

IN THE MATTER OF

J. V. CORDES AND MRS. J. H. CORDES, DOING BUSINESS
AS MARTHA BEASLEY ASSOCIATESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3841. Complaint, June 30, 1939—Decision, Sept. 18, 1941*

Where two individuals engaged in interstate sale and distribution of certain medicinal preparations intended for use in the treatment of delayed menstruation, one being designated as "Martha Beasley's Compound Formula No. 2" and the other as "Martha Beasley's Compound Formula No. 3"; by means of advertisements disseminated through the mails and in periodicals, directly or by implication—

- (a) Represented that their preparations constituted competent and effective treatments for delayed menstruation, were recommended by physicians generally, and were safe for use, through such statements as "Get a modern woman's remedy. Ladies, when troubled with delay, get our Special Relief Compound at once. Don't wait longer. Has rapidly relieved many unusual, long overdue or past due, suppressed, late appearing abnormally delayed periods in 2 to 4 days without pain or inconvenience," and "A preferred favorite time-tested prescription of many doctors";

The facts being active ingredients in products in question were apiol, oil of savin, aloin, and ergotin, first three of which had long been recognized by pharmacologists and physicians generally as gastrointestinal irritants, aloin in particular being regarded as a drastic cathartic; under directions prescribed or suggested, daily dosage of last-named drug would be four times dose of the United States Pharmacopoeia, which dosage, particularly when added to the apiol and savin ingredients, is likely to produce gastrointestinal disturbances resulting in nausea and vomiting, with pelvic congestion, including congestion of the uterus, and possibly resulting and leading to excessive hemorrhage therefrom; while in the case of pregnancy, use of their said preparations had a tendency to cause also contraction of uterus, sometimes producing abortion and causing uterine infection, which might also extend to other pelvic and abdominal structures and result in septicemia or blood poisoning; and while drugs which constituted active ingredients of their said preparations possess emmenagogue properties, they are not competent or effective treatments for delayed menstruation, nor recommended by physicians generally, being used only after careful diagnosis and under supervision of the physician in those exceptional cases in which some of said drugs may be used; and

- (b) Failed to reveal in said advertisements that use of their said products, under prescribed or usual conditions, might result in serious injury to the health of the user, and to apprise prospective purchasers that said preparations should not be used in event of pregnancy, by use in their advertisements of the word "abnormally" in connection with words "delayed periods," said preparations being offered for sale and sold indiscriminately to the lay public, and prospective purchaser being usually incapable of determining whether her condition is due to normal or abnormal causes, and did not dis-

close product's harmful potentialities, in direction "Should capsules cause looseness of bowels or act excessively, discontinue for several days or number of capsules may be reduced for a day or so," which appeared only on the labels of said products and not in their advertisements, and which the many purchasers by mail had no opportunity to observe until after they had received products in question;

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

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 sellers' products, offered for delayed menstruation, did not possess harmful potentialities, the Commission found that such experiments—which, in certain instances, tended to confirm the opinions of experts introduced by the Commission as to the toxic properties of said products—were inconclusive, did not afford a substantial basis for their 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. William C. Reeves*, trial examiner.

Mr. Gerard A. Rault for the Commission.

Nash & Donnelly, of Washington, D. C., 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 J. V. Cordes and Mrs. J. H. Cordes, trading and doing business as Martha Beasley Associates, 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. V. Cordes and Mrs. J. H. Cordes, are individuals trading and doing business under the name of Martha Beasley Associates, with their principal office and place of business located at 5741 Grand River Boulevard, Detroit, Mich. The respondents are now, and for several years last past have been, engaged in the sale of medicinal preparations designed for the treatment of unnaturally delayed menstruation, one known as Martha Beasley

Complaint

33 F. T. C.

Compound Formula No. 2 and as Special Relief Compound, and Special Package No. 2; and the other known as Martha Beasley Compound Formula No. 3, and as Special Relief Compound, and Special Package No. 3. Respondents cause said preparations when sold to be transported from their aforesaid place of business in the State of Michigan to the purchasers thereof located in various States of the United States other than the State of Michigan and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said drugs in commerce between and among 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 preparations by the United States mails, by insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed among and between the various States of the United States and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations; and have disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and cause to be disseminated, as aforesaid, are the following:

Get a modern woman's remedy. Ladies, when troubled with delay, get our Special Relief Compound at once. Don't wait longer. Has repeatedly relieved many unusual, long overdue, or past due, suppressed, late appearing abnormally delayed periods in 2 to 5 days without pain or inconvenience.

A preferred favorite time-tested prescription of many doctors.

The representations hereinbefore set out, and other representations similar thereto but not set out herein, appearing in respondents' advertisements, are false, misleading, and untrue. Respondents' preparations are not safe or scientific treatment for delayed menstruation. They are not recommended by physicians. Said advertisements of respondents are also false in that they fail to reveal that the use of such preparations under the conditions prescribed in said advertisements or under such conditions as are customary and usual may result in the serious illness, and in some cases the death, of the user.

The true facts are that the following drugs constitute the chief ingredients of each of these preparations, apiol, ergotin, savin, water pepper, and aloin, and that the use of either of these preparations may result in gastrointestinal disturbances such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus leading to uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures causing septicemia or blood poisoning.

PAR. 3. The use by the respondents of the foregoing false advertisements and deceptive and misleading statements and representations with respect to their preparations 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 and representations are true and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparations containing injurious drugs.

PAR. 4. The aforesaid acts and practices of 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 June 30, 1939, issued, and subsequently served, its complaint in this proceeding upon the respondents, J. V. Cordes and Mrs. J. H. Cordes, individuals trading and doing business as Martha Beasley Associates, 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 the complaint were introduced by Gerard A. Rault, attorney for the Commission, and in opposition thereto by Messrs. Nash and Donnelly, attorneys for respondents, before William C. Reeves, trial examiner 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 examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; and the Com-

mission, 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. V. Cordes and Mrs. J. H. Cordes, are individuals trading under the name Martha Beasley Associates, with their principal office and place of business located at 5741 Grand River Boulevard, Detroit, Mich. Respondents are now, and for several years last past have been, engaged in the sale and distribution of certain medicinal preparations intended for use in the treatment of delayed menstruation, one of such preparations being designated by respondents as "Martha Beasley's Compound Formula No. 2" and the other as "Martha Beasley's Compound Formula No. 3."

PAR. 2. In the course and conduct of their business the respondents cause their preparations, when sold, to be transported from their place of business in the State of Michigan to 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 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 business the respondents have disseminated, and have caused the dissemination of, advertisements concerning their preparations 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 have caused the dissemination of, advertisements concerning their preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their 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 periodicals, are the following:

Get of modern woman's remedy. Ladies, when troubled with delay, get our Special Relief Compound at once. Don't wait longer. Has rapidly relieved many unusual, long overdue or past due, suppressed, late appearing abnormally delayed periods in 2 to 4 days without pain or inconvenience.

A preferred favorite time-tested prescription of many doctors.

PAR. 4. Through the use of these statements and representations and others of similar import, the respondents represent, directly or by

implication, that their preparations constitute competent and effective treatments for delayed menstruation; that they are recommended by physicians generally; and that they are safe for use.

PAR. 5. The formulas for respondents' preparations are as follows:

Formula No. 2

Apiol—7½ minims
Oil of Savin—½ grain
Ergotin—1 grain
Extract of water pepper—
½ grain
Aloin—½ grain

Formula No. 3

Apiol—8 minims
Oil of Savin—¾ minims
Ergotin—1 grain
Extract of water pepper—
½ grain
Aloin—½ grain

The dosage as prescribed by respondents for Formula No. 3 is "One or two capsules four times a day." The dosage prescribed for Formula No. 2 is the same as that for Formula No. 3 except that the words "three or four times a day" are used instead of "four times a day."

Respondents' directions for the use of the preparations contain the following statement:

Should the capsules cause looseness of bowels or act excessively, discontinue for several days or number of capsules may be reduced for a day or so.

PAR. 6. The active ingredients in the preparations are the apiol, savin, aloin and ergotin. Apiol, savin, and aloin have long been recognized by pharmacologists and by physicians generally as gastrointestinal irritants, aloin in particular being regarded as a drastic cathartic. The average dose of aloin, according to the United States Pharmacopoeia, is one-fourth grain. The amount in each of respondents' capsules (Formula No. 3) is one-half of that amount or one-eighth grain. According to respondents' directions, as many as eight capsules may be taken in 1 day, and in that event the total amount of aloin taken per day would be four times the United States Pharmacopoeia dose. This dosage, particularly when added to the apiol and savin ingredients, is likely to produce gastrointestinal disturbances, resulting in nausea and vomiting. Pelvic congestion, including congestion of the uterus, may also result, leading to excessive hemorrhage from the uterus.

In the case of pregnancy, the use of respondents' preparations has a tendency to cause, in addition to the results mentioned above, a contraction of the uterus, due to the ergotin content of the preparations. Such contraction of the uterus may in some cases produce an abortion, which may result in uterine infection. Such infection may also extend to other pelvic and abdominal structures and may result in septicemia or blood poisoning.

PAR. 7. The respondents insist that their advertisements are not directed to pregnant women, and that the use in their advertisements

of the word "abnormally" in connection with the words "delayed periods" is sufficient to apprise prospective purchasers that the preparations should not be used in the event of pregnancy. The preparations, however, are offered for sale and sold indiscriminately to the lay public, and the prospective purchaser is usually incapable of determining whether her condition is due to normal or abnormal causes.

Respondents further insist that their direction, "Should capsules cause looseness of bowels or act excessively, discontinue for several days or number of capsules may be reduced for a day or so," is sufficient to obviate the danger of excessive cathartic action. The Commission finds, however, that this statement is insufficient to disclose the harmful potentialities of the preparations. Moreover, the statement appears only on the labels of the preparations and does not appear in respondents' advertisements. Many of respondents' sales are made through the mails, and the purchasers have no opportunity to observe such statement until after they have received the preparations.

PAR. 8. In support of their claims that their preparations do not possess the harmful and dangerous potentialities referred to above, the respondents 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 experiments was sufficient to afford a substantial scientific basis for the conclusions contended for by respondents. Moreover, in certain of the tests, the results tend to confirm the opinions of the experts introduced by the Commission as to the toxic properties of the preparations. It is doubtful also whether these experiments can be accepted as a positive indication of the effect of the preparations on human beings, there being substantial differences in the degrees of susceptibility of animals and human beings.

The Commission therefore finds that while these animal experiments may be to a limited degree indicative of the effects produced by respondents' preparations, the experiments are inconclusive and do not afford a substantial basis for respondents' claims. Their probative value is insufficient to overcome the testimony of the expert witnesses testifying at the instance of the Commission, among whom were outstanding authorities on pharmacology, toxicology, gynecology, and obstetrics.

PAR. 9. While the drugs which constitute the active ingredients of respondents' preparations possess emmenagogue properties, such drugs are not competent or effective treatments for delayed menstruation, nor are they recommended by physicians generally. In those exceptional cases in which some of the drugs may be used by

1352

Order

physicians, they are used only after careful diagnosis and under the supervision of the physician.

PAR. 10. The Commission therefore finds that the representations of the respondents with respect to their preparations are misleading and deceptive, and constitute false advertisements. The Commission finds also that respondents' advertisements are false for the further reason that they fail to reveal that the use of respondents' preparations under the conditions prescribed in such 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 finds that the use by the respondents of such 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 respondents' preparations possess therapeutic values which they do not in fact possess, and that such 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 respondents' preparations as a result of such belief.

CONCLUSION

The acts and practices of the respondents 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 the respondents, testimony, and other evidence taken before William C. Reeves, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence, 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, J. V. Cordes and Mrs. J. H. Cordes, individually and trading as Martha Beasley Associates, or trading under any other name, and respondents' 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 preparations designated as "Martha Beasley's Com-

Order

33 F. T. C.

pound Formula No. 2" and "Martha Beasley's Compound Formula No. 3," 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 treatments for delayed menstruation; that said preparations are recommended by physicians generally; that said preparations are safe for use; or which advertisement fails to reveal that the use of said preparations may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case 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 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 gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

It is further ordered, That the 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 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

PERFECT VOICE INSTITUTE, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4047. Complaint, Mar. 5, 1940—Decision, Sept. 18, 1941

Where a corporation and three individuals, including its president in charge of its teaching activities, the chairman of its board of directors and its principal stockholder, who directed and controlled its business activities and policies, and its secretary and treasurer; engaged in interstate sale and distribution of a correspondence course of instruction for the development of the voice, based on the theory that the development and control of the muscles of the tongue is the key to voice culture, and accordingly prescribing numerous physical exercises for the tongue muscles, involving frequent use of certain mechanical aids supplied by them in addition to the series of lessons, including a mirror, an electric torch or flashlight, a pitch pipe, certain tongue supports and depressors, a tape measure and a so-called mouth gauge;

In advertisements of its said courses in periodicals of general circulation and in booklets outlining them and including testimonials from those who had taken it—

Represented that the voice might be greatly improved through the development and control of the muscles of the tongue, and that use of their course brought out a new and improved quality to the voice, and that by such use stammering might be overcome and physical defects of the vocal organs corrected;

The facts being that there is no relation between the development and control of the tongue muscles and the culture of the voice and while the physical exercises prescribed by them might result in strengthening said muscles and, in consequence, in the voice becoming louder or stronger, the quality and tone of the latter are not thereby improved, the voice on the contrary almost invariably becoming harsh and unmusical; there was danger also that use of such exercises might result in injury rather than a benefit to the voice, due to strain of the vocal organs through excessive exercising (ordinarily pursued by correspondence and without supervision of a teacher), notwithstanding caution as to moderation, since moderation for one student may be excess for another; and use of said course could not correct physical defects of the vocal organs or overcome stammering;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their course possessed values and benefits which it did not possess, and to cause it to purchase their course as a result of said belief:

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 the theory, underlying a course in voice culture, that the development and control of the muscles of the tongue is the key to the culture