescription Capsules

DON'T WAIT—START TODAY

Don't be Discouraged

Findings

31 F. T. C.

Don't be alarmed over delayed, unnatural, suppressed periods. A new discovery, Special Prescription Capsules, the fast acting, safe aid to women, acts without discomfort or inconvenience, even in obstinate cases. Ask today for Special Prescription Capsules.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated as "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength" is a competent and efficient treatment for delayed menstruation and that said preparation is safe and harmless.

PAR. 5. The aforesaid 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 efficient 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 described in said advertisements or under such conditions as are customary or usual.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations and 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 injury to health.

Such use of said preparation may result in gastro-intestinal disturbances, 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.

PAR. 7. Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause an abortion in some instances and may result in a severe toxic condition, such as hemorrhagic diarrhea, and in other instances producing a gangrenous condition of

1183

Order

the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

PAR. 8. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to his 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.

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 he 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, Howard Deckelbaum, trading as Sun Cut Rate Store, or under any other name or names, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his medicinal preparation designated as "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or 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 Commis-

Order

31 F. T. C.

sion Act, which advertisement represents, 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 advertisement fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning; or

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 of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy, may cause uterine infection and blood poisoning.

It is further ordered, That the respondent shall, within 30 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

TRINIDAD CREAMERY COMPANY

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

Docket 4251. Complaint, Aug. 21, 1940—Decision, Oct. 21, 1940

Where a corporation engaged in the processing of butter and in the sale and distribution thereof, including certain packages which were so packed as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and including (1) one-pound, individually wrapped packages sold at designated prices and containing coupons bearing one of letters making up name of product in question, for use under plan by which customer-purchaser who assembled, as thus secured, and remitted, with 25 cents in stamps, necessary coupons to spell aforesaid name received, without further cost, choice of number of listed articles of merchandise, retail value of each of which severally exceeded aforesaid amount, and (2) various other sales plans involving use of game of chance, gift enterprise, or lottery scheme similar to one above described and varying therefrom in detail only—

Sold such butter to dealer or retailer purchasers; by whom as such direct or indirect buyers, same was exposed and sold to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its said butter in accordance with such sales plans or methods, involving game of chance or sale of a chance to procure an additional article of merchandise at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving use of a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

With the result that many persons were attracted by its said methods and element of chance involved in sale of said butter as above set forth, and were thereby induced to buy and sell its said product in preference to butter offered and sold by such competitors who do not use same or equivalent methods, and with tendency and capacity thereby unfairly to divert trade to it from its competitors who do not use same or equivalent sales plans or methods in commerce between and among various States of the United States; 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.