

Syllabus

IN THE MATTER OF
WARNER'S RENOWNED REMEDIES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4063. Complaint, Mar. 12, 1940—Decision, Mar. 23, 1942*

Where a corporation, engaged in interstate sale and distribution, among other medicinal preparations, of its "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets," which were sold separately and in combination under the designations "Prescription No. 6 Complete," "Prescription No. 6 Method," and "Formula No. 6 Method"; by means of advertisements through the mails, newspapers and periodicals, and by circulars, leaflets, and other advertising literature—

- (a) Represented that its said preparations were cures or remedies for functional sterility and constituted a competent and effective treatment therefor, and possessed beneficial properties in relation to the functioning of the female reproductive organs;
- (b) Represented that one of the general causes of functional sterility is lack of proper timing between ovulation and menstruation, and that its products served to synchronize such phenomena and thereby bring about pregnancy; and that another general cause of functional sterility is constriction of the mouth of the womb, which prevents fertilization, causing scanty menstruation and toxic accumulation, and that "Warner's Renowned Prescription No. 6" would relax the tension so that the mouth of the womb would be sufficiently open to permit pregnancy and prevent toxic accumulations;
- (c) Represented that the alkalizing hot douche provided by "Prescription No. 6" counteracted an acid condition of the womb, represented as another general cause of functional sterility, and thereby made fertilization or pregnancy possible; and that use of its products would tone up the female organs and relieve sluggishness, and thereby overcome functional sterility; and
- (d) Represented that its preparation would relieve itchy, sensitive, tender, and sore breasts associated with the menstrual period;

The facts being that such assertions as to ailments and their causes, and the functions concerned, were erroneous; its said preparations would not, either by reason of the theory upon which based or the ingredients therein contained accomplish results claimed; they were not, used either singly or in combination, cures or effective treatments for sterility, functional or otherwise, and possessed no beneficial properties with relation to the functioning of the female reproductive organs; and there was nothing in its "Prescription No. 6" or its combination treatment which could in any way affect the peculiar sensations in the breasts associated with menstruation; With the effect of misleading a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of thereby inducing it to purchase its said preparations:

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

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Before *Mr. Arthur F. Thomas* and *Mr. Robert S. Hall*, trial examiners.

Mr. William L. Taggart for the Commission.

Nash & Donnelly, of Washington, D. C., 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 Warner's Renowned Remedies Co., a corporation, 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. The respondent, Warner's Renowned Remedies Co., is a corporation, organized and doing business under the laws of the State of Minnesota with its principal office and place of business located at 13 East Twenty-fifth Street and 2451 Nicollet Avenue, Minneapolis, Minn. Said respondent trading under the name Warner's Renowned Medicine Co., is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the preparations sold and distributed by the respondent are "Warner's Renowned Prescription No. 6" and "Warner's Renowned Alkaline Douche Tablets."

Respondent causes its products when sold to be shipped from its place of business in Minneapolis, Minn., 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 medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

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

purchase of its said products 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 described, by the United States mails, by advertisements inserted in newspapers and periodicals, by circulars, leaflets, and other advertising literature, are the following:

1. That respondent's preparations are cures or remedies for functional sterility and constitute competent and effective treatment therefor;

2. That respondent's preparations possess beneficial properties in relation to the functioning of the female reproductive organs;

3. That one of the general causes of functional sterility is lack of proper timing between ovulation and menstruation and that the Warner products serve to synchronize such phenomena thereby bringing about pregnancy;

4. That another general cause of functional sterility is constriction or closing of the mouth of the womb which prevents fertilization causing scanty menstruation and toxic accumulation and that "Warner's Renowned Prescription No. 6" will relax the tension so that the mouth of the womb will be sufficiently opened to permit pregnancy and prevent toxic accumulations;

5. That the alkalizing hot douche provided by "Prescription No. 6" counteracts an acid condition of the womb which is another general cause of functional sterility and thereby makes fertilization or pregnancy possible;

6. That the use of the Warner products will tone up the female organs and relieve sluggishness and thereby overcome functional sterility; and

7. That respondent's preparations will relieve itchy, sensitive, tender, and sore breasts associated with the menstrual period.

PAR. 3. The respondent's aforesaid representations and claims, as well as others of similar import which have not been specifically set out herein, are grossly exaggerated, misleading and untrue. In truth and in fact respondent's preparations have no therapeutic value in the treatment of the female organs or in relieving any form of functional sterility. Said preparations do not constitute cures or remedies for functional sterility and are not competent or effective treatments therefor. Said preparations possess no value or beneficial properties in reference to the functioning of the female reproductive organs. Representations to the effect that the use of respondent's preparations will serve to synchronize the phenomena of ovulation and menstruation are false and deceptive in that menstruation is entirely dependent upon ovulation and there is no lack of synchronization between ovulation and menstruation but they must occur simultaneously. Respondent's representations as to the effect of its preparations in relaxing the mouth of the uterus and removing toxic accumulations is false, deceptive and misleading for the reason that when menstruation occurs the cervical opening will be sufficient to admit the passage of spermatozoa

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since it is through the cervix that drainage of menstrual discharges must take place. Furthermore, there is no toxic accumulation in the female organs arising from the causes or in the manner described by the respondent in its various advertising material. Any alkalization or neutralization of the acid condition of the vaginal secretions is contrary to nature since the normal reaction of the vagina is acid and consequently there would be no benefit derived from the use of respondent's alkalizing douche. Respondent's preparations have no therapeutic value in toning up the organs and relieving itchy, sensitive, tender or sore breasts associated with the menstrual period.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to its preparations has had and now has a tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and induces a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' preparations containing drugs.

PAR. 5. 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 March 12 A. D. 1940, issued and subsequently served its complaint upon the respondent, Warner's Renowned Remedies Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After issuance of said complaint, testimony, and other evidence in support of said complaint were introduced by William L. Taggart, attorney for the Commission and in opposition to the allegations of the complaint by John A. Nash and Horace J. Donnelly, attorneys for the respondent, before Arthur F. Thomas and Robert S. Hall, trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, testimony and other evidence, report of Trial Examiner Arthur F. Thomas upon the

evidence and exceptions filed thereto, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); 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, Warner's Renowned Remedies Co., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 2451 Nicollet Avenue, Minneapolis, Minn. Said respondent, trading under the name of "Warner's Renowned Medicine Co.," is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the preparations sold and distributed by the respondent are "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets," which are sold separately and in combination under the designations "Prescription No. 6 Complete," "Prescription No. 6 Method," and "Formula No. 6 Method."

Respondent causes its products, when sold, to be transported from its place of business in the State of Minnesota 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 medicinal preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparations, by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparations, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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 dis-

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seminated and caused to be disseminated as hereinabove described, by United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

1. That respondent's preparations are cures or remedies for functional sterility and constitute a competent and effective treatment therefor;

2. That respondent's preparations possess beneficial properties in relation to the functioning of the female reproductive organs;

3. That one of the general causes of functional sterility is lack of proper timing between ovulation and menstruation, and that the Warner products serve to synchronize such phenomena, thereby bringing about pregnancy;

4. That another general cause of functional sterility is constriction or closing of the mouth of the womb, which prevents fertilization, causing scanty menstruation and toxic accumulation, and that Warner's Renowned Prescription No. 6 will relax the tension so that the mouth of the womb will be sufficiently open to permit pregnancy and prevent toxic accumulation;

5. That the alkalizing hot douche provided by Prescription No. 6 counteracts an acid condition of the womb, which is another general cause of functional sterility, and thereby makes fertilization or pregnancy possible;

6. That the use of Warner's products will tone up the female organs and relieve sluggishness, and thereby overcome functional sterility; and

7. That respondent's preparation will relieve itchy, sensitive, tender, and sore breasts associated with the menstrual period.

PAR. 3. From examination of the testimony in this case, it appears that it is the respondent's contention that the general health of a woman has a direct bearing upon sterility and that the administration of the various tonics combined in respondent's preparation tones up the general health, with a favorable reaction upon the female organs, causing them to function properly and permit conception to occur. For the purpose of accomplishing this tonic effect, the respondent has developed its combination treatment, which consists of its preparations "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets."

PAR. 4. Respondent's tablet preparation "Warner's Renowned Prescription No. 6" is designed for use as a tonic and contains three ingredients: Ferrous sulfate, gentian, and nux vomica, which are designed as tonics to tone up the general health. Ferrous sulfate is an iron preparation effective in cases of anemia; gentian is a drug, the use of which

in modern medicine has, to a great extent, been discontinued, and which was formerly used as a stomachic, with perhaps some tonic value; and nux vomica is the original organic substance from which strichnine is obtained, which has been used considerably in the past as a tonic but less in recent years, and has a stimulating effect upon gastric secretions and is a nerve stimulant which tends to relax the nerve endings.

In addition to the above ingredients used for general tonic effect, there are other ingredients contained in this tablet which are designed to tone up the female organs and directly affect sterility. These ingredients are viburnum pruniflorous, a drug formerly used as a uterine tonic or sedative, which, since the use of more specific medication, has been largely discontinued and is now thought to be relatively inert; ovarian substance, a preparation made from whole ovary, which is considered to be inert and of no value when administered orally, particularly in quantities provided in respondent's preparation; and wheat germ oil, which contains vitamin E, sometimes referred to as a sterility vitamin. The value of vitamin E as affecting pregnancy or sterility in women has not been definitely determined. In tests upon rats it has been found to be effective in preventing repeated abortions, the minimum dose required being a half gram a day. If the ordinary pharmacological scale is used, it would require the use of a minimum of one hundred of respondent's pills, three times daily, to provide a comparable dose of this vitamin for human beings.

Respondent's laxative tablets designated "Warner's Renowned Laxative Tablets" are designed to assist in beneficially affecting sterility by toning up the system, relieving sluggishness, and eliminating constipation. This preparation consists of three drugs: Cascarin, podophyllin, and aloin, which combination constitutes a harsh laxative, the value of which is limited to the temporary relief of constipation and is of no value in the treatment of sterility.

Respondent's third preparation in its combination treatment is a douche tablet designated "Warner's Renowned Alkaline Douche Tablets" containing ten grains soda bicarbonate. The use of this douche in combination with the other preparations hereinabove described, is designed to assist in toning up the female organs by removing toxic accumulations and particularly the thickened mucous secretion forming a cervical plug or barrier against the entry of male spermatozoa, and by neutralizing the acid condition of the vagina, considered to be unfavorable to the spermatozoa.

PAR. 5. Based upon the medical testimony, the Commission finds that there are a large number of causes for sterility in women, many

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of which are unknown to the medical profession. The term "functional sterility" as used by the respondent is a misnomer and incorrect. By "functional" is meant that the organs are normally functioning, that the ovaries, tubes, uterus, and vagina are all normally developed and functioning within the normal realm, as contrasted to "pathological," where they would be improperly developed or where disease process has taken place. The conditions under which respondent asserts that sterility takes place are, by their nature, pathological and require specific treatment.

It is an established medical fact that women suffering from anemia, tuberculosis, and other debilitating diseases have become pregnant and the toning up of the general health of the individual will not in itself, overcome sterility, which may be due to many various causes of a pathological nature.

The lack of proper timing between ovulation and menstruation is not generally considered as a cause of sterility. In any event, there is nothing in respondent's "Prescription No. 6" or its combination treatment which will in any way effect the timing between ovulation and menstruation or serve to synchronize such phenomena.

The statements made by the respondent with reference to the constriction or closing of the mouth of the womb as being a general cause of functional sterility, are false and misleading. The mouth of the womb is never closed unless there is a congenital condition requiring surgery. Menstrual fluid is not normally held within the uterus due to constriction of the uterine outlet, and in event the uterine outlet should remain closed and the menstrual fluid accumulate, a very acute illness would undoubtedly result. It is normal between the periods of menstruation for a small amount of mucus to be present in the cervix or mouth of the womb. The presences of such mucous material is not generally considered as an obstruction to pregnancy, as the spermatozoa are able to penetrate this mucous, which is normally present. None of respondent's said preparations, used either singly or in combination will have the effect of relaxing the womb, so that the mouth of the womb will be sufficiently open to permit pregnancy or have any value in the prevention of so-called toxic accumulations.

The normal condition of the vagina is acid, and such acidity is essential for normal functioning. The use of the preparations contained in respondent's combination treatment, with the exception of the douche tablets, has no effect upon the acid condition of the vagina. The use of the bicarbonate of soda douche as provided in this prescription might have a tendency to temporarily neutralize

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the acid condition of the vagina. This, however, is contrary to the normal process of the vagina and has no value in favorably affecting sterility.

Respondent's preparations, used either singly or in combination as provided in "Prescription No. 6 Complete," "Prescription No. 6 Method," or "Formula No. 6 Method," are not cures or remedies for sterility, functional or otherwise, and do not constitute competent or effective treatments for sterility and possess no beneficial properties which have any value in promoting or aiding the functioning of the female reproductive organs. The use of said preparations will not tone up the female organs, relieve sluggishness, or in any way overcome sterility. Increased sensitivity of the breasts at or about the time of menstruation is considered to be physiological and normal in a great many women. There is nothing in respondent's "Prescription No. 6" or its combination treatment which can in any way affect the peculiar sensations in the breasts associated with menstruation, described by the respondent as itchy, sensitive, tender, and sore breasts.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to its preparations, has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparations containing drugs.

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, answer of the respondent, testimony, and other evidence taken before Arthur F. Thomas and Robert S. Hall, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of Trial Examiner Arthur F. Thomas upon the evidence and exceptions filed thereto, and

briefs in support of the complaint and in opposition thereto; 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, Warner's Renowned Remedies Co., a corporation, trading as Warner's Renowned Medicine Co., or under any other trade name, and 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 its preparations designated "Warner's Renowned Prescription No. 6," "Warner's Renowned Laxative Tablets," and "Warner's Renowned Alkaline Douche Tablets," either singly or in combination under the designations "Prescription No. 6 Complete," "Prescription No. 6 Method," or "Formula No. 6 Method," or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from:

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,

(a) That respondent's preparations, either singly or in combination, are cures or remedies for, or constitute competent or effective treatments for, functional sterility.

(b) That respondent's preparations, either singly or in combination, have any therapeutic value in the treatment of any form of sterility.

(c) That respondent's preparations, either singly or in combination, possess any properties which have any value in promoting or aiding the functioning of the female reproductive organs.

(d) That respondent's preparations, either singly or in combination, possess any properties which will in any way affect the timing between ovulation and menstruation, or serve to synchronize such phenomena.

(e) That the use of said preparations, either singly or in combination, will be effective in relaxing the womb, cause the mouth of the womb to be sufficiently open to permit pregnancy, or prevent toxic accumulations.

(f) That the use of respondent's preparation "Warner's Renowned Alkaline Douche Tablets" has any value in the treatment of sterility by neutralizing the acid condition of the vagina, or that the use of said preparation will remove toxic accumulations or any barrier in

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the cervix, or in any way affect sterility or make fertilization and pregnancy possible.

(g) That the use of said preparations, either singly or in combination, will tone up the female organs, relieve sluggishness, or overcome sterility.

(h) That the use of said preparations, either singly or in combination, can in any way affect the sensations of the breasts associated with menstruation or that said preparations have any therapeutic value in the treatment of itchy, sensitive, tender, or sore breasts associated with the menstrual period.

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 respondent's preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
DEFOREST'S TRAINING, INC.

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

Docket 4441. Complaint, Dec. 31, 1940—Decision, Mar. 23, 1942

Where a corporation, engaged in the sale of a course of home study in electronics, including radio, sound and television, and branches thereof, such as facsimile, sound pictures, public address system, and many uses of the electric eye, which might be concluded, at the student's option, with 2 weeks of shop training at said corporation's place of business, in any branch the student might select; by means of booklets, pamphlets, etc., circulated to prospective students by mail, and by numerous salesmen to whom it referred inquiries received in response to advertising—

Made such representations concerning the opportunities in television open to those who completed said course as "If Television develops as we anticipate, it won't be very long until many of the 23,000,000 homes in the U. S. will want Television receivers. * * *"; "So it seems that Television will soon be one of the big industries of this country—possibly as large as the Radio and Sound Picture business combined. It will hold wonderful opportunities for the young man who has the vision and foresight to get into it at the very beginning and pioneer and grow with it"; "* * *. Our Employment Service is available to every enrollee * * *. Through this service we have helped scores of men obtain employment. * * * What we have done for others we can do for you, when you are properly trained. * * *"; and "To the young man seeking to fit himself into this exciting new picture of modern opportunity, *everything* may depend on one factor. That is—whether he has the ambition and foresight to seize this fine chance; whether he makes himself ready for Television NOW, before its pioneering opportunities pass on into history";

The facts being that delay after delay has occurred to postpone commercial development in the television field, involvement of the Nation in active hostilities will undoubtedly result in further delay, and no one can say when it will reach a stage assuring opportunities for the employment of large numbers of men; up to the present, opportunities for employment in that field have been limited to a few individuals with wide training and experience in radio and allied problems, and much broader scientific education than offered by course in question; and while said corporation, during a 3-year period, placed in employment with a large number of different concerns, 1,077 of a total of 1,155 graduates, such employment was usually in beginners' positions for which no training was necessary, and in such instances completion of the course was helpful merely as indicating sustained interest on the part of the individual for that particular field;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were