

IN THE MATTER OF

JULIUS MILLER AND JESSIE MILLER, TRADING AS
MILLER DRUG COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 4363. Complaint, Oct. 25, 1940—Decision, Dec. 12, 1940*

Where two individuals engaged in interstate sale and distribution of their variously designated "Belite," "Reducers," and "Miller's Reducing Prescription"; in advertisements of their said medicinal preparation which they disseminated and caused to be disseminated through the mails and by other means in commerce, and otherwise, and by advertisements in newspapers and other advertising literature, and which were intended and likely to induce purchase of their said product—

- (a) Represented that their said medicinal preparation was a cure or remedy for obesity and constituted a safe, competent, and effective treatment therefor, and for reduction of body weight, facts being it did not constitute such a treatment, and was not safe, by virtue of inclusion therein of desiccated thyroid extract, present therein in quantities sufficient to cause serious and irreparable injury to health, if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and which, thus used, would accelerate rate of metabolism, burning body tissues in excess of that which is normal, and might produce nausea and various other effects, including angina pectoris, and result, among other things, in permanent injury to tissues, organic functions, and entire body mechanism, and irreparable injury to heart muscles, as in detail set forth; and
- (b) Failed to reveal in said advertisements facts material in the light of the representations therein contained, and that use of said preparation under conditions prescribed in said advertisements, or under such conditions as are customary or usual, might result in serious and irreparable injury to health, in that it accelerated rate of metabolism, thereby burning body tissues in excess of normal and causing permanent injury to heart, thyroid gland, and other vital organs;

With effect, through use of aforesaid false, deceptive, and misleading statements and representations with respect to their said preparation, disseminated as aforesaid, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and of inducing portion of said public, because of such erroneous and mistaken belief, to purchase their 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. James L. Baker for the Commission.

Stone & Hoffenberg, of Rochester, N. Y., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Julius Miller and Jessie Miller, individuals trading as Miller Drug Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Julius Miller and Jessie Miller, are individuals trading as Miller Drug Co., with their office and principal place of business at 1160 North Clinton Avenue, Rochester, N. Y., from which address they transact business under the above trade name.

Respondents, Julius Miller and Jessie Miller as individuals trading as Miller Drug Co., act in conjunction and in cooperation with each other in performing the acts and practices hereinafter alleged.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain medicinal preparation designated as Belite, Reducers, and as Miller's Reducing Prescription.

In the course and conduct of their business the respondents cause said medicinal preparation when sold to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, respondents have maintained a course of trade in said medicinal preparation sold and distributed by them 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product, in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, mis-

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leading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails and by advertisements in newspapers and other advertising literature, are the following:

Reduce 10-20 lbs. in a month.
Miller's Reducing Prescription.
Harmless ingredients guaranteed by
the Miller Drug Co.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent and have represented that their medicinal preparation, designated as Belite, Reducers, and as Miller's Reducing Prescription, is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment for obesity and the reduction of bodily weight.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the medicinal preparation sold and distributed by the respondents as aforesaid, designated as Belite, Reducers, and as Miller's Reducing Prescription, is not a cure or remedy for obesity and does not constitute a competent or effective treatment for obesity or the reduction of bodily weight. Moreover, said preparation is not safe, in that it contains desiccated thyroid extract.

The aforesaid drug is present in the said medicinal preparation in quantity sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said medicinal preparation accelerates the rate of metabolism, thereby burning the body tissues in excess of that which is normal, and may produce nausea, vomiting, headaches, muscular and articular pains, vertigo, insomnia, physical exhaustion, tremor, tachycardia, and angina pectoris. The use of said preparation, as aforesaid, may also result in thyroid toxicosis, permanent injury to tissues, organic functions, and the entire body mechanism, and irreparable injury to the heart muscles, with auricular fibrillation.

The advertisements disseminated by the respondents as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, 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 serious and irreparable

able injury to health, in that it accelerates the rate of metabolism, thereby burning the body tissues in excess of that which is normal, causing permanent injury to the heart, thyroid gland, and other vital organs.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their preparation, 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 portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

PAR. 7. The foregoing acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 25, 1940, issued, and on October 26, 1940, served its complaint in this proceeding upon respondents, Julius Miller and Jessie Miller, individuals trading as Miller Drug Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently respondents filed their answer, in which they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Julius Miller and Jessie Miller, are individuals trading as Miller Drug Co., with their office and principal place of business at 1160 North Clinton Avenue, Rochester, N. Y., from which address they transact business under the above trade name.

Respondents, Julius Miller and Jessie Miller, as individuals trading as Miller Drug Co., act in conjunction and in cooperation with each other in performing the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain medicinal preparation designated as Belite, Reducers, and as Miller's Reducing Prescription.

In the course and conduct of their business the respondents cause said medicinal preparation when sold to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, respondents have maintained a course of trade in said medicinal preparation sold and distributed by them 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and the respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails and by advertisements in newspapers and other advertising literature, are the following:

Reduce 10-20 lbs. in a month. Miller's
Reducing Prescription. Harmless ingredients
guaranteed by the Miller Drug Co.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent and have represented that their medicinal preparation, designated as Belite, Reducers, and as Miller's Reducing Prescription, is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment for obesity and the reduction of bodily weight.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the medicinal preparation sold and distributed by the respondents as aforesaid, designated as Belite, Reducers, and as Miller's Reducing Prescription, is not a cure or remedy for obesity and does not constitute a competent or effective treatment for obesity or the reduction of bodily weight. Moreover, said preparation is not safe, in that it contains desiccated thyroid extract.

The aforesaid drug is present in the said medicinal preparation in quantity sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said medicinal preparation accelerates the rate of metabolism, thereby burning the body tissues in excess of that which is normal, and may produce nausea, vomiting, headaches, muscular and articular pains, vertigo, insomnia, physical exhaustion, tremor, tachycardia, and angina pectoris. The use of said preparation, as aforesaid, may also result in thyroid toxicosis, permanent injury to tissues, organic functions, and the entire body mechanism, and irreparable injury to the heart muscles, with auricular fibrillation.

The advertisements disseminated by the respondents as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, 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 serious and irreparable injury to health, in that it accelerates the rate of metabolism, thereby burning the body tissues in excess of that which is normal, causing permanent injury to the heart, thyroid gland, and other vital organs.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their preparation, 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 portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

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CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer the respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Julius Miller and Jessie Miller, individually and trading as Miller Drug Co., or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their medicinal preparation designated as Belite, Reducers, and Miller's Reducing Prescription, or any medicinal preparation of substantially similar composition, or possessing substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from directly or indirectly—

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation is a cure or remedy for obesity or constitutes a safe, competent, or effective treatment for obesity or the reduction of body weight; or which advertisement fails to reveal that the use of said preparation may result in permanent injury to the heart, thyroid gland, and other vital organs.

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 advertisement fails to reveal that the use

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of said preparation may result in permanent injury to the heart, thyroid gland, and other vital organs.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing, stating whether they intend to comply with this order, and if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, said respondents shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
CHARLES KELLER, TRADING AS SORBOL COMPANY AND
KELLER COMPANY

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

Docket 4368. Complaint, Oct. 30, 1940—Decision, Dec. 12, 1940

Where an individual engaged in interstate sale and distribution of his "Sorbol-Quadruple" and "Bukets" medicinal preparations, in advertisements of his said products which he disseminated and caused to be disseminated through the mails, and by other means in commerce, and otherwise, and by advertisements in newspapers and periodicals and by circulars, leaflets, and other advertising literature—

- (a) Represented directly or through inference that frequent and scanty flow of urine and rheumatic pains and leg pains were due to presence in body of excess acid and waste and that his said "Bukets" eliminated such acid and waste therefrom and thereby constituted a cure or remedy for such ailments or conditions, facts being conditions above referred to were not usually or generally due to presence in body of excess acid or waste and even in those cases in which such conditions might be due thereto, use of said product was of no substantial value in eliminating such acid or waste, and product in question was not a cure or remedy for conditions aforesaid set forth and possessed no substantial therapeutic value in treatment thereof;
- (b) Represented that his said "Sorbol-Quadruple" constituted a cure or remedy for simple goitre and possessed substantial therapeutic value in the treatment of such condition and was entirely safe and harmless, facts being it did not constitute a cure or remedy for goitre of any kind, possessed no substantial therapeutic value in the treatment of such condition and was not in all cases safe or harmless, by virtue of inclusion therein of potassium iodide in quantity sufficient to cause, in some instances, injury to health if taken under conditions prescribed in advertisements in question or under such conditions as are customary or usual, and might be harmful to those having any forms of goitre other than simple colloidal goitre and to those having tuberculosis in either active or arrested stage, by virtue of action thereof in such cases; and
- (c) Failed to include in his said advertisements statement to effect that said preparation last referred to should not be used by persons having goitre other than simple goitre, or by those having tuberculosis, nor cautionary statement to effect that product in question should be used only as directed on label thereof, and thereby failed to reveal facts material in light of representations contained in advertisements in question, and that use of product under conditions prescribed therein or under such conditions as are customary or usual might result in injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that his preparations possessed properties which they did not in fact possess, and that said "Sorbol-Quadruple" was safe and harmless, and with result, as consequence of such belief thus