

Complaint

IN THE MATTER OF

SHERRY'S CUT RATE DRUG 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 4345. Complaint, Oct. 10, 1940—Decision, Apr. 19, 1941

Where a corporation engaged in interstate sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps"; by advertisements of its said products disseminated through the mails, newspaper advertisements and other advertising literature—

- (a) Represented, directly and by implication, that its said preparation constituted a competent and effective treatment for delayed menstruation, that there was no risk in its use, and that it did not cause the user discomfort or inconvenience, and that it was harmless and effective in obstinate, unnatural and suppressed cases of aforesaid condition;

Facts being it was not a competent and effective treatment for such condition, and was not safe or harmless, in that it 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 disturbances and excessive congestion and hemorrhage of the pelvic organs and, in the 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 result in serious injury to health;

With capacity and tendency, through use of such false, misleading, and deceptive representations, to mislead and deceive substantial portion of purchasing public into the erroneous and mistaken belief that its said preparation was a safe, harmless, competent and effective treatment for delayed menstruation, and with result, because of such mistaken belief, of inducing such public to purchase its 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. A. J. Lubliner, of Bluefield, W. Va., 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 Sherry's Cut Rate Drug Co., Inc., a corporation, hereinafter referred to as respondent,

Complaint

32 F. T. C.

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, Sherry's Cut Rate Drug Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 406 Federal Street, in the city of Bluefield, State of West Virginia.

PAR. 2. Respondent for some time past has been engaged in the sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps."

Respondent caused its said preparation, when sold, to be transported from its places of business in the State of West Virginia to purchasers thereof located in the various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said preparation by 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 has caused the dissemination of, false advertisements concerning its said preparation by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said preparation 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 other advertising literature, is the following:

MODERN WOMEN

Harmless Prescription. Don't be discouraged. Don't be alarmed over delayed, unnatural suppressed periods.

A 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. SHERRY'S CUT RATE DRUG COMPANY, INC., 406 Federal Street, Bluefield, West Virginia.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out

herein, respondent has represented directly and by implication that its preparation, designated as "Mrs. Bee Femo Caps", constitutes a safe, competent and effective treatment for delayed menstruation; that there is no risk in its use, and that it does not cause the user discomfort or inconvenience, and that it is harmless and effective in obstinate, unnatural, and suppressed cases of delayed menstruation.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent as hereinabove set forth, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation, designated as "Mrs. Bee Femo Caps," is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless in that it contains the drugs, ergot, oil of tansy and aloin, 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.

The 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 by pregnant women, 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.

The use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, 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 may produce a gangrenous condition of the lower limbs, resulting in possible loss of limbs or other serious and irreparable injury to health.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal facts material in the light of such representations 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 serious injury to health.

PAR. 7. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations with respect to its said preparation disseminated as aforesaid has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements,

Findings

32 F. T. C.

representations and advertisements were true and that the preparation designated as "Mrs. Bee Femo Caps" is a safe, harmless, competent and effective treatment for delayed menstruation and to induce purchase by the public of the respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

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 10, 1940, issued, and on October 11, 1940, served its complaint in this proceeding upon respondent Sherry's Cut Rate Drug Co., Inc., a corporation, 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 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 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, Sherry's Cut Rate Drug Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 406 Federal Street, in the city of Bluefield, State of West Virginia.

PAR. 2. Respondent for some time past has been engaged in the sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps."

Respondent caused its said preparation, when sold, to be transported from its places of business in the State of West Virginia to purchasers thereof located in the various other States of the United States. Respondent maintains, and at all times mentioned

1251

Findings

herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said preparation by 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 has caused the dissemination of, false advertisements concerning its said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation 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 other advertising literature, is the following:

MODERN WOMEN

Harmless Prescription. Don't be discouraged. Don't be alarmed over delayed, unnatural suppressed periods.

A 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.

SHERRY'S CUT RATE DRUG COMPANY, INC.,
406 Federal Street,
Bluefield, West Virginia.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented directly and by implication that its preparation, designated as "Mrs. Bee Femo Caps," constitutes a safe, competent and effective treatment for delayed menstruation; that there is no risk in its use, and that it does not cause the user discomfort or inconvenience, and that it is harmless and effective in obstinate, unnatural, and suppressed cases of delayed menstruation.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent as hereinabove set forth, are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation, designated as "Mrs. Bee Femo Caps," is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless in that it contains the drugs, ergot, oil of tansy and aloin, 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.

Order

32 F. T. C.

The 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 by pregnant women, 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.

The 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 may produce a gangrenous condition of the lower limbs, resulting in possible loss of limbs or other serious and irreparable injury to health.

PAR. 6. In addition to the representations hereinbefore set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations 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 serious injury to health.

PAR. 7. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and advertisements were true and that the preparation designated as "Mrs. Bee Femo Caps" is a safe, harmless, competent, and effective treatment for delayed menstruation, and to induce purchase by the public of the respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

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

1251

Order

respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it 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 the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Sherry's Cut Rate Drug Company, 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 medicinal preparation known as "Mrs. Bee Femo Caps," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name 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 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 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 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 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.

IN THE MATTER OF
ASSOCIATED NEWS PHOTOGRAPHIC SERVICE, INC.,
BLACKSTONE STUDIOS, INC., AND LEO FRIED AND
WILLIAM SHAPIRO

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

Docket 3561. Complaint, Aug. 29, 1938—Decision, Apr. 22, 1941

Where two corporations and two individuals who were general officers thereof, together owned said corporations' capital stock, and directed and controlled their policies and practices, engaged in making photographs and photographic prints, and in interstate sale and distribution thereof to subjects and purchasers, in substantial competition with others, including those who do not, in respect of their business status or otherwise, make false representations; originally securing names of individuals for solicitation through arrangements with college and university alumni associations for photographing their members, and carrying on usual business only of a photographic studio under name of Blackstone Studios, Inc., which continued to finish their photographs during all the period here involved—

Following an extension of their business to include solicitation of trade association business under arrangements by which they acted as "official photographer," and, more particularly, in soliciting business of persons of prominence in various communities, usually the smaller cities, in which they made arrangements with various newspapers in return for a general letter of introduction designating them as "official photographers" or "representatives" of said papers, incident to the undertaking of which they organized, for use in all solicitation of and contacts with members of public, Associated News Photographic Service, Inc., as second of two corporations first referred to—

Made use, as aforesaid, of word "News" as included in said corporate and trade name (1) through aforesaid newspapers' letters, identifying "Associated News Photographic Service, Inc.," as particular paper's "official photographer" engaged in obtaining photographs for paper's files or use, and bespeaking any courtesies prospect might extend with no obligation on his part, and (2) through telephone contacts by their "bookers" or representatives, each of whom they supplied with letter of introduction stating that said individual was "authorized to take photographs for the files of the Associated News to be serviced to the leading trade and financial publications and to the press," and who advised prospect that the Associated News or the Associated News Photographic Service, Inc., desired his photograph in connection with some coming event or for its files for newspaper or other publicity service, and thereafter following such contacts at which the absence of any obligation was emphasized, and following return of proofs, and ostensibly to secure subject's choice for press release, sought and frequently secured orders of prospect;