

Complaint

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IN THE MATTER OF
THERMALAID METHOD, INC., AND CHARLES H.
McFARLAND

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

Docket 4078. Complaint, Apr. 2, 1940—Decision, July 25, 1941

Where a corporation and an individual, who was its president and manager, engaged in the manufacture and interstate sale and distribution of their "Thermalaid" electrical device for ailments of the prostate gland by the application of heat to adjacent areas; by means of advertisements disseminated through the mails, in newspapers and periodicals, circulars, pamphlets, and other advertising literature—

Represented, directly and by implication, that use of their device provided a cure or remedy for all prostate gland disorders, ranging from milder forms of prostatitis due to irritation to a complete state of hypertrophy (enlargement), or atrophy (hardening) of the gland, that use of said device constituted a competent and effective treatment for such conditions, and would prolong vigorous years of life and recuperate vitality and sex virility;

Facts being, it did not provide a cure for such disorders, or an effective treatment therefor in excess of the benefit that might be expected from local application of heat in cases of acute or chronic prostatitis in its milder forms, and was of no value in prolonging vigorous life or recuperating virility;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it because of such mistaken belief, to purchase 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.

Mr. Morton Nesmith for the Commission.

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 Thermalaid Method, Inc., a corporation, and Charles H. McFarland, an individual, 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. Respondent Thermalaid Method, Inc., is a corporation organized, existing and doing business under and by virtue of

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the laws of the State of Ohio. Respondent Charles H. McFarland is the president of respondent corporation Thermalaid Method, Inc., and is actively engaged in the management and conduct of its business. Both respondents have their principal office and place of business at Franklin and Morris Avenues in the city of Steubenville, State of Ohio. The respondent Thermalaid Method, Inc., is a successor corporation to the Electro Thermal Co., having acquired by purchase or lease all of the assets, including inventories, accounts receivable, patents, trade-marks, plant, and building previously occupied by the Electro Thermal Co.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing, offering for sale and selling an electrical device designated as Thermalaid for the treatment of the prostate gland and ailments or debilities arising therefrom by the application of heat to the area adjacent to said prostate gland. Respondents have caused and still cause said device when sold to be transported from their place of business in the State of Ohio to purchasers thereof located at various points 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 device in commerce between and among 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, 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, among others, the following:

There is no question that is more universally occupying the attention of the middle-aged man of today than this: "How may I prolong the vigorous years

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of my life and recuperate the vitality and sex virility I feel gradually slipping away?"

So little is known by the average man regarding sex-hygiene and the biologic laws governing his sex-life, that when he begins to be harassed with annoying symptoms of distress in the pelvic region or lower extremities, he adds to his physical debility the mental torture engendered by fear of "lost manhood."

The statement that "A man is just as old as his Prostate" is literally as well as figuratively true, for the prostate, like the other pelvic glands of the body, is an organ of internal as well as external secretion.

Due to the erroneous impression caused by innumerable advertisements of patent medicines, many men attribute backache, frequency or difficulty of urination, pain in the lower extremities, and many other symptoms of pelvic disorders to a disturbance in the kidneys or bladder or to sciatica when frequently the seat of trouble is in the prostate gland. And even though the effects are manifested in one of many forms, treatment applied at the point of manifestation often effects no results, simply because the source of the difficulty goes unattended, and to eradicate any disorder, one must treat it at its source.

The fact that many reliable medical authorities tell us that over 65% of all men past fifty years of age suffer from some form of prostatic trouble is sufficient reason for our having dwelt so at length regarding this part of the pro-genital system. And with the proper exercise of personal hygiene and immediate attention of any symptoms of distress, many acute conditions of this gland may be completely remedied before they become chronic.

Do you know that over 40%, yes, nearly 50%, of the American men past forty cannot even reproduce their kind?

Prostatitis covers a wide field, ranging from the milder forms of irritation to a complete state of hypertrophy (enlargement) or atrophy (hardening). In fact, many men do not even know that they have a prostate gland until they are almost ready for a prostatectomy (the removal of the prostate gland by excision), having misread the symptoms of the disordered gland and taken treatments for bladder or kidney trouble instead.

Sex weaknesses and lost manhood, when due to prostate trouble, have been found to respond beautifully to application of the infra-red radiation and thermal-energy when applied directly in the area of the prostate by the "Thermalaid".

Much is said about glands these days. Experimenters are taking the glands of animals and feeding them to patients with the hope of doing for the patients what the patient's own glands should have done.

But isn't it much more desirable to have our own glands in health and working properly than to depend upon the glands of the lower animals?

So we come to you with Thermalaid, a convenient means of applying vitalizing, dry, electrically generated, thermic energy, directly in the area of the inflamed prostate, in a continuous manner, correctly.

The late forties and fifties are approached by many men with a more or less certain uneasiness. Rather unconsciously they become aware of shortcomings—resistance may be lowered; little incidents are magnified; we find ourselves cross and irritable; things at home are no longer just right, the coffee isn't good, things we once cherished and looked forward to with high anticipation become more like a duty and even then are attempted with uncertainty.

Just think how good you would feel if the frequency of urination was relieved—if the backache that has bothered you for a long time was more comfortable—if you could do your work without that tired listless feeling, so often resulting from

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broken rest. Only a safe, convenient and comfortable method would appeal to your good judgment. THERMALAID is just that method. Thermalaid releases to the prostate through the rectum wall those long rays of infra-red radiation so soothing and comforting. This type of therapy is strikingly successful with inflammatory conditions of the prostate.

The potency, logic, simplicity and economy of the THERMALAID are among its highest endorsements and warrant your immediate trial. Much of life's happiness may often be restored in the Autumn and much of your lost confidence may often be regained. * * *

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent, directly and by implication, that the use of their device "Thermalaid" provides a cure or remedy for all prostate gland disorders ranging from milder forms of prostatitis due to irritation, to a complete state of hypertrophy (enlargement) or atrophy (hardening) of the gland, and that the use of such device constitutes a competent and effective treatment therefor. By said means the respondent further represents that the use of said device "Thermalaid" will prolong vigorous years of life and recuperate the vitality and sex virility.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact, the use of respondents' device "Thermalaid" does not provide a cure or remedy for prostate gland disorders, or provide a competent and effective treatment therefor in excess of the benefit that might be expected through the local application of heat in cases of acute or chronic prostatitis in its milder forms. Said device has no therapeutic value in the treatment of the state of hypertrophy or atrophy of the prostate gland. Such device is of no value in prolonging vigorous years of life, and will not recuperate vitality or sex virility.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their device and those not specifically set out herein 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 and representations are true and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase said device.

PAR. 7. 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 2d day of April 1940, issued and subsequently served its complaint in this proceeding upon the said respondents' Thermalaid Method, Inc., a corporation, and Charles H. McFarland, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondents filed no answer. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and Richard P. Whiteley, Assistant Chief Council for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted and filed, 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, Thermalaid Method, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio. Respondent Charles H. McFarland is the president of said corporation and has been actively engaged in the management and conduct of its business. Both Thermalaid Method, Inc., and Charles H. McFarland have as their principal office and place of business a factory or plant at Franklin and Morris Avenues, in the city of Steubenville, State of Ohio. Thermalaid Method, Inc., is a successor corporation to The Electric Thermal Co., having acquired by purchase or lease all of the assets, including inventories, accounts receivable, patents, trade-marks, and plant and building previously occupied by The Electro Thermal Co.

PAR. 2. Both the Thermalaid Method, Inc., and Charles H. McFarland have been for more than 1 year last past engaged in the business of manufacturing, offering for sale, and selling an electrical device designated as "Thermalaid" for the treatment of the prostate gland

and ailments or debilities arising therefrom, by the application of heat to the area adjacent to the prostate gland. Said respondents have caused said device when sold to be transported from their place of business in the State of Ohio to purchasers thereof located at various points in various other States of the United States and in the District of Columbia. At all times mentioned herein they have maintained a course of trade in said device in commerce between and among 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 have caused the dissemination of false advertisements concerning the product Thermalaid by 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 were likely to induce, directly or indirectly, the purchase of this device; and they have also disseminated and caused the dissemination of false advertisements concerning this device by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of this device 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, leaflets, pamphlets, and other advertising literature, are, among others, the following:

There is no question that is more universally occupying the attention of the middle-aged man of today than this: "How may I prolong the vigorous years of my life and recuperate the vitality and sex virility I feel gradually slipping away?"

So little is known by the average man regarding sex-hygiene and the biologic laws governing his sex-life, that when he begins to be harassed with annoying symptoms of distress in the pelvic region or lower extremities, he adds to his physical debility the mental torture engendered by fear of "lost manhood."

The statement that "A man is just as old as his Prostate" is literally as well as figuratively true, for the prostate, like the other pelvic glands of the body, is an organ of internal as well as external secretion.

Due to the erroneous impression caused by innumerable advertisements of patent medicines, many men attribute backache, frequency or difficulty of urination, pain in the lower extremities, and many other symptoms of pelvic disorders to a disturbance in the kidneys or bladder or to sciatica when frequently the seat of trouble is in the prostate gland. And even though the effects are manifested in one of many forms, treatment applied at the point of manifestation often effects no results, simply because the source of the difficulty goes unattended, and to eradicate any disorder, one must treat it at its source.

The fact that many reliable medical authorities tell us that over 65% of all men past fifty years of age suffer from some form of prostatic trouble is suffi-

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cient reason for our having dwelt so at length regarding this part of the pro-genital system. And with the proper exercise of personal hygiene and immediate attention of any symptoms of distress, many acute conditions of this gland may be completely remedied before they become chronic.

Do you know that over 40%, yes, nearly 50%, of the American men past forty cannot even reproduce their kind?

Prostatitis covers a wide field, ranging from the milder forms of irritation to a complete state of hypertrophy (enlargement) or atrophy (hardening). In fact, many men do not even know that they have a prostate gland until they are almost ready for a prostatectomy (the removal of the prostate gland by excision), having misread the symptoms of the disordered gland and taken treatments for bladder or kidney trouble instead.

Sex weaknesses and lost manhood, when due to prostate trouble, have been found to respond beautifully to application of the infra-red radiation and thermal-energy when applied directly in the area of the prostate by the "Thermalaid."

Much is said about glands these days. Experimenters are taking the glands of animals and feeding them to patients with the hope of doing for the patients what the patient's own glands should have done.

But isn't it much more desirable to have our own glands in health and working properly than to depend upon the glands of the lower animals?

So we come to you with Thermalaid, a convenient means of applying vitalizing, dry, electrically generated, thermic energy, directly in the area of the inflamed prostate in a continuous manner, correctly.

The late forties and fifties are approached by many men with a more or less certain uneasiness. Rather unconsciously they become aware of shortcomings—resistance may be lowered; little incidents are magnified; we find ourselves cross and irritable; things at home are no longer just right, the coffee isn't good, things we once cherished and looked forward to with high anticipation become more like a duty and even then are attempted with uncertainty.

Just think how good you would feel if the frequency of urination was relieved—if the backache that has bothered you for a long time was more comfortable—if you could do your work without that tired listless feeling, so often resulting from broken rest. Only a safe, convenient and comfortable method would appeal to your good judgment. THERMALAID is just that method. Thermalaid releases to the prostate through the rectum wall those long rays of infra-red radiation so soothing and comforting. This type of therapy is strikingly successful with inflammatory conditions of the prostate.

The potency, logic, simplicity and economy of the THERMALAID are among its highest endorsements and warrant your immediate trial. Much of life's happiness may often be restored in the Autumn and much of your lost confidence may often be regained. * * *

PAR. 4. By the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the Thermalaid Method, Inc., and Charles H. McFarland, respondents, represent directly and by implication that the use of their device "Thermalaid" provides a cure or remedy for all prostate gland disorders ranging from milder forms of prostatitis due to irritation to a complete state of hypertrophy (enlargement), or atrophy (hardening) of the gland, and that use of such device constitutes a

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competent and effective treatment therefor. By said means the respondents further represent that the use of said device "Thermalaid" will prolong vigorous years of life and recuperate the vitality and sex virility.

PAR. 5. The foregoing statements and representations used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact, the use of respondents' device "Thermalaid" does not provide a cure or remedy for prostate gland disorders, or provide a competent and effective treatment therefor in excess of the benefit that might be expected through the local application of heat in cases of acute or chronic prostatitis in its milder forms. This device has no therapeutic value in the treatment of the state of hypertrophy or atrophy of the prostate gland. Such device is of no value in prolonging vigorous years of life, and will not recuperate vitality or sex virility.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their device, and those not specifically set out herein, 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 and representations are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase this device.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein set out, 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 a stipulation as to the facts entered into between the respondents herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

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It is ordered, That the respondent, Thermalaid Method, Inc., a corporation and its officers, and respondent, Charles H. McFarland, an individual, and the aforesaid respondents' respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a therapeutic device sold under the name, Thermalaid, or any device 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:

1. Disseminating or causing to be disseminated any advertisements

(a) by means of the United States Mails, or

(b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference,

(1) That the use of Thermalaid will prolong the vigorous years of one's life and recuperate one's vitality or sex virility.

(2) That the use of Thermalaid will provide a competent and effective cure or remedy for prostatic gland disorders.

(3) That the use of Thermalaid will provide a cure for all types of prostatic trouble.

(4) That the use of Thermalaid constitutes a competent or effective treatment for hypertrophy (enlargement or added growth) or atrophy (hardening) of the prostate gland.

(5) That sex weaknesses and loss of manhood, when due to prostate trouble, will be benefited by the use of Thermalaid.

(6) That the use of Thermalaid will provide any relief from prostate gland disorders in excess of the benefit that might result from the local application of heat in cases of acute or chronic prostatitis in its milder forms.

2. Disseminating or causing to be disseminated any advertisements by any means for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said Thermalaid, which advertisements contain 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.

Syllabus

IN THE MATTER OF

ORGANIZATION SERVICE CORPORATION, HERBERT S.
BLAKE, THOMAS B. JORDAN, ET AL.

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

Docket 4351. Complaint, Oct. 17, 1940—Decision, July 25, 1941

Where five corporations constituting the largest manufacturers in the United States of pins, metal paper clips, and fasteners used as office supplies, and occupying, together, a predominant position in the interstate sale and distribution thereof, and which were members of the Metal Paper Fasteners Institute and the Pin Manufacturers' Institute (membership of which in 1938 made and sold approximately 64.76 percent of all the paper clips manufactured and sold in the United States, 96.18 percent of the fasteners, and 100 percent of the pins used as office supplies), and made bids and secured orders from various governmental agencies, and were in competition among themselves and with other manufacturers of similar products except as below set forth;

Acting between and among themselves and by means of said so-called institutes of a corporation (1) which was engaged in the business of organizing such trade groups under the announced policy of improving the articles made by the members, improving use and consumption of such articles, and disseminating useful market and other legal information, (2) president and general counsel of which issued instructions to the secretaries of such institutes as to procedure to be followed by them, (3) vice president of which was secretary of the institutes in question, and (4) expenses of which corporation were paid by assessments levied against the members of the institutes, based on business done; and with the aid and cooperation of aforesaid individuals, acting individually and as president and vice president of said Organization Service Corporation, and with the latter acting also as secretary of the two institutes—

Entered into and carried out an understanding, agreement, or combination among themselves to fix and maintain, and to adhere to, uniform prices to be charged for the sale of said manufacturers' office pins, paper clips, and fasteners; and, pursuant thereto and in furtherance thereof—

- (a) Agreed to, and did, maintain and adhere to substantially uniform price lists on comparable pins, paper clips, and fasteners made by them, and to change, and did change, simultaneously, prices at which such products were sold or offered by themselves, directly, or as principals of their respective distributing agents;
- (b) Sponsored, called and held conferences of representatives of the members in question and of other members, at the time of the quarterly meetings of the institutes of said corporation, shortly after which they issued price lists containing substantially uniform prices for their products, to become effective on approximately the same dates for the following quarterly period, exchanged price lists freely as a common practice, and in the majority of instances sold their products at the prices stated therein; with intent and effect of carrying out and making effective such agreement, etc.; and