

Syllabus

IN THE MATTER OF

EARL ARONBERG, TRADING AS POSITIVE PRODUCTS
COMPANY AND REX PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3856. Complaint, July 20, 1939—Decision, Sept. 17, 1941*

Where an individual engaged in interstate sale and distribution of his medicinal preparations intended for use in the treatment of delayed menstruation, designated as "Triple X Relief Compound," and "Perio Pills," known also as "Reliable Perio Compound" and "Perio Relief Compound"; by means of advertisements disseminated through the mails and in newspapers and periodicals, directly or by implication—

- (a) Represented that his said products constituted competent and effective remedies and treatments for delayed menstruation, and that they were harmless and safe for use, facts being that, while they possessed emmenagogue properties, they did not constitute competent and effective remedies or treatments for delayed menstruation, nor were they harmless or safe for use, but contained aloes, extract of cotton root and oil of savin in sufficient quantities, even where used in dosage prescribed, to cause such harmful results as gastro-intestinal disturbances and excessive purgation, and, by reason of their ergotin content, as well as the quinine, sulphate in said "Triple X" preparation, might also cause severe toxix and circulatory conditions particularly hazardous in the case of pregnancy; and danger inherent in said preparations was further augmented by their indiscriminate sale to the lay public for use without medical supervision, and the taking by many users, because of ignorance or alarm, of excessive and too frequent doses; and
- (b) Failed to reveal in said advertisement that prescribed use of said preparations might result in serious injury to health, and failed sufficiently to disclose harmful potentialities of such products in statements which appeared only on their labels, which, as a result of change made following the initiation of the Commission's investigation, read: "Not to be taken in pregnancy as it may cause discomfort. If in doubt consult a physician. If the pills cause excessive bowel action, they should be stopped temporarily. This medicine is a laxative and may irritate piles. Laxatives should never be used in cases of nausea, vomiting, abdominal pain or other possible sign of appendicitis," and which the many purchasers by mail had no opportunity to observe until after they had received said products;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that his preparations possessed therapeutic values which they did not in fact possess, and that they were safe for use, when such was not the fact, and to cause such public to purchase substantial quantities of his preparations because of such belief:

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

As respects evidence of experiments performed on rats and rabbits, introduced to support claim that seller's products, offered for delayed menstruation, did not possess harmful potentialities, the Commission found that such experiments were inconclusive, did not afford a substantial basis for his contentions, and lacked sufficient probative value to overcome evidence introduced at the instance of the Commission, which included the testimony of outstanding authorities in the field of gynecology and obstetrics.

Before *Mr. Randolph Preston* and *Mr. William C. Reeves*, trial examiners.

Mr. R. P. Bellinger for the Commission.

Jacobson, Merrick, Nierman & Silbert, of Chicago, Ill., 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 *Earl Aronberg*, an individual trading as *Positive Products Company* and *Rex Products Co.*, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, *Earl Aronberg*, is an individual trading as *Positive Products Co.* and *Rex Products Co.* with his office and principal place of business located at 6603 Cottage Grove Avenue, Chicago, Ill. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

Among the preparations so sold and distributed by the respondent are certain medicinal preparations for the relief of delayed menstruation, designated as "Triple-X Compound" and "Reliable Perio Compound," also known as "Perio Pills" and "Perio Relief Compound."

Respondent causes said preparations when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations, by the United States mails, by in-

sertions 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 said preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Unnaturally DELAYED WOMEN!

We Can't Prove that TRIPLE-X

Relief Compound Brings You Relief

—But You Can!

Why be satisfied with anything else but *genuine* Triple-X Relief Compound? Thousands of women everywhere have used this time-tested compound for relieving stubborn, abnormally delayed, suppressed and long-overdue periods. For functional cases of longer standing or more stubborn abnormal delays, we offer PERIO RELIEF COMPOUND. Scores say they have brought Pleasant and Satisfactory relief. Mrs. J. K. writes:

"2 periods overdue; relief prompt." Mrs. S. B. H. writes: "I was 3 months abnormally late. Perio Pills worked fine." Hundreds of wonderful letters on file. Don't be concerned! Lose no time in sending coupon below. Either compound sent with absolute satisfaction guaranteed on first order or money refunded.

A Modern Aid For Many Unnaturally

DELAYED WOMEN

(Picture of one woman saying
to another—

But my dear, haven't you heard
of Perio-Relief Compound?)

A Time-Tested Preparation

For countless women such unnatural menstrual delay is often needless. To them a simple preparation is offered, which in many cases of abnormally suppressed, overdue, scant and painful periods has helped start the function, thus bringing gratifying relief. It is called PERIO RELIEF COMPOUND and may be taken at home, without, in most instances, interfering with daily activities.

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Do as Many Other Women do

Thousands of modern-minded women have used PERIO RELIEF COMPOUND: a large number having heard about it through friends who have been helped and are therefore grateful. Some have secured relief after a delay of as much as two months, while others write to tell us how pleased they are with reputed effectiveness and say it is worth many times the cost.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set-out herein, respondent represents that his medicinal preparations known and designated as "Triple-X Compound" and "Reliable Perio Compound," also known as "Perio Pills" and "Perio Relief Compound," are competent and effective remedies for delayed menstruation; that said preparations are harmless and will accomplish results without pain or inconvenience.

PAR. 4. In truth and in fact said preparations are not a competent and efficient remedy for delayed menstruation and will not accomplish results without pain or inconvenience. Furthermore, said preparations are not safe and harmless in that "Triple-X Compound" contains aloes, extract cotton root, ergoti ferrous sulphate, extract black hellebore, quinine sulphate and oil savin, and said preparation "Reliable Perio Compound," also known as "Perio Pills" and "Perio Relief Compound" contains extract cotton root, ergotin, iron sulphate extract, extract black hellebore, aloes purified and oil savin. The aforesaid drugs are present in said preparations in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparations, under the conditions prescribed in said advertisements, or under such conditions as are customary and usual, may produce a very severe circulatory condition by constriction of blood vessels and contraction of involuntary muscles tending to produce abortion with violent poisonous effects upon the human system, and liable to produce severe toxic conditions, such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs, and in some instances resulting in either the loss of limbs or in death of the individual.

PAR. 5. In addition to the representations above set forth, the respondent is also engaged in the dissemination of false advertisements in that said advertisements fail to reveal that the use of said preparations, 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.

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PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, 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 false statements, representations, and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations containing injurious drugs.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 20, 1939, issued, and subsequently served, its complaint in this proceeding upon the respondent, Earl Aronberg, an individual trading as Positive Products Co. and as Rex Products Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by R. P. Bellinger, attorney for the Commission, and in opposition thereto by David Silbert, attorney for respondent, before trial examiners of the Commission theretofore duly designated by it, and such 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 the complaint, answer, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; 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 respondent, Earl Aronberg, is an individual trading as Positive Products Co. and as Rex Products Co., with his office and principal place of business located at 6603 Cottage Grove Avenue, Chicago, Ill. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of certain

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medicinal preparations intended for use in the treatment of delayed menstruation, such preparations being designated by the respondent as "Triple-X Relief Compound" and "Perio Pills," the latter being known also as "Reliable Perio Compound" and as "Perio Relief Compound."

PAR. 2. Respondent causes his preparations, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and for more than three years last past has maintained, a course of trade in his 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 his business the respondent has disseminated, and has caused the dissemination of, advertisements concerning his preparations by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated, and has caused the dissemination of, advertisements concerning his preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations appearing in such advertisements, disseminated and caused to be disseminated by the United States mails and by advertisements in newspapers and periodicals, are the following:

Unnaturally DELAYED WOMEN!
We Can't Prove that TRIPLE-X
Relief Compound Brings You Relief
—But You Can!

Why be satisfied with anything else but *genuine* Triple-X Relief Compound? Thousands of women everywhere have used this time-tested compound for relieving stubborn, abnormally delayed, suppressed and long-overdue periods. For functional cases of longer standing or more stubborn abnormal delays, we offer PERIO RELIEF COMPOUND. Scores say they have brought Pleasant and Satisfactory relief. Mrs. J. K. writes: "2 periods overdue; relief prompt." Mrs. S. B. H. writes: "I was 3 months abnormally late. Perio Pills worked fine." Hundreds of wonderful letters on file. Don't be concerned! Lose no time in sending coupon below. Either compound sent with absolute satisfaction guaranteed on first order or money refunded.

SEND ONLY \$1.00 for full treatment of Triple-X Relief Compound; \$2.50 for 3 boxes. Perio Relief Compound (for very stubborn cases) \$2.00; 2 boxes \$3.50. C. O. D. 15¢ extra. Same day shipment in plain sealed wrapper. Also FREE Catalog of Hygienic Articles. Send coupon now.

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A Modern Aid for Many Unnaturally
DELAYED WOMEN

A Time-Tested Preparation

For countless women, such unnatural menstrual delay is often needless. To them a simple preparation is offered, which in many cases of abnormally suppressed, overdue, scant and painful periods has helped start the function, thus bringing gratifying relief. It is called PERIO RELIEF COMPOUND and may be taken at home, without, in most instances, interfering with daily activities.

Pure Vegetable Ingredients .

PERIO RELIEF COMPOUND contains no habit-forming drugs, but is made almost solely of pure vegetable ingredients, such as may be used by many physicians in their practice. Many users say they would never be without it. Some keep it always on hand and use it just before the time so as to help bring on a more full, unsuppressed function.

DO AS MANY OTHER WOMEN DO

Thousands of modern-minded women have used PERIO RELIEF COMPOUND; a large number having heard about it through friends who have been helped and are therefore grateful. Some have secured relief after a delay of as much as two months, while others write to tell us how pleased they are with its reputed effectiveness and say it is worth many times the cost.

GOOD NEWS TO MANY WOMEN!

PERIO RELIEF COMPOUND is made to quickly and harmlessly aid most abnormally delayed functions, in cases where no organic disorder is present.

PAR. 4. Through the use of these statements and representations and others of similar import, the respondent has represented, directly or by implication, that his preparations constitute competent and effective remedies and treatments for delayed menstruation, and that the preparations are harmless and safe for use.

PAR. 5. The formulas for the preparations are as follows:

TRIPLE-X

PERIO PILLS

Each capsule contains:

Each pill contains:

Aloes.....	¾ Gr.	Aloes Purified.....	1 Gr.
Ergotin.....	1 "	Ergotin.....	1 "
Ext. Cotton Root.....	1 "	Ext. Cotton Root.....	1 "
Ext. Black Hellebore.....	1 "	Ext. Black Hellebore.....	1 "
Oil Savin.....	¼ Min.	Oil Savin.....	¼ Min.
Ferrous Sulphate.....	1 Gr.	Ferrous Sulphate.....	1 Gr.
Quinine Sulphate.....	½ "		

Respondent's directions for the use of the preparations were originally as follows:

For Triple-X: "One capsule four times a day, that is, one after each meal and one before bedtime, the last one to be taken with a large glass of water, to-

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gether with a tablespoon full of epsom salts, that is, the epsom salts is to be in the large glass of water. The latter is merely suggested."

For Perio Pills: "The average adult dose is one pill before each meal and one before retiring, and, in addition, one of the pink capsules (Triple-X), which is contained in the box, is to be taken at night before retiring."

Subsequent to the Commission's investigation the directions were changed by respondent to read as follows:

The average adult dose is one pill with water four times daily before each meal and before retiring, not to be used continuously for more than ten days. Allow one week to intervene before resuming. Caution: Not to be taken in pregnancy as it may cause discomfort. If in doubt consult a physician. If the pills cause excessive bowel action, they should be stopped temporarily. This medicine is a laxative and may irritate piles. Laxatives should never be used in cases of nausea, vomiting, abdominal pain or other possible sign of appendicitis.

PAR. 6. Delayed menstruation is frequently due to pregnancy. In those cases which are due to causes other than pregnancy emmenagogue treatment is seldom efficacious or necessary. In such cases the menstrual delay is usually but a symptom of some other dysfunction in the body or is due to some external cause, such as fright or shock, and when such dysfunction is corrected or such cause removed, the normal menstrual flow usually resumes. In those exceptional cases where physicians prescribe emmenagogues such action is taken only after diagnosis, and the treatment is under the supervision of the physician.

PAR. 7. While respondent's preparations possess emmenagogue properties, they do not constitute competent or effective remedies or treatments for delayed menstruation. Nor are they harmless or safe for use. The ingredients aloes, extract of cotton root and oil of savin are drastic cathartics and gastro-intestinal irritants. They tend to cause gastro-intestinal disturbances and excessive purgation, resulting in severe toxic conditions, including hemorrhagic diarrhea. The preparations, by reason of their ergotin content (and in the Triple-X preparation the quinine sulphate also), may also cause a severe circulatory condition by the constriction of the blood vessels and the contraction of the involuntary muscles, including the muscles of the uterus. This is particularly hazardous in the case of pregnancy, as the contraction of the uterus may precipitate an abortion, which may result in violent poisonous effects upon the system.

PAR. 8. The ingredients referred to above are present in the preparations in quantities sufficient to cause such harmful results even in those cases where the preparations are used in the dosage prescribed by respondent. The record discloses, moreover, that where, as in this case, such preparations are sold indiscriminately to the lay public for use without medical supervision, many users, because of ignorance or

of alarm over their condition, take excessive and too-frequent doses, thus augmenting the danger inherent in the preparations.

Respondent insists that the statements appearing in his current directions are sufficient to obviate the danger of excessive use of the preparations, and to apprise purchasers that the preparations should not be used in the event of pregnancy. The Commission finds, however, that such statements are insufficient to disclose the harmful potentialities of the preparations. Moreover, such statements appear only on the labels of the preparations and do not appear in respondent's advertisements. Many of respondent's sales are made through the mails, and the purchasers have no opportunity to observe such statements until after they have received the preparations.

PAR. 9. In support of his claims that the preparations do not possess the harmful potentialities referred to above, the respondent introduced in evidence, in addition to the testimony of certain expert witnesses, the results of certain experiments performed on rats and rabbits. It is questionable, however, whether the number of animals used in the tests was sufficient to afford a substantial scientific basis for the conclusions contended for by respondent. Moreover, it appears from the record that the results of these tests cannot be accepted as a positive indication of the effects of the preparations on human beings, there being substantial differences in the degrees of susceptibility of animals and human beings.

The Commission finds that while these experiments may be to a limited extent indicative of the effects which may be expected to follow the use of the preparations, the experiments are inconclusive and do not afford a substantial basis for respondent's contentions. Their probative value is insufficient to overcome the evidence introduced at the instance of the Commission, which included the testimony of certain expert witnesses who are outstanding authorities in the field of gynecology and obstetrics.

PAR. 10. The Commission therefore finds that respondent's representations with respect to his preparations are misleading and deceptive and constitute false advertisements. The Commission finds also that respondent's advertisements are false for the further reason that they fail to reveal that the use of the preparations under the conditions prescribed in the advertisements, or under such conditions as are customary or usual, may result in serious injury to the health of the user.

PAR. 11. The Commission further finds that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparations possess

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therapeutic values which they do not in fact possess, and that the preparations are safe for use, when such is not the fact, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's preparations as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice 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 respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiners upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Earl Aronberg, individually and trading as Positive Products Co. and as Rex Products Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparations designated as "Triple-X Relieve Compound" and "Perio Pills," the latter being known also as "Reliable Perio Compound" and as "Perio Relief Compound," or any preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparations constitute competent or effective remedies or treatments for delayed menstruation; that said preparations are harmless or safe for use; or which advertisement fails to reveal that the use of said preparations may cause gastro-intestinal disturb-

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ances and severe toxic and circulatory conditions, and in the case of pregnancy, may produce violent poisonous effects upon the system.

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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal that the use of said preparations may cause gastro-intestinal disturbances and severe toxic and circulatory conditions, and in the case of pregnancy, may produce violent poisonous effects upon the system.

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing, stating whether he intends to comply with this order and, if so, the manner and form in which he intends to comply; and that within 60 days after service upon him of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

W. S. McClymonds and G. L. McClymonds, Doing
Business as Oxol LaboratoriesCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4208. Complaint, July 31, 1940—Decision, Sept. 17, 1941*

Where two individuals engaged in manufacture and interstate sale and distribution of their "Trox Tablets," ingredients of which included powdered extract triticum repens, oxyquinoline sulphate, charcoal, starch, and sugar of milk; by means of advertisements disseminated through the mails and otherwise—

Falsely represented that said preparation was a cure or remedy for various diseases and ailments of the kidneys and prostate gland, and constituted an effective treatment therefor; facts being tablets in question were without therapeutic value; modern pharmacologists ascribe no therapeutic properties to said first ingredient or conch grass, second ingredient is a decidedly less efficient antiseptic than phenol, with amount contained in said tablets so insignificant that no beneficial action would result therefrom for said ailments, and other ingredients are of no medical value;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of inducing it, because of such erroneous belief, to purchase substantial quantities of their said "Trox Tablets":

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. William C. Reeves*, trial examiner.

Mr. Donovan R. Divet 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 W. S. McClymonds and G. L. McClymonds, individuals, doing business as Oxol Laboratories, 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. The respondents, W. S. McClymonds and G. L. McClymonds, are individuals doing business under the firm name and style of Oxol Laboratories with their principal office and place of business at 1042-48 Santa Fe Drive, Denver, Colo.