

Complaint

IN THE MATTER OF

MERRITT FREEMAN BUTLER, TRADING AS FREEMAN'S
PRODUCTS

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

Docket 4615. Complaint, Oct. 10, 1941—Decision, Apr. 20, 1942

Where an individual, engaged in interstate sale and distribution of his "Freeman's Pyletts"; through advertisements by the mails, and in newspapers and periodicals, and circulars and other advertising literature, including testimonial advertisements, and through use of said trade name, directly and by inference—

- (a) Falsely represented that his said "Pyletts" constituted an effective treatment and cure for all forms of piles, hemorrhoids, and swelling capillaries in the lower bowels, relieving blind, bleeding, itching, internal or protruding piles; that use thereof eased pain quickly and produced amazing results; that it was equally effective for mild or long-standing cases of piles; and that use thereof promoted general good health;

The facts being preparation in question was of no therapeutic value in excess of its laxative properties; and

- (b) Failed to reveal facts material in the light of such representations, or with respect to consequences which might result from use of said product under usual or prescribed conditions, in that preparation was a laxative and dangerous when taken by one suffering from symptoms of appendicitis; frequent or continued use thereof might result in dependence on laxatives; and product contained the drug phosphorus, continued use of which might result in phosphorus poisoning and deterioration of the bones;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby inducing it, because of such mistaken belief, to purchase said preparation:

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. John M. Russell 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 Merritt Freeman Butler, an individual trading as Freeman's Products, 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:

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• **PARAGRAPH 1.** Respondent, Merritt Freeman Butler, is an individual, trading as Freeman's Products, having his principal place of business located in Grand Rapids, Mich., his address being Post Office Box 274.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the business of selling and distributing a medicinal preparation designated as "Freeman's Pyletts" and advertised as a treatment for piles.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said product by United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act, and respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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 periodicals, and by circulars and other advertising literature, are the following:

* * * Freeman's Pyletts are taken internally—going right to the seat of the trouble to relieve blind, bleeding, itching, internal or protruding piles. Pain eases quickly and the beneficial results will amaze you.

What Freeman's Pyletts have done for others is best proof of what they will do for you.

End piles without surgery.

For lasting and quick results, try "Pyletts".

Bleeding, pains, and swelling go quickly.

Equally effective for mild or long standing cases.

Recommended for all forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowel.

Freeman's Pyletts aid nature to remove the cause and thus banish piles.

They heal and promote general good health.

I have been a sufferer with piles many years. Tried many treatments, I also resorted to four operations in the past years without any success. A friend advised me to use Freeman's Pyletts; after taking a four weeks course my trouble is completely ended.

PAR 4. By the use of the trade name "Pyletts" and the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, including advertisements in the form of testimonials, all of which purport to be descriptive of the thera-

peutic properties of respondent's preparation, respondent represents directly and through inference that his preparation designated as "Freeman's Pyletts" or "Pyletts" is an effective treatment and cure for all forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowels; that it relieves blind, bleeding, itching, internal or protruding piles; that its use eases pain quickly and produces amazing results; that it is equally effective for mild or long-standing cases of piles; and that its use promotes general good health.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false and misleading.

In truth and in fact, respondent's preparation is not an effective treatment or cure for all forms or for any form of piles, hemorrhoids, and swelling capillaries in the lower part of the bowels; it is not an effective treatment for relieving blind, bleeding, itching, internal or protruding piles. The use of said preparation will not ease pain quickly or effectively or produce amazing results or any beneficial results in the treatment of the above-named ailments or conditions of the body. Said preparation is not an effective treatment for mild cases of piles or for long-standing cases of piles, and its use will not promote general good health. In fact, said preparation is of no substantial therapeutic value in the treatment of the above-named ailments and conditions, nor is it of any value in excess of its laxative properties.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they failed 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 said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, cholera, nausea, vomiting or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

Furthermore, respondent's said preparation contains phosphorus, which is a potentially dangerous drug and the repeated or continued use of said preparation may result in phosphorus poisoning and deterioration of the bones of the body.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the

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therapeutic properties of said preparation 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 said statements and representations are true and induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's preparation designated as Freeman's Pyletts.

PAR. 8. The aforesaid acts and practices of the 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 October 10, 1941, issued, and on October 16, 1941, served its complaint in this proceeding upon respondent, Merritt Freeman Butler, an individual, trading as Freeman's Products, 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 thereof 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, Merritt Freeman Butler, is an individual, trading as Freeman's Products, his principal place of business being formerly located at Grand Rapids, Mich., and now located at Howard City, Mich., address Post Office Box 89.

PAR. 2. Respondent, is now, and for more than 2 years last past has been engaged in the business of selling and distributing a medicinal preparation designated as "Freeman's Pyletts" and advertised as a treatment for piles.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said product by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of 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 periodicals, and by circulars and other advertising literature, are the following:

* * * Freeman's Pyletts are taken internally—going right to the seat of the trouble to relieve blind, bleeding, itching, internal or protruding piles. Pain eases quickly and the beneficial results will amaze you.

What Freeman's Pyletts have done for others is best proof of what they will do for you.

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Recommended for all forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowel.

Freeman's Pyletts aid nature to remove the cause and thus banish piles.

They heal and promote general good health.

I have been a sufferer with piles many years. Tried many treatments, I also resorted to four operations in the past years without any success. A friend advised me to use Freeman's Pyletts; after taking a four weeks course my trouble is completely ended.

PAR. 4. By the use of the trade name "Pyletts" and the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, including advertisements in the form of testimonials, all of which purport to be descriptive of the therapeutic properties of respondent's preparations, respondent represents directly and through inference that his preparation designated as "Freeman's Pyletts" or "Pyletts" is an effective treatment and cure for all forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowels; that it relieves blind, bleeding, itching, internal or protruding piles; that its use eases pain quickly and produces amazing results;

that it is equally effective for mild or long-standing cases of piles; and that its use promotes general good health.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, false, and misleading.

In truth and in fact, respondent's preparation is not an effective treatment or cure for all forms or for any forms of piles, hemorrhoids, and swelling capillaries in the lower part of the bowels; it is not an effective treatment for relieving blind, bleeding, itching, internal or protruding piles. The use of said preparation will not ease pain quickly or effectively or produce amazing results or any beneficial results in the treatment of the above-named ailments or conditions of the body. Said preparation is not an effective treatment for mild cases of piles or for long-standing cases of piles, and its use will not promote general good health. In fact, said preparation is of no substantial therapeutic value in the treatment of the above-named ailments and conditions, nor is it of any value in excess of its laxative properties.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they failed 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 said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms, of appendicitis. Its frequent or continued use may result in dependence on laxatives.

Furthermore, respondent's said preparation contains phosphorus, which is a potentially dangerous drug and the repeated or continued use of said preparation may result in phosphorus poisoning and deterioration of the bones of the body.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the therapeutic properties of said preparation 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 said statements and representations are true and induce a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's preparation designated as Freeman's Pylets.

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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 answer of 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, Merritt Freeman Butler, an individual, trading as Freeman's Products, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparation designated "Freeman's Pyletts" or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that respondent's said preparation is a cure or remedy for, or constitutes a competent or effective treatment for piles, hemorrhoids or swelling capillaries in the lower part of the bowels, or that said preparation has any substantial therapeutic value in the treatment of said conditions; that said preparation will ease pain quickly or effectively, promote general good health, or that said preparation has any therapeutic value in the promotion of good health in excess of its laxative properties; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis, and further that the repeated and continued use may result in phosphorus poisoning and resulting deterioration of the bones of the body, provided, however, that if the directions for use, wherever they appear on the label, in the labeling or both on the label and in the labeling, contain

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a warning of the 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 defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in said paragraph 1.

It is further ordered, That respondent shall, within 60 days after service upon him of this order, 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

NU-TONE LABORATORIES, INC.

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

Docket 4645. Complaint, Nov. 25, 1941—Decision, Apr. 20, 1942

Where a corporation, engaged in the manufacture and competitive interstate distribution and sale of two devices to be attached to radio receiving sets which it described as "aerial eliminators" and "line noise eliminators"; through labels attached thereto and through counter cards which were conspicuously exhibited by retailers in connection with display of said devices, directly and by implication—

(a) Represented that said "aerial eliminator" constituted an indoor aerial for radio reception, use of which rendered perfect or improved the tone and selectivity of the radio to which attached, reducing noises due to static and other causes, enabling it to receive broadcasts from more distant stations than would otherwise be the case, and making it possible to dispense with any aerial without impairment of performance.

The facts being devices in question would not perform the functions of an aerial, reduce noises in question except at the expense of the incoming program, or accomplish results claimed above, but would, in a large majority of cases, result in less efficient reception and performance; and use thereof would not result in a radio performing without any aerial, but merely in the substitution of another instrumentality performing function of an aerial; and

(b) Represented that its "line noise eliminator," when attached to the power line of a radio receiving set, would reduce line noises or those due to static or electrical interference, and improve the tonal quality of the instrument;

The facts being that noises in question enter a set through the aerial and not the power line, so that such device used as directed would not be expected to accomplish results claimed therefor, though if used on some other electrical appliance causing interference, it would tend to reduce such static;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of causing it to purchase said devices, thereby unfairly diverting trade to respondent from its competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Branower & Kornfeld, of Chicago, Ill., for respondent.