

IN THE MATTER OF

REX DRUG COMPANY, AND LOUIS PODROFSKI, INDIVIDUALLY AND TRADING AS REX DRUG COMPANY, AND AS AN OFFICER THEREOF

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

Docket 4342. Complaint, Oct. 10, 1940—Decision, July 11, 1941

Where a corporation and an individual, who was president and treasurer thereof and directed and controlled its policies and practices, engaged in interstate sale and distribution of various medicinal preparations, including one designated "Rex Perio Pills," for treatment of delayed menstruation; by means of advertisements disseminated through the mails, in periodicals, and by circulars, leaflets, pamphlets, and other advertising literature; in cooperation with one another—

- (a) Represented, directly or by implication, that their said preparation constituted a competent and effective treatment for delayed, scanty, and painful menstruation, and that it was safe and harmless;

The facts being it was not a competent or effective treatment for said condition, and was not safe or harmless, in that it contained certain drugs, use whereof under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and, where used to interfere with pregnancy, might result in uterine infection and blood poisoning or other serious and irreparable injury to health; and

- (b) Failed to reveal facts material in the light of such representations, and that the use of said preparation under prescribed or usual conditions might result in said serious and irreparable injury;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that their said preparation possessed properties which it did not in fact possess, and that it was safe and harmless, when such was not the fact, and with result, that, because of such belief, said public purchased substantial quantities of their 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.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Taggart for the Commission.

Jacobson, Merrick, Nierman & Silbert, of Chicago, Ill., 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 Rex Drug Co., a

corporation and Louis Podrofski, individually and trading as Rex Drug Co., and as an officer of Rex Drug Co., a corporation, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rex Drug Co. is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 201 East Thirty-fifth Street, Chicago, Ill.

Respondent Louis Podrofski is an individual trading as Rex Drug Co. with his principal office and place of business located at 201 East Thirty-fifth Street, Chicago, Ill. Respondent Podrofski is also president and treasurer of the corporate respondent Rex Drug Co. and directs and controls the policies and practices of the corporate respondent.

The respondents have acted in conjunction and cooperate with each other in carrying out the acts and practices hereinafter alleged.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of various medicinal preparations, including a preparation designated Rex Perio Pills, intended for use in the treatment of delayed menstruation. Respondents cause and have caused their said preparation, when sold, to be transported from their place of business in the State of Illinois 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 mentioned herein have maintained a course of trade in their said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. 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; 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

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set forth, by the United States mails, by advertisements in periodicals and by circulars, leaflets, pamphlets, and other advertising literature are the following:

Ladies * * * For abnormally Delayed Periods. REX PERIO PILLS used for many years by many women all over the country for the relief of ABNORMALLY DELAYED, SCANTY, and PAINFUL MENSTRUATION PERIODS, when due to unnatural causes.

Rex Perio Pills have given timely relief to many considerably past due, abnormally delayed periods and are praised highly by many women all over the country because they were not disappointed in their time of need, and for this reason tell one another how good they are for relief of abnormal, unnatural delay.

This non-foeticidal compound is composed of time tested ingredients, such as have been in use by many physicians in their practice for many years. It contains no opiates, no dope, no narcotic, no habit forming drugs, so why take a chance and maybe experience the fretfulness and jitters that are often caused by unnatural delay? Order a box of Rex Perio Pills at once and see for yourself the satisfactory relief they may bring you, which is just what women want, not flashy and exaggerated claims.

We cannot begin to tell you about the many satisfied customers we have all over the country and about the wonderful relief and satisfaction they report from these pills, in their time of need. Nothing we can say about the satisfactory relief these pills afford will be nearly as convincing as your using them yourself would be, and so sure are we that they will prove their satisfaction to you, that we make this liberal offer of your money back in full on the first box, if they fail to prove satisfactory.

You must agree with us that nothing could be more fair to you, and in no other way except by trying them could you experience the satisfaction their fine ingredients, carefully compounded, will afford you, at this fretful trying time, when you really need something excellent. Then too, absolute privacy is assured when ordering from us. No prying eyes or gossiping tongues to know your business.

Some women keep these pills always on hand and take a few just before the due time, so as to help obtain the relief of a full, unsuppressed period, free from abnormal delay, which is so desirable. * * *

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondents have represented, directly or through inference, that their said preparation constitutes a competent and effective treatment for delayed, scanty, and painful menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' preparation does not constitute a competent or effective treatment for delayed, scanty, or painful menstruation. Said preparation is not safe or harmless, as it contains the drugs ergotin, extract of black hellebore, aloes, and oil of savin, in quantities sufficient to cause serious and irreparable

injury to health, if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, such as 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 to interfere with the normal course of pregnancy, 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.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects 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 producing a gangrenous condition of the lower limbs, resulting possibly in loss of limbs or in other serious and irreparable injury to health.

PAR. 6. The advertisements disseminated by respondents as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, 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 and irreparable injury to health.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said 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 respondents' preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' preparation.

PAR. 8. 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 the 10th day of October

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1940, issued, and on the 12th day of October 1940, served its complaint in this proceeding upon respondents, Rex Drug Co., a corporation, and Louis Podrofski, individually and trading as Rex Drug Co., and as an officer of Rex Drug Co., a corporation, 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, the Commission, by order entered herein, granted respondents' 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 the 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 Rex Drug Co. is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 201 East Thirty-fifth Street, Chicago, Ill.

Respondent Louis Podrofski is an individual trading as Rex Drug Co. with his principal office and place of business located at 201 East Thirty-fifth Street, Chicago, Ill. Respondent Podrofski is also president and treasurer of the corporate respondent Rex Drug Co. and directs and controls the policies and practices of the corporate respondent.

The respondents have acted in conjunction and cooperate with each other in carrying out the acts and practices hereinafter alleged.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of various medicinal preparations, including a preparation designated Rex Perio Pills, intended for use in the treatment of delayed menstruation. Respondents cause and have caused their said preparation, when sold, to be transported from their place of business in the State of Illinois 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 mentioned herein have maintained a course of trade

in their said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. 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 means of 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 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 means of the United States mails, by advertisements in periodicals and by circulars, leaflets, pamphlets, and other advertising literature are the following:

Ladies * * * For abnormally Delayed Periods. REX PERIO PILLS used for many years by many women all over the country for the relief of ABNORMALLY DELAYED, SCANTY, and PAINFUL MENSTRUATION PERIODS, when due to unnatural causes.

Rex Perio Pills have given timely relief to many considerably past due, abnormally delayed periods and are praised highly by many women all over the country because they were not disappointed in their time of need, and for this reason tell one another how good they are for relief of abnormal, unnatural delay.

This non-foeticidal compound is composed of time tested ingredients, such as have been in use by many physicians in their practice for many years. It contains no opiates, no dope, no narcotic, no habit forming drugs, so why take a chance and maybe experience the fretfulness and jitters that are often caused by unnatural delay? Order a box of Rex Perio Pills at once and see for yourself the satisfactory relief they may bring you, which is just what women want, not flashy and exaggerated claims.

We cannot begin to tell you about the many satisfied customers we have all over the country and about the wonderful relief and satisfaction they report from these pills, in their time of need. Nothing we can say about the satisfactory relief these pills afford will be nearly as convincing as your using them yourself would be, and so sure are we that they will prove their satisfaction to you, that we make this liberal offer of your money back in full on the first box, if they fail to prove satisfactory.

You must agree with us that nothing could be more fair to you, and in no other way except by trying them could you experience the satisfaction their fine ingredients, carefully compounded, will afford you, at this fretful trying time, when you really need something excellent. Then too, absolute privacy is assured when ordering from us. No prying eyes or gossiping tongues to know your business.

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Some women keep these pills always on hand and take a few just before the due time, so as to help obtain the relief of a full, unsuppressed period, free from abnormal delay, which is so desirable. * * *

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondents have represented, directly or by implication, that their said preparation constitutes a competent and effective treatment for delayed, scanty, and painful menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' preparation does not constitute a competent or effective treatment for delayed, scanty, or painful menstruation. Said preparation is not safe or harmless, as it contains the drugs ergotin, extract of black hellebore, aloes, and oil of savin, in quantities sufficient to cause serious and irreparable injury to health, if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, such as 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 to interfere with the normal course of pregnancy, 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.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects 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 producing a gangrenous condition of the lower legs, resulting possibly in loss of legs or in other serious and irreparable injury to health.

PAR. 6. The advertisements disseminated by respondents as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, 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 and irreparable injury to health.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to

their said 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 respondents' preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' preparation.

CONCLUSION

The aforesaid 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 and the answer of the respondents, in which answer the respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Rex Drug Co., a corporation, and its officers, and Louis Podrofski, as an officer of said corporation, and as an individual trading as Rex Drug Co., or trading under any other name or names, 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 medicinal preparation known as Rex Perio Pills, or any other medicinal preparation or product 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 by implication, that said preparation constitutes a competent or effective treatment for delayed, scanty, or painful menstruation, or that said preparation is safe or harmless; or which advertisement fails to reveal that the use of said

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preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in cases 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 advertisement fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in cases of pregnancy, may cause uterine infection and blood poisoning.

It is further ordered, That respondents shall within 10 days after service upon them of this order, file with the Commission an interim report in writing, stating whether they intend to comply with this order, and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, said respondents shall 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

MOTOR TIRE RETREAD COMPANY, INC., BENJAMIN DUCHEN, LILLIAN HOLLOWICH AND JOHN M. WEINER, AS OFFICERS AND DIRECTORS OF MOTOR TIRE RETREAD COMPANY, INC., ALSO TRADING AS NATION WIDE TIRE COMPANY, CENTRAL TIRE & RETREADING EXCHANGE, ETC.

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

Docket 4325. Complaint, Sept. 30, 1940—Decision, July 12, 1941

Where a corporation and an individual, who was president and director thereof, engaged in interstate sale and distribution of used tires which had been retreaded or recapped for use on automobiles, trucks, and buses; to obtain salesmen for their products—

- (a) Represented, through newspaper advertisements and through their "crew managers," that salesmen employed by them received a commission of 10 percent on all orders obtained by them, which amount salesmen collected from purchaser as a deposit at the time order was taken, that their salesmen were further credited with a bonus of 5 percent on each order accepted and paid for in full by purchaser, and that they would also pay all expenses incurred by the salesman for oil and gasoline used in operation of his automobile, provided his sales totaled a specified minimum varying from \$200 to \$250 per week; and
- (b) Represented, through their said "crew managers," that the \$5 so-called "bond deposits" required of the salesmen for the sample kits which the "crew managers" supplied to them, and which contained cross-section tire specimens represented by said corporation as being samples of and representative of the tires sold by them, would be refunded to the salesmen after they had been in their employ for three weeks;

The facts being that their salesmen did not receive, in all cases, the deposit of 10 percent collected by them on each order, but in the event the remainder of the purchase price of tires ordered was not paid by purchasers, said deposit was deducted from future earnings of the salesman, and in many cases they did not pay their salesmen a bonus on sales paid for by customers; they did not pay salesmen expense incurred for oil and gasoline used in operation of their automobiles, even though said salesmen's aggregate weekly sales might total specified minimum above referred to; did not, in many cases, refund to salesmen so-called "bond deposit" after the salesmen had been in their employ for 3 weeks, or at any other time; and the cross-section tire specimens in aforesaid sample kits were not, in fact, representative of the tires actually sold and delivered to purchasers, which were far inferior to such purported samples; and

Where said corporation and individual, to induce purchase of their said products, by means of letters, order blanks, and other written or printed material