

IN THE MATTER OF

FONG POY, ALSO KNOWN AS FONG WAN; FONG KWONG-GIH, YEE NUN YET, CHAN WOON SHEUNG, AND LEE BING LIM, COPARTNERS, OPERATING UNDER THE FIRM NAME OF FONG WAN

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

Docket 3964. Complaint, Dec. 7, 1939—Decision, May 24, 1941

Where five partners engaged in interstate sale and distribution of Chinese herbs as treatments for various diseases and disorders, under a plan by which suffering members of the public were urged in their advertising to contact them, for diagnosis by the partners and prescription of the proper herbs to cure or relieve the particular disorders by Fong Poy, also known as Fong Wan, who undertook from statements of prospective purchasers calling at the partnership's place of business, and brief observation to determine the nature of the ailment and prescribe herbs therefor, placing particular emphasis upon the nature and sound of the patient's voice, and, in numerous instances, made purported diagnosis upon the basis of such information as could thus be obtained from prospect by mail, without any personal observation, and selected and mailed herbs to purchaser; by means of advertisements disseminated through the mails, newspapers, and periodicals, and circulars and other printed or written matter, including numerous purported testimonial letters containing representations with respect to benefits allegedly received through use of their herbs—

Represented directly or through implication that their herbs constituted a cure or remedy for, and possessed substantial therapeutic value in, the treatment of, numerous diseases and disorders including cancer, tuberculosis, ulcers, tumors, diabetes, Bright's disease, kidney, bladder and prostate gland troubles, paralysis, rheumatism, and arthritis, high and low blood pressure, asthma, influenza, coughs and colds, varicose veins, cross-eyes, neuritis, heart trouble, blood disorders, pyorrhea, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, sinus trouble, liver and gall bladder troubles, nervous attacks and disorders, obesity, headaches, and piles; that their herbs built up the body, purified the blood, renewed strength, stopped pain, and washed away diseases from the body, and that said Fong Poy had the ability to diagnose numerous diseases and ailments and prescribe remedies therefor;

The facts being—

(1) It is impossible to diagnose human ailments or disorders through methods employed by said partners which are based upon doctrines of historical interest only, and have been without scientific acceptance for several centuries, and there is no factual or scientific basis for theory that ailments can be diagnosed by listening to the voice; Chinese drugs of therapeutic value are known to the medical profession and are in use in various forms, though, in many cases with the useful chemicals extracted by modern medicine employed in preference to the crude drugs

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as permitting better control of the dosage; said partners' use of various crude drugs in the form of tea has no scientific basis for the treatment of disease, while, aside from inability to determine definitely exact dosage, prolonged boiling of herbs as recommended would tend to destroy the chemical agents or the medicinal materials upon which they depend for their purported efficacy; and

(2) Said herbs alone or in combination do not constitute a cure or remedy for, or possess any therapeutic value in the treatment of, cancer, tuberculosis, diabetes, Bright's disease, influenza, prostate gland troubles, paralysis, varicose veins, hardening of the arteries, cross-eyes, obesity, gall-stones, or stomach ulcers, nor for all diseases and conditions included by such general designations as heart trouble, kidney trouble, bladder trouble, liver trouble, stomach trouble, blood disorders, high and low blood pressure and bronchial disorders, would have no effect upon the underlying causes of certain conditions affording only temporary alleviation of certain symptoms such as pain associated with arthritis and rheumatism, in case of drugs with analgesic action, and paroxysms of asthma and congestion of the mucus membrane in colds, in the case of drugs containing ephedrine; and, while herb preparations containing iodine might be of some value in types of goiter due to iodine deficiency, in other types they would be definitely harmful; said herbs have no therapeutic value in the treatment of pyorrhea and will not accomplish the results otherwise claimed therefor; and none of said partners has the ability to diagnose diseases or ailments scientifically or prescribe remedies therefor;

With effect of misleading a substantial portion of the purchasing public with respect to the therapeutic values of their herbs, and of causing it thereby to purchase substantial quantities thereof:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke, *Mr. Robert Mathis, Jr.*, and *Mr. John W. Brookfield, Jr.*, for the Commission.

Mr. Frank M. Carr, of Oakland, Calif., for respondents.

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 Fong Poy, also known as Fong Wan, Fong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim, copartners operating under the firm name of Fong Wan, 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

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public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Fong Poy, also known as Fong Wan, Fong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim are copartners operating, trading, and doing business under the firm name of Fong Wan, with their principal place of business located at 576 Tenth Street, in the city of Oakland, State of California. Respondents during the year last past have been, and still are, engaged in the sale and distribution of Chinese herbs which are offered for sale and sold as a treatment for diseases and disorders of the human body.

In the course and conduct of their business respondents cause said herbs, when sold, to be transported from their place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said herbs 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 their aforesaid business, the respondents have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or 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 their said products; and have 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 their said products 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:

Beginning in the year 1916, the Fong Wan Herbalist has made a careful study of these complaints (stomach troubles) from which Americans suffer so intensely. His formula contains herbs for kidneys and liver, herbs for freeing the stomach and spleen of acid, herbs to eliminate gas and herbs to improve

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the digestion. When the blood in the stomach is in good condition, the ulcers heal.

HOW CHINESE HERBS ARE MARSHALLED TO COMBAT DISEASE

Let us take a case of Gallstones, for example. The inflamed condition of the Liver causes inflammation and congestion of the Gall Duct; and the Bile either overflows, causing Yellow Jaundice, or Solidifies into Gallstones. At intervals, the liver becomes greatly inflamed, causing swelling in the entire right side of the trunk from the glands of the neck to the lower part of the abdomen. The Appendix then swells and Appendicitis sets in. When the stones are passing through, they cause such intense pain that the sufferer frequently loses consciousness. As a symptom of Gall and Liver Troubles, there is generally more or less pain starting beneath the right rib and running around the right side, up to the shoulder blades.

In a condition of this sort, five or six kinds of herbs must be compounded for the Liver and Gall; auxiliary herbs must be added to cleanse the blood and rid it of the fire element (inflammation); some herbs must be put in to cause the air and the blood to circulate properly; other varieties must be used to take away the swelling; and still other herbs must be added for Nerves of the Shoulder Blade.

The Fong Wan Herbs work independently through the blood circulation instead of weakening the individual's constitution.

RESULTS OBTAINED FROM FONG WAN HERBS

The following persons who suffered from Arthritis, Tuberculosis, Stomach Ulcers, Diabetes, Heart Trouble, Dropsy, Malignant Growths, Prostate Gland, Paralysis, Kidney Trouble and Obesity have been benefited by taking Fong Wan Herbs. * * *

BLOOD PRESSURE

At 70 years of age, Mr. L. Smith of Richmond, who suffered high blood pressure and lacked strength to walk, sought relief by taking The FONG WAN HERBS. After two months' supply of the herbs, he obtained marvelous results and enjoyed splendid health for over ten years.

ECZEMA

Herbs for Eczema must be so compounded as to remove the impurities from the blood through the action of the lungs which drive out the impurities through the pores. In addition, herb powder may be applied externally. Herbs may also be boiled for washing the affected parts. When the disease affects either the lower or the upper limbs, herbs for cleansing the spleen must be added to the herbs in the compound for the lungs, as the spleen controls the limbs.

* * * * *

PREVENT WINTER SUFFERING

Persons who suffer from Asthma, Colds, Coughs, Neuritis, Rheumatism, Nervous Attacks, Sharp Shooting Pains in the Hands and Legs, Poor Blood Circula-

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tion and General Weakness should give their bodies more attention and better care during the cold season. They are welcome to consult Fong Wan before their ailments get a lasting grip.

The herbs sold by Fong Wan have saved the lives of many persons who had been given up to die, either with "Flu" or other serious ailments.

Respondents also, as a part of their advertising, distribute a booklet designated "Herb Lore," in which are contained many of the above quoted statements and others in which it is claimed that Fong Wan herbs are a remedy, cure or competent and effective treatment for heart trouble, high blood pressure, colds, influenza, asthma, pyorrhea, blood disorders, cross eyes and other eye troubles, cancer, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, coughs, sinus trouble, liver and gall bladder troubles, diabetes and other disorders of the kidneys and bladder, nervous attacks and disorders, arthritis, obesity, headaches, neuritis, and piles; that they stop pain and give permanent relief from asthma and other disorders. This booklet also contains numerous statements to the effect that Fong Poy or Fong Wan has the ability to diagnose and heal diseases and restore health and that the herbs are compounded individually for each purchaser.

In addition to the foregoing advertisements, the respondents disseminate false advertisements in the same manner as set out above, by means of purported testimonial letters, which the respondents place in pamphlets, booklets, and advertising copy. Among and typical of the false statements and representations disseminated as aforesaid by respondents by use of purported testimonial letters in their advertising are the following:

ULCER SUFFERER RELIEVED

For 10 years I suffered with gas and pain in my stomach, which I was told was caused by ulcers. Failing to obtain relief elsewhere, I began to take the Fong Wan herbs. Now, after having drunk the herb tea for a short time, I can eat almost anything without distress.

ARE VARICOSE VEINS INCURABLE?

For more than two years I suffered from blood poisoning due to the improper functioning of my kidneys * * * The poisonous inflammation lodged in my legs, causing varicose veins. The veins in my legs swelled to such an extent that great hard lumps the size of an egg formed in them. I tried several doctors without results. After three weeks of the herb treatment I felt like a new man, and the lumps had all disappeared * * *.

RESULTS FROM CHINESE HERBS CANNOT BE DENIED

I was suffering from Yellow Jaundice. I was completely relieved by taking the Fong Wan Herbs.

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I was very discouraged when the physician told me after an examination that I had a tumor and low blood pressure. To build me up enough to stand an operation would be very hard, as I had severe hemorrhages.

I heard so much good the FONG WAN HERBS did that I decided to try them. I took the herbs for over five months. Now, nearly seven years later I am in the best of health and more than thankful for what FONG WAN HERBS did for me.

* * * * *

I was a sufferer from kidney and prostate gland trouble that affected my back, legs and eyes. I rolled in agony from the terrible pain. After having tried different medicos without obtaining results, I decided to go to Fong Wan and take his herbs.

Then the pain became so severe that it was well nigh unbearable, my sister became frightened. Fearing that I might die, she phoned Fong Wan and was told that I should continue with the herbs. I did so, and now, after having taken the herbs for several months, all of my complaints have been overcome and I am able to resume my usual work.

* * * * *

For many years I suffered from pain in the back of my neck and round my heart. I was also troubled with gas, which felt like a lump in my chest. I tried several doctors and had all my teeth extracted, but failed to obtain relief. Fortunately, we heard of the wonderful results to be obtained through drinking the Fong Wan Herbs and I decided to try them. After having taken the Herb Tea for but three weeks, my recovery was complete.

* * * * *

For approximately two years, our son, James, suffered from a condition that was pronounced Bright's Disease. He had albumen in the Kidneys, was dizzy, listless, nervous, run down and weak. He was also troubled with a pain in his back. After having tried several doctors without results, we decided to have James try the Fong Wan herbs. He responded to the first cup of tea, and after having drunk the herb tea for three weeks he was like a new man.

* * * * *

While working in the copper mines at Ely, Nevada, I twice contracted Flu. The physicians at the hospital called the second attack "Intestinal influenza." I was very weak, could not eat and had pain throughout my intestines. As the physicians also said that I had Appendicitis, I had my appendix removed, but my condition was not improved. * * * Intense pain shot through my intestines and I felt that I might drop dead. Neither my kidneys nor my bowels functioned properly, laxatives having no effect. My brother urged that I go to see Fong Wan right away. I was brought to his office. I could scarcely take a step without excruciating pain. The tea from the first package of herbs cooked for me afforded instant relief. Now, after three weeks of the herbs, I feel able to return to Nevada.

PAR. 3. Through the use of the statements 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 herbs, respondents have represented and do now represent, directly and indirectly, that their herbs are a remedy or cure, or a competent and effective treatment for practically all diseases and

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ailments of the human body, including cancer, tuberculosis, ulcers, tumors, diabetes, Bright's disease, kidney, bladder and prostate gland troubles, paralysis, rheumatism and arthritis, high and low blood pressure, asthma, influenza, coughs and colds, varicose veins, cross eyes, neuritis, heart trouble, blood disorders, pyorrhea, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, sinus trouble, liver and gall bladder troubles, nervous attacks and disorders, obesity, headaches, and piles; that said herbs build up the body, purify the blood, renew the strength and stop pain; that said herbs wash away diseases from the body; that Fong Poy or Fong Wan is able, by observation alone, to diagnose numerous diseases and ailments and has the power to heal numerous disorders; that he has restored the health of numerous persons by the use of said herbs; that respondents' herbs are compounded individually for each purchaser.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondents as hereinbefore described are grossly exaggerated, misleading, and untrue. In truth and in fact, respondents' Chinese herbs are not a remedy or cure for, nor have they any therapeutic value in the treatment of, cancer, tuberculosis, ulcers, tumors, diabetes, Bright's disease, kidney, bladder and prostate gland troubles, paralysis, rheumatism and arthritis, high and low blood pressure, asthma, influenza, coughs, and colds, varicose veins, cross eyes, neuritis, heart trouble, blood disorders, pyorrhea, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, sinus trouble, liver and gall bladder troubles, nervous attacks and disorders, obesity, headache, piles, or any other diseases or ailments of the human body. Said herbs will not build up the body, purify the blood, renew the strength, or stop pain. They do not and cannot wash away any diseases from the human body. Fong Poy or Fong Wan is not able to diagnose or heal diseases or ailments, nor has he restored the health of any persons by the use of Chinese herbs. Respondents do not in all cases or generally compound their herbs individually for each purchaser.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said Chinese herbs, 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 said herbs are a cure, remedy, or effective treatment for various diseases and disorders of the human body as represented. As a result of such erroneous and mistaken be-

lief the purchasing public is induced to and does purchase substantial quantities of respondents' product.

PAR. 6. 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 December 7, 1939, issued its complaint in the above-entitled proceeding and thereafter caused same to be served on each of the respondents above named, Fong Poy, also known as Fong Wan; Pong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim, copartners operating under the firm name of Fong Wan, 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 of said complaint and the filing of respondents' joint answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke and Robert Mathis, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by Frank M. Carr, attorney for the respondents, before Miles J. Furnas and William C. Reeves, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments by John W. Brookfield, Jr., attorney for the Commission, and Frank M. Carr, attorney for the respondents, 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 respondents, Fong Poy, also known as Fong Wan; Pong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim, are copartners and carry on business under the firm name and style of Fong Wan, with their principal place of business located at 576 Tenth Street, in the city of Oakland, State of California. Respondents are engaged in the business of selling and distributing Chi-

nese herbs, which are offered for sale and sold as treatments for various diseases and disorders of the human body. In the course and conduct of their business respondents cause quantities of their herbs, when sold, to be transported from their place of business in the State of California into various other States of the United States to the respective purchasers thereof. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their herbs in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said herbs, by United States mails 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 preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations 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 United States mails, by advertisements in newspapers and periodicals, and by circulars and other printed or written matter, are the following:

Beginning in the year 1916, the Fong Wan Herbalist has made a careful study of these complaints (stomach troubles) from which Americans suffer so intensely. His formula contains herbs for kidneys and liver, herbs for freeing the stomach and spleen of acid, herbs to eliminate gas and herbs to improve the digestion. When the blood in the stomach is in good condition, the ulcers heal.

HOW CHINESE HERBS ARE MARSHALLED TO COMBAT DISEASE

Let us take a case of Gallstones, for example. The inflamed condition of the Liver causes inflammation and congestion of the Gall Duct; and the Bile either overflows, causing Yellow Jaundice, or solidifies into Gallstones. At intervals, the liver becomes greatly inflamed, causing swelling in the entire right side of the trunk from the glands of the neck to the lower part of the abdomen. The Appendix then swells and Appendicitis sets in. * * * As a symptom of Gall and Liver Troubles, there is generally more or less pain starting beneath the right rib and running around the right side, up to the shoulder blades.

In a condition of this sort, five or six kinds of herbs must be compounded for the Liver and Gall; auxiliary herbs must be added to cleanse the blood and rid it of the fire element (inflammation); some herbs must be put in to cause the air and the blood to circulate properly; other varieties must be used to take away the swelling; and still other herbs must be added for Nerves of the Shoulder Blade.

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Findings

The Fong Wan Herbs work independently through the blood circulation instead of weakening the individual's constitution.

RESULTS OBTAINED FROM FONG WAN HERBS

The following persons who suffered from Arthritis, Tuberculosis, Stomach Ulcers, Diabetes, Heart Trouble, Dropsy, Malignant Growths, Prostate Gland, Paralysis, Kidney Trouble and Obesity have been benefited by taking Fong Wan Herbs. * * *

BLOOD PRESSURE

At 70 years of age, Mr. L. Smith of Richmond, who suffered high blood pressure and lacked strength to walk, sought relief by taking The FONG WAN HERBS. After two months' supply of the herbs, he obtained marvelous results and enjoyed splendid health for over ten years.

ECZEMA

Herbs for Eczema must be so compounded as to remove the impurities from the blood through the action of the lungs which drive out the impurities through the pores. In addition, herb powder may be applied externally. Herbs may also be boiled for washing the affected parts. When the disease affects either the lower or the upper limbs, herbs for cleansing the spleen must be added to the herbs in the compound for the lungs, as the spleen controls the limbs.

* * *

PREVENT WINTER SUFFERING

Persons who suffer from Asthma, Colds, Coughs, Neuritis, Rheumatism, Nervous Attacks, Sharp Shooting Pains in the Hands and Legs, Poor Blood Circulation and General Weakness should give their bodies more attention and better care during the cold season. They are welcome to consult Fong Wan before their ailments get a lasting grip.

The herbs sold by Fong Wan have saved the lives of many persons who had been given up to die, either with "Flu" or other serious ailments.

Among the various pieces of advertising material distributed by the respondents is a booklet designated "Herb Lore." This booklet contains many of the statements quoted above as well as others, of which the following are typical:

Thousands of persons are being saved by the Fong Wan herbs from unnecessary operations.

Just as a heavy fall of rain washes away diseases that affect the community collectively, so do the herbs which the herbalist combines and cooks with water wash away the diseases from the body of the individual. * * *

Fong Wan herbs take away the inflammation from the heart after which the gas and pain disappear. * * * Numerous people suffering from various sorts of heart trouble have been permanently relieved by Fong Wan harmless herbs. * * * The Fong Wan Herb Compound is different from all others. It is both mild and safe and is far better than drugs at any time.

An herb compound for a cold is therefore much more beneficial than any sort of drugs.

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The Fong Wan Co. has a splendid record for the absolute and permanent relief of asthma cases.

Herbs for colds also tend to drive away influenza germs, * * *.

Up to the time of this writing not a single person who has taken the Fong Wan herbs for gall stones has either had to be operated on or has even suffered again.

Fong Wan herbs have not only cleansed the systems of many persons afflicted with various ills, but they have also helped to eradicate pyorrhea and to heal diseased gums.

Paralytic stroke quickly relieved.

In a cancer sufferer whose blood circulation is poor, the cancer is slow to develop, and the pain becomes intense at night. When the person is walking or keeps moving, the pain is greatly lessened. In cases of this kind, the blood should be enriched and strengthened, with nourishing herbs, combined with herbs to free the flood of poisonous substances. Then the cancer or growth will develop quickly and come out. In this way, pain is overcome by Chinese Herbal Remedies without resort to cocaine, morphine, or any other drug.

Respondents' booklet "Herb Lore" also contains numerous statements to the effect that Fong Poy or Fong Wan has the ability to diagnose diseases and prescribe remedies therefor.

In their advertising the respondents also use numerous testimonial letters purported to have been received from purchasers of respondents' herbs. These purported testimonials contain many statements and representations with respect to benefits alleged to have been received through the use of respondents' herbs.

PAR. 3. Through the use of the statements and representations set out above and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of their herbs, the respondents represent, directly or through inference, that their herbs constitute a cure or remedy for, and possess substantial therapeutic value in the treatment of, numerous diseases and disorders of the human body, including cancer, tuberculosis, ulcers, tumors, diabetes, Bright's disease, kidney, bladder and prostate gland troubles, paralysis, rheumatism, and arthritis, high and low blood pressure, asthma, influenza, coughs and colds, varicose veins, cross-eyes, neuritis, heart trouble, blood disorders, pyorrhea, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, sinus trouble, liver and gall bladder troubles, nervous attacks and disorders, obesity, headaches, and piles; that respondents' herbs build up the body, purify the blood, renew the strength, and stop pain; that the herbs wash away diseases from the body; that Fong Poy, also known as Fong Wan, has the ability to diagnose numerous diseases and ailments and prescribe remedies therefor.

PAR. 4. The Commission finds that the plan or method used by the respondents in the operation of their business is substantially as follows:

Members of the public suffering from disease or physical disorders are urged through respondents' advertising to contact the respondents in order that their trouble may be diagnosed by respondents and the proper herbs prescribed to cure or relieve such disorders. The person claimed by respondents to be particularly qualified to make such diagnosis and select the herbs needed is respondent Fong Poy, also known as Fong Wan. Prospective purchasers calling at the respondents' place of business are questioned by Fong Poy as to their symptoms, and from the prospective purchaser's statement and from brief observation of the purchaser, Fong Poy undertakes to determine the nature of the ailment and to prescribe the particular herb or combination of herbs required for such ailment.

In his purported diagnosis of the patient's ailment Fong Poy places particular emphasis upon the nature and sound of the patient's voice. His theory, as stated in "Herb Lore," is that:

Many sufferers make a low moaning sound. This is the tone of the Yll and signifies kidney trouble. A loud, cranky, quick-tempered voice indicates an ailment of the heart. A crying, choking voice signifies trouble in the lungs, while a sighing sound directs one to the spleen, intestines, etc.

The detection of ailments in this way by listening to the voices is frequently far more accurate and successful than are many of the exhaustive examinations made by medical men. Any reader of this article, by carefully following suggestions, will be able to discover for himself the ailment of a person who is suffering severely.

In numerous instances the prospective purchaser does not call in person at respondents' place of business but contacts respondents by mail. In such cases the purported diagnosis is made by Fong Poy upon the basis of such information as can be obtained from the prospective purchaser by mail and without any personal observation. The herbs are then selected by Fong Poy and mailed to the purchaser.

Fong Poy is not a physician and has had no formal education or training along medical or scientific lines. The respondents' contention that Fong Poy is qualified to diagnose human ailments and to prescribe therefor is based entirely upon his claim that he has made a study of ancient Chinese writings upon the subject of herbs, these writings being largely in the nature of folklore.

Respondents customarily carry in stock some 3,000 different herbs. The herbs are intended to be taken in the form of tea. They are boiled in a prescribed quantity of water and the patient drinks a portion of the resulting solution at regular intervals.

PAR. 5. The evidence shows, and the Commission finds, that it is impossible correctly to diagnose human ailments or disorders through the method employed by respondents. The diagnosis of human ailments is a complicated and difficult matter, even for the trained and

experienced physician who has available all the necessary instruments and apparatus for making tests of the various organs of the body. Moreover, frequent and repeated examinations and tests must be made in many cases if intelligent and accurate conclusions are to be reached. The brief inquiry and cursory observation made of prospective purchasers by the respondents is wholly inadequate to reveal the actual physical condition of such persons. There is no factual or scientific basis for respondents' theory that ailments can be diagnosed by listening to the voice.

PAR. 6. As indicated by respondents' publication "Herb Lore," Commission's Exhibit No. 11, the methods of diagnosis and treatment of disease used by Fong Poy, also known as Fong Wan, are based upon doctrines which are of historical interest only, and which have had no acceptability in the scientific sense for several centuries. The "Doctrine of Significances," as it is known historically and which involves analogy between color of plant preparations and color of organs of the body or color of symptoms that may occur in the body, was abandoned, so far as Western civilization was concerned, during the Middle Ages, when the obvious lack of any relationship as having a reasonable basis was appreciated. During the nineteenth century, with the rise of, particularly, organic chemistry and the study of drugs under controlled conditions on animals, most of the folklore regarding remedies upon which Fong Poy apparently relies was abandoned.

The many thousands of materials discussed in Chinese materia medica have been thoroughly investigated by scientists all over the world and notably in this country. Those drugs which have therapeutic value are known to the medical profession and are in use in various forms. Modern medicine, however, has in many cases extracted the useful chemicals, which are used in preference to the crude drugs as the dosage can be more carefully controlled without the interference by the gum or tannin or other more or less inert materials that are in crude drugs. Among the drugs of herbal origin now being used in modern medicine are digitalis, derived from foxglove; opium, from poppy; ephedrine, from the herb Ma Huang; the laxatives cascara, rhubarb, and senna; and the expectorant ipecac.

The practice of Fong Poy of compounding various crude drugs for use in the form of tea and his methods of diagnosis have no scientific basis in the treatment of diseases and conditions of the human body. In addition to the inability to definitely determine the exact dosage free from the interference of other materials, the prolonged boiling of such herbs as recommended by the respondents would have a tendency to destroy the chemical agents or the medicinal materials upon which such herbs depend for their reported efficacy.

PAR. 7. On the subject of the therapeutic value of Chinese herbs, five expert witnesses were called at the instance of the Commission. Two of these witnesses were professors of pharmacology in outstanding medical schools and have devoted much study to the subject of herbs. Two of the remaining three witnesses were physicians and members of the faculties in prominent medical schools, while the third was a practicing physician of many years' experience. All five of these witnesses occupy eminent places in their professions.

The respondents offered no expert testimony in support of their claims for their herbs, but confined their evidence to the introduction of a number of lay witnesses. The testimony of these witnesses was, in substance, that they had formerly suffered from various ailments which had been diagnosed as such by certain physicians, that the drugs and treatments prescribed by the physicians had proved of little or no value, but that upon taking the respondents' herbs they had been cured or relieved of their ailments. Much of this testimony was in the nature of hearsay and much of it was contradicted in material respects by the testimony of the physicians in question, who were introduced by the Commission as witnesses in rebuttal. After giving full consideration to the testimony of these lay witnesses, the Commission is of the opinion and finds that the testimony is of little probative value as compared with the expert testimony in the record.

PAR. 8. The Commission finds that the respondents' representations with respect to their herbs are grossly exaggerated, false, and misleading and constitute false advertisements. Respondents' herbs or any combination of such herbs do not constitute a cure or remedy for nor do they possess any therapeutic value in the treatment of cancer, tuberculosis, diabetes, Bright's disease, influenza, prostate gland troubles, paralysis, varicose veins, hardening of the arteries, cross eyes, obesity, gallstones, or stomach ulcers.

The representation that respondents' various herbs are of value in the treatment of heart trouble is too general in its scope, as heart trouble includes many diseases and conditions usually of a chronic or organic type, for which no herb product would be of any value whatsoever. Furthermore, the drug digitalis, the more effective of respondents' drugs, must be carefully controlled in dosage in the treatment of certain well recognized specific heart conditions and its administration should be limited to such specific conditions. In some heart conditions this drug has no recognized useful effect. The use of the general term "heart trouble" to designate conditions for which respondents' herbs might be efficacious is misleading to the general public and causes it to believe that respondents' preparations are

effective in all cases of heart trouble, even of a chronic or organic nature.

The same tendency to mislead the public exists in the use of the terms "kidney trouble," "bladder trouble," "liver trouble," "stomach trouble," "blood disorders," "high or low blood pressure," and "bronchial disorders," which cover a number of diseases and conditions affecting those particular organs for which respondents' herbs have absolutely no useful therapeutic value when taken as directed.

There are a number of other diseases and conditions named by the respondents in their advertising in the treatment of which the use of respondents' herbs has no therapeutic value in excess of the temporary alleviation of certain symptoms associated with such conditions. Among these are arthritis, rheumatism, asthma, and colds. Drugs of herbal origin which have an analgesic action might afford temporary relief from the symptoms of pain associated with arthritis and rheumatism; drugs containing ephedrine might afford temporary relief from the paroxysms of asthma and also afford temporary relief from the symptoms of congestion of the mucous membrane in colds. The use of these preparations, however, would have no effect upon the underlying causes of these conditions and would not constitute a cure or remedy for such conditions.

There are some types of goiter which are due to a deficiency of iodine, and as to such types the use of herb preparations containing iodine might be of some value. There are, however, other types of goiter in which the use of iodine would be definitely harmful. The therapeutic value of respondents' herbs is limited to the extent that a deficiency of iodine is supplied when the condition is due to an iodine deficiency.

The use of respondents' herbs in the form of tea has no therapeutic value in the treatment of pyorrhea.

Respondents' herbs will not build up the body, purify the blood, or renew strength. The use of said herbs will not wash away diseases from the body. Neither the respondent Fong Poy nor any of the other respondents have the ability to properly or scientifically diagnose diseases or ailments or prescribe remedies therefor.

PAR. 9. The use by the respondents of the false advertisements referred to herein has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and values of respondents' herbs and to cause the purchasing public to purchase substantial quantities of respondents' herbs as a result of the erroneous and mistaken belief engendered by such false advertisements.

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Order

CONCLUSION

The 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, the answer of respondents, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence, briefs filed herein and oral arguments by John W. Brookfield, Jr., counsel for the Commission, and by Frank M. Carr, counsel for respondents, 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, Fong Poy, also known as Fong Wan; and Fong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lin, individually and trading as Fong Wan, or trading under any other name, 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 herbs, or any products 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, by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(a) That respondents' herbs constitute cures or remedies for, or possess any therapeutic value in the treatment of, cancer, tuberculosis, diabetes, Bright's disease, influenza, prostate gland disorders, paralysis, varicose veins, hardening of the arteries, cross eyes, obesity, gallstones, stomach ulcers, or pyorrhea.

(b) That respondents' herbs are cures or remedies for heart trouble, kidney trouble, bladder trouble, liver trouble, stomach trouble, blood disorders, high or low blood pressure, or bronchial disorders, or constitute competent or effective treatments therefor.

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(c) That respondents' herbs constitute cures or remedies for arthritis or rheumatism or have any therapeutic value in the treatment of such conditions in excess of affording temporary relief from the symptoms of pain.

(d) That respondents' herbs constitute a cure or remedy for asthma or have any therapeutic value in the treatment of such condition in excess of furnishing temporary relief from the paroxysms of asthma.

(e) That respondents' herbs constitute cures or remedies for colds or have any therapeutic value in the treatment thereof in excess of affording temporary relief from the symptoms of congestion of the mucous membrane.

(f) That respondents' herbs constitute a cure or remedy for goiter or have any therapeutic value in the treatment of such condition in excess of that afforded by supplying iodine in those cases where a deficiency of iodine exists.

(g) That said herbs will build up the body, purify the blood, or renew strength.

(h) That said herbs wash away diseases from the body.

(i) That respondent Fong Poy or Fong Wan, or any of the respondents, have the ability to diagnose diseases or ailments or prescribe remedies therefor.

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 respondents' herbs, which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

It is further ordered, That the respondent shall, within 60 days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

STEPHENSON LABORATORIES TRUST, ETC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1911

Docket 3622. Complaint, Oct. 4, 1938—Decision, May 29, 1941

Where a corporation engaged in the licensing of others to manufacture arch supports under United States letters patent and certain contrivances designated as foot exercisers, and in interstate sale to licensees, of a correspondence course of instruction in the manufacture of said articles and for their application in a system or plan of correction of foot troubles, in substantial competition with others engaged in the sale and distribution in commerce of arch supports and of correspondence courses by mail designed to render purchasers proficient in some line of business endeavor intended to increase their earning power—

- (a) Made use of term "Laboratories" in the name employed by it and through use of such representations circulated to prospective customers as "Stephenson Laboratories Trust," "Stephenson Laboratory," and that Stephenson Laboratory was a pioneer in the making of arch supports to individual impressions represented directly and by implication that its devices, system of correction, and instruction with respect thereto, were developed in and disseminated by a laboratory;

Facts being that its so-called laboratory was merely a workroom containing the materials and tools necessary to make arch supports and foot exercisers, and not a place equipped for scientific research, nor staffed by anyone having any medical education or other special training qualifying him for research with respect to the correction of foot troubles;

- (b) Represented in advertisements of its said courses and manufacturing licenses in magazines and periodicals of general circulation and through circulars, pamphlets, and other printed or written matter, that the structure of the foot was simple; that anyone of ordinary intelligence who mastered the course would thereby become sufficiently learned and proficient to distinguish between all surgical and nonsurgical foot conditions, and to cure or overcome all foot troubles not requiring operative surgery; and that application of its system of foot culture, foot exercise and arch supports would correct and overcome all such foot troubles and could not fail to produce successful results;

The facts being, structure of the foot is not simple, but complex; proper diagnosis is a necessary preliminary to the treatment of any foot trouble; many ailments of the foot may be due in whole or in part to systemic causes which require knowledge of the entire body for proper diagnosis and treatment; in many such instances complete mastery of its courses would not supply information needed, which could not be given by correspondence; application of its said system will not cure all foot troubles with unfailing success, since there are many foot troubles not requiring operative surgery for which arch supports and exercisers are not appropriate;

- (c) Represented further, as aforesaid, that its system prepared the student to treat successfully many specific foot troubles including (1) weak feet, flat