

Complaint

IN THE MATTER OF

EDWIN TOM, TRADING AS MASTER HERB COMPANY

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

Docket 4748. Complaint, Apr. 14, 1942—Decision, Oct. 19, 1942

Where an individual, engaged in interstate sale and distribution of Chinese herbs; by means of advertisements through the mails and newspapers, directly or by implication—

Represented that his herbs constituted a cure or remedy and competent and effective treatment for various diseases and ailments, including rheumatism, arthritis, asthma, and stomach ulcers; and that the use of the herbs would renew the glands of the body, thus enabling the user to regain strength and vigor;

The facts being they possessed no therapeutic value in the treatment of said conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis and from the paroxysms of asthma; they had no therapeutic value in the treatment of any other ailments in excess of affording temporary relief from some of the pains or symptoms which might accompany the disorders; and they would not renew the glands or enable the user to regain strength or vigor;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said herbs possessed therapeutic properties which they did not, thereby causing such public to purchase substantial quantities thereof:

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.

Mr. James I. Rooney for the Commission.

Mr. Clifford Thoms, of Los Angeles, Calif., 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 Edwin Tom, an individual, trading and doing business as Master Herb Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Edwin Tom, also known as Shing Tom and Kim Fong Tom, is an individual, trading and doing business as

Master Herb Co., with his principal office and place of business located at 215 West Ninth Street, Los Angeles, Calif.

PAR. 2. Respondent is now and for more than 3 years last past has been engaged in the business of selling and distributing Chinese herbs which are offered for sale and sold as a treatment for diseases and disorders of the human body. Respondent has caused and now causes said herbs, when sold, to be transported from his aforesaid place of business in Los Angeles, Calif., to purchasers thereof located in various States of the United States other than the State of California, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said herbs in commerce among and between the several States of the United States and in the District of Columbia.

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 products 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 his said preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparations 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, as hereinbefore set forth, by the United States mails, and by advertisements in newspapers, are the following:

GREATER HEALTH

By renewing your glands.

Regain strength and lost vigor, enjoy living.

Eliminate Rheumatism, Arthritis, Asthma, Stomach Ulcers, and various other ailments.

Use Chinese Herbs for greater relief.

T. Foo Yuen 50 years in Southern California.

MASTER HERB CO.

PAR. 4. Through the use of the statements and representations hereinabove set forth, all of which purport to be descriptive of the remedial, curative, and therapeutic value of respondent's herbs and of the benefits to be derived from their use, respondent represents, directly and by implication, that said herbs, or combinations thereof, constitute a cure or remedy for various diseases and ailments of the human

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body including rheumatism, arthritis, asthma, and stomach ulcers, and constitute a competent and effective treatment for such disorders; that the use of said herbs will renew glands, thus enabling the user to regain strength and lost vigor; that Chinese herbs, such as are sold by respondent, have more therapeutic value and provide greater relief than other medicinal preparations or methods of treatment.

PAR. 5. The foregoing representations and claims used and disseminated by the respondent as hereinabove described, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's herbs are not a cure or remedy for, and do not constitute a competent or effective treatment for, rheumatism, arthritis, asthma, and stomach ulcers, nor do they have any therapeutic value in the treatment of any of such conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis and temporary relief from the paroxysms of asthma. Said herbs are not a cure or remedy for, nor do they constitute a competent and effective treatment of, other diseases and ailments of the human body and have no therapeutic value in the treatment thereof in excess of affording temporary palliative relief from some of the pains or symptoms thereof. The use of said herbs will not renew glands and will not enable the user to regain strength or lost vigor. Chinese herbs do not have more therapeutic value and do not provide a greater measure of relief than other medicinal preparations or methods of treatment.

PAR. 6. The use by said respondent of the foregoing false, deceptive, and misleading representations and advertisements has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false representations and advertisements are true and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparations composed of Chinese herbs.

PAR. 7. 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 April 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Edwin Tom, an individual, trading as Master Herb Co., charging him with the use of unfair and deceptive acts and practices in commerce

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in violation of the provisions of that act. On May 8, 1942, the respondent filed his answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondent and Richard P. Whiteley, assistant chief council for the Commission, subject to the approval of the Commission, might be made a part of the record herein and might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, and stipulation (the stipulation having been approved and accepted by the Commission and entered of record); 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 respondent, Edwin Tom, also known as Shing Tom and Kim Fong Tom, is an individual, trading and doing business as Master Herb Company, with his principal office and place of business located in Los Angeles, Calif., his last known street address being 215 West Ninth Street.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of selling and distributing Chinese herbs, which are offered for sale and sold by him as a treatment for various diseases and disorders of the human body. For some time prior to October 23, 1939, respondent caused his herbs, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States. Respondent maintained a course of trade in his herbs in commerce among and between various States of the United States.

PAR. 3. In the course and conduct of his business respondent, during the period beginning March 21, 1938, and ending October 23, 1939, disseminated and caused the dissemination of advertisements concerning his products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade

Commission Act; and during such period respondent also disseminated and caused the dissemination of advertisements concerning his products by various means for the purpose of inducing, directly or indirectly, the purchase of his products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the representations contained in such advertisements disseminated, as set forth above, by the United States mails and by advertisements in newspapers, are the following:

GREATER HEALTH

By renewing your glands.

Regain strength and lost vigor, enjoy living.

Eliminate Rheumatism, Arthritis, Asthma, Stomach Ulcers, and various other ailments.

Use Chinese Herbs for greater relief.

T. Foo Yuen. 50 years in Southern California.

MASTER HERB CO.

PAR. 4. Through the use of these statements and representations respondent represented, directly, or by implication, that his herbs constituted a cure or remedy and a competent and effective treatment for various diseases and ailments of the human body, including, among others, rheumatism, arthritis, asthma, and stomach ulcers; and that the use of the herbs would renew the glands of the body, thus enabling the user to regain strength and vigor.

PAR. 5. The Commission finds that respondent's herbs do not constitute a cure or remedy for rheumatism, arthritis, asthma, or stomach ulcers, nor do such herbs possess any therapeutic value in the treatment of any of such conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis, and temporary relief from the paroxysms of asthma. Nor have the herbs any therapeutic value in the treatment of any other diseases or ailments of the human body in excess of affording temporary palliative relief from some of the pains or symptoms which may accompany such disorders. The use of the herbs will not renew the glands, nor enable the user to regain strength or vigor.

PAR. 6. The Commission therefor finds that the representations made by respondent with respect to his herbs, as set forth in paragraphs 3 and 4 herein, were erroneous and misleading, and constituted false advertisements.

PAR. 7. The use by respondent of these false advertisements had the tendency and capacity to mislead and deceive a substantial portion

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of the purchasing public into the erroneous and mistaken belief that respondent's herbs possessed therapeutic properties or values which they did not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's herbs as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondent 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 the respondent, and a stipulation as to the facts entered into between the respondent and Richard P. Whiteley, assistant chief counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Edwin Tom, individually, and trading as Master Herb Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's medicinal herbs, do herewith 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 respondent's herbs constitute a cure or remedy for or possess any therapeutic value in the treatment of stomach ulcers.

(b) that respondent's herbs constitute a cure or remedy for rheumatism, arthritis, or asthma, or possess any therapeutic value in the treatment of such conditions in excess of affording temporary relief from the symptoms of pain associated with rheumatism and arthritis, and temporary relief from the paroxysms of asthma.

(c) that respondent's herbs possess any therapeutic value in the treatment of any other diseases or ailments of the human body in excess of affording temporary palliative relief from some of the pains or other symptoms which may accompany such disorders.

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(d) that the use of respondent's herbs will renew the glands of the body or enable the user to regain strength or vigor.

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 herbs, which advertisement contains any representation prohibited in paragraph 1 hereof.

It is further ordered, That the 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.

IN THE MATTER OF

THE MAY DEPARTMENT STORES COMPANY, PHYSICIANS ELECTRIC SERVICE CORPORATION, AND SOLOMAN E. MENDELSON

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

Docket 4683. Complaint, Jan. 26, 1942—Decision, Oct. 20, 1942

Where a corporation and the individual who formulated, controlled, and directed its policies, acts, and practices, engaged in manufacture and interstate sale and distribution of their "Pescor Shortwavatherm" short-wave diathermic device; by means of advertisements in newspapers, circulars, leaflets, and pamphlets—

- (a) Represented that their said device or apparatus, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments by individual self-application in the home, was a scientific, safe, harmless, and effective means for the relief, cure, or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, painful menstruation, female disorders, and many other ailments, and for the alleviation of pain resulting therefrom; and that its use would have no ill effects; and

Where a department store, engaged in sale and distribution of a substantial portion of such devices, delivered to it on consignment by said corporation, which collaborated by preparing, editing, and approving its drafts of advertisements for newspaper publications, and in supplying to it circulars and leaflets for local distribution; by means of such advertisements—

- (b) Represented that said "Pescor Shortwavatherm" device, when used in the home as above set forth, was a scientific, safe, harmless, and effective means and method for relief, cure, or treatment of arthritis, sinus infection, lumbago, bronchitis, laryngitis, head colds, and rheumatism;

The facts being individual self-application of device in question by the unskilled lay public in the home, under prescribed or usual conditions, would not accomplish the results claimed; it was not a scientific, safe, harmless, and effective means for use by such public for the relief, cure, or treatment of self-diagnosed ailments or for the alleviation of pain resulting therefrom, and might cause severe electric burns or other serious injury; there are conditions and ailments in which short-wave diathermy is contra-indicated, and in which use thereof may result in serious and irreparable injury, including delay of proper diagnosis for treatment of serious underlying difficulties, of which such pains as neuralgia or neuritis may be merely symptomatic; in diseases and conditions in which diathermy may be indicated, efficacy thereof is dependent upon the method and duration of use; and member of lay public is unable either correctly to diagnose his ailment, or to determine method and duration of use of diathermy where indicated; and