

## Syllabus

## IN THE MATTER OF

## HOME DIATHERMY 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 3653. Complaint, Nov. 23, 1938—Decision, Nov. 20, 1940*

Where a corporation engaged in sale and distribution of its "Home Diathermy" device for treatment of various diseases, ailments and afflictions, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in manufacture, sale, and distribution in commerce among the various States and in said District of similar devices and other products intended for similar usage and treatment of various diseases and conditions for which it recommended its said device; in advertisements thereof which it disseminated and caused to be disseminated through the mails, and in circulars, pamphlets, and other printed or written matter distributed in commerce among the various States and in said District, and through radio broadcasts of extra-State audience, and by other means in commerce and otherwise, and which were intended and likely to induce purchase thereof, and in which it made statements purporting to be descriptive of its said product and effectiveness thereof in safely treating and curing many of the diseases, ailments, afflictions, and disordered conditions of the body and cause of such conditions—

- (a) Represented that use of said device, in and of itself, had substantial therapeutic value in treatment of, and constituted a competent and adequate cure or remedy for, arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high and low blood pressure, rheumatism, and many other diseases, ailments, afflictions, and disordered conditions, and that use thereof would alleviate most discouraging, painful, and chronic conditions caused by ailments referred to, and increased oxidation, elimination of waste and toxic poisons, and nutrition, and that a person suffering from any of such ailments and conditions might be restored to health and vigor by such use alone, and that said device constituted up-to-date method which alleviated such diseases, ailments, afflictions, and disordered conditions without employment of any other means of treatment;

Facts being that use of its said device, whether of long wave type or of short wave type, more recently sold by it exclusively except on special orders for other, does not constitute a cure or remedy for arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high or low blood pressure, or rheumatism, nor have any therapeutic value in the treatment of any of said ailments or of any other disease or condition where acute inflammation, infection, pus formation, arteriosclerosis or conditions in which there is a tendency to hemorrhage, are present; and

- (b) Represented that the method of using said device was so simple that it might be used safely in the home by persons without knowledge and training with respect to the diagnosis, analysis, and treatment of diseases, ailments, afflictions, and disordered conditions of the body, and with respect to the technique and methods of the application of diathermy;

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Facts being development of diathermy, discovered in 1891, has been conservative in many respects and as to many effects, and, while generally used as an aid in the treatment of many diseases, when used by those with technical and medical training, it is still subject of considerable research work, acute pains may be symptoms of several diseases, and before such device may be safely or effectively used there must be a competent diagnosis determining the nature of the ailment, analysis to determine the stage of the disease, and knowledge whether diathermy is indicated in that ailment or at that stage, person not skilled in application thereof and without ability to diagnose disease or condition existing cannot safely apply different sizes of electrodes on different sized individuals by virtue of danger of electro surgery and burning of the tissues, among other things and even after competent diagnosis and analysis and where there is accurate knowledge of the favorable results which ordinarily follow application of a definite amount of heat, use of said device is dangerous unless user has also proper technique and thorough knowledge of methods of application, and use thereof, if technique is not good, may cause burns or be otherwise detrimental to patient, and it is impracticable and dangerous to apply heat by means of device in question in treatment of any disease or ailment unless, as aforesaid indicated, user is skilled in diagnosis, analysis and methods of treatment of disease, and unsupervised use of device in question in the home, by reason of such use in situations where contra-indicated, or by manner of such use in other cases, or otherwise, may result in serious and irreparable injury to health and even prove fatal;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements, representations, and advertisements were true, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase its device in preference to devices, remedies and preparations of competitors, designed and offered for same or similar purposes, and of diverting trade to it unfairly from competitors likewise engaged in sale and distribution of such products in commerce, and who truthfully advertise the effectiveness and therapeutic value of their respective preparations:

*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.

Before *Mr. John P. Bramhall* and *Mr. Arthur F. Thomas*, trial examiners.

*Mr. R. A. McOuat*, for the Commission.

*Mr. Saul L. Harris*, of Brooklyn, N. Y., 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 the Home Diathermy Co., Inc., a corporation, hereinafter referred to as the respondent, has vio-

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lated 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. The respondent, Home Diathermy Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business at 1776 Broadway, in the city of New York, State of New York. The respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a device designated as "Home Diathermy," which is attached to the human body for the purpose of applying heat to afflicted parts thereof. Respondent sells said device to members of the purchasing public situated in various States of the United States and in the District of Columbia and causes the said device, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States in the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of similar products or other products designed and intended for similar usages in the treatment of various diseases and ill conditions of the human body in commerce between and among the various States of the United States and in the District of Columbia. Among the competitors of the respondent in said commerce are many who truthfully advertise the efficacy of their products in treating diseases and ailments of the human body.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing, directly or indirectly, the purchase of said device, respondent has disseminated and caused to be disseminated false advertisements by the United States mails, by the use of circulars, folders, and other advertising matter disseminated in commerce between and among the various States of the United States and in the District of Columbia, and also by use of radio continuities broadcast from radio stations which have power to, and do, convey the programs emanating therefrom to the listeners thereto located in various States of the United States other than the State from which said broadcast originates and in the District of Columbia. Respondent has also dis-

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seminated other false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States and in the District of Columbia of said device. Among and typical of the representations thus made by the respondent are the following:

It is no longer necessary to continue living a life of pain and agony. When with a Home Diathermy one can have lasting relief, relaxation and peace. By means of Diathermy, a modern scientific discovery, YOU can make your life enjoyable.

What is Diathermy and how does it work? Diathermy is one of the miracles of modern science. The secret is *heat*. That is what diathermy means, *heating through*. By means of a gently electric current, diathermy produces a penetrating heat *deep* down in the blood stream, just as nature does. This equalizes and stimulates the circulation of the blood and lymph, flushing away the waste and toxic poisons that are the direct cause of their pain and agony. The faster the blood moves through the system, so fast are the poisons carried away. Almost immediately after the heat begins to penetrate, the sufferer feels that soothing, healing action deep in the joints, muscles, and tissues. The instant action is so great and wonderful the the sufferers say it is miraculous!

It is so easy to apply the diathermy electrodes to any part of the body and to localize the beneficial effects on any organ or set of muscles. The Home Diathermy has been used successfully by sufferers of asthma, hay fever, arthritis, neuritis, bursitis, lumbago, neuralgia, pneumonia, sciatica, bronchitis, rheumatism, and high or low blood pressure.

The role of Diathermy in the field of thermo-electro-therapy is self-evident. By no other means can one penetrate deeper than the skin of mucous membrane; by means of diathermy alone, is it possible to heat internal organs at any depth; to any degree desired.

And this can be done right in your own home—by you, as easily as you can turn on your radio.

Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out and picturizations appearing in respondent's advertising, all of which purport to be descriptive of respondent's device and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that the use of such device is a competent and adequate cure or remedy for and has substantial therapeutic value in the treatment of arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high and low blood pressure, and rheumatism; that the use of such device will thoroughly alleviate the most discouraging, painful and chronic conditions caused by the aforesaid ailments; that the use of such device dilates the blood vessels, stimulates the blood supply, increases oxidation, increases the elimination of waste and toxic poisons, increases nutrition; that a person suffering from any of the aforesaid ailments and conditions may be restored to health and vigor by the use of such

device; and that such device is an up-to-date method which definitely and miraculously alleviates the aforesaid ailments and conditions of the human body.

PAR. 4. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements, and induce, or are likely to induce, directly or indirectly, the purchase of respondent's device. The use of such device is not a competent and adequate cure or remedy for, nor does it have substantial therapeutic value in the treatment of, arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high and low blood pressure, and rheumatism; the use of such device will not thoroughly alleviate the most discouraging, painful, and chronic conditions caused by the aforesaid ailments of the human body. The use of such device does not dilate or stimulate blood vessels. The use of such device does not stimulate the blood supply and increase oxidation. The use of such device does not eliminate waste and toxic poisons and increase nutrition. A person suffering from the aforesaid ailments and conditions of the human body will not be restored to health and vigor by the use of such device. The therapeutic value of the use of such device is limited to provide temporary relief from certain of the symptoms of distress of some of the aforesaid ailments and conditions of the human body in some cases. In truth and in fact, the use of any diathermy apparatus requires a competent diagnosis and a highly developed technique and a thorough knowledge of the methods of application. The use of respondent's device in the home is impracticable and may be dangerous to persons using such device without the services of persons skilled in the application of electrical currents to the human body.

PAR. 5. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said device, 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 false statements, representations, and advertisements are true and that respondent's device will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase a substantial number of respondent's devices. As a result, trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective products. In consequence thereof injury has been, and is now being, done by respondent to competition in commerce among

and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce and 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 November 23, 1938, issued, and on November 25, 1938, served, its complaint in this proceeding upon respondent, Home Diathermy Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by R. A. McOuat, attorney for the Commission, and in opposition to the allegations of the complaint by Saul L. Harris, attorney for the respondent, before John P. Bramhall and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; 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 Home Diathermy Co., Inc., is now and has been at all times herein mentioned a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and having its principal place of business at 1780 Broadway, New York, N. Y.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of a device under the name of "Home Diathermy" recommended by respondent for use in the treatment of various diseases, afflictions, ailments, and disordered conditions of the

human body, in commerce between and among the various States of the United States and in the District of Columbia. Respondent sells said device to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said device, when sold by it, to be transported from its place of business in the State of New York 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 device, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now and at all times mentioned in the complaint has been in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of similar devices, and other products, intended for similar usage in the treatment of various diseases and conditions of the human body for which respondent recommends its said device.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing, directly or indirectly, the purchase of its said device, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device by the United States mails, and in circulars, pamphlets, and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia and by the use of radio continuities broadcast from radio stations in the State of New York, which have power to, and do, convey the programs emanating therefrom to listeners thereto located in the various States of the United States other than the State of New York, 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 device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements made in said false advertisements, disseminated and caused to be disseminated as aforesaid, with

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reference to the device sold under the name "Home Diathermy" are the following:

It is no longer necessary to continue living a life of pain and agony. When with a Home Diathermy one can have lasting relief, relaxation and peace. By means of Diathermy, a modern scientific discovery, you can make your life enjoyable.

By means of a gentle electric current, diathermy produces a penetrating heat deep down in the blood stream, just as nature does. This equalizes and stimulates the circulation of the blood and lymph, flushing away the waste and toxic poisons that are the direct cause of their pain and agony. The faster the blood moves through the system, so fast are the poisons carried away. Almost immediately after the heat begins to penetrate, the sufferer feels that soothing, healing action deep in the joints, muscles, and tissues. The instant action is so great and wonderful the sufferers say it is miraculous!

It is so easy to apply the diathermy electrodes to any part of the body and to localize the beneficial effects on any organ or set of muscles. The Home Diathermy has been used successfully by sufferers of asthma, hay fever, arthritis, neuritis, bursitis, lumbago, neuralgia, pneumonia, sciatica, bronchitis, rheumatism, and high or low blood pressure.

And this can be done right in your own home—by you, as easily as you can turn on your radio.

Diathermy has proven to be the most successful in eliminating the stubborn pain and agony of arthritis, high or low blood pressure, sciatica, lumbago, rheumatism, neuritis or asthma. Be logical, do what countless other sufferers did when they heard of Home Diathermy. \* \* \* Do a good deed to your friends and relatives or anyone that you know that is suffering and tell them about this marvelous modern scientific discovery that ends pain without pills, powders or medicines.

As I stand before you telling you these things I can see many, many homes where Home Diathermy has come in and converted a home of pain and agony into a home of health, happiness and laughter. Where Home Diathermy has changed ailing mothers and bedridden fathers—yes, and even sons and daughters into active, joyous, healthy men and women.

Be modern. Why be one of the incurables? Let the Home Diathermy Company show you the right way. \* \* \* And by the way, Diathermy is also effectively used for high and low blood pressure.

And with Home Diathermy you can positively alleviate arthritis, or rheumatism, sciatica, lumbago, neuritis, or bursitis.

With the wonderful new Home Short Wave Diathermy, you can alleviate these painful conditions yourself by applying two rubber pads that are so made that they can throw a very deep internal heat into those sore and aching parts in your afflicted body.

Some application and technique. The new features of this Home Short Wave Diathermy is that it is compact and portable and meets the usual requirements in a most simple and easy manner, making it possible for any one to take these treatments on any part of the body that is afflicted by placing the rubber pads above and below the part to be treated. Especially designed for the practical and convenient use in the home. It is adaptable to home use. The remarkable simplicity of operation and the automatic timing device, gives real efficiency. All one need to do is set the time clock and adjust the dial with the heat controlled to a degree of heat that is comfortable. If you are suffering from painful conditions in your

tissues, nerves, muscles or joints on any part of the body, as shown in the enclosed photographs use the simplified Home Short Wave Diathermy.

(There are several picturizations of applications of the device to various parts of the body inserted between the last and next quotations from respondent's advertisement.

**Instructively Displayed—**

The purpose of these enlarged photographs is for your convenience to show you how simple it is to take these treatments through your wearing apparel or undergarments. When taking a Short Wave, a cloth is applied on the bare skin first, then rubber electrodes are applied. This cloth acts as a spacer.

**Instructions—**

To take a treatment properly with Short Wave on any particular part of the body, be sure that any metal that is on that particular part of the body is removed. Then place a cloth which will act as a spacer on the bare skin before applying the electrodes. This above method has a two-fold purpose. One is that spacing is necessary. In other words, there must be clothing between the body and the rubber pads. The other is to show how simple it is to apply these rubber pads directly through the clothing, avoiding the necessity of disrobing.

**Method—**

This method is so simple that it can be used by anyone.

Increases oxidation. Increases elimination of waste and toxic poisons. Increases nutrition.

All of said statements, together with many similar statements appearing in said advertisements disseminated as aforesaid, purport to be descriptive of respondent's device and its effectiveness in safely treating and curing many of the diseases, ailments, afflictions, and disordered conditions of the human body and the cause of such conditions. In its advertisements, respondent represents through the statements herein set out, and other statements of similar import and effect, that the use of such device, in and of itself, has substantial therapeutic value in the treatment of, and is a competent and adequate cure or remedy for, arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high and low blood pressure, rheumatism, and many other diseases, ailments, afflictions, and disordered conditions in the human body; that the method of using such device is so simple that it may be used safely in the home, by persons without knowledge and training with respect to the diagnosis, analysis, and treatment of diseases, ailments, afflictions, and disordered conditions of the human body, and with respect to the technique and methods of the application of diathermy; that the use of such device will alleviate the most discouraging, painful, and chronic conditions caused by said ailments; that the use of said device increases oxidations, increases the elimination of waste and toxic poisons, and increased nutrition; that a person suffering from any of the aforesaid ailments and conditions may be restored to health and vigor by the use of the device alone; and that such device is an up-to-date method which alleviates the aforesaid

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diseases, ailments, afflictions, and disordered conditions of the human body without employment of any other means of treatment.

PAR. 4. The aforesaid statements and representations made by the respondent are false, deceptive, and misleading.

The purpose in diathermy is to relieve certain maladies and certain stages of other maladies known to be benefited by introduction of heat into, or the creation of heat in, the tissues. Respondent's device is designed and intended for that purpose and it is capable of introducing heat into the tissues.

Although diathermy was discovered in 1891, development of its use has been conservative and in many respects and as to many effects, considerable research work is still being done. It has been generally used as an aid in the treatment of many diseases when used by those with technical and medical training.

There are two types of diathermy machines or devices—long wave and short wave. In 1935, respondent began the sale and distribution of a long wave type diathermy machine but since 1937 respondent has sold the short wave type exclusively with the exception of a few long wave machines made to order. In both types, the electric current is oscillated and frequent reversal of polarity occurs. The resistance to change of polarity has the effect of transmitting heat to the body without the shock which ordinarily accompanies an uninterrupted electrical current. In the long wave type the current changes its positive and negative status at approximately 1 million times per second. In the short wave type a reversal of polarity occurs 21 million times per second. With the use of this high frequency, short wave device, the electrical contact does not have to be made with the body as in the case of the long wave machines, since heat can be produced in the tissues without the necessity of making such contact. The size of the electrode makes a difference in the amount of the heat transmitted to the user. The size of the person using the device and the size of the part contacting the electrode also make a difference in the amount of heat transmitted. In the treatment of disease by heat applications it is essential to know how much heat should be administered, and how much is being administered, to each particular part afflicted.

The long wave type has a spark gap which throws a spark between metal fins, capable of igniting inflammable gases, and the metal fins become heated enough to burn flesh coming in contact with them. These metal fins are near the bakelite knob, which is used to regulate the amount of heat. There is danger of touching the fins while manipulating the machine and potential danger in the application of the metal electrodes. If not properly applied, there might be coagulation of the tissues, leaving an ugly scar at the contact point. Covered rub-

ber pads are used on the short wave machine instead of metal electrodes, thus lessening the danger of producing burns.

Respondent's long wave device is incapable of transmitting sufficient heat to be effective in the treatment of some of the aforesaid diseases where diathermy is indicated, but it is capable of producing sufficient heat to coagulate tissue cells.

In the treatment of diathermy of any disease, ailment, affliction, or condition, by either the short or long wave type of device, it is necessary to determine the nature of the malady, the stage to which it has progressed, and to consider the effects of the application of heat in each case or at a particular stage. Some diseases and conditions respond to heat treatment; in others heat causes or may cause an aggravation of pain and serious injury to health. Further, the condition of the afflicted person may change from time to time, and a continuation of the heat treatment may prove ineffective or even dangerous. Diathermy alone is not an effective treatment or cure for any disease, affliction, ailment, or disordered condition.

A person not skilled in the application of diathermy and not having the ability to diagnose the disease or condition existing cannot safely apply the different sizes of electrodes on different-sized individuals. In such case there is a danger of electro surgery, of coagulation, of desiccation or of burning, of the tissue. Even after a competent diagnosis and analysis and where there is accurate knowledge of the favorable results which ordinarily follow application of a definite amount of heat, it is dangerous to use said device unless the user has also the proper technique and a thorough knowledge of the methods of application. If the technique is not good, the use of the device may cause a burn or be otherwise detrimental to the patient.

Diseases are classified with respect to whether acute or chronic. Where there is no sharp line of distinction, it is difficult to determine the exact condition. Acute conditions of some diseases are sometimes present in chronic cases of other diseases. Acute pains may be symptoms of several diseases. In certain cases acute pains may be alleviated by the application, yet it may have harmful effects because of other existing conditions.

Before respondent's device may be safely or effectively used, there must be a competent diagnosis determining the nature of the ailment, an analysis to determine the stage of the disease, and knowledge whether diathermy is indicated in that ailment or at that stage.

Arthritis is an inflammation of the joints. It may be aggravated by diathermy either because of improper technique or lack of knowledge of proper methods of application or because diathermy is not

indicated in the particular type or under the particular conditions. In cases where the joint is destroyed, the results of diathermy treatments are nil. More cases of chronic arthritis are treated without diathermy than with it.

Bursitis is an inflammation of the sac between the joints. Its symptoms and treatment follow closely those of neuritis. Neuritis and neuralgia are inflammations of the nerves. If the pain is due to vitamin deficiency, beriberi, alcoholism, angina pectoris, gall bladder disease or ulcers, heat application may result in harm. If neuralgia is caused by an infection, even mild heat will cause considerable aggravation of pain. In some neuralgia and neuritis cases, superficial applications of moist heat are preferred to diathermy.

Sciatica is a pain in the sciatic nerve or in the sciatic area and a type of neuritis. When the sciatic pain is caused by an ulcer or abscess, heat increases the amount of pus and may cause dangerous complications. In certain cases the sciatic nerve is affected by a tumor in the cervix or uterus, by flatfeet, or from other causes. In some of these cases heat treatments are futile. In sciatic neuritis diathermy may often cause definite increase in pain.

Lumbago is a pain in the lumbar region commonly called backache and may be symptomatic of different conditions. It may be due to an abscessed kidney. Heat would increase pus production in the abscess and would aggravate the pain and might cause considerable harm. In cases of pains in the lumbar region caused by a blow, either with or without a fracture of the transverse process, diathermy will aggravate the pain.

Hay fever is an allergic disease and heat treatments are ineffective.

Medical authorities do not agree upon the use of diathermy in the treatment of many of the forms of asthma. Diathermy may be slightly beneficial in a few cases, neutral in some cases, and very dangerous in cardiac cases.

In low blood pressure cases diathermy is ineffective in most instances, and may react very badly in others. In high blood pressure cases it is frequently effective, when no other disease exists; in other cases, it is neutral, and in cardiac cases dangerous.

What to the layman is rheumatism may be arthritis, neuritis, or neuralgia or other nerve disease. Diathermy will not in all cases alleviate the painful chronic conditions caused by the three diseases named above. Diathermy is not used in acute articular rheumatism; it would aggravate the pain.

There are certain forms of disease in which there is a shrinking of the tissues of the arteries, and if coupled with arteriosclerosis

and swelling in the foot or inflammation or ulcers on the toe, the application of heat throws more blood into the foot, which may be sufficient to cause the tissues to break down and cause an aggravation of the infection. In cases of this nature even death has resulted from the application of diathermy.

If a person is afflicted with an ailment where otherwise diathermy would be indicated, but also has ulcers of the stomach, diathermy is dangerous. In certain cases an increased motility of the stomach is desired; in others, it has a harmful effect. It is known that diathermy reduces the motility of the stomach and may, under certain circumstances, increase bleeding from stomach ulcers. There is, therefore, potential danger in the effect of diathermy in dilating the blood vessels, increasing the circulation, increasing the bleeding and decreasing the rate at which waste matters are carried off.

Little is known about oxidation. It is not known whether or not increase in circulation of the blood has any appreciable effect on oxidation. Oxidation depends upon salt metabolism. It is probable that diathermy treatments increase the metabolic rate. There are many diseases in which it is undesirable and harmful to increase metabolism. In some cases disease is caused by a high rate of metabolism. The use of diathermy, therefore may be harmful if the user's rate of metabolism is already too high.

Nutrition and the elimination of waste depends mostly upon proper functioning of the intestines. There is a slight elimination through the kidneys and from sweating. When the liver functions properly, poisons are detoxicated. The value of diathermy in cases where an increased elimination of waste and poison and increased nutrition are desirable, is limited to the slight increase in perspiration caused by the heat. Diathermy does not increase sweating more than hot baths or any other application of heat. Its effect on the elimination of wastes and poisons and on nutrition is very slight, if any.

The use of diathermy to create even mild heat will increase pain and aggravate conditions in any case coupled with an inflammatory process due to an infection in the tonsils, nose, teeth, stomach, heart, back, legs, joint and feet. The danger in the use of diathermy devices is greater than in such devices as electric pads, lamps, hot-water bags or mustard plasters, because the heat transmitted to the body in these devices is only superficial. Electric pads penetrate one-tenth to a quarter of an inch. Hot-water bags and other devices have no penetrating power. A mustard plaster dilates superficial blood vessels and draws blood to the surface. Respondent's device, on the other hand, is capable of producing heat within the tissues which may cause certain destructive effects.

To a person not skilled in the treatment of ailments, a certain symptom, such as a pain, may suggest erroneously an ailment in which heat treatments are not desirable. The pain may, in fact, arise from an ailment in which the application would aggravate the ailment and thus prove dangerous.

Circulation varies with individuals. Respondent's device is designed to and does increase circulation. In a normally healthy person, diathermy frequently gives relief from a painful condition caused by decreased circulation. On the other hand, when the circulation is completely or partially stopped in a certain area due to sclerosis of certain of the blood vessels, or when passage of the blood through the hardened portion is difficult, diathermy tremendously aggravates the pain, and creates a dangerous condition. In certain cases of nerve conditions which go with anesthesia, heart disease, gangrene of the leg or foot, necrosis, ulcers, or a bluish leg, injury or death may result from the application of diathermy.

PAR. 5. The Commission further finds that the use of respondent's device of either the long wave type or short wave type, does not constitute a cure or remedy for arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high or low blood pressure, rheumatism. The Commission further finds that the use of said device does not have any therapeutic value in the treatment of any of said ailments or any other disease or condition where acute inflammation, infection, pus formations, arteriosclerosis or conditions in which there is a tendency to hemorrhage are present. Furthermore, it is impracticable and dangerous to apply heat by means of respondent's device in the treatment of any disease or ailment unless the user is skilled in the diagnosis, analysis and methods of treatment of disease, and the unsupervised use of this device in the home may result in serious and irreparable injury to the health and may even prove fatal.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the therapeutic value and effectiveness of its device known as "Home Diathermy" 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 cause, and it does cause, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's device in preference to devices, remedies, and preparations of competitors, designed and offered for the same or similar purposes, which competitors are likewise engaged in the sale and distribution of the same in commerce between and among

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the various States of the United States and in the District of Columbia, who truthfully advertise the effectiveness and therapeutic value of their respective preparations and devices, and thus unfairly to divert, and it has diverted, trade to respondent from its said competitors.

## CONCLUSION

The aforesaid acts and practices of the respondent as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST <sup>1</sup>

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before John P. Bramhall and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by R. A. McOuat, counsel for the Commission, and by Saul L. Harris, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Home Diathermy Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a certain device designated as "Home Diathermy" whether of the long wave or short wave type, or any other device of substantially similar construction or possessing substantially similar qualities, whether sold under that name or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which

<sup>1</sup> By order dated January 18, 1941, that part of the order set forth below beginning with the words "or which advertisement fails to reveal", etc., was changed to read as follows, namely:

"or which advertisement fails to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician."

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advertisement represents, directly or through inference that said device may be easily and safely used in the home, or that the use of said device constitutes a cure or remedy for arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high or low blood pressure, or rheumatism or that said device has any therapeutic value in the treatment of any of such diseases and conditions, or has any therapeutic value in the treatment of any other ailment unless such advertisement is specifically limited to those cases of such disorders and ailments where acute inflammation, infection, pus formations, arteriosclerosis, or conditions in which there is a tendency to hemorrhage are not present; or which advertisement fails to reveal that the unsupervised use of this device by persons not skilled in the diagnosis, analysis, and methods of treatment of disease may result in serious and irreparable injury to health.

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 device, which advertisement contains any of the representations prohibited in paragraph 1 hereof; or which advertisement fails to reveal that the unsupervised use of the device by persons not skilled in the diagnosis, analysis and methods of treatment of disease may result in serious and irreparable injury to health.

*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 the 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.

## Complaint

IN THE MATTER OF  
THE PRIMFIT TEXTILE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4199. Complaint, July 26, 1940—Decision, Nov. 20, 1940*

Where a corporation engaged in advertising, selling and distributing men's hosiery to purchasers in various other States and in the District of Columbia; in advertising in periodicals of general circulation and in circulars and other printed or written matter distributed in commerce throughout the various States, and through other means, certain of its said hosiery, known and described as "Jerks," and sold, as aforesaid, to department stores and retailers for resale to purchasing public, and in referring in such advertising to nature of its business—

- (a) Represented that its "Jerks" hosiery was the original garterless sock, facts being such was not the case; and
- (b) Represented that it was the manufacturer of the hosiery sold by it, and that it owned, operated, or controlled a plant, factory or mill in which such hosiery was made, facts being that, while it did have a contract with a factory or mill under which certain machines were utilized by said factory exclusively for manufacture of its said "Jerks" hose and no other purpose, it did not own, operate, or control any such plant, factory or mill, but was a jobber or distributor of hosiery sold by it;

With capacity and tendency to lead prospective purchasers of its said product into mistaken and erroneous belief that its said "Jerks" hosiery was the original garterless hose, and that it was the manufacturer, as well as seller, of such hose, and owned, operated, or controlled a plant, factory, or mill for manufacture thereof, and, as aforesaid, was a manufacturer, for the purchase of the products of which directly, there is a preference on the part of a substantial portion of the purchasing public as securing them, in their belief, better prices, superior quality and other advantages not ordinarily obtainable when such products are purchased through jobbers or other middlemen:

*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. Charles S. Cox*, for the Commission.

*Dinsmore, Shohl, Sawyer & Dinsmore*, of Cincinnati, Ohio, 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 The Primfit Textile Co., a corporation, has violated the provisions of said act, and it