

Syllabus

IN THE MATTER OF

J. R. OLNEY, SR., AND J. R. OLNEY, JR., DOING BUSINESS
AS J. R. PHARMACAL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4127. Complaint, May 7, 1940—Decision, June 11, 1941*

Where two individuals engaged in interstate sale and distribution of their "J. R." medicinal preparation; by advertisements disseminated through the mails, newspapers, and periodicals, and circulars, leaflets, and other advertising literature—

(a) Represented that their preparation constituted a cure or remedy for all cases of athlete's foot and afforded immediate relief from said condition, itching toes, ringworm, and raw, inflamed feet, that it was endorsed by leading health institutions, and was the only known treatment of its kind;

Facts being no method of treating the condition known as athlete's foot is applicable or suitable in all cases, extended treatment is usually required, and in certain cases it is practically impossible to kill or destroy all of the fungi; while the drugs in said preparation were among those used by dermatologists in treatment of athlete's foot or ringworm generally, they were rarely used by such persons in the proportions found therein, and might in some cases aggravate rather than improve the condition; said preparation would not afford cure or remedy or immediate relief in all cases, though possibly affording temporary relief in some cases from frequent itching symptom associated therewith; and said product had not been endorsed as claimed, and was not the only known treatment of its kind; and

(b) Represented through the statement "Athlete's foot fungi killed in less than 3 minutes in laboratory test," that said product would in all cases kill or destroy such fungi, so that thereby speedy cure would be effected;

Facts being that while said statement might be literally true, as used it was deceptive and misleading: conditions under which laboratory tests were made and those existing when the fungi were on the foot were so dissimilar that results obtained in the former instances are not necessarily indicative of what might be expected in latter; and said preparation was wholly incapable of killing all fungi under ordinary conditions of use;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic value of their said preparation, and to cause it to purchase their product as a result of such erroneous belief:

Held, That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before Mr. John J. Keenan, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Guy W. Davis, of Chester, Pa., for respondents.

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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 J. R. Olney, Sr., and J. R. Olney, Jr., individuals, doing business as J. R. Pharmacal Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, J. R. Olney, Sr., and J. R. Olney, Jr., are individuals doing business as J. R. Pharmacal Co., with their principal office and place of business located at 2011 Edgmont Avenue, Chester, Pa. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of a medical preparation designated "J. R." In the course and conduct of their business, respondents cause said preparation when sold to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein respondents have maintained a course of trade in said preparation in commerce between and among 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 the United States mails, and by various 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 said product; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product 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 periodicals and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Can't get rid of athlete's foot? Then you haven't used J. R.

Athlete's foot, itching toes, ringworm, raw inflamed feet, here is new instant relief.

Athlete's foot is generally relieved by a single application. Contains a valuable healing agent which heals the inflamed tissues.

J. R. is indorsed by leading health institutions as a most thorough scientific treatment for athlete's foot.

PAR. 3. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents have represented and now represent that the use of their preparation "J. R." assures a cure of all cases of athlete's foot; that it gives instant or immediate relief from athlete's foot, itching toes, ringworm, and raw, inflamed feet; that it is endorsed by leading health institutions; that it is unique or the only known treatment of its kind.

The representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact the condition known as athlete's foot is caused by several different types of organisms and "J. R." is not a remedy or cure for all forms of the disorder and is not effective in all instances. It will not give instant or immediate relief from athlete's foot, itching toes, ringworm, or raw, inflamed feet in excess of alleviating the symptomatic itching which accompanies or is associated with such conditions. Respondents' preparation has not been endorsed by leading health institutions; and it is not unique or the only known treatment of its kind.

Through the dissemination of the further advertising claims "athlete's foot fungi killed in less than 3 minutes in laboratory tests," respondents represent that their preparation "J. R." will kill the fungi causing athlete's foot. By the use of said representation, respondents induce purchasers to believe that said preparation will destroy athlete's foot fungi in all instances when applied to the affected portion. In truth and in fact the application of respondents' preparation "J. R." will not kill athlete's foot fungi in all instances since the condition known as athlete's foot is caused by several different types of organisms and "J. R." is not a remedy or cure for all forms of the disorder and is not effective in all instances.

PAR. 4. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their preparation, disseminated as aforesaid, 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 statements, representations, and advertisements are

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true, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said medicinal preparation.

PAR. 5. 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 May 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, J. R. Olney, Sr., and J. R. Olney, Jr., individuals, doing business as J. R. Pharmacal Co., 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' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by R. P. Belinger, attorney for the Commission, and in opposition to the allegations of the complaint by Guy W. Davis, attorney for the respondents, before John J. Keenan, an examiner 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, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, J. R. Olney, Sr., and J. R. Olney, Jr., are individuals doing business as J. R. Pharmacal Co., with their principal office and place of business located at 2011 Edgemont Avenue, Chester, Pa. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of a medicinal preparation designated by them as "J. R." and intended for use in the treatment of certain ailments and conditions of the human body.

In the course and conduct of their business respondents cause their preparation, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and for more than 3 years last past have maintained, a course of trade in their preparation in commerce between and among the various States of the United States and in the District of Columbia.

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, advertisements concerning their preparation by the 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, advertisements concerning their preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in such advertisements, disseminated and caused to be disseminated as herein set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

ATHLETE'S FOOT, ITCHING TOES—RINGWORM, RAW INFLAMED FEET.

Here is instant relief. The only known treatment of its kind. J. R. is endorsed by leading health institutions as the most thoroughly scientific treatment for Athlete's Foot. Don't take chances use J. R.

CAN'T GET RID OF ATHLETE'S FOOT? THEN YOU HAVEN'T USED J. R.

ATHLETE'S FOOT, RINGWORM, ITCHING TOES QUICKLY RELIEVED BY J. R.

At the first sign of itching of the feet or toes, something should be applied which is capable of killing the fungi. J. R. is especially recommended for this purpose; it also stops that annoying itching immediately; In this early stage, Athlete's Foot is generally relieved by a single application of J. R.

J. R. FOR ATHLETE'S FOOT, INSTANT RELIEF FROM ITCHING.

A scientific treatment for Athlete's Foot, "ringworm," toe itch.

J. R. contains a most valuable healing agent which soothes the inflamed tissues, and other ingredients allay the itching, toughening the tender surface.

**ITCHING TOES (due to fungus infection) RAW INFLAMED FEET—RINGWORM
ATHLETE'S FOOT ENTIRELY CLEARED UP * * ***

PAR. 3. The Commission finds that through the use of these advertisements, and others of a similar nature, the respondents have represented that their preparation constitutes a cure or remedy for all cases of athlete's foot; that it affords instant or immediate relief from

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athlete's foot, itching toes, ringworm, and raw, inflamed feet; that it is endorsed by leading health institutions; and that it is the only known treatment of its kind.

PAR. 4. The evidence shows, and the Commission finds, that the condition known as athlete's foot is a form of ring worm. It is caused by fungi, of which there are many varieties. There is no method of treating the condition which is applicable or suitable in all cases. The treatment must in each case be governed by the variety of the fungi, the condition prevailing in the particular case and the acuteness of the condition. Rarely, if ever, can a case of athlete's foot be cured within a short period of time, extended treatment usually being required. And, in many cases, even after extended treatment and after the condition appears to have been eliminated, certain of the fungi still remain. There are, in fact, certain cases of athlete's foot in which it is practically impossible to kill or destroy all of the fungi.

The active ingredients of respondents' preparation are:

Salicylic acid
Benzoic acid
Tannic acid and
Phenol.

While these drugs are among those used by dermatologists in the treatment of athlete's foot and ringworm generally, the drugs are rarely used by dermatologists in the proportions found in respondents' preparation. For example, the salicylic acid content in the preparation is unusually high, and this would in some cases cause the preparation to aggravate rather than improve the condition. The preparation does not in any event constitute a cure or remedy for athlete's foot in all cases. Nor will the preparation afford instant or immediate relief from athlete's foot, itching toes, ringworm, or raw, inflamed feet, although it may, by reason of its phenol content, afford temporary relief in some cases from the itching symptom frequently associated with such conditions. Respondents' preparation has not been endorsed by leading health institutions, nor is it the only known treatment of its kind. The drugs constituting the preparation have long been known to and used by dermatologists generally.

The Commission therefore finds that these representations of the respondents with respect to their preparation and its therapeutic value are grossly exaggerated, deceptive, and misleading, and constitute false advertisements.

PAR. 5. The respondents have also used in their advertisements the statement, "Athlete's foot fungi killed in less than 3 minutes in laboratory test." The testimony of a number of members of the

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purchasing public shows, and the Commission finds, that to a substantial portion of the purchasing public this statement constitutes a representation that respondents' preparation will in all cases kill or destroy athlete's foot fungi, and that thereby a speedy cure of athlete's foot will be effected.

Respondents introduced in evidence a report of a chemical laboratory showing that under certain tests conducted by the laboratory certain athlete's foot fungi were killed in 3 minutes when subjected to respondents' preparation. However, the conditions under which laboratory tests are made and the conditions existing when the fungi are actually on the foot are so dissimilar that results obtained in the former instance are not necessarily indicative of results which may be expected in the latter instance. The uncontradicted expert testimony in the record is to the effect that respondents' preparation is wholly incapable of killing athlete's foot fungi in all cases under ordinary conditions of use. The Commission therefore finds that while respondents' statement with respect to the laboratory test of their preparation may be literally true, such statement is deceptive and misleading when used in connection with the advertising of the preparation to the general public.

PAR. 6. The Commission further finds that the use by the respondents of the false advertisements herein referred to has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic value of respondents' preparation, and to cause such portion of the purchasing public to purchase respondents' preparation as a result of the erroneous and mistaken belief so engendered.

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 John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and the exceptions thereto, and briefs filed by R. P. Bellinger, attorney for the Commis-

sion and Guy W. Davis, attorney for the respondents (oral argument not having been requested) and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, J. R. Olney, Sr., and J. R. Olney, Jr., individually and trading as J. R. Pharmacal Co., 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 respondents' medicinal preparation designated "J. R.," or any 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 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:

(a) Represents, directly or through inference, that said preparation is in all cases a cure or remedy for athlete's foot.

(b) Represents, directly or through inference, that said preparation affords instant or immediate relief from athlete's foot, itching toes, ringworm, or raw, inflamed feet, in excess of temporarily relieving the itching symptom associated with such conditions.

(c) Represents, directly or through inference, that said preparation is endorsed by leading health institutions, or that it is the only known treatment of its kind.

(d) Uses the statement, "Athlete's foot fungi killed in less than three minutes in laboratory test," or otherwise represents that said preparation will in all cases kill or destroy athlete's foot fungi.

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.

It is further ordered, That the respondents shall, within 60 days after 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.

Complaint

IN THE MATTER OF
D. J. MAHLER 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 4228. Complaint, Aug. 7, 1940—Decision, June 11, 1941

Where a corporation engaged in interstate sale and distribution of its "Mahler Electrolysis Apparatus" for electrolytic removal of superfluous hair by individual self-application in the home; by advertisements disseminated through the mails, newspapers, circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented that said device was an efficient, effective and safe method for the permanent removal of hair by individual self-application in the home, and that its operation required only ordinary care and skill, when in fact its operation required the services of a skilled operator who must be acquainted with anatomy and physiology, particularly of the areas to be covered, and also with bacteriology and sepsis, as well as the properties of the machine used, proper use whereof by lay person is extremely difficult, while improper use may cause scarring, pitting or infection, with particular danger where used on certain areas and possibility of infection leading to abscess of the brain; use to remove hairs from some pigmented moles may stimulate quiescent cells to growth terminating in cancer, treatment of cancerous mole may cause dissemination of cancer cells all over the body; and use thereof to remove hairs from syphilitic lesions or other areas showing local pathological conditions may produce serious injury; and
- (b) Failed to reveal facts material in the light of aforesaid representations, and that use of said device under prescribed or usual conditions might result in permanent disfigurement or cause infections or other irreparable injury to health, and that said device should not be used to remove hair from cancerous or syphilitic lesions, pigmented moles, or other areas showing local pathological conditions;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing a portion of it, because of such belief, to purchase its said device:
Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Hugh F. O'Donnell, of New York City, 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 D. J. Mahler Co., Inc., a corporation, hereinafter referred to as respondent, has violated