

IN THE MATTER OF

ERIE LABORATORIES, INC., ALSO TRADING AS MACK
PHARMACAL COMPANY, ALLIED PHARMACAL CO., ALSO
TRADING AS ERIE LABORATORIES, INC., AND MELVIN
ROSE, DAVID F. BERLAND AND ROSE KOTENBERGCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4382. Complaint, Nov. 20, 1940—Decision, Mar. 21, 1941*

Where two corporations and three individuals, who directed and controlled their practices and methods of advertising, engaged in interstate sale and distribution of various medicinal preparations, including their "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps," and acting in conjunction and cooperation with each other in carrying on acts and practices below set forth; by advertisements of their said last-named preparations disseminated through the mails, newspaper advertisements, circulars, and other advertising literature in commerce and otherwise—

- (a) Represented, directly and by implication, that their said preparations constituted a competent and effective treatment for delayed, unnatural, and suppressed menstruation, and were safe and harmless, facts being they were not competent and effective treatments for said condition, and were not safe and harmless in that they contained certain drugs 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, thus used, might result in gastro-intestinal disturbance and excessive congestion and hemorrhage of the pelvic organs and, in case of pregnancy, might cause uterine infection and blood poisoning or other serious injury; and
- (b) Failed to reveal facts material in the light of the representations contained in said advertisements, and that use thereof under conditions prescribed therein or under such conditions as are customary or usual, might cause the dangerous conditions noted above;

With capacity and tendency, through use of such false, misleading, and deceptive representations, to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said preparations possessed properties which they did not in fact possess, and that they were in all cases safe and harmless, and with result, because of such mistaken belief, of inducing such public to purchase substantial quantities of their said preparations:

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. A. L. Greenspun, of Cleveland, Ohio, for respondents.

1030

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 Erie Laboratories, Inc., a corporation, also trading as Mack Pharmacal Co.; Allied Pharmacal Co., a corporation, also trading as Erie Laboratories, Inc.; and Melvin Rose, David F. Berland, and Rose Kottenberg, individually, and as officers and directors of Allied Pharmacal Co., hereinafter referred to as respondents, have 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, Erie Laboratories, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business in Suite 530 Film Exchange Building, 2108 Payne Avenue, Cleveland, Ohio. Mack Pharmacal Co. is a trade name used by the said Erie Laboratories, Inc., in selling its products to retail dealers. Allied Pharmacal Co. is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business in Suite 530 Film Exchange Building, 2108 Payne Avenue, Cleveland, Ohio. Respondent, Allied Pharmacal Co., also does business under the name of Erie Laboratories, Inc. Melvin Rose is an individual engaged in business both individually and as vice president, treasurer, and a director of the Allied Pharmacal Co., and David F. Berland and Rose Kottenberg, individuals, are likewise officers and directors of said Allied Pharmacal Co. Said individual respondents are also officers and directors of Erie Laboratories, Inc.

Respondents, Melvin Rose, David F. Berland, and Rose Kottenberg, direct and control the practices and methods of advertising of respondents Erie Laboratories, Inc., also trading as Mack Pharmacal Co., and Allied Pharmacal Co., also trading as Erie Laboratories, Inc. The individual respondents have acted in conjunction and cooperation with each other and with the corporate respondents in carrying on the acts and practices hereinafter alleged.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondents are drug preparations advertised and sold respectively as "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps."

Complaint

32 F. T. C.

Respondents cause said preparations, when sold, to be transported from their places of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in its said preparations 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 businesses, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products by the United States mail 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 products, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly the purchase of 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 by circulars and other advertising literature, are the following:

MODERN WOMEN!

Be Safe! Use a guaranteed harmless prescription. Don't be alarmed or disturbed over delayed, unnatural, suppressed periods. A new discovery, Mrs. Bee-Femo-Caps, the fast acting safe aid to women. Acts without discomfort or inconvenience. Even in obstinate cases. Be safe—ask TODAY for Mrs. Bee Femo-Caps. * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondents represent and have represented, directly and by implication, that their preparations designated as "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps" constitute a competent and effective treatment for delayed, unnatural and suppressed menstruation and that said preparations are safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparations are not competent and effective treatments for delayed, unnatural, and suppressed menstruation. Moreover, said preparations

1030

Complaint

are not safe and harmless in that they contain the drugs ergot, oil of savin, aloin, and hellebore, 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 preparations may result in gastrointestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparations are 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 preparations 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. Furthermore, the advertisements disseminated by the respondents, 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 preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy may cause uterine infection and blood poisoning.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparations, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' preparations possess properties which they do not in fact possess, and that said preparations are in all cases 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 respondents' preparations.

Findings

32 F. T. C.

PAR. 8. The aforesaid 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 November 20, 1940, issued, and on November 22, 1940, served, its complaint in this proceeding upon the respondents, Erie Laboratories, Inc., also trading as Mack Pharmacal Co., Allied Pharmacal Co., also trading as Erie Laboratories, Inc., and Melvin Rose, David F. Berland, and Rose Kottenberg, charging them 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 respondents' answers, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answers 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 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 its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Erie Laboratories, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business in Suite 530, Film Exchange Building, 2108 Payne Avenue, Cleveland, Ohio. Mack Pharmacal Co. is a trade name used by the said Erie Laboratories, Inc., in selling its products to retail dealers. Allied Pharmacal Co. is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business in Suite 530, Film Exchange Building, 2108 Payne Avenue, Cleveland, Ohio. Respondent, Allied Pharmacal Co., also does business under the name of Erie Laboratories, Inc. Melvin Rose is an individual engaged in business both individually and as vice president, treasurer, and a director of the Allied Pharmacal Co., and

David F. Berland and Rose Kottenberg, individuals, are likewise officers and directors of said Allied Pharmacal Co. Said individual respondents are also officers and directors of Erie Laboratories, Inc.

Respondents, Melvin Rose, David F. Berland, and Rose Kottenberg, direct and control the practices and methods of advertising of respondents, Erie Laboratories, Inc., also trading as Mack Pharmacal Co., and Allied Pharmacal Co., also trading as Erie Laboratories, Inc. The individual respondents have acted in conjunction and cooperation with each other and with the corporate respondents in carrying on the acts and practices hereinafter found.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondents are drug preparations advertised and sold respectively as "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps."

Respondents cause said preparations, when sold, to be transported from their places of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in its said preparations 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 businesses, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products by the United States mail 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 products, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of 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 by circulars and other advertising literature, are the following:

MODERN WOMEN!

Be Safe! Use a guaranteed harmless prescription. Don't be alarmed or disturbed over delayed, unnatural, suppressed periods. A new discovery, Mrs.

Findings

32 F. T. C.

Bee-Femo-Caps, the fast acting safe aid to women. Acts without discomfort or inconvenience. Even in obstinate cases. Be safe—ask TODAY for Mrs. Bee Femo-Caps. * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondents represent and have represented, directly and by implication, that their preparations designated as "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps" constitute a competent and effective treatment for delayed, unnatural and suppressed menstruation that said preparations are safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparations are not competent and effective treatments for delayed, unnatural and suppressed menstruation. Moreover, said preparations are not safe and harmless in that they contain the drugs ergot, oil of savin, aloin, and hellebore, 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 preparations may result in gastrointestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparations are 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 preparations 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 respondents 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 preparations under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs,

1030

Order

and in case of pregnancy may cause uterine infection and blood poisoning.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparations, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' preparations possess properties which they do not in fact possess, and that said preparations are in all cases 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 respondents' preparations.

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 respondents, in which answer 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, Erie Laboratories, Inc., also trading as Mack Pharmacal Co.; Allied Pharmacal Co., a corporation, also trading as Erie Laboratories, Inc., and Melvin Rose, David F. Berland, and Rose Kottenberg, individually and as officers and directors of Allied Pharmacal Co., 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 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:

Order

32 F. T. C.

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 gastrointestinal 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 "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 fails to reveal that the use of said preparation may cause gastrointestinal 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 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 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.

Complaint

IN THE MATTER OF
TRUDEAU CANDIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4376. Complaint, Nov. 14, 1940—Decision, Mar. 22, 1941*

Where a corporation 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 games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and included, as typical, 60 bars of candy, with push card for use in sale and distribution thereof under a plan by which purchaser paid 1, 2, 3, 4, or 5 cents for bar, in accordance with number selected by chance from disks thereon—

Sold such assortments, together with said push cards, to wholesalers, jobbers and retailers by whom, as direct and indirect purchasers, they were exposed and sold to purchasing public in accordance with sales plan aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with plan involving game of chance to procure bars of candy at prices much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to use said or any method involving game of chance or any other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan or method and by element of chance involved therein, and were thereby induced to buy and sell its said candy in preference to that of competitors aforesaid who do not use same or equivalent methods, and with tendency and capacity to unfairly divert trade in commerce to it from its said competitors:

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. W. W. Sheppard*, trial examiner.

Mr. L. P. Allen, Jr., 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 Trudeau Candies, Inc., a corporation, 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 interest