

Complaint

IN THE MATTER OF

MAX CAPLAN, DOING BUSINESS AS CAPITAL DRUG
COMPANY

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

Docket 4343. Complaint, Oct. 10, 1940—Decision, May 16, 1941

Where an individual engaged in interstate sale and distribution of a medicinal preparation designated "Mrs. Bee Femo Caps"; by means of advertisements disseminated through the mails and in newspapers and other advertising literature—

- (a) Represented, directly and by implication, that his said preparation constituted a safe, competent, and effective treatment for delayed menstruation, that there was no risk in its use, and that it did not cause discomfort or inconvenience;

Facts being it was not a competent or effective treatment for said condition, was not safe or harmless in that it contained the drugs ergot, oil of tansy and aloin in quantities sufficient to cause gastro-intestinal disturbances, with pelvic congestion and hemorrhage, and in cases of pregnancy might result in uterine infection, blood poisoning, and other serious conditions, if used under the conditions prescribed in said advertisements or under such as are customary or usual; and

- (b) Failed to reveal facts material in the light of such representations, and that use of said preparation might, as aforesaid, result in serious injury to health;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and, because of such mistaken belief, of inducing purchase by the public 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. 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 Max Caplan, an individual, trading and doing business as Capital Drug Co., 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

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32 F. T. C.

PARAGRAPH 1. Respondent Max Caplan is an individual trading and doing business as Capital Drug Co., with his principal office and place of business located at 18 East Campbell Avenue, in the city of Roanoke, State of 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 his said preparation, when sold, to be transported from his place of business in the State of 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 his aforesaid business, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning his 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 his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his 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

Be safe! Use a Guaranteed Harmless Prescription.

Don't be alarmed or discouraged 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. **SOLD ONLY BY CAPITAL DRUG COMPANY, 18 E. Campbell Avenue, Roanoke, 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 his 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 his 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.

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 the respondent Max Caplan, an individual trading and doing business as Capital Drug Co., 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 the 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 Max Caplan is an individual trading and doing business as Capital Drug Co., with his principal office and place of business located at 18 East Campbell Avenue, in the city of Roanoke, State of 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 his said preparation, when sold, to be transported from his place of business in the State of 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 his aforesaid business, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning his 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 his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his 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 advertising in newspapers and other advertising literature, are the following:

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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 his 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 his 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he

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Order

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, Max Caplan, individually, and trading as Capital Drug Co. 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," 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 is effective in obstinate, unnatural or suppressed cases of delayed menstruation or constitutes a competent or effective treatment for delayed menstruation; that said preparation does not cause the user any discomfort and that there is no risk involved in its use; or 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 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 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
THE BONITA COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2263. Order, May 17, 1941

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on June 21, 1935, 20 F. T. C. 454, prohibiting sale of candy by lottery schemes or devices; (2) Circuit Court of Appeals for the Seventh Circuit, on July 1, 1936, in *Federal Trade Commission v. A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co. and The Bonita Co.*, 84 F. (2d) 910, 22 F. T. C. 1149, rendered its opinion and entered its decree modifying said order of the Commission in certain particulars and affirming the same in other particulars; and (3) on July 19, 1940, in *Federal Trade Commission v. The Bonita Co.*, 31 F. T. C. 1834,¹ modified its said decree—

Requiring respondent, its representatives, etc., in the manufacture, sale, and distribution in interstate commerce of candy and candy products, to forever cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made by means of a lottery, etc.; (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in sale or distribution of such contents; (3) packing, etc., in the same package, etc., of candy for sale to the public at retail, pieces of candy of uniform size, etc., with centers of a different color, etc., and contained within wrappers, together with larger pieces of candy to be given as prizes to those procuring piece of candy with center of a particular color or having a particular color; (4) supplying, etc., wholesalers, etc., with assortments, together with a push card or punchboard, for use or which may be used, in distributing or selling said candy to public at retail; (5) furnishing to wholesalers, etc., a push card or punchboard, either with packages or assortments or separately, informing purchaser that products in question are being sold to public by lot or chance, etc.; (6) furnishing wholesalers, etc., with display cards, either with assortments or separately, informing public that products are being sold to public by lot or chance, etc.; and (7) furnishing wholesalers with display cards or other printed matter for use in connection with sale of such products and which inform purchasing public that upon the obtaining by the ultimate purchaser of a piece of a particular colored center large piece or small box of candy or another article of merchandise will be given free to such purchaser; as in order below in detail specified and set forth.

¹ Modifying decree in question not reported in Federal Reporter.