

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

engendered, that purchasing public was induced to and did purchase substantial quantities of his said products:

Held, That such acts and practices under the circumstances set forth are all to the prejudice and injury of the public and constitutes unfair and deceptive acts.

Mr. Karl Stecher for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Charles Keller, an individual, trading and doing business as Sorbol Co. and as Keller Co., 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, Charles Keller, is an individual, trading and doing business as Sorbol Co. and as Keller Co., with his principal office and place of business in the city of Mechanicsburg, State of Ohio. Respondent is now, and for more than 2 years past has been, engaged in the business of selling and distributing two medicinal preparations known as "Sorbol-Quadruple" and as "Bukets." In the course and conduct of his business respondent causes said medicinal preparations, when sold, to be transported from his place of business in the State of Ohio 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 herein mentioned has maintained, a course of trade in his said medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. 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 products by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating and has caused, and is now causing the dissemination of false advertisements concerning his said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said products 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

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disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals and by circulars, leaflets and other advertising literature are the following:

With respect to the preparation "Buckets"

Flush the kidneys as you would the bowels. Help nature eliminate excess acid and waste which can cause the irritation that wakes you up, frequent or scanty flow, * * * backache.

Excess acids can cause the irritation resulting in getting up nights, frequent or scanty flow, * * * backache or leg pains.

Rheumatic pains may result if kidneys do not regularly eliminate excess acid and other wastes.

Disturbed sleep may result if the kidneys do not regularly eliminate excess acid and other waste.

With respect to the preparation "Sorbol-Quadruple"

GOITRE

MAKE THIS QUICK TEST

Get a small bottle of Sorbol-Quadruple, a colorless liniment. For simple goitre apply twice daily. It is so pleasant and easy to use. Does not interfere with work or pleasure. Thousands have obtained relief. Get more information at most drug stores.

PAR. 3. Through the use of the foregoing statements and representations and other statements and representations similar thereto not specifically set out herein, the respondent represents directly or through inference that frequent and scanty flow of urine, rheumatic pains, backache, and leg pains are due to the presence in the body of excess acid and waste; that respondent's preparation "Buckets" eliminates excess acid and waste from the body and thereby constitutes a cure or remedy for said ailments or conditions. Respondent also represents in the manner aforesaid that his preparation "Sorbol-Quadruple" constitutes a cure or remedy for simple goitre and possesses substantial therapeutic value in the treatment of such condition; that said preparation is entirely safe and harmless.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the conditions known as frequent and scanty flow of urine, rheumatic pains, backache, and leg pains are not usually or generally due to the presence in the body of excess acid or waste. Even in those cases in which such conditions may be due to the presence of excess acid or waste, the use of said preparation is of no substantial value in eliminating such excess acid or waste. Said preparation is not a cure or remedy for frequent

or scanty flow of urine, rheumatic pains, backache, or leg pains, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions. In truth and in fact, said preparation possesses no therapeutic value in excess of that of a mild diuretic.

Respondent's preparation "Sorbol-Quadruple" does not constitute a cure or remedy for goitre of any kind, nor does it possess any substantial therapeutic value in the treatment of such condition. Said preparation is not, in all cases, safe or harmless, as it contains the drug potassium iodide in a quantity sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation, as aforesaid, may be harmful to those having any form of goitre other than simple, colloid goitre and to those having tuberculosis in either the active or arrested stage. The hazard in cases of goitre is the tendency to convert a simple adenoma to a toxic adenoma. In cases of arrested tuberculosis, the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process. In cases of active tuberculosis, the tendency of potassium iodide is to prevent or retard the healing process.

PAR. 5. The advertisements disseminated by the respondent, as aforesaid, contain neither a statement to the effect that the preparation "Sorbol-Quadruple" should not be used by persons having goitre other than simple goitre or by persons having tuberculosis, nor a cautionary statement to the effect that said preparation should be used only as directed on the label thereof. Consequently, such advertisements constitute false advertisements in 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 injury to health.

PAR. 6. The use by the respondent of the foregoing false advertisements, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparations possess properties which they do not, in fact, possess, and that said preparation, "Sorbol-Quadruple" is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased substantial quantities of respondent's preparations.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute

unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 30, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Charles Keller, an individual trading and doing business as Sorbol Co. and as Keller Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 18, 1940, respondent filed his answer, in which answer respondent 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 said complaint and the answer thereto, and the Commission having duly considered the matter and now 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, Charles Keller, is an individual, trading and doing business as Sorbol Co. and as Keller Co., with his principal office and place of business in the city of Mechanicsburg, State of Ohio. Respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing two medicinal preparations known as "Sorbol-Quadruple" and as "Bukets." In the course and conduct of his business respondent causes said medicinal preparations, when sold, to be transported from his place of business in the State of Ohio 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 herein mentioned has maintained, a course of trade in his said medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. 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 products by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now disseminating, and has caused, and is now causing the dissemination

of, false advertisements concerning his said products by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said products 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 periodicals and by circulars, leaflets, and other advertising literature are the following:

With respect to the preparation "Buckets"

Flush the kidneys as you would the bowels. Help nature eliminate excess acid and waste which can cause the irritation that wakes you up, frequent or scanty flow, * * * backache.

Excess acids can cause the irritation resulting in getting up nights, frequent or scanty flow, * * * backache or leg pains.

Rheumatic pains may result if kidneys do not regularly eliminate excess acid and other wastes.

Disturbed sleep may result if the kidneys do not regularly eliminate excess acid and other waste.

With respect to the preparation "Sorbol-Quadruple"

GOITRE

MAKE THIS QUICK TEST

Get a small bottle of Sorbol-Quadruple, a colorless liniment. For simple goitre apply twice daily. It is so pleasant and easy to use. Does not interfere with work or pleasure. Thousands have obtained relief. Get more information at most drug stores.

PAR. 3. Through the use of the foregoing statements and representations and other statements and representations similar thereto not specifically set out herein, the respondent represents, directly or through inference, that frequent and scanty flow of urine, rheumatic pains, backache, and leg pains are due to the presence in the body of excess acid and waste; that respondent's preparation "Buckets" eliminates excess acid and waste from the body and thereby constitutes a cure or remedy for said ailments or conditions. Respondent also represents in the manner aforesaid that his preparation "Sorbol-Quadruple" constitutes a cure or remedy for simple goitre and possesses substantial therapeutic value in the treatment of such condition; that said preparation is entirely safe and harmless.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, the condition known as frequent and scanty flow of urine, rheumatic pains, backache, and

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leg pains are not usually or generally due to the presence in the body of excess acid or waste. Even in those cases in which such conditions may be due to the presence of excess acid or waste, the use of said preparation is of no substantial value in eliminating such excess acid or waste. Said preparation is not a cure or remedy for frequent or scanty flow of urine, rheumatic pains, backache, or leg pains, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions. In truth and in fact, said preparation possesses no therapeutic value in excess of that of a mild diuretic.

Respondent's preparation "Sorbol-Quadruple" does not constitute a cure or remedy for goitre of any kind, nor does it possess any substantial therapeutic value in the treatment of such condition. Said preparation is not, in all cases, safe or harmless, as it contains the drug potassium iodide in a quantity sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid, may be harmful to those having any form of goitre other than simple, colloid goitre and to those having tuberculosis in either the active or arrested stage. The hazard in cases of goitre is the tendency to convert a simple adenoma to a toxic adenoma. In cases of arrested tuberculosis, the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process. In cases of active tuberculosis, the tendency of potassium iodide is to prevent or retard the healing process.

PAR. 5. The advertisements disseminated by the respondent, as aforesaid, contain neither a statement to the effect that the preparation "Sorbol-Quadruple" should not be used by persons having goitre other than simple goitre or by persons having tuberculosis, nor a cautionary statement to the effect that said preparation should be used only as directed on the label thereof. Consequently, such advertisements constitute false advertisements in 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 injury to health.

PAR. 6. The use by respondent of the foregoing false advertisements, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparations possess properties which they do not, in

fact, possess, and that said preparation, "Sorbol-Quadruple" is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased substantial quantities of respondent's preparations.

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, Charles Keller, individually, and trading as Sorbol Co. and as Keller Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his medicinal preparations designated "Sorbol-Quadruple" and "Bukets," or any preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that the conditions known as frequent and scanty flow of urine, rheumatic pains, backache or leg pains are usually or generally due to the presence in the body of excess acid or waste; that said preparation "Bukets" is of any substantial value in eliminating excess acid or waste from the body; that said preparation "Bukets" constitutes a cure or remedy for frequent or scanty flow of urine, rheumatic pains, backache or leg pains, or that said preparation "Bukets" possesses any substantial therapeutic value in the treatment of such conditions; that said preparation

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"Buckets" possesses any therapeutic value in excess of that of a mild diuretic; that said preparation "Sorbol-Quadruple" constitutes a cure or remedy for goitre of any kind, or that it possesses any substantial therapeutic value in the treatment of such condition; or which advertisement with respect to said preparation "Sorbol-Quadruple" fails to reveal that said preparation should not be used by those who have tuberculosis or any form of goitre other than simple goitre: *Provided, however,* That such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof, when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or any form of goitre other than simple goitre.

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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof; or which advertisement with respect to said preparation "Sorbol-Quadruple" fails to reveal that said preparation should not be used by those having tuberculosis or any form of goitre other than simple goitre: *Provided, however,* That such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof, when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or any form of goitre other than simple goitre.

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and, if so, the manner and form in which he intends to comply; and that within 60 days after the service upon him of this order, said respondent shall 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

WALTER P. PHILLIPS, TRADING AS PHILLIPS CARD COMPANY .

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

Docket 4311. Complaint, Sept. 12, 1940—Decision, Dec. 13, 1940

Where an individual engaged in interstate sale and distribution of Christmas cards, gift wrappings, and similar products; in advertising in newspapers and periodicals of general circulation, and in folders, pamphlets, and letters, employed by him in course and conduct of his said business in soliciting the sale of his products, and agents to sell same—

Made use of words "Sample Free," and sent to those replying folder containing 10 Christmas cards of various designs so marked with matter printed thereon as to be used as display samples, and, in addition "Supercraft" assortment of 21 Christmas cards not so marked, and suitable for use, together with invoice upon which was printed statement "Supercraft Assortment 21 Christmas Cards, Wholesale Price—50¢," and featured words "Free Sample Offer," and "We will cancel this invoice," followed by statement that if recipient sold certain number of boxes of such assortments within 15 days after receipt of sample assortment this would be done and that, failing this, remittance must be sent or box returned; and, if so-called free sample offer was not accepted and 50 cents paid, or assortment returned, sent recipient letter to effect 50-cent charge would be cancelled upon placing of \$3 order for additional samples to show prospects;

Facts being said, statements, representations, and prices quoted as above set forth were deceptive, false, and misleading and those replying in response to such free-sample advertisement had not ordered of said individual merchandise sent out as above set forth, said twenty-one-card assortment was not given free but recipient was required to pay for return, or order specified number of boxes within 15 days, to comply with directions of said individual, and assortment of cards thus shipped to such persons was not in fact free or sample offer since consideration in either payment of money or rendering of services was required of person receiving merchandise before assortment became, without obligation, his property;

With effect, through use of term "free sample" or word "free" and import and implication therein of delivery of said cards as gift or gratuity, of deceiving members of the purchasing public and inducing them to believe that all of said samples were to be delivered without cost or condition, and, because of such belief thus engendered, to request the sending of such samples, and with consequence of thereby placing them under obligation to said individual which they did not anticipate or intend to assume, in responding to said advertisement and ordering such "free" samples, and with result, through acts and practices of said individual in advertising said so-called free samples, and shipment to those replying, as above described, of said invoiced articles, and without prior notice of terms and conditions upon which shipped and without shipment having been authorized, of unfairly