

## Syllabus

## IN THE MATTER OF

GEORGE S. MOGILNER AND JAMES WALKER, TRADING  
AS MERIT HEALTH APPLIANCE CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4543. Complaint, July 21, 1941—Decision, Aug. 31, 1942*

Where two individuals, engaged in interstate sale and distribution of their "Merit Short Wave Diathermy" therapeutic apparatus; by means of advertisements in newspapers which circulated widely in different States, and through advertising circulars and frequent radio broadcasts, directly or by implication—

- (a) Represented that the unsupervised use of their device by the lay public for self-diagnosed conditions, through self-application in the home, constituted a competent and effective treatment for numerous ailments, including rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and female disorders, and for the alleviation of pain resulting from such conditions; and that use of the device was entirely safe and harmless;

The facts being that while diathermy machines are in fairly common use among physicians, particularly those who specialize in physical therapy, it is their practice never to employ diathermy until after thorough diagnosis and definite establishment of the fact that the condition is one in which its use is proper, and never to leave application of the treatment, delegated, usually, to a trained technician, to the patient; physicians' use of diathermy in the treatment of ailments above set forth is limited to chronic cases since use in acute cases has a tendency to aggravate rather than alleviate the pain; there are various specific conditions in which its use is positively contraindicated, including menstruation, pregnancy, tuberculosis, cancer, acute appendicitis, and gastric ulcers, while use or excessive use in other conditions may spread the infection and lead to gangrene and amputation of the limb; in cases in which the skin has lost sense of heat, application may result in severe burns; due to the impossibility of a member of the lay public correctly diagnosing his condition or determining the underlying cause of the disorder, necessary medical treatment may be delayed; and in instances in which diathermy would be of therapeutic benefit, it is impossible for the layman to determine the method of application or frequency and extent of the treatment; and

- (b) Failed to reveal all the facts material in the light of such representations, under prescribed or usual conditions, and that such device might safely be used only after competent medical diagnosis has determined that diathermy is indicated, and has prescribed the frequency and extent of the treatment, and the user has received adequate instruction by a trained technician in the use of the device;

With tendency and capacity to mislead and deceive the purchasing public into the mistaken belief that said device possessed therapeutic values which it did not, and that it might safely be used indiscriminately by the lay public,

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thereby causing said public to purchase substantial quantities of said device because of such mistaken belief:

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

Before *Mr. Miles J. Furnas*, trial examiner.

*Mr. James L. Baker*, *Mr. John M. Russell* and *Mr. R. P. Bellinger* for the Commission.

*Dockweiler & Dockweiler* and *Mr. Frank W. Walden*, of Los Angeles, Calif., for respondents.

## 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 George S. Mogilner and James Walker, individuals, trading as Merit Health Appliance Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, George S. Mogilner and James Walker, are individuals, trading as Merit Health Appliance Co., with their office and principal place of business at 801-802 Foreman Building, 707 South Hill Street, Los Angeles, Calif., from which address they transact business under the above trade name.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain device or apparatus designated as Merit Short Wave Diathermy.

In the course and conduct of their business, the respondents cause said device or apparatus, when sold, to be transported from their place of business in the State of California, 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 said device or apparatus, 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 have caused the dissemination of, false advertisements concerning their said product by the United States mail and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of, false

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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, by radio continuities, and by leaflets, pamphlets and other advertising literature are the following:

Free \$7.50 SINUS PAD  
With every DIATHERMY purchased this week.

## LOW MONTH RENTAL

MERIT Short Wave Diathermy is now used in hundreds of homes, and is the ideal and most economical way to treat stubborn ailments, such as

|            |                          |           |
|------------|--------------------------|-----------|
| Asthma     | Pleurisy                 | Arthritis |
| Bronchitis | Sinus                    | Neuritis  |
| Prostate   | High Blood Pressure      |           |
|            | And Many Other Ailments. |           |

Get the "proof of the pudding." Rent a Merit Short Wave Diathermy for one month and see for yourself what it will do for you. SEND FOR FREE FOLDER, "Short Wave Diathermy in Your Home."

Call at our office for FREE Demonstration, or arrange for a Demonstration in Your Own Home. NO OBLIGATION.

RENTED OR SOLD ON EASY TERMS

Office Hours 9-5:30 P. M.

Manufactured and Sold Direct by

MERIT HEALTH  
APPLIANCE CO.  
707 So. Hill St.  
Suite 801-802.

Phone VA. 5682

## MERIT SHORT WAVE DIATHERMY in Your Home

WHY are more MERIT sets being used and installed in California homes than the combination of all other makes put together?

SINUS—Specially designed mask for directing warm, penetrating radio waves through the sinuses. ARTHRITIS—Rheumatism ailments even chronic, have shown marked response to its permeating heat.

Send for Illustrated Literature, or Free Home Demonstration. Rented or Sold on Easy Terms.

MERIT HEALTH APPLIANCE CO.

707 S. Hill St., Los Angeles, Cal.

Phone: VAndike 5682 Suite 801-802

FULLY GUARANTEED by the only home diathermy company in California owning its own factory.

Easy to use—Merit Short Wave Diathermy is so simple that even a child can operate it.

No one can afford to be without this health guard and all can enjoy the benefit of Short Wave Diathermy treatments in their homes.

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The application of heat stimulates certain chemical processes of the body. The natural defensive powers of the tissues are assisted, repair and recovery are hastened by natural healthful means.

\* \* \* the therapeutic value of heat has long been known, the old methods of application are ineffective, uncertain and uncomfortable, \* \* \* because the heat does not penetrate to the deep-seated area involved. In a vain effort to secure deep penetration the skin is uncomfortably overheated and possibly burned or blistered.

Now modern science provides—in Short Wave Diathermy—a means of applying heat to diseased tissues that overcomes every objection to the uncertain methods of the past.

Short Wave Diathermy is pleasant and comfortable—the surface of the skin is not unduly heated.

Short Wave Diathermy is safe—the burns and blisters of the old-fashioned methods are absent.

\* \* \* the safest, pleasantest and most effective methods of treatment ever discovered.

Outstanding results have been obtained with Short Wave Diathermy in the relief of suffering due to arthritis, neuritis, neuralgia, rheumatism, lumbago, sciatica, hay fever, asthma, gout, bronchitis, sinus inflammation and similar diseases. The value of Short Wave Diathermy cannot be overestimated.

Now the Merit Short Wave Diathermy offers new hope for sufferers from agonizing pain, and various chronic disorders.

**ARTHRITIS**—Every arthritic should know that heat has been most effective in the relief of this dread disease. Short Wave Diathermy's proven ability in relieving the anguish of arthritis, neuritis, rheumatism, sciatica, lumbago and kindred ailments is well established.

**SINUS INFLAMMATION**—The alleviation and relief to sinus sufferers by Short Wave Diathermy is truly amazing.

**FOR WOMEN**—In the ailments common to women, Short Wave Diathermy has proved to be a veritable blessing for relieving much pain and suffering.

This treatment is so simple that you can take it yourself in your home without any assistance from anyone.

## MERIT DIATHERMY CONTINUITY

We've all heard the wisdom of Benjamin Franklin expounded many times; he wrote this: "Never leave 'til tomorrow, that which you can do today." The habit of putting things off is all too common. Doubtless there are many listening to me today who have often said to themselves, "Someday I'm going to investigate this Merit Short Wave Diathermy and see if it can help me." But they have put it off and put it off—meantime missing out on the comfort that awaits them. If you are one of those who have planned to investigate this Merit Short Wave Diathermy—**DO IT TODAY**. Why continue to suffer untold agony when you can very simply alleviate your most painful conditions by simply applying two rubber pads to the sore and afflicted parts. This sends a penetrating internal heat down deep into the sore and aching parts of your body. If you suffer from arthritis, neuritis, bursitis, sciatica, neuralgia, sinus trouble or rheumatism in any part of your body, you may have a free trial of

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the Merit Short Wave Diathermy in your home any days from 9 A. M. 'till 9 P. M., by calling this number now \* \* \* VAndike 5682 \* \* \* VAndike 5682 \* \* \*.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondents represent that their device or apparatus, advertised as Merit Short Wave Diathermy, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a scientific, safe, harmless, and effective means and method for the relief, cure, or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and colds, painful menstruation, female disorders, chronic disorders, and many other ailments, and for the alleviation of pain resulting therefrom; and that its use will have no ill effects upon the human body.

The foregoing representations are grossly exaggerated, false and misleading.

PAR. 5. The said device or apparatus is composed principally of a high-frequency generator encased in a portable steel cabinet. The circuit is a modified Hartley Circuit, two Taylor T-4055 tubes, push-pull, plus the regular chokes for proper control. The power to the circuit is furnished by a transformer of 1,300 volts (half wave), plate supply, 7½-volt filament supply. The output is inductively coupled and tuned with a series variable condenser and the wave length is approximately 12 meters. The maximum power output is approximately 120 watts calibrated on a photo-electric watt meter. Under ordinary lamp-load, it may be considered as 100 to 125 watts output. The power is transmitted to the user by two insulated rubber condenser pads, 7 by 9 inches or by two small pads, namely sinus and cuff applicators 4 by 7½ inches and 2 by 24 inches, respectively, used with one of the larger pads. No cable is used with this device. The application to the patient is made usually by placing the condenser pads in such position that the power may pass between said condenser pads through the affected area of the body, at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisement or under such conditions as are customary or usual, will not accomplish the results claimed by the respondents and is not a scientific, safe, harmless, and effective means and method to be used by the unskilled lay public for the relief, cure, or treatment of self-diagnosed diseases and ailments of the human body, or for the allevi-

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ation of pain resulting therefrom, and may cause severe electric burns or other serious and irreparable injury to health.

The said device does not constitute a competent treatment for condition of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; acute inflammation of the muscles, such as lumbago and myositis; acute inflammation of the bursae, such as bursitis; acute inflammation of the joints, such as acute inflammatory arthritis; and rheumatic pains associated with acute inflammatory conditions of the joints, bursae, nerves, and muscles. Such treatment as aforesaid may result in further swelling of the inflamed tissue, thereby increasing the congestion of the inflamed part and in spreading the inflammation to adjacent tissue and allowing the absorption of toxins, when present.

Short-wave diathermy is contraindicated in all cases of menstruation; pregnancy; gastric ulcers; acute appendicitis; in areas where there is a probable malignancy; and where there is a hemorrhagic diathesis.

Furthermore, the use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptoms of some deeper, underlying disease or cause (such as pains due to tuberculosis of the joints, syphilis, and other infectious processes, or to tumor or cancer), may cause serious injury to health and also delay proper diagnosis and treatment.

The application of Merit Short Wave Diathermy in treating conditions of acute sinus trouble may result in further increasing congestion of the mucous membranes of the sinuses, nose, and throat, and facilitate extension of the infections and increased absorption of bacterial toxins.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in severe tissue destruction and severe burns.

Cancer or tuberculosis of the spine may evidence itself by severe pains in the knees and the application of diathermy by the untrained layman may delay proper diagnosis and treatment.

The application of this device for the treatment of pain in the extremities in the presence of advanced blood vessel changes of the legs or arms, when given in excess dosage, will cause serious injuries and may lead to gangrene and necessitate amputation of the legs or arms.

There are many diseases and conditions in the treatment of which, diathermy would be contra-indicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and

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duration of its use. In both of these classes of cases, the use of diathermy may aggravate rather than relieve such conditions. Many conditions, including some of those for which respondents recommend their device, are sometimes symptomatic or indicative of underlying systemic disorders for which diathermy would have no therapeutic value and may even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

PAR 6. In addition to the representations hereinabove set forth, the respondents have also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health.

The said advertisements are further false, as aforesaid in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

PAR 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations with respect to their device or apparatus, disseminated as aforesaid, 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 statements, representations and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondents' said device or apparatus.

PAR 8. The foregoing 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 July 21, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, George S. Mogilner and James Walker, individuals, trading as Merit Health Appliance Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondents, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (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. The respondents, George S. Mogilner and James Walker, are individuals, trading under the name Merit Health Appliance Co., with their office and principal place of business located at 707 South Hill Street, Los Angeles, Calif. They are engaged in the sale and distribution of a therapeutic device or apparatus designated by them as Merit Short Wave Diathermy.

PAR. 2. In the course and conduct of their business respondents cause their device, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of promoting the sale of their product, respondents have inserted advertisements in Los Angeles newspapers which have a wide circulation not only in the State of California but in other

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States of the United States as well. Respondents have also distributed advertising circulars by means of the United States mails to numerous prospective purchasers located outside the State of California. Frequent use of radio broadcasts has also been made by respondents in advertising their device.

Among and typical of the many statements and representations appearing in respondents' advertisements are the following:

## MERIT SHORT WAVE DIATHERMY IN YOUR HOME

Is the ideal and most economical way to treat stubborn ailments, such as

Asthma

Pleurisy

Arthritis

Bronchitis

Sinus

Neuritis

Prostate

High Blood Pressure

Any Many Other Ailments

Get the "proof of the pudding." Rent a Merit Short Wave Diathermy for one month and see for yourself what it will do for you. SEND FOR FREE BOOKLET, "Short Wave Diathermy in Your Home." Free home demonstration on request.

## RENTED OR SOLD ON EASY TERMS

\* \* \*

## MERIT SHORT WAVE DIATHERMY IN YOUR HOME

WHY are more MERIT sets being used and installed in California homes than the combination of all other makes put together?

SINUS—Specially designed mask for ARTHRITIS — Rheumatic ailments directing warm, penetrating radio waves even chronic, have shown marked response to its permeating heat.

Send for Illustrated Literature, or

## FREE HOME DEMONSTRATION

\* \* \*

\* \* \* The application of heat stimulates certain chemical processes of the body. The natural defensive powers of the tissues are assisted, repair and recovery are hastened by natural healthful means.

\* \* \* the therapeutic value of heat has long been known, the old methods of application are ineffective, uncertain and uncomfortable \* \* \* because the heat does not penetrate to the deep-seated area involved. In a vain effort to secure deep penetration the skin is uncomfortably overheated and possibly burned or blistered.

\* \* \* Now modern science provides—in Short Wave Diathermy—a means of applying heat to diseased tissues that overcomes every objection to the uncertain methods of the past. \* \* \* Short Wave Diathermy is pleasant and comfortable—the surface of the skin is not unduly heated. Short Wave Diathermy is safe \* \* \* the burns and blisters of the old-fashioned methods are absent.

\* \* \* the safest, pleasantest, and most effective methods of treatment ever discovered.

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OUTSTANDING RESULTS have been obtained with Short Wave Diathermy in the relief of suffering due to arthritis, neuritis, neuralgia, rheumatism, lumbago, sciatica, hay fever, asthma, gout, bronchitis, sinus inflammation and similar diseases. The value of Short Wave Diathermy cannot be overestimated \* \* \*.

NOW THE MERIT SHORT WAVE DIATHERMY OFFERS NEW HOPE FOR SUFFERERS FROM AGONIZING PAIN, AND VARIOUS CHRONIC DISORDERS

\* \* \*

ARTHRITIS—Every arthritic should know that heat has been most effective in the relief of this dread disease. Short Wave Diathermy's proven ability in relieving the anguish of arthritis, neuritis, rheumatism, sciatica, lumbago, and kindred ailments is well established. \* \* \*

\* \* \*

SINUS INFLAMMATION—The alleviation and relief to sinus sufferers by Short Wave Diathermy is truly amazing. \* \* \*

FOR WOMEN—In the ailments common to women, Short Wave Diathermy has proved to be a veritable blessing for relieving much pain and suffering.

\* \* \*

#### ADVANTAGES OF HOME TREATMENT

THERE WHEN YOU NEED IT—the old axiom “an ounce of prevention,” etc., holds true today. Therein lies one of the chief advantages of having MERIT SHORT WAVE DIATHERMY in your home right when you need it. When the ailment is in its initial stages it is there—ready to use and its application may prevent further progress of the disease. MERIT SHORT WAVE DIATHERMY can be used by every member of the family. CHRONIC CASES—Better results are often obtainable with MERIT SHORT WAVE DIATHERMY in your home, as you can apply its beneficial heat waves two or three times a day if necessary. Home treatments can be taken at a time most convenient to yourself. It is indispensable for invalids. RESTFUL—Short Wave Diathermy treatments are relaxing. When treatments are taken at home you can enjoy the full benefit of total relaxation. As this is conducive to good sleep, it is most desirable to take treatments just before going to bed. EASY TO USE—MERIT SHORT WAVE DIATHERMY is so simple that even a child can operate it.

\* \* \*

\* \* \* No one can afford to be without this health guard and all can enjoy the benefit of Short Wave Diathermy treatments in their homes.

\* \* \* \* \*

We've all heard the wisdom of Benjamin Franklin expounded many times; he wrote this: “Never leave 'til tomorrow, that which you can do today.” The habit of putting things off is all too common. Doubtless there are many listening to me today who have often said to themselves, “Someday I'm going to investigate this Merit Short Wave Diathermy and see if it can help me.” But they have put it off and put it off—meantime missing out on the comfort that awaits them. If you are one of those who have planned to investigate this Merit Short Wave Diathermy—DO IT TODAY. Why continue to suffer untold agony when you can very simply alleviate your most painful

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conditions by simply applying two rubber pads to the sore and afflicted parts. This sends a penetrating internal heat down deep into the sore and aching parts of your body. If you suffer from arthritis, neuritis, bursitis, sciatica, neuralgia, sinus trouble or rheumatism in any part of your body, you may have a free trial of the Merit Short Wave Diathermy in your home any day from 9 A. M. 'til 9 P. M., by calling this number now \* \* \* VAndike 5682 \* \* \* VAndike 5682 \* \* \*.

PAR. 4. Through the use of these representations and others of a similar nature, respondents have represented, directly or by implication, that the unsupervised use of their device by the lay public for self-diagnosed conditions through self-application in the home constitutes a competent and effective means and method for the treatment of numerous ailments, disorders, and conditions of the human body, including, among others, rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and female disorders, and for the alleviation of pain resulting from such conditions; and that such use of the device is entirely safe and harmless.

PAR. 5. Medical diathermy may be defined as the therapeutic use of heat generated in the tissues of the body by artificial means. Respondents' device is what is known as a short-wave diathermy machine. The essential part of the device is a high-frequency generator which is encased in a portable steel cabinet. The electric power generated by the machine is transmitted to the user through rubber condenser pads which are attached to the machine by means of cords. The pads are intended to be placed on the affected area of the body in such position that the power generated by the machine passes between the pads and through the affected area. The resistance of the tissues of the body to the power produces the heat which forms the basis for the therapeutic value of the machine.

PAR. 6. Diathermy machines are now in fairly common use among physicians, particularly among those who specialize in physical therapy. Such machines, however, are used with caution, it being recognized by the medical profession that they possess definite potentialities for harm and that there are numerous conditions in which diathermy is positively contraindicated. Diathermy is never employed by physicians until after a thorough diagnosis of the patient has been made and it has definitely been established that the patient's condition is one in which the use of diathermy is proper. Moreover, the application of the treatment is never left to the patient but is carefully supervised by the physician, the application usually being delegated to a trained technician.

Generally speaking, diathermy is used only in those cases where the condition is chronic. It is not used in acute conditions, which are usually accompanied by inflammation resulting from congestion

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due to an engorgement of blood. The effect of diathermy in such cases is to increase the congestion of blood at the affected area, with the result that the patient's condition is definitely aggravated rather than improved. The congestion of the inflamed area may cause the inflammation to spread to adjacent tissues, and may also cause the absorption by such tissues of any infection which may be present in the affected area. Likewise, diathermy is always avoided in cases where there is a hemorrhagic condition or even a tendency to hemorrhage.

While diathermy is occasionally used by physicians in the treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, and female disorders, its use is limited to those cases in which the condition is chronic rather than acute. It is not a competent or effective treatment for any of these specific ailments, or for any other ailment, which is in the acute stage or in which acute inflammation is present. In all such cases, moreover, the use of diathermy has a tendency to aggravate and increase the pain rather than alleviate it, this being due to the increased congestion and inflammation resulting from the treatment.

Among the specific conditions in which diathermy is positively contraindicated are menstruation, pregnancy, tuberculosis, cancer, acute appendicitis, and gastric ulcers.

In cases of acute sinus trouble, the use of diathermy may result in increasing the accumulation of pus in the sinuses, which in turn may cause the extension of the infection to other organs of the body.

The excessive application of diathermy for the treatment of pains in the arms and legs, in the presence of advanced blood vessel changes, may lead to gangrene and necessitate amputation of the arm or leg.

Another danger which attends the unsupervised use of diathermy by the layman is that cases are fairly frequent in which certain areas of the skin have lost the sense of heat. In such cases, the application of the treatment is likely to be excessive and may result in severe burns.

Moreover, many disorders and conditions of the body, including some of those for which respondents recommend their device, are frequently but symptoms of more serious, underlying disorders for which diathermy would have no therapeutic value and might even be injurious. For example, neuralgia and neuritis may be symptoms of tuberculosis of the joints, syphilis, or other infectious processes, or tumor or cancer. Also, cancer in the spine and tuberculosis in the spine may evidence themselves by pain in the knees or elbows or other parts of the body. It is impossible for a member of the lay public correctly to diagnose his condition or determine the underlying cause

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of the disorder, and, in consequence, necessary medical treatment may be delayed. Even in those cases where diathermy would be of therapeutic benefit, it is impossible for the layman correctly to determine the method of application or the frequency and extent of the treatment.

PAR. 7. The Commission therefore finds that the representations made by the respondents with respect to their device, as set forth in paragraphs 3 and 4 hereof, are misleading and deceptive, and constitute false advertisements.

PAR. 8. The Commission finds also that respondents' advertisements are false for the further reason that they fail to reveal all of the facts material in the light of the representations made therein, and fail to reveal the consequences which may result from the use of respondents' device under the conditions prescribed in the advertisements or under such conditions as are customary or usual. The advertisements are false also in that they fail to reveal that respondents' device may safely be used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated, and has prescribed the frequency and extent of the treatment, and the user has received adequate instruction by a trained technician in the use of the device.

PAR. 9. The Commission finds further that the use by the respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondents' device possesses therapeutic values which it does not in fact possess, and that such device may safely be used indiscriminately by the lay public, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' device as a result of the erroneous and mistaken belief so engendered.

## CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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, the answer of respondents, testimony and other evidence taken before a trial examiner of

the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, George S. Mogilner and James Walker, individually and trading as Merit Health Appliance Co., or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondents' device designated "Merit Short Wave Diathermy," or any other device of substantially similar character, 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 advertisements 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,

(a) that respondents' device is safe or harmless.

(b) that respondents' device constitutes a competent or effective treatment for, or will alleviate pain resulting from, rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, female disorders, or any other ailment or disorder of the human body, unless such advertisement is specifically limited to those cases in which the condition is chronic rather than acute, and in which there is an absence of acute inflammation.

2. 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 fails to reveal clearly and conspicuously that respondents' device is not safe for use unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated, and has prescribed the frequency and rate of application of the treatments, and the user has been adequately instructed by a trained technician in the use of such device.

3. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' device, which advertisement contains any representation prohibited in para-

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## Order

graph 1 hereof or which fails to contain the warning set forth in paragraph 2 hereof.

*It is further ordered,* That the 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 upon them of this order, the 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.

## Complaint

§ 35 F. T. C.

IN THE MATTER OF  
GIROUX COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4731. Complaint, Mar. 16, 1942—Decision, Sept. 1, 1942*

Where Lea & Perrins "Worcestershire Sauce" had long been made in England and imported into the United States in highly distinctive bottles, containers, and wrappings, and as thus made and imported, and later made in the United States in accordance with a secret formula, had come to enjoy Nationwide popularity for many years and to be preferred over the much cheaper domestic Worcestershire Sauces; and thereafter a domestic manufacturer, engaged in interstate sale and distribution of its much cheaper Worcestershire Sauce which was similar in color, odor and general appearance to the aforesaid Lea & Perrins, and which, as Worcestershire Sauce, it sold under various trade names and brands, together with its own name or the name of the distributor on label and wrapper—

- (a) Made use of labels and wrappers for its said sauce, packaged in containers of the same size and shape as those used by said Lea & Perrins, upon which the typography, border, dividing lines and color scheme were similar to, and in some instances the phrases identical with, those on the wrapper or label long theretofore used by said Lea & Perrins;

With tendency and capacity to mislead and deceive members of the purchasing public into the belief that its Worcestershire Sauce was in fact the Worcestershire Sauce made and sold by Lea & Perrins, and as a result, into purchase of substantial quantities thereof; and

- (b) Falsely represented to the purchasing public, through use of trade name or brand "English Pride" in designating its sauce and "Old English Brand" upon private brand merchandise, that its said domestic product was made in England and imported into the United States;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said product was imported from England, and as a result into purchase of substantial quantities thereof:

*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. S. F. Rose* for the Commission.

*Mr. C. P. Goepel* and *Diamond, Rabin & Mackay*, of New York City, 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 Giroux Co., Inc., a