

Syllabus

IN THE MATTER OF

DAVID L. SILVER AND O. C. COLWES, TRADING AS KAY'S
CUT RATE AND AS KAY'S CUT RATE DRUGSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4510. Complaint, May 27, 1941—Decision, Oct. 14, 1941*

Where two individuals engaged in interstate sale and distribution of various medicinal preparations; in advertisements through the mails, in newspapers, circulars, and other advertising literature, directly and by implication—

- (a) Represented that their "Madame Bea's Capsules" constituted a competent and effective treatment for delayed, unnatural, and suppressed menstruation, and that it was safe and harmless, through such statements as "*Modern women: Harmless prescription delayed periods. Don't be alarmed over delayed unnatural suppressed periods. Madame Bea's Capsules sold at Kay's Cut-Rate*";

Facts being that said product was not a competent or effective treatment for such ailment, and was not safe or harmless, in that it contained the drugs ergot, oil of savin, aloin, and hellebore in quantities sufficient to cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs; where used to interfere with the normal course of pregnancy, might result in uterine infection causing blood poisoning; might also produce a severe circulatory condition by constriction of the blood vessels and contraction of the involuntary muscles, tending to cause abortion, and might result in severe poisonous effects upon the human system, in some instances resulting in loss of limbs or other serious and irreparable injury to health; and

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

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said preparation possessed properties which it did not in fact possess, and that it was safe and harmless when such was not the fact, and to cause such public to buy substantial quantities of said preparation, as a result of such belief:

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. William L. Taggart for the Commission.

McGinnis & Mann, of Beckley, W. Va., for respondents.

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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 David L. Silver and O. C. Colwes, trading under the names of Kay's Cut Rate and Kay's Cut Rate Drugs, 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 are individuals operating under the laws of the State of West Virginia with their principal office and place of business in Beckley, W. Va. Kay's Cut Rate and Kay's Cut Rate Drugs are trade names used by respondents in the operation of their said business.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondents is a drug preparation advertised and sold as "Madame Bea's Capsules."

Respondents cause their said preparation, when sold, to be transported from their place of business in the State of West Virginia 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 said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in news-

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papers, and by circulars and other advertising literature, are the following:

Modern Women! Harmless prescription delayed periods. Don't be alarmed over delayed unnatural suppressed periods. *Madame Bea's Capsules* sold at *Kay's Cut-Rate*.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondents represent and have represented, directly and by implication, that their preparation designated as "Madame Bea's Capsules" constitutes a competent and effective treatment for delayed, unnatural, and suppressed menstruation, and that said preparation is safe and harmless.

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

Such use of said preparation may result in gastro-intestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels, and contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

PAR. 6. The advertisements disseminated by the respondents constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may cause gastro-intestinal dis-

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turbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact, and the capacity and tendency to cause the purchasing public to purchase substantial quantities of respondents' preparation as a result of such belief.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 27, 1941 issued, and on May 29, 1941 served its complaint in this proceeding upon David L. Silver and O. C. Colwes, individually, and trading as Kay's Cut Rate and as Kay's Cut Rate Drugs, charging them with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are individuals operating under the laws of the State of West Virginia, with their principal office and place of business in Beckley, W. Va. Kay's Cut Rate and Kay's

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Cut Rate Drugs are trade names used by respondents in the operation of their said business.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondents is a drug preparation advertised and sold as "Madame Bea's Capsules."

Respondents cause their said preparation, when sold, to be transported from their place of business in the State of West Virginia 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 said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

Modern Women! Harmless prescription delayed periods. Don't be alarmed over delayed unnatural suppressed periods. Madame Bea's Capsules sold at Kay's Cut-Rate.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondents represent and have represented, directly and by implication, that their preparation designated as "Madame Bea's Capsules" constitutes a competent and effective treatment for delayed, unnatural and suppressed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' prepara-

tion is not a competent or effective treatment for delayed, unnatural, or suppressed menstruation. Moreover, said preparation is not safe or harmless, as it contains the drugs ergot, oil of savin, aloin, and hellebore in quantities sufficient to cause serious and irreparable injury to health if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels, and contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

PAR. 6. The advertisements disseminated by the respondents constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact, and the capacity and tendency to cause the purchasing public to purchase substantial quantities of respondents' preparation as a result of such belief.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer the respondents admit all of the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents David L. Silver and O. C. Colwes, individually, and trading as Kay's Cut Rate and as Kay's Cut Rate Drugs, or trading under any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their medicinal preparation known as Madame Bea's Capsules, or any other medicinal preparation or product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparation constitutes a competent or effective treatment for delayed, unnatural or suppressed menstruation, or that said preparation is safe or harmless; or which advertisement fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in cases of pregnancy may cause uterine infection and blood poisoning.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and

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excessive congestion and hemorrhage of the pelvic organs, and in cases of pregnancy may cause uterine infection and blood poisoning.

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

POWER & GANG MOWER MANUFACTURERS' ASSOCIATION, COLDWELL LAWN MOWER COMPANY, JACOBSEN MANUFACTURING COMPANY, MILBRADT MANUFACTURING COMPANY, MOTO MOWER COMPANY, TORO MANUFACTURING COMPANY, IDEAL POWER LAWN MOWER COMPANY, OUTBOARD MOTORS CORPORATION, ROSEMAN TRACTOR MOWER COMPANY, AND ECLIPSE LAWN MOWER COMPANY

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

Docket 3689. Complaint, Jan. 19, 1939—Decision, Oct. 15, 1941

Where an association of manufacturers of power or gang mowers or both, whose combined sales approximated from 65 to 85 percent of the total sales of such equipment, of which, it appeared, a large part was sold to agencies of the Federal Government; following the abandonment of the N. R. A. code of fair competition for the industry, which carried into effect many of the practices previously established by said association and included provision for filing of prices and strict adherence thereto as filed, various restrictive rules relating to marketing, uniform cash discounts and establishment of trade-in allowances which were not to be exceeded, and in order "to salvage such provisions of the power and gang mower code as were found of value under the N. R. A."—

- (a) Provided for the filing of prices with the association and the furnishing of copies to all known members of the industry, and also for uniform cash discounts and uniform guarantees to purchasers; and prohibited the sale of any product at any other price or discount than those set forth in such published price sheets;
- (b) Prohibited members from repurchasing or taking in trade any product of the industry, or granting credit or allowances therefor, in amounts in excess of those set forth in the trade-in allowance schedule adopted by the association, and published, in different years, a "Blue Book" fixing trade-in allowances for various makes, models, and years, which were less, it appeared, than the average actual value of the equipment concerned;
- (c) Established a uniform rate of discount to be granted to agencies of the Federal Government and, where price was the only factor considered, undertook to place their various models, which were not identical and prices of which ordinarily were not the same, on an absolute price parity; and—
- (d) Organized distributors, in order more fully to effectuate such association and member policies in various territories in the United States, including, particularly, four large cities, and frequently met with such dealer organizations, and exerted pressure upon dealers to secure compliance with their said policies, including observance of established prices, discounts, and trade-in allowances, and avoidance of price cutting;