

Syllabus

IN THE MATTER OF

JAMES R. MIDDLEBROOK, M. D., DOING BUSINESS AS
MIDDLEBROOK HOSPITAL AND CLINICCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4539. Complaint, July 16, 1941—Decision, Dec. 11, 1941*

Where a doctor of medicine, with offices, hospital, and clinic in a certain Texas city, engaged in the surgical and medical treatment of diseases and disorders of the prostate gland, and in distributing through the mails, advertising and other literature, which had the capacity and tendency to induce prospective patients to travel to his place of business for treatment; and engaged, further, in the interstate offer, sale, and distribution of certain medicinal preparations in a "Special Prostate Package for Home Treatment," containing (1) "Calomel, Rhubarb, and Colocynth Compound," (2) "Special Formula No. 17831," and (3) "Methenamine (7½ Grains)";

By means of letters, circulars, booklets, and other advertising literature (along with requests, on the reverse side of many of his advertisements, for names and addresses of men believed to have prostate or rectal troubles, together with an offer to award the forwarder a \$10 credit on medical services rendered in aforesaid city following the furnishing of such names); directly or by implication—

- (a) Falsely represented that preparations contained in said "Special Package" would relieve pain and soothe and heal the affected parts involved in kidney, bladder, and rectal diseases and diseases of the prostate gland;
- (b) Falsely represented that said "Methenamine (7½ Grains)" was one of the best urinary antiseptic treatments for cleansing infections and inflammation from the kidneys, bladder, and prostate and urethral canal; facts being said product would be effective only when urine was sufficiently acid to liberate formaldehyde, and contained no ingredient insuring constant acidity of the urine;
- (c) Falsely represented that said "Special Formula No. 17831," when applied through the rectum, "was absorbed through and into" the prostate gland in sufficient quantities to be effective;
- (d) Falsely represented that the price of his said package of preparations was normally \$7.50, but that it was offered at a special introductory price of \$5.00, facts being \$5.00 was the price for which it was generally sold; and
- (e) Failed to reveal that prescribed use of his cathartic "Calomel, Rhubarb, and Colocynth Compound" by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, was dangerous;

With effect of misleading and deceiving a substantial portion of the purchasing public into the belief that such false representations were true, and further effect of causing it because of said mistaken belief, to purchase his said "Special Package":

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.

Complaint

34 F. T. C.

Mr. Eldon P. Schrup for the Commission.

Mr. Douglas A. Newton, of Del Rio, Tex., 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 James R. Middlebrook, M. D., individually and doing business under the name and style of the Middlebrook Hospital and Clinic, 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, James R. Middlebrook, is a doctor of medicine, doing business under the name and style of the Middlebrook Hospital and Clinic, with offices, hospital, and clinic located in the city of Del Rio, State of Texas.

Respondent allegedly specializes in the surgical and medical treatment of diseases and disorders of the prostate gland, and in furtherance of the introduction of his said medical services to the public has caused, and now causes, to be distributed through the United States mails various letters, circulars, booklets, physical examination and diagnosis blanks, dietary lists, and other advertising literature purportedly descriptive of the conditions allegedly giving rise to the need for such operations or treatments and further designed to induce prospective patients to travel to respondent's places of business for the obtaining of the same.

Respondent is now and for more than 1 year last past has been also engaged in the offering for sale, sale and distribution of certain medicinal preparations distributed in a package designated as "Special Prostate Package for Home Treatment," containing the following preparations:

(a) "Calomel, Rhubarb, and Colocynth Compound," consisting of a box of two capsules, labeled as follows:

Calomel, Rhubarb and
Colocynth Compound—

SHARP & DOHME

Take one each night before
treatment is started.

Said preparation is compounded of the following drugs:

	<i>Grains</i>
Calomel	2
Pill Rhubarb Compound	2
Pill Colocynth Compound	2

(b) "Special Formula No. 17831," consisting of a box of 30 suppositories, labeled as follows:

Thirty Suppositories
SPECIAL FORMULA
No. 17831

Keep in a cool place to avoid softening Atropine, $\frac{1}{60}$ gr.; Phenacaine Hydrochloride, $\frac{1}{3}$ gr.; Tannin, 1 gr.; Nutgall, 1 gr.; Phenol, $\frac{1}{6}$ gr.; Zinc Oxide, 6 grs.

CAUTION: To be used only by or on the prescription of a physician.

Manufactured for
J. R. Middlebrook, M. D.
Del Rio, Texas
by
The Upjohn Company,
Kalamazoo, Mich.

(c) "Methenamine (7½ Grains)," consisting of a box of tablets, labeled as follows:

Methenamine (7½ Grains)
SHARP & DOHME

Dissolve one in glass of water, and take 2 times daily, before meals, for 20 days, then one daily until complete.

The above preparations are described and offered for sale by respondent by means of letters, circulars, booklets, and other advertising literature distributed as aforesaid, to prospective patients or purchasers.

Respondent has caused and now causes said Special Prostate Package for Home Treatment when sold to be transported from his offices, hospital, or clinic in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said Special Prostate Package for Home Treatment in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 2. Respondent in the course and conduct of his aforesaid business has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said Special Prostate Package for Home Treatment by the United States mails and various other means in commerce, as commerce is defined by the Federal Trade Commission Act which are likely to induce, directly or indirectly, the purchase of said preparations or package; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said package or preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said package or preparations in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in the said advertisements disseminated and caused to be disseminated by respondent, as aforescribed, are the following:

SPECIAL PROSTATE PACKAGE FOR HOME TREATMENT

Recommended by J. R. Middlebrook, M. D.

So many of my prospective patients who suffer from kidney, bladder, rectal, and prostate gland trouble, have written to me saying that either because of lack of funds or other personal reasons, that they are unable to come at this time, and have asked me to recommend some of the medicine which I use for them to take at home until they can make the trip to Del Rio for complete treatment. It may be that you are in a similar condition.

I have prepared what I call the "Prostate Package" which is recommended for the relief of kidney, bladder, rectal, and especially the diseases of the prostate gland. It consists of three kinds of medicine to be taken both internally and applied through the rectum, thereby getting this medicine into the gland direct and also letting the gland tissues absorb medicine through and into the gland, which relieves the pain, soothes and heals the affected parts.

This treatment is designed to help clear the infection and inflammation from the kidneys, bladder, rectum, and prostate and give relief from pain and discomforts of these diseases.

The price of this package complete is \$5.00 postage prepaid. I assure you that the highest quality ingredients only are used because I want you to be a patient who will be satisfied.

THIS PACKAGE SOLD UNDER A MONEY BACK GUARANTEE

Because this treatment has proven so successful, we are able to sell this remedy so that if it does not help you after you have given it a fair trial, and you return the unused portion of the medicine in good condition, we will refund your money on the amount of medicine which is not used.

I believe you will agree that this is a fair way in which to deal. You stand a very small chance to lose anything, and you have everything to gain. Order your package today.

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-----Order Blank-----

The Middlebrook Hospital and Clinic,
Del Rio, Texas.

I enclose \$5.00 for your prostate package containing a forty-day treatment for the prostate gland. (If you send cash, you do so at your own risk. C. O. D. if convenient.)

(Your name)-----
(Your address)

Some of respondent's above advertisements contain the following variations of paragraphs 2 and 4 quoted above:

I have prepared a home treatment which consists of three kinds of medicine to be taken both internally and by application through the rectum. The medicine to be taken internally is one of the best urinary antiseptics, which is designed to help clear the infection and inflammation from the kidneys, bladder, prostate, and urethral canal, while the medicine used by application through the rectum is absorbed through and into the gland relieves the pain and soothes the inflamed parts.

* * *

By buying in quantities of ten thousand lots, I have been able to hold the price of this special package down to \$5.00, postage prepaid. I assure you that the highest quality ingredients only are used, because I want you to be a satisfied patient also.

* * *

The price of this package complete is \$7.50, but as an introductory offer to you, I can send it postpaid for only \$5. I assure you that only the highest quality ingredients are used because I want you to be a satisfied patient of mine.

On the reverse side of many of respondent's said advertisements appear testimonials from persons allegedly recommending the purchase and use of respondent's said Special Prostate Package for Home Treatment, while other of respondent's said advertisements similarly contain requests by respondent for the names and addresses of men believed to have prostate or rectal troubles, and offering the forwarder a \$10 credit on medical services to be rendered in Del Rio upon the furnishing of such names and addresses.

PAR. 3. Through the use of the statements and representations hereinabove set forth and other statements and representations similar thereto, not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of the preparations contained in respondent's "Special Prostate Package for Home Treatment," respondent represents, directly and by implication, that said preparations relieve pain and soothe and heal affected parts involved in kidney, bladder, and rectal diseases, and diseases of the prostate gland; that "Methenamine (7½ Grains)" is one of the best urinary antiseptic treatments for cleansing infections and inflammation from

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the kidneys, bladder, and prostate and urethral canal; that said preparation, "Special Formula No. 17831," when applied through the rectum medicates or "gets into" prostate gland in sufficient quantities by absorption through the tissues to be effective; and that the price of respondent's said package of preparations is normally \$7.50 but that it is offered for sale and sold at a special introductory price of \$5.

PAR. 4. The foregoing statements and advertisements of the respondent are grossly exaggerated, false, and misleading.

In truth and in fact, the preparations contained in respondent's said Special Prostate Package for Home Treatment will not relieve pain and soothe and heal affected parts involved in kidney, bladder, and rectal diseases, and diseases of the prostate gland. Said preparation, "Methenamine (7½ Grains)," is not one of the best urinary antiseptics for cleansing infections and inflammations from the kidneys, bladder, and prostate and urethral canal. Respondent's preparation, "Special Formula No. 17831," when applied through the rectum, will not medicate or "get into" the prostate gland in sufficient quantities by absorption through the tissues to be effective. The usual price of respondent's said "Special Prostate Package for Home Treatment" is not \$7.50 but said package is sold generally by respondent for the price of \$5. The respondent's so-called introductory offer price of \$5 for said "Special Prostate Package for Home Treatment" is not an introductory price.

Respondent's preparation designated as Calomel, Rhubarb, and Colocynth Compound is limited in its therapeutic effect to the temporary evacuation of the bowels and its use would not constitute an effective treatment for infections or inflammations of the rectum and it is of no therapeutic value in the treatment of any infection or inflammation of the kidneys, bladder, or prostate gland, nor will it relieve the pain and discomfort attending such disorders.

Respondent's preparation, "Methenamine (7½ Grains)," although possessing antiseptic qualities, would be effective only when the urine was sufficiently acid to liberate formaldehyde. This product contains no ingredients insuring the constant acidity of the urine and its efficacy in neutral or alkaline urine would be of no significance.

PAR. 5. The respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparation "Calomel, Rhubarb, and Colocynth Compound" is a cathartic and its use, by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, is dangerous.

PAR. 6. The use by the respondent 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 false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said "Special Prostate Package for Home Treatment."

PAR. 7. The aforesaid acts and practices of 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 16, 1941, issued, and on July 19, 1941, served its complaint in this proceeding upon respondent, James R. Middlebrook, M. D., individually and doing business under the name and style of the Middlebrook Hospital and Clinic, 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, the Commission, by order entered herein, granted respondent's 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 on 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. Respondent, James R. Middlebrook, is a doctor of medicine doing business under the name and style of the Middlebrook Hospital and Clinic, with offices, hospital, and clinic located in the city of Del Rio, State of Texas.

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Respondent is engaged in the surgical and medical treatment of diseases and disorders of the prostate gland, and as a method of introducing his said medical services to the public respondent has caused and now causes to be distributed through the United States mails various letters, circulars, booklets, physical examination and diagnosis blanks, dietary lists, and other advertising literature wherein respondent describes conditions stated by respondent to give rise to the need for respondent's operations or treatments and which have had and now have the capacity and tendency to induce prospective patients to travel to respondent's places of business for the obtaining of the same.

Respondent is now and for more than 1 year last past has been further engaged in the offering for sale, sale, and distribution of certain medicinal preparations distributed in a package designated "Special Prostate Package for Home Treatment," containing the following preparations:

(a) "Calomel, Rhubarb and Colocynth Compound," consisting of a box of two capsules, labeled as follows:

Calomel, Rhubarb and
Colocynth Compound—
SHARP & DOHME
Take one each night before
treatment is started.

Said preparation is compounded of the following drugs:

	Grains
Calomel	2
Pill Rhubarb Compound.....	2
Pill Colocynth Compound.....	2

(b) "Special Formula No. 17831," consisting of a box of thirty suppositories, labeled as follows:

Thirty Suppositories
SPECIAL FORMULA
No. 17831

Keep in a cool place to avoid softening Atropine,
1/60 gr.; Phenacaine Hydrochloride, 1/3 gr.;
Tannin, 1 gr.; Nutgall, 1 gr.; Phenol, 1/5 gr.; Zinc
Oxide 6 grs.

CAUTION: To be used only by or on the prescription
of a physician.

Manufactured for
J. R. Middlebrook, M. D.
Del Rio, Texas
by
The Upjohn Company,
Kalamazoo, Mich.

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(c) "Methenamine (7½ Grains)," consisting of a box of tablets, labeled as follows:

Methenamine (7½ Grains)

SHARP & DOHME

Dissolve one in glass of water, and take 2 times daily, before meals, for 20 days, then one daily until complete.

The above preparations are described and offered for sale by respondent by means of letters, circulars, booklets, and other advertising literature distributed as aforesaid by respondent to prospective patients and purchasers.

Respondent has caused and now causes said Special Prostate Package for Home Treatment when sold to be transported from his offices, hospital, or clinic in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said Special Prostate Package for Home Treatment in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent in the course and conduct of his aforesaid business has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said Special Prostate Package for Home Treatment by the United States mails and various other means in commerce, as commerce is defined by the Federal Trade Commission Act, which are likely to and have induced, directly and indirectly, the purchase of said preparations or package; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said package or preparations by various means for the purpose of inducing and which are likely to and have induced, the purchase of his said package or preparations in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statement and representations contained in the said advertisements disseminated and caused to be disseminated by respondent, as aforescribed, are the following:

SPECIAL PROSTATE PACKAGE FOR HOME TREATMENT

Recommended by J. R. Middlebrook, M. D.

So many of my prospective patients who suffer from Kidney, Bladder, rectal and Prostate Gland trouble, have written to me saying that either because of lack of funds or other personal reasons, that they are unable to come at this time,

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and have asked me to recommend some of the medicine which I use for them to take at home until they can make the trip to Del Rio for complete treatment. It may be that you are in similar condition.

I have prepared what I call the "Prostate Package" which is recommended for the relief of Kidney, bladder, rectal and especially the diseases of the prostate gland. It consists of three kinds of medicine to be taken both internally and applied through the rectum, thereby getting this medicine into the gland direct and also letting the gland tissues absorb medicine through and into the gland, which relieves the pain, soothes and heals the affected parts.

This treatment is designed to help clear the infection and inflammation from the kidneys, bladder, rectum and prostate and give relief from pain and discomfort of these diseases.

The price of this package complete is \$5.00 postage prepaid. I assure you that the highest quality ingredients only are used because I want you to be a patient who will be satisfied.

THIS PACKAGE SOLD UNDER A MONEY BACK GUARANTEE

Because this treatment has proven so successful, we are able to sell this remedy so that if it does not help you after you have given it a fair trial, and you return the unused portion of the medicine in good condition, we will refund your money on the amount of medicine which is not used.

I believe you will agree that this is a fair way in which to deal. You stand a very small chance to lose anything, and you have everything to gain. Order your package today.

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The Middlebrook Hospital and Clinic,

Del Rio, Texas.

I enclose \$5.00 for your prostate package containing a forty-day treatment for the prostate gland. (If you send cash, you do so at your own risk. C. O. D. if convenient.)

(Your name)

(Your address)

Some of respondent's above advertisements contain the following variations of paragraphs 2 and 4 quoted above:

I have prepared a home treatment which consists of three kinds of medicine to be taken both internally and by application through the rectum. The medicine to be taken internally is one of the best urinary antiseptics, which is designed to help clear the infection and inflammation from the kidneys, bladder, prostate and urethral canal, while the medicine used by application through the rectum is absorbed through and into the gland relieves the pain and soothes the inflamed parts.

* * *

By buying in quantities of ten thousand lots, I have been able to hold the price of this special package down to \$5.00, postage prepaid. I assure you that the highest quality ingredients only are used, because I want you to be a satisfied patient also.

* * *

The price of this package complete is \$7.50, but as an introductory offer to you, I can send it postpaid for only \$5. I assure you that only the highest quality ingredients are used because I want you to be a satisfied patient of mine.

On the reverse side of many of respondent's said advertisements appear requests by respondent for the names and addresses of men believed to have prostate or rectal troubles, which said requests further contain an offer by the respondent to award the forwarder a \$10 credit on medical services to be rendered in Del Rio, following the furnishing of such names and addresses by said forwarder.

PAR. 3. Respondent through the use of the statements and representations hereinabove set forth ascribes certain therapeutic properties to the preparations contained in respondent's "Special Prostate Package for Home Treatment." Respondent through such statements and representations claims, directly and by implication, that the said preparations will relieve pain and soothe and heal the affected parts involved in kidney, bladder, and rectal diseases, and diseases of the prostate gland; that "Methenamine (7½ Grains)" is one of the best urinary antiseptic treatments for cleansing infections and inflammation from the kidneys, bladder, and prostate and urethral canal; that said preparation, "Special Formula No. 17831," when applied through the rectum medicates or "gets into" the prostate gland in sufficient quantities by absorption through the tissue to be effective; and that the price of respondent's said package of preparations is normally \$7.50 but that it is offered for sale and sold at a special introductory price of \$5.

PAR. 4. The foregoing statements and advertisements of the respondent are grossly exaggerated, false, and misleading.

In truth and in fact, the preparations contained in respondent's said Special Prostate Package for Home Treatment will not relieve pain and soothe and heal affected parts involved in kidney, bladder, and rectal diseases, and diseases of the prostate gland. Said preparation, "Methenamine (7½ Grains)," is not one of the best urinary antiseptics for cleansing infections and inflammations from the kidneys, bladder, and prostate and urethral canal. Respondent's preparation, "Special Formula No. 17831," when applied through the rectum, will not medicate or "get into" the prostate gland in sufficient quantities by absorption through the tissues to be effective. The usual price of respondent's said "Special Prostate Package for Home Treatment" is not \$7.50 but said package is sold generally by respondent for the price of \$5.00. The respondent's so-called introductory offer price of \$3.00 for said "Special Prostate Package for Home Treatment" is not an introductory price.

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Respondent's preparation, "Methenamine (7½ Grains)," although possessing antiseptic qualities, would be effective only when the urine was sufficiently acid to liberate formaldehyde. This product contains no ingredient insuring the constant acidity of the urine and its efficacy in neutral or alkaline urine would be of no significance.

PAR. 5. The respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparation, "Calomel, Rhubarb, and Colocynth Compound" is a cathartic and its use, by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis, is dangerous.

PAR. 6. Respondent's use of the foregoing false, deceptive, and misleading statements and representations 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 further had and now has the capacity and tendency to induce, and does, cause a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's said "Special Prostate Package for Home Treatment" and the preparations therein contained.

CONCLUSION

The aforesaid acts and practices of the respondent 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 substitute answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, James R. Middlebrook, M. D., individually and doing business under the name and style of the Middlebrook Hospital and Clinic, or trading or doing business under any other name or names, his agents, representatives, and employees, directly or through any corporate or any other device, in connection with the offering for sale, sale, or distribution of the medicinal preparations designated "Calomel, Rhubarb, and Colocynth Compound," "Special Formula No. 17831" and "Methenamine (7½ Grains)," separately or in combination as enclosed in a package designated as "Special Prostate Package for Home Treatment," or any preparations of substantially similar composition or possessing substantial 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 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 through inference: that said preparations separately or in combination will relieve pain or soothe or heal the affected parts involved in kidney, bladder or rectal diseases, or diseases of the prostate gland; that the preparation "Methenamine (7½ Grains)" is one of the best urinary antiseptic treatments for cleansing infection or inflammation from the kidneys, bladder, prostate, or urethral canal; that the preparation designated "Special Formula No. 17831," when applied through the rectum, medicates or penetrates the prostate gland in sufficient quantities by absorption through the tissues to be effective; that the price at which said "Special Prostate Package for Home Treatment" is offered for sale constitutes a special, reduced or introductory price, when such price is in fact the usual and customary price at which said package is offered for sale and sold by respondent in the normal and regular course of business; or which advertisement with respect to the preparation "Calomel, Rhubarb, and Colocynth Compound" fails to reveal that said preparation is a cathartic and should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis; provided, however, that if the directions for use, whether they appear on the label or in the labeling, or both on the label and in the labeling, contain a warning of the said potential dangers in the use of said preparation, as hereinabove set forth, such advertisement need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED.

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 de-

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fined in the Federal Trade Commission Act, of said preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement with respect to said preparation "Calomel, Rhubarb, and Colocynth Compound" fails to reveal the dangerous consequences which may result from the use of said preparation, as required in paragraph 1 hereof.

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.

Syllabus

IN THE MATTER OF

GRANT T. WHITESIDE, TRADING AS GRANT COMPANY

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

Docket 4553. Complaint, July 31, 1941—Decision, Dec. 11, 1941

Where an individual engaged in the interstate sale and distribution of medicinal preparations designated as "Ton Jon No. 1," "Ton Jon No. 2," and "Ton Jon No. 3"; by means of advertisements disseminated through the mails and in various other ways, including purported testimonials containing such exaggerated statements of claimed benefits received from use of said preparations as "No dread of gallstones after suffering 10 years," "Endorses Ton Jon No. 3, as the only treatment in many for prostate trouble.," "Ton Jon worth twenty times the price. Gave lasting relief," "Years of suffering ended," and "Says kidney stones came out like sand.;"

- (a) Falsely represented that his said Ton Jon No. 1 was an effective treatment for ailments and diseases of the stomach and bowels which would bring complete relief from indigestion, pain in the chest and stomach, palpitation, headache, loss of weight or strength, nervousness, sleeplessness, and various other conditions and troubles;
- (b) Falsely represented that said Ton Jon No. 2 was a powerful liver medicine and an effective treatment for ailments and disorders of the liver and gall bladder, which would bring relief from impurities of the blood and other disorders, lazy liver, sick headache, billousness, constipation, dizzy spells, drowsy feeling, gall stones, high blood pressure and various other troubles;
- (c) Represented that his Ton Jon No. 3 was an effective treatment for ailments and disorders of the kidneys and prostate glands, which would give complete relief from bladder irritations and weakness, dull and sharp pain in the back, stiffness in back and lower limbs, nephritis, diminished sexual power, nervousness, mental depression, sleeplessness, tiredness, low blood pressure and various other conditions and troubles; when in fact such representations were false and it would not accomplish such or better results in the treatment of prostate gland and kidney disorders than any medicine had ever done before; and
- (d) Failed to reveal that prescribed use of first two cathartic preparations by one suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis was dangerous;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such false representations were true and of thereby inducing purchase by it of the preparations in question:

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

Mr. S. F. Rose for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.