

Order

32 F. T. C.

IN THE MATTER OF
HOME DIATHERMY COMPANY, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 3653. Order, Jan. 18, 1941

Order modifying prior order to cease and desist, made as of November 20, 1940, 31 F. T. C. 1407—and which required respondent corporation, its officers, etc., in connection with offer, etc., of their "Home Diathermy" device, or other substantially similar device, to cease and desist from disseminating or causing to be disseminated, as there set forth, advertisements which represent that such device may be easily and safely used in the home, or that use thereof constitutes a cure or remedy for various ailments and conditions specified or has any therapeutic value in the treatment of any other ailment, unless limited as in said order specified, or which advertisements fail to reveal that unsupervised use thereof by those not skilled in diagnosis, analysis and methods of treatment of disease may result in serious and irreparable injury to health—by prohibiting dissemination, etc., of such advertisements which, in addition to representations otherwise prohibited as above set forth, fail 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."

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.

ORDER MODIFYING ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, 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, on November 20, 1940, having made and issued its findings as to the facts and its conclusion that the respondent had violated the provisions of the Federal Trade Commission Act, and having made and issued its order to cease and desist herein on the same date, and it now appearing that such order to cease and desist should be modified in certain respects, and the Commission

having now duly considered the matter and being now fully advised in the premises.

It is ordered, That the order to cease and desist issued herein on November 20, 1940, be, and the same hereby is, modified so that as modified such order to cease and desist shall read:

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 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 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.

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 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

Order

32 F. T. C.

instructed in the method of operating such device by a trained technician.

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.

Syllabus

IN THE MATTER OF

JOE B. HILL AND C. O. McAFEE, TRADING AS McAFEE
CANDY COMPANY, AND LIBERTY CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4114. Complaint, Apr. 26, 1940—Decision, Jan. 21, 1941*

Where two partners engaged in manufacture of candy, and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, and included, as illustrative of methods used (1) large number of chocolate-covered pieces of uniform size and shape, together with 24 small candy bars and one large bar, for sale and distribution to purchasers under a plan by which purchaser procuring, by chance, one of said pieces having center differing in color from that of the majority of said candy pieces of uniform size and shape, was entitled to and received without additional cost one of said small bars, and person procuring last one of said pieces of uniform size and shape in assortment was entitled to and received without additional cost said large bar, and (2) number of bars of candy of uniform size and shape, together with a push card for use in sale and distribution to purchasers of said bars, under a plan by which purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents, as case might be, for bar, in accordance with particular number secured by chance from card, and purchaser making last push in each of two sections into which card was divided received without additional cost two of said bars, and in furnishing, as thus engaged, various push cards for use in sale and distribution of their candy by means of game of chance, gift enterprise, or lottery scheme under plans similar to that hereinabove described and varying therefrom in detail only—

Sold such assortments, together with said push cards, as case might be, to wholesalers, to jobbers, and to retailers by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with sales plans aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their products in accordance with such sales plans, involving game of chance or sale of a chance to procure bars of candy at prices much less than normal retail value thereof, or additional bars of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use such or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by said sales plans or methods employed by them in sale and distribution of their said candy, and element of chance involved therein, and were thereby induced to buy and sell their said candy in preference to that of said competitors who do not use same