

IN THE MATTER OF
VITAPHORE APPLIANCES, INC.

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

Docket 3884. Complaint, Aug. 31, 1939—Decision, Apr. 3, 1941

Where a corporation engaged in interstate sale and distribution to members of the public and physicians, of its Vibratherm heat and massage electric device for the alleged treatment, through internal and external use, of disorders of the pelvic region, both male and female, and particularly disorders of the prostate gland; by advertisements disseminated by mail and in newspapers and periodicals of general circulation, and in circulars and other written and printed matter—

Represented, directly and by implication, that the use of said device constituted a cure or remedy or was an effective and competent treatment for prostatitis, constipation, hemorrhoids, sexual decline, backache, headache, arm, leg and foot pains, bodily weakness, tired feeling, night rising, bladder weakness, nervousness, vaginitis, leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus and tubes;

Facts being it had no therapeutic value in the treatment of prostatitis in excess of furnishing temporary relief from pain by local application of heat, and not only was without therapeutic value in treatment of various conditions and disorders above set forth but use thereof might be harmful in the case of female disorders of the pelvic region where inflammatory conditions existed;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and, because of such belief, of inducing it to purchase said devices in substantial number:

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.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Wilbur N. Baughman, *Mr. Donovan Divet* and *Mr. John M. Russell* for the Commission.

Yeagley & Yeagley, of South Bend, Ind., for respondent.

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 Vitaphore Appliances, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Com-

mission 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, Vitaphore Appliances, Inc., is a corporation created by, and existing under the laws of the State of Indiana, with its principal office and place of business located in the Pythian Building, in the city of South Bend, State of Indiana.

Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a heat and massage device for the alleged treatment of prostate gland and female disorders, and kindred disorders of the pelvic region, designated "Vibratherm."

Respondent causes said device, when sold, to be transported from its place of business in the State of Indiana to the purchasers thereof located in 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 said device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

Prostate sufferers and those having gland trouble or kindred disorders of the pelvic region such as hemorrhoids, constipation, etc. Relief guaranteed or money refunded.

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If you suffer the misery of prostate trouble—have to get up nights—feel weak and tired—try Vibratherm for 10 days with no risk.

Prostate inflammation and enlargement is very common in adult men of all ages today. Unusual demands on the nervous system caused by our present day economic life and the general high tension pace that most of us have to face under modern conditions is broadly recognized as being mainly responsible for the widespread increase of prostate trouble which causes so much loss of vitality, leg and crotch pains, night rising, extreme nervousness, etc.

This company acquired a patent for the manufacture of an instrument which is operated by electricity, through which both heat and vibration is produced. The heat aids in reducing inflammation if the prostate gland is sore and inflamed and also aids in restoring proper circulation of the blood in the area of the prostate gland. Vibration will expel from the prostate gland accumulations of pus or foreign substances.

It has given many most excellent results in Prostate Enlargement, Hemorrhoids and many other pelvic disorders in both male and female.

It provides all the benefits of heat in prostatic and female pelvic disorders.

Immediate relief and relaxation are experienced by most patients through the tonic effect on the nervous system and the feeling of well-being this treatment induces.

Bladder irritation caused by prostatitis and other forms of congestion are treated as in prostatitis or intra-vaginally in the female.

Virbratherm combines heat and massage.

Affords heat, infra-red rays and vibration in prostatic disorders, vaginitis and hemorrhoids.

Relief guaranteed.

PAR. 3. Through the use of the statement and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's device, respondent represented and does now represent that the use of said device, known as "Vibratherm," will cure prostate disorders and the ailments, diseases, and conditions caused thereby; such as night rising, bladder weakness, backaches, headaches, arm, leg, and foot pains and nervousness; that said device is a cure or remedy for or effective in the treatment of hemorrhoids, constipation and sexual decline, prostatitis and kindred disorders of the pelvic region. By means of statements to the effect that said device is a cure or remedy for or effective in the treatment of various pelvic disorders of male and female and of vaginitis, the respondent represents that said device is a cure or remedy for or competent treatment of various female disorders, such as leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus, and tubes.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly

exaggerated, misleading and untrue. In truth and in fact, respondent's device, "Vibratherm" does not combine heat, infra-red, vibration, and massage, and it has no therapeutic value other than possible temporary symptomatic relief of pain from locally applied heat. It is not a cure or remedy for any disease or a competent treatment therefor. Respondent's device is not a cure or remedy for prostate disorders or any of the diseases, ailments or conditions caused thereby, and is not a competent treatment therefor. Said device will have no effect in the treatment or cure of night rising, bladder weakness, backaches, headaches, arm, leg and foot pains and nervousness. Said device is not a cure or remedy for hemorrhoids, constipation and sexual decline, prostatitis and kindred disorders of the pelvic region, and its use is not a competent treatment therefor. Respondent's device is of no value in the treatment of various female disorders of the pelvic region, including vaginitis, leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus and tubes, and relief cannot be guaranteed, nor the device used without risk.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and advertisements disseminated as aforesaid with respect to said device 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 false statements, representations and advertisements are true, and that respondent's device will accomplish the results indicated, and induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial number of respondent's devices.

PAR. 6. The aforesaid acts and practices of respondent 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 August 31, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Vitaphore Appliances, Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the

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filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the complaint by Messrs. Yeagley and Yeagley, attorneys for the respondent, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (oral argument not having been requested), 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. The respondent, Vitaphore Appliances, Inc., is a corporation organized under the laws of the State of Indiana with its principal office and place of business located at 825 East Jefferson Boulevard, South Bend, Ind.

PAR. 2. The respondent is, and since sometime prior to 1938 has been, engaged in the business of the sale and distribution, in commerce, of a heat and massage device designated "Vibratherm" which it sells to members of the general public and to medical doctors for the alleged treatment of disorders of the pelvic region, both male and female, and particularly disorders of the prostate gland.

PAR. 3. The device consists of bakelite case, containing a magnetic coil, or vibrating mechanism, with a dilator attached. Said dilator also contains heat coils. Upon attaching the device to an electrical socket and manipulating the switch on the back of the device, either vibration or heat, or both, can be obtained. When in use the dilator is inserted in the rectum or vagina by the user, and either vibration or heat, or both, are brought into play. There is also another part supplied with the appliance called an external applicator, being a glass bulb in the shape of a knob that is inserted in the case in place of the dilator and is to be used externally on the body.

PAR. 4. Respondent causes said device, when sold, to be transported from its place of business in the State of Indiana to the purchasers thereof located in other States of the United States and in the District of Columbia. At all times mentioned herein respondent has main-

tained a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

PROSTATE SUFFERERS, and those having gland trouble or kindred disorders of the pelvic region. VIBRATHERM heat—massage—infra red relief guaranteed or your money back.

It also warms up the bowels and causes a copious movement and refreshes one like a tonic.

It has given me most excellent results in Prostatic enlargement, Hemorrhoid and many other Pelvic disorders in both male and female.

Since using your instrument, it has given me more "pep" than I have had for years, and I really believe it has given me a new lease on life.

I now begin my day refreshed, strong and with ten times the resistance against fatigue that I ever had. My physical condition is improved to the extent of turning the calendar back fifteen years. Appetites aroused are fulfilled in this rejuvenation of the glandular system as vigorously as in my youth.

The Vibratherm combines the following well known principles of healing; heat (infra-red ray), vibratory massage—dilation.

PROSTATE DISORDERS. Relief from suffering is generally experienced by ten to thirty minutes treatment, daily or less frequently, depending upon the gravity of the case. Regular treatment removes congestion, and where pus is present it will be drained through the urethra without finger massage.

By its gentle massage and its comforting warm heat, it loosens the congestion, soothes the inflammation, stimulates the blood circulation, helping relax tense muscles and nerves, and bringing blessed freedom from pain and worry.

The VIBRATHERM gives a simple positive source of heat and massage to the

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prostate—It is designed and perfected for this purpose. Therefore, it would seem to be an ideal way of bringing comfort and relief and freedom from worry over prostate trouble.

I can truthfully state that the use of your instrument relieved my backache and prostate trouble and I sleep soundly.

Instructions for the home use of Vibratherm for the correction of prostate trouble are as follows:

If you suffer the misery of prostate trouble—have to get up nights—feel weak and tired—try vibratherm for thirty days with no risk. Many users enthusiastically praise it. Vibratherm employs both heat and Vibration (Massage) to encourage the flow of health giving blood to the afflicted organs—this is a method recognized by leading scientists as a proper treatment for prostate trouble.

PROSTATE TROUBLE Vibratherm will positively correct your condition or it costs you nothing.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's device designated "Vibratherm" and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, the following:

That the use of said device constitutes a cure or remedy for or is an effective and competent treatment of prostatitis, constipation, hemorrhoids, sexual decline, backache, headache, arm, leg and foot pains, bodily weakness, tired feeling, night rising, bladder weakness, nervousness, vaginitis, leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus, and tubes.

PAR. 7. The aforesaid statements and representations used and disseminated by respondent in the manner above described are grossly exaggerated, misleading and untrue and constitute false advertising. The Commission finds that respondent's device "Vibratherm" does not constitute a cure or remedy for prostatitis and that it has no therapeutic value in the treatment thereof in excess of furnishing temporary relief from the symptoms of pain where the local application of heat is indicated. The use of this device does not constitute a cure or remedy for night rising, bladder weakness, backaches, headaches, arm, leg or foot pains, or nervousness, and does not constitute a competent or effective treatment for such disorders and conditions. The use of this device has no therapeutic value in the treatment of hemorrhoids, constipation, or sexual decline. Said device has no value in the treatment of various female disorders of the pelvic region, such as vaginitis, leucorrhea, cervicitis, inflammation

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of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus or tubes, but, instead, the use of this device is contraindicated and may be harmful where inflammatory conditions exist in such female disorders.

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to said device, 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 false statements, representations and advertisements are true, and that respondent's device will accomplish the results indicated, and has induced a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial number of respondent's devices.

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, the answer of respondent, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, 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, Vitaphore Appliances, 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 its device designated as "Vibratherm" or any other device of substantially similar construction or performing substantially similar functions, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisements by means of the United States mails, or by any means in commerce,

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as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent directly or through inference:

(a) That the use of respondent's device "Vibratherm" constitutes a cure or remedy for prostatitis or that it has any therapeutic value in the treatment thereof in excess of furnishing temporary relief from the symptoms of pain where the local application of heat is indicated.

(b) That the use of said device constitutes a cure or remedy for night rising, bladder weakness, backache, headache, arm, leg, or foot pains, or nervousness, or that it constitutes a competent or effective treatment for such disorders and conditions.

(c) That the use of respondent's device has any therapeutic value in the treatment of hemorrhoids, constipation, or sexual decline.

(d) That the use of said device is a cure or remedy for vaginitis, leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus or tubes, or other female disorders of the pelvic region, or that it has any therapeutic value in the treatment of such diseases and conditions.

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 advertisements contain any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, 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
FINK & COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3890. Complaint, Sept. 12, 1939—Decision, Apr. 3, 1941*

Where a corporation engaged in interstate sale and distribution of certain vitamin preparations designated "Mi-Vit-Ine" and "Vi-Min-Ex," and of a cosmetic preparation designated "Muriel Joan Beautifier;" by advertisements disseminated by mail and in newspapers and periodicals, and by circulars and other advertising literature—

- (a) Represented directly and by implication that its said "Mi-Vit-Ine" was a cure or remedy for lowered vigor and vitality, constipation, colitis, stomach disorders, neuralgia and nerve disorders, caused by a deficiency of vitamin B in the diet, and constituted a competent treatment for such diseases and conditions; that use thereof would stimulate the appetite, improve digestion, make the bowels function normally and cause the user to gain in vigor and vitality; and that it was a different kind of wheat germ which constituted a proper dietary corrective, and was effective in the treatment of alcoholism;

Facts being such product was not a cure or remedy or competent treatment for aforesaid conditions and disorders which, while they may be symptoms of deficiency of Vitamin B, which is very difficult to determine, under ordinary conditions are due to many different causes, and for curative purposes, in unlikely event under circumstances of Vitamin B1 deficiency requiring curative doses, user would have to take approximately ten times the dosage per day recommended by said corporation; and preparation in question was not different kind of wheat germ, or a dietary corrective, and had no therapeutic value in aforesaid correction or as cure for alcoholism, in both of which its only value would be to stimulate the appetite;

- (b) Represented directly and by implication that its said "Vi-Min-Ex" vitamin and mineral capsules constituted a cure or remedy for colds, constipation, spastic colitis, digestive disorders, neuritis, nervous disorders, anemia, loss of appetite and weight, lowered vigor and vitality, and tooth decay due to vitamin deficiency, and that use thereof constituted a competent treatment for said diseases and conditions; that such preparation supplied all the essential vitamins and minerals; and that there was no better source thereof;

Facts being said product was not a cure or remedy or competent treatment for said conditions and disorders, and, while vitamins contained therein would be effective in improving conditions of vitamin deficiency if taken in sufficient amounts, in the dosage recommended said product had little or no beneficial value, would not supply all essential vitamins and minerals required by the body and was not the best source thereof; and

- (c) Represented that its "Muriel Joan Beautifier" would beautify and transform the face and make it bloom with beauty, causing skin blemishes, pimples, and blackheads to disappear and bringing about a beautiful complexion;