

IN THE MATTER OF

CARL D. BATES, TRADING AS SIMMON'S CUT RATE
DRUG STORECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4366. Complaint, Oct. 29, 1940—Decision, Feb. 10, 1941*

Where an individual engaged in sale and distribution of various medicinal preparations, including drug preparation known as "Mrs. Bee Femo Caps" and also as "Femo Caps" and "Bee Caps," to purchasers in various other States and in the District of Columbia; in advertisements of said preparation which he disseminated and caused to be disseminated through the mails and by various other means in commerce—

- (a) Represented, directly and by implication, that his said preparation constituted a competent and effective treatment for delayed, unnatural, and suppressed menstruation and that it was safe and harmless, facts being said preparation was not a competent or effective treatment for such conditions and was not safe or harmless, in that it contained drugs ergot, oil of savin, aloin, and oil of tansy 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 such use of said preparation might cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy might cause uterine infection and blood poisoning, and such use of said preparation might also produce severe circulatory conditions, often with poisonous effect upon human system and tending to cause abortion in some instances, and might result in severe toxic conditions, in some instances producing gangrenous condition of lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health; and
- (b) Failed to reveal, in said advertisements, facts material in the light of representations contained therein, and that use of said preparation under conditions prescribed in such advertisements or under such conditions as are customary or usual, might cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs and, in case of pregnancy, might cause uterine infection and blood poisoning;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that his preparation possessed properties which it did not in fact possess, and that it was safe and harmless when such was not the fact, and with result, as consequence of such erroneous and mistaken belief, of inducing such public to purchase substantial quantities of his said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. William L. Taggart for the Commission.

Mr. Samuel R. Levy, of Canandaigua, N. Y., for respondent.

Complaint

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 Carl D. Bates, an individual, trading as Simmon's Cut Rate Drug Store, hereinafter referred to as respondent, has 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. Respondent Carl D. Bates, an individual trading as Simmon's Cut Rate Drug Store, with his principal place of business at 84 Main Street, Canandigua, Ontario County, N. Y., is now and for more than 1 year last past has been engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is a drug preparation known as "Mrs. Bee Femo Caps," and also as "Femo Caps" and as "Bee Caps."

PAR. 2. Respondent causes said preparation, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product by 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 product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature are the following:

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MODERN WOMEN

(Facsimile package of Mrs. Bee Femo Caps)

HARMLESS PRESCRIPTION

DON'T BE DISCOURAGED. Don't be alarmed over delayed unnatural suppressed menstruation. New discovery, Mrs. Bee Femo Caps, the fast acting, safe aid to women. Acts without discomfort or inconvenience. Ask today for Mrs. Bee Femo Caps.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly and by implication, that his said preparation constitutes a competent and effective treatment for delayed, unnatural, and suppressed menstruation and that said preparation is safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed, unnatural, or suppressed menstruation. Moreover, said preparation is not safe or harmless, as it contains the drugs ergot, oil of savin, aloin, and oil of tansy in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage; and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels and contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

PAR. 6. The advertisements disseminated by the respondent 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

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prescribed in said advertisements, or under such conditions as are customary or usual, may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

PAR. 7. The use by the respondent of the aforesaid false advertisements with respect to his said 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 respondent's preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase and has purchased substantial quantities of respondent's preparations.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 29, 1940, issued, and on October 30, 1940, served, its complaint in this proceeding upon respondent, Carl D. Bates, individually and trading as Simmon's Cut Rate Drug Store, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance and service of said complaint and filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carl D. Bates, an individual trading as Simmon's Cut Rate Drug Store, with his principal place of business at

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84 Main Street, Canandaigua, Ontario County, N. Y., is now and for more than 1 year last past has been engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is a drug preparation known as "Mrs. Bee Femo Caps," and also as "Femo Caps" and as "Bee Caps."

PAR. 2. Respondent causes said preparation, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product by 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 product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature are the following:

MODERN WOMEN

(Facsimile package
of Mrs. Bee Femo
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HARMLESS
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DON'T BE DISCOURAGED. Don't be alarmed over delayed unnatural suppressed menstruation. New discovery, Mrs. Bee Femo Caps, the fast acting, safe aid to women. Acts without discomfort or inconvenience. Ask today for Mrs. Bee Femo Caps.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly and by implication, that his said preparation constitutes a competent and effective treatment for delayed, unnatural, and suppressed menstruation and that said preparation is safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed, unnatural, or suppressed menstruation. Moreover, said preparation is not safe or harmless, as it contains the drugs ergot, oil of savin, aloin, and oil of tansy in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels and contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

PAR. 6. The advertisements disseminated by the respondent 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 cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

PAR. 7. The use by the respondent of the aforesaid false advertisements with respect to his said 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 respondent's preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced

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to purchase, and has purchased, substantial quantities of respondent's preparation.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Carl D. Bates, individually and trading as Simmon's Cut Rate Drug Store, 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 preparation known as "Mrs. Bee Femo Caps," and as "Femo Caps," and "Bee Caps," or any 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 constitutes a competent or effective treatment for delayed, unnatural, or suppressed menstruation; that said preparation is safe or harmless; or which advertisement fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

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 com-

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merce 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 fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

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 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.

IN THE MATTER OF
**B. M. BENNETT, TRADING AS EMPIRE STATE CANDY
COMPANY**

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

Docket 4400. Complaint, Dec. 5, 1940—Decision, Feb. 10, 1941

Where an individual engaged in manufacture of candy and in interstate sale and distribution of various assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and included (1) number of bars of candy, together with two-section push card, for use in sale and distribution of said bars, all of which had retail value greater than 1 cent, under plan in accordance with which purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, in accordance with legend or figure revealed and secured by disk punched and selected, and purchaser of last punch in each section received two bars free, and (2) various assortments involving lot or chance feature and sales plans or methods similar to that above described, from which they varied in detail only—

Sold such assortments and cards to dealers and retailers, by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plans or methods, involving game of chance or sale of a chance to procure bars of candy at prices much less than normal retail prices thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his products, in accordance with said sales plans or methods, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who make and sell candy and who are unwilling to offer or sell their products so packed and assembled as above set forth, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method contrary to public policy and refrain therefrom;

With tendency and capacity to induce purchasers of his said candy to purchase same in preference to that offered and sold by his competitors, and with result that many dealers in and ultimate consumers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof, as above set forth, and were thereby induced to purchase such candy, thus packed and sold by him, in preference to that offered and sold by his competitors, who do not use same or equivalent methods, and with tendency and capacity, through use of said methods and because of said game of chance, to unfairly divert trade to him from his competitors who do not use such methods, exclude from candy trade all competitors who are unwilling to and do not use same or equivalent methods as unlawful, lessen competition therein, and create monopoly thereof in him and in such other distributors of candy as use same or equivalent methods, and deprive purchasing public of benefit of free competition and to eliminate from trade in