

IN THE MATTER OF

W. K. STERLINE, AND MUMM, ROMER, ROBBINS &
PEARSON, INC.

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

Docket 4485. Complaint, Apr. 8, 1941—Decision, Sept. 23, 1941

Where an individual engaged in interstate sale and distribution of his "Hay Fever Compound" also known as "W. K. Sterline's compound," and his "Asthma Treatment," the latter including said "Compound," "Bronchial Elixir," and "Korana Powder"; together with his corporate advertising agency, by advertisements sent through the mails and through form letters, leaflets, pamphlets, and other advertising media, and including purported testimonial quotations, directly and by implication—

- (a) Represented that his said "Hay Fever Treatment" was a cure and remedy for hay fever, and a competent and effective treatment therefor, which would fortify one's system against it, enabling one to avoid it, and would check sneezing and nasal discharge; facts being said treatment had no therapeutic value in the treatment of such condition;
- (b) Represented that said "Asthma Treatment" constituted a cure and remedy for asthma and a competent and effective treatment therefor, and also for bronchitis when associated with asthma, and would restore one to health and prevent return of said condition; facts being neither said treatments nor the preparations of which it was composed, whether used separately or in any combination, constituted a cure or effective treatment for either ailment, or had any therapeutic value in the treatment of asthma in excess of affording mild temporary relief from its paroxysms, or any such value in the treatment of bronchitis when associated with asthma in excess of that furnished by a mild expectorant;
- (c) Represented that his said "Elixir" constituted a cure and remedy and a competent and effective treatment for bronchitis; facts being it had no therapeutic value in treatment thereof, in excess of that furnished, as aforesaid, by a mild expectorant; and
- (d) Failed to reveal facts material in light of representations contained in said advertisements as respects his said "Compound," and that use thereof under usual or prescribed conditions might result in serious injury to health, in that its content of potassium iodide and fluid extract of lobelia might be harmful to those suffering from active or latent tuberculosis, and its sodium bromide content, when used over long period of time, was likely to cause mental derangement and rash; and failed to apprise the reader that use of product in question might be harmful for such reasons, in note on label of said "Compound" advising prospective user, in event of having tuberculosis, to see a physician first;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing a substantial portion of said public, because of such belief, to purchase his "Treatments":

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.

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Complaint

Before *Mr. John W. Norwood*, trial examiner.

Mr. John W. Carter, Jr. 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. K. Sterline, an individual, and Mumm, Romer, Robbins & Pearson, Inc., a corporation, hereinafter referred to as respondents, 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, W. K. Sterline, is an individual with his principal place of business located at 110 West Poplar Street, Sidney, Ohio.

PAR. 2. This respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a treatment for hay fever, consisting of a medicinal preparation designated "W. K. Sterline's Compound," sometimes referred to as "Double Strength Hay Fever Compound," "W. K. Sterline's Hay Fever Compound," "Hay Fever Compound," and "Compound," hereinafter referred to as "Hay Fever Treatment;" and in the sale and distribution of a treatment for asthma designated "Sterline's Combination Home Treatment" and sometimes as "Combination Treatment," hereinafter referred to as "Asthma Treatment," consisting of the following items:

(a) A medicinal preparation designated "W. K. Sterline's Compound," sometimes referred to as "Sterline's Asthma Compound" and "Asthma Compound."

(b) A medicinal preparation designated as "W. K. Sterline's Elixir," sometimes referred to as "Sterline's Bronchial Elixir" and "Bronchial Elixir"; and

(c) A medicinal powder designated as "Korona," sometimes referred to as "Asthma Powder,"

in commerce among and between the various States of the United States.

This respondent causes his aforesaid treatments, and the various items constituting said treatments, when sold, to be transported from his place of business in the State of Ohio to the purchasers thereof located in various other States of the United States.

This respondent maintains, and at all times mentioned herein has maintained, a course of trade in his aforesaid treatments, and in the

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various items constituting said treatments, in commerce between and among the various States of the United States.

PAR. 3. Respondents, Mumm, Romer, Robbins & Pearson, Inc., is a corporation existing under the laws of the State of Ohio, with its principal office and place of business located at 33 North Grant Avenue, Columbus, Ohio. This respondent is an advertising agency and, as such, is engaged in formulating, editing, and selling, as well as advising its clients on advertising matters.

This respondent is the advertising representative of respondent, W. K. Sterline, and as such it places all newspaper advertising, and aids, assists and advises in the preparation of all advertising material, used by respondent, W. K. Sterline, in the sale and distribution of the aforesaid treatments and medicinal preparations designated as aforesaid.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the aforesaid "Hay Fever Treatment," the aforesaid "Asthma Treatment" and the respective items thereof, as aforesaid, the said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the aforesaid "Hay Fever Treatment" and the aforesaid "Asthma Treatment" by the United States mails and by various means in commerce, as commerce is defined by 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 the said treatments, designated as aforesaid, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said treatments, and the respective items thereof, in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statements and representations disseminated and caused to be disseminated by the United States mails, by form letters, leaflets, pamphlets, and other advertising media, are the following:

WHY SUFFER WITH HAY FEVER? Fortify your system now by using W. K. Sterline's Hay Fever Compound.

Every time you take a dose you are doing that much to fortify your system and avoid your Hay Fever.

For 20 years I have been afflicted with Hay Fever. Nothing gave me any relief until I used your product. The sneezing and running from my nose was checked and I can truthfully say it is the most effective remedy I ever used in my life.

Some will not believe Hay Fever can be prevented, but at the end of every Hay Fever season sufferers write they escaped entirely.

I am glad to recommend your treatment because it always keeps me from having the slightest attack of Hay Fever.

I am mailing you today my ASTHMA COMPOUND and, since most people who suffer from Asthma also have Bronchitis without knowing it, I am also sending a trial of my Bronchial Elixir.

For instance, W. W. Shaeffer, Wakeman, Ohio, says that before he used my treatment in 1909, he couldn't rest in bed at all, but since taking the medicine nearly 30 years ago, he has never had an attack of asthma.

I have hundreds and hundreds of letters, not only from those who have just recently taken the treatment, but from those who used these same medicines 10, 15, and 20 years ago, all stating that their asthma has not returned.

I was confined to my bed for years and wondered how I managed to live. Everything I ate disagreed with me until I received your proper diet. Now I am making up for what I missed in my younger days. I have just forgotten that I ever had Asthma, but I owe it all to your great medicine. I am in the best of health * * *.

Your medicines are worth their weight in gold and God Bless you for saving me from the grave. I did not want to live those years and now I can hardly believe it is myself well and perfectly healthy. I want everyone to write me as I will always praise your treatment to the highest. I would be dead but for your precious medicine.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, but not specifically set out herein, which purport to be descriptive of the therapeutic properties of the aforesaid "Hay Fever Treatment," sold and distributed by respondent, W. K. Sterline, as aforesaid, respondents represent directly and by implication that the "Hay Fever Treatment," is a cure and remedy for hay fever and constitutes a competent and effective treatment for hay fever; that it will fortify one's system against hay fever; that it will enable one to avoid hay fever; and that it will check sneezing and discharging from the nose.

Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto but not specifically set out herein, which purport to be descriptive of the therapeutic properties of the aforesaid "Asthma Treatment" sold and distributed by respondent, W. K. Sterline, as aforesaid, respondents represent directly and by implication that the "Asthma Treatment" is a cure and remedy for asthma and constitutes a competent and effective treatment for asthma; and that it will restore one to health; and that it will prevent the return of asthma. Respondents further represent that this treatment is a cure and remedy for bronchitis when this disease is associated with asthma.

PAR. 7. The foregoing statements and representations, and others similar thereto but not specifically set out herein, are grossly exaggerated, false, and misleading.

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The aforesaid "Hay Fever Treatment," sold and distributed as aforesaid, is not a cure or remedy for, and has no generally recognized dependable therapeutic value in the treatment of, hay fever. It will not fortify one's system against hay fever. It will not enable one to avoid hay fever. It will not check sneezing and discharging from the nose. It will not prevent hay fever.

The aforesaid "Asthma Treatment," and the individual preparations constituting this treatment sold and distributed as aforesaid, used separately, or in any combination of one with the other, is not a cure or remedy, nor do they jointly or separately, or in any combination of one with the other, have any generally recognized material therapeutic value in the treatment of asthma or bronchitis in excess of affording temporary relief from the paroxysm usually associated with asthma. They will not restore one to health. They will not prevent the return of asthma. They are not a cure or remedy, nor are they a competent or effective treatment for bronchitis.

The medicinal preparation "W. K. Sterline's Compound" and the medicinal preparation "Korona" have no generally recognized material therapeutic value in the treatment of asthma in excess of affording temporary relief from the paroxysm of asthma.

The medicinal preparation "W. K. Sterline's Elixir" has no generally recognized material therapeutic value in the treatment of bronchitis in excess of that furnished by an expectorant.

PAR. 8. The medicinal preparation "W. K. Sterline's Compound" contains the drugs potassium iodide and fluid extract of lobelia. The use of this preparation thus constituted may be harmful to those suffering with active or latent tuberculosis by reason of delaying or retarding healing and the danger of activation of dormant lesions.

This medicinal preparation also contains the drug sodium bromide. The use of this preparation thus constituted over a long period of time is likely to cause mental derangement and rash.

The advertisements disseminated by the respondents, as aforesaid, contain no cautionary or warning statement to the effect that this preparation should not be used by persons suffering from active or latent tuberculosis, nor do they contain a cautionary or warning statement to the effect that this preparation should not be taken over a prolonged period of time. Such advertisements, therefore, constitute false advertising in that they fail to reveal facts material in the light of the representations contained therein and 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 injury to health.

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Findings

PAR. 9. The use by said respondents, as aforesaid, of the foregoing false, deceptive, and misleading statements and representations, and others of similar nature, disseminated as aforesaid, has had and now has the tendency and capacity 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 substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase the aforesaid treatments and the medicinal preparations designated as aforesaid.

PAR. 10. The aforesaid acts and practices of said 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 8th day of April 1941, issued, and on the 9th day of April 1941, and on the 10th day of April 1941, served its complaint on respondents, Mumm, Romer, Robbins & Pearson, Inc., and on respondent, W. K. Sterline, respectively, charging respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On April 28, 1941, respondents, Mumm, Romer, Robbins & Pearson, Inc., and on April 30, 1941, respondent, W. K. Sterline, filed their separate answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, together with the exhibits thereto attached, signed and executed by respondent, W. K. Sterline, and by respondents, Mumm, Romer, Robbins & Pearson, Inc., and Richard P. Whiteley, assistant chief counsel 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 the said Commission may proceed upon said statement of facts, and the exhibits thereto attached, to make its reports, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceedings without the presentation of argument or the filing of briefs and without the filing of trial examiner's report upon the evidence.

This proceeding, thereafter, regularly came on for final hearing before the Commission on said complaint, answers, stipulation, and exhibits, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now

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fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. K. Sterline, is an individual with his principal place of business located at 110 East (instead of 110 West as alleged in the complaint) Poplar Street, Sidney, Ohio, and he is now and for more than 1 year last past has been engaged in the sale and distribution in commerce between and among the various States of the United States of a treatment for hay fever and of a treatment for asthma and of the various individual medicinal preparations of which said treatments are composed.

This respondent's hay fever treatment consists of a medicinal preparation designated "W. K. Sterline's Compound," sometimes referred to as "Double Strength Hay Fever Compound," "W. K. Sterline's Hay Fever Compound," "Hay Fever Compound" and "Compound."

This respondent's treatment for asthma, designated "Sterline's Combination Home Treatment," and sometimes as "Combination Treatment," consists of the following items:

(a) A medicinal preparation designated "W. K. Sterline's Compound," sometimes referred to as "Sterline's Asthma Compound" and "Asthma Compound."

(b) A medicinal preparation designated as "W. K. Sterline's Elixir," sometimes referred to as "Sterline's Bronchial Elixir," and "Bronchial Elixir"; and

(c) A medicinal powder designated "W. K. Sterline's Korana Powder" (instead of "Korona" as alleged in the complaint), sometimes referred to as "Asthma Powder."

PAR. 2. Respondent, W. K. Sterline, causes his aforesaid treatments, designated as aforesaid, and the individual medicinal preparations constituting said treatments, when sold, to be transported from his place of business in the State of Ohio to the respective purchasers thereof located in various other States of the United States; and he maintains, and at all times mentioned herein has maintained, a course of trade in his aforesaid treatments and in the individual medicinal preparations constituting said treatments in commerce between and among the various States of the United States.

PAR. 3. Respondents, Mumm, Romer, Robbins & Pearson, Inc., is a corporation existing under the laws of the State of Ohio, with its principal office and place of business located at 33 North Grant Avenue, Columbus, Ohio. This respondent is an advertising agency engaged in formulating, editing, selling, and advising its clients on advertising

matters. It is the advertising representative of respondent, W. K. Sterline, and prepares and places all newspaper and periodical advertising, and reviews, edits, revises, alters, rearranges, and sometimes rewrites all advertising material used by W. K. Sterline in the offering for sale, sale and distribution of the aforesaid "Hay Fever Treatment" and "Asthma Treatment" and the individual medicinal preparations of which said treatments are composed.

PAR. 4. The respondents act in conjunction with one another in the performance of the acts and practices hereinafter found.

PAR. 5. In furtherance of the sale and distribution of the said "Hay Fever Treatment," and "Asthma Treatment," variously designated as aforesaid, and of the individual medicinal preparations of which said treatments are composed, as aforesaid, the said respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the said "Hay Fever Treatment," and "Asthma Treatment" and the individual medicinal preparations of which said treatments are composed, by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have caused and are now causing the dissemination of false advertisements concerning the said "Hay Fever Treatment" and "Asthma Treatment," designated as aforesaid, and concerning the individual medicinal preparations of which said treatments are composed, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said treatments and the purchase of the respective individual medicinal preparations thereof, in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations disseminated and caused to be disseminated by the United States mails, and by various means in commerce, through the use of form letters, leaflets, pamphlets, and other advertising media, are the following:

WHY SUFFER WITH HAY FEVER: Fortify your system now by using W. K. Sterline's Hay Fever Compound.

Every time you take a dose you are doing that much to fortify your system and avoid your Hay Fever.

For 20 years I have been afflicted with Hay Fever. Nothing gave me any relief until I used your product. The sneezing and running from my nose was checked and I can truthfully say it is the most effective remedy I ever used in my life.

Some will not believe Hay Fever can be prevented, but at the end of every Hay Fever season sufferers write they escaped entirely.

I am glad to recommend your treatment because it always keeps me from having the slightest attack of Hay Fever.

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I am mailing you today my **ASTHMA COMPOUND** and, since most people who suffer from Asthma also have Bronchitis without knowing it, I am also sending a trial of my **Bronchial Elixir**.

For instance, W. W. Shaeffer, Wakeman, Ohio, says that before he used my treatment in 1909, he couldn't rest in bed at all, but since taking the medicine nearly 30 years ago, he has never had an attack of asthma.

I have hundreds and hundreds of letters, not only from those who have just recently taken the treatment, but from those who used these same medicines 10, 15, and 20 years ago, all stating that their asthma has not returned.

I was confined to my bed for years and wondered how I managed to live. Everything I ate disagreed with me until I received your proper diet. Now I am making up for what I missed in my younger days. I have just forgotten that I ever had Asthma, but I owe it all to your great medicine. I am in the best of health * * *.

Your medicines are worth their weight in gold and God Bless you for saving me from the grave. I did not want to live those years and now I can hardly believe it is myself well and perfectly healthy. I want everyone to write me as I will always praise your treatment to the highest. I would be dead but for your precious medicine.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, purporting to be descriptive of the therapeutic properties of respondent W. K. Sterline's "Hay Fever Treatment," respondents represent directly and by implication that the said "Hay Fever Treatment" is a cure and remedy for hay fever and constitutes a competent and effective treatment for hay fever; that it will fortify one's system against hay fever; that it will enable one to avoid hay fever; and that it will check sneezing and discharging from the nose.

PAR. 7. Through the use of the statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, purporting to be descriptive of the therapeutic properties of respondent W. K. Sterline's "Asthma Treatment," and of the individual medicinal preparations of which said treatment is composed, respondents represent directly and by implication that the said "Asthma Treatment" is a cure and remedy for asthma and constitutes a competent and effective treatment for asthma; that it is a cure and remedy for bronchitis and constitutes a competent and effective treatment for bronchitis when bronchitis is associated with asthma; that it will restore one to health; that it will prevent the return of asthma.

PAR. 8. Through the use of the statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, purporting to be descriptive of the therapeutic properties of the medicinal preparation "W. K. Sterline's Elixir," respondents represent directly and by implication that the said medicinal preparation is a cure and remedy for bronchitis and constitutes a competent and effective treatment for bronchitis.

PAR. 9. The aforesaid statements and representations, and others similar thereto but not specifically set out herein, are grossly exaggerated, false, and misleading.

The aforesaid "Hay Fever Treatment," sold and distributed as aforesaid is not a cure or remedy, nor a competent or effective treatment for hay fever. It has no generally recognized dependable therapeutic value whatever in the treatment of hay fever. It will not fortify one's system against hay fever. It will not enable one to avoid hay fever. It will not prevent hay fever. It will not check sneezing and discharging from the nose.

The aforesaid "Asthma Treatment," sold and distributed as aforesaid, or the individual medicinal preparations of which said treatment is composed, used separately, jointly, or in any combination of one with the other, is not a cure or a remedy, nor a competent or effective treatment, for asthma or bronchitis; nor do they jointly or separately, or in any combination of one with the other, have any generally recognized dependable therapeutic value in the treatment of asthma in excess of affording mild temporary relief from the paroxysms usually associated with asthma; nor do they jointly or separately, or in any combination of one with the other, have any generally recognized dependable therapeutic value in the treatment of bronchitis, when bronchitis is associated with asthma, in excess of that furnished by a mild expectorant. They will not restore one to health. They will not prevent the return of asthma.

The aforesaid medicinal preparation "W. K. Sterline's Elixir" sold and distributed, as aforesaid, is not a cure or remedy, nor a competent or effective treatment for bronchitis. It has no generally recognized dependable therapeutic value in the treatment of bronchitis in excess of that furnished by a mild expectorant, either when bronchitis is associated with asthma or when bronchitis is independent of asthma.

PAR. 10. The medicinal preparation "W. K. Sterline's Compound" contains the drugs potassium iodide, fluid extract of lobelia, and sodium bromide. Due to the presence of potassium iodide and fluid extract of lobelia the use of this preparation may be harmful to persons suffering from active or latent tuberculosis by reason of delaying or retarding healing and the danger of activation of dormant lesions. Due to the presence of sodium bromide the use of this preparation over a long period of time by any person is likely to cause mental derangement and rash.

PAR. 11. The labels now being used by respondent, W. K. Sterline, for the medicinal preparation "W. K. Sterline's Compound" carries the following statement printed thereon:

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NOTE: If you have tuberculosis see a physician before using.

This statement is not such a warning or cautionary statement that apprises the reader that the use of this preparation may be harmful to persons suffering from active or latent tuberculosis by reason of delaying or retarding healing and the danger of activation of dormant lesions and that this preparation used over a long period of time by any person is likely to cause mental derangement and rash.

The advertisements disseminated by the respondents contain neither a statement to the effect that the use of this preparation may be harmful to persons suffering from active or latent tuberculosis by reason of delaying or retarding healing and the danger of activation of dormant lesions and that its use over a long period of time is likely to cause mental derangement and rash, nor a cautionary or warning statement to the effect that this preparation should be used only as directed on the label. Such advertisements, therefore, constitute false advertisements in 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 injury to health.

PAR. 12. The use of said respondents, as aforesaid, of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature, disseminated as aforesaid, has had and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and that respondent W. K. Sterline's "Hay Fever Treatment" and "Asthma Treatment" and the individual medicinal preparation of which said treatments are composed will accomplish the results claimed as found in paragraphs 6, 7, and 8 hereof, and that respondent's medicinal preparation "W. K. Sterline's Compound" is harmless and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent W. K. Sterline's aforesaid "Hay Fever Treatment" and "Asthma Treatment" and the various medicinal preparations of which said treatments are composed, as aforesaid.

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.

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, 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 findings as to the facts and its conclusion based thereon and an order disposing of the proceeding, 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 respondent, W. K. Sterline, his agents, representatives, and employees, and that respondents, Mumm, Romer, Robbins & Pearson, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of W. K. Sterline's "Hay Fever Treatment," consisting of the medicinal preparation "W. K. Sterline's Compound" and W. K. Sterline's "Asthma Treatment" consisting of the medicinal preparations, "W. K. Sterline's Compound," "W. K. Sterline's Elixir," and "W. K. Sterline's Korana Powder," and the individual preparations of which the aforesaid "Hay Fever Treatment" and the aforesaid "Asthma Treatment" are composed, or in connection with the offering for sale, sale or distribution of any other preparation or combination of preparations, consisting of substantially similar composition or possessing substantially similar properties, whether represented as a treatment or treatments and under whatever name or names designated, 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, indirectly or through inference:

A. That respondent W. K. Sterline's "Hay Fever Treatment," or the medicinal preparation "W. K. Sterline's Compound"

(a) is a cure or remedy for, or possesses any therapeutic value whatever in the treatment of persons suffering from, hay fever; or

(b) possesses any properties which will be effective in fortifying the system against, or enable one to avoid, hay fever; or

(c) will check sneezing and discharging from the nose; and

B. That respondent W. K. Sterline's "Asthma Treatment," or the medicinal preparations "W. K. Sterline's Compound," "W. K. Ster-

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line's Elixir" or "W. K. Sterline's Korana Powder," separately, jointly, or when used in any combination of the one with the other:

(a) is a cure or remedy for, or possesses any therapeutic value in the treatment of, asthma in excess of affording mild temporary relief from the paroxysms usually associated with asthma; or

(b) will prevent the return of asthma or restore one to health; or

(c) possesses any therapeutic value in the treatment of bronchitis, when bronchitis is associated with asthma, in excess of that furnished by a mild expectorant;

C. That respondent W. K. Sterline's medicinal preparation "W. K. Sterline's Elixir" possesses any therapeutic value in the treatment of bronchitis in excess of that furnished by a mild expectorant, whether bronchitis is associated with asthma or not.

2. Disseminating or causing to be disseminated any advertisement of the medicinal preparation "W. K. Sterline's Compound" by means of United States mail or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which fails to reveal that said medicinal preparation should not be used by persons suffering from active or latent tuberculosis and that use of said preparation over a long period of time is likely to cause mental derangement, provided, however, that if the label of said preparation contains a warning of the potential dangers existing in the said medicinal preparation as hereinabove set forth, such advertisements need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED ON THE LABEL.

3. 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 W. K. Sterline's "Hay Fever Treatment" or of W. K. Sterline's "Asthma Treatment," or of the individual medicinal preparations of which each treatment is composed, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to comply with the requirements set forth in paragraph 2 hereof.

It is further ordered, That the respondent 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

NOLAN B. STADLEY, TRADING AS STERLING
APPLIANCE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4542. Complaint, July 18, 1941—Decision, Sept. 23, 1941*

Where an individual engaged in interstate sale and distribution of his "Sterling Short Wave Diathermy"; by means of advertisements disseminated through the mails—

- (a) Represented that his said device, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments, by self-application in the home, was a scientific, safe, harmless, and effective means for the relief, cure, or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and colds, painful menstruation, female disorders, ulcers, and innumerable other ailments, and for the alleviation of pain resulting therefrom, and that its use would have no ill effects upon the body;

Facts being the device did not constitute a competent treatment for conditions of acute inflammation of the nerves, muscles, bursae, or joints, and rheumatic pains associated therewith, but might result, in such cases, in further swelling of the inflamed tissues, thereby increasing the congestion and spreading the inflammation; short wave diathermy is contra-indicated in all cases of menstruation, pregnancy, gastric ulcers, acute appendicitis, in areas where there is a probable malignancy, and where there is a hemorrhagic diathesis; use of device in certain cases might cause serious injury to health, delay proper diagnosis and treatment, and result in severe tissue destruction and burns; use for treatment of pain in the extremities under certain conditions may lead to gangrene and even necessitate amputation; and diagnosis by competent medical authority is required to determine if diathermy is indicated and method of treatment which should be prescribed; and

- (b) Failed to reveal the facts material in the light of such representations, and that use of said device under prescribed or usual conditions might result in serious and irreparable injury to health, and failed to reveal conspicuously that it might be safely used only after a competent medical authority had determined that diathermy was indicated and had prescribed the treatment, and user had been adequately instructed in the operation of such device by a trained technician;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it, because of said belief, to purchase his said device or apparatus:

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. James L. Baker for the Commission.