

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

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Where said corporation, individual, and store—

- (c) Failed to reveal facts material in the light of said representations, and with respect to consequences which might result from use of such device under usual or prescribed conditions, including said possibility of serious and irreparable injury; and that device might be used safely only after competent medical authority had determined that diathermy was indicated and had prescribed frequency and amount of application of treatments, and user had been adequately instructed in operating the device by a trained technician;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing its purchase of said device:

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.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Lawler, Felix & Hall and *Mr. Brenton L. Metzler*, of Los Angeles, Calif., for The May Department Stores Co.

Mr. Clifford Thoms, of Los Angeles, Calif., for Soloman E. Mendelsohn.

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 The May Department Stores Co., a corporation, Physicians Electric Service Corporation, a corporation, and Soloman E. Mendelsohn, individually, and as an officer of said Physicians Electric Service Corporation, 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. Physicians Electric Service Corporation is a corporation created, organized, and existing under and by virtue of the laws of the State of California, with its office and principal place of business at the Professional Building, 1054-1056 West Sixth Street, Los Angeles, Calif.

Soloman E. Mendelsohn is an individual and is also president and treasurer of Physicians Electric Service Corporation with his office and principal place of business at the same address as the aforesaid corporate respondent.

The May Department Stores Co. is a corporation duly organized and existing under the laws of the State of New York. The said re-

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spondent's California office and principal place of business within said State is located at Eighth Street and Broadway, Los Angeles, Calif.

Respondent, Solomon E. Mendelsohn, as an officer of said Physicians Electric Service Corporation, formulates, controls, and directs the policies, acts, and practices of said corporate respondent. The said respondents act and have acted in conjunction and in cooperation with each other and with The May Department Stores Co. in performing the acts and practices hereinafter alleged.

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 short-wave diathermic device advertised as PESCOR SHORTWAVATHERM.

The said device is composed principally of a high-frequency generator encased in an all-steel cabinet. The circuit is a regenerative feed-back circuit, incorporating two type T-55 oscillator tubes, powered by two transformers. Plate voltage supply through a specially constructed four-position switch. This switch controls plate supply through separate primary voltage stages on the power transformer, the secondary voltage being varied from 1,250, 1,500 or 1,700 volts. The filament supply transformer is also controlled through the above-mentioned special switch, with 125-volt primary and 7½ volt secondary. The patient's circuit is through a helix coil and variable condenser with two conventional sponge rubber encased diathermy pads, approximating 6 by 8 inches. The device is designed and operated at approximately 12 to 16 meters with a power output of 200 to 250 watts. 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 said device is manufactured by the Physicians Electric Service Corporation and a substantial portion of the aforesaid sale and distribution has been effected by respondent, The May Department Stores Co., through deliveries of said device to said respondent on consignment by said Physicians Electric Service Corporation.

The aforesaid sale and distribution of said device has been further accomplished by respondent, The May Department Stores Co., through the collaboration of said Physicians Electric Service Corporation in preparing, editing and approving said respondent's drafts of advertisements for newspaper publication and in printing for and supplying to said respondent, The May Department Stores Co., circulars, leaflets, or pamphlets used in local distribution and in answering inquiries by mail.

In the course and conduct of their business, the respondents cause said device, when sold, to be transported from their places 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, 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 are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false 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 newspapers and by circulars, leaflets, or pamphlets are the following:

Pescor Engineers, after years of diligent research, now present the PESCOR SHORTWAVE THERM * * * incorporating safety features.

Applications may be made by any one following simple instructions.

Outstanding results—Exceptional results.

Physicians prescribe and recommend Short Wave Diathermy in many ailments, such as the following:

Addison's Disease	Fractures
Adhesions	Gangrene
Amenorrhoea	Gastric Ailments
Ankylosis	Goiter (Selected)
Arthritis	Hay Fever
Arteriosclerosis	Head Colds
Cardiac Ailments (Selected)	Hodgkin's Disease
Chilblains	Impetigo
Chorea	Insomnia
Colitis	Intestinal Neurosis
Constipation	Kidney Diseases
Cystitis	Laryngitis
Dysmenorrhoea	Leucorrhoea
Empyema	Liver Diseases
Enuresis	Lumbago
Erysipelas	Lymphadenitis
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Migrane	Rheumatism
Mumps	Reynaud's Disease
Muscle Ailments	Sciatica
Nephritis	Septicemia
Neurasthenia	Sinus Infection
Neuritis	Spinal Cord Ailments
Onychia	Spleen
Orchitis	Synovitis
Ovaritis	Tonsillitis
Pancrea Ailments	Urinary Ailments
Paralysis	Vaginitis
Phlebitis	

Save time * * * money! Powerful short-wave diathermy treatments taken at home * * *.

PESCOR SHORTWAVATIHERM

* * * Same power as physicians'. Extremely simple, safe in operation. New! * * * a short wave diathermy available for home use! Simple to operate and regulate.

Short wave diathermy treatments at home! Right when you need it most.

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 PESCOR SHORTWAVATIHERM, 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, 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.

PAR. 5. The foregoing advertisements and representations are grossly exaggerated, false, and misleading.

In truth and in fact, the individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements 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 alleviation 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 conditions 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 contra-indicated 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.

PAR. 6. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the device to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and fail to reveal that the use of said device may result in serious and irreparable injury to health.

In truth and in fact, the use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptomatic 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 PESCOR SHORTWAVE THERM 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 contraindicated. There are other conditions in

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which the efficacy of diathermy is dependent upon the method and 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 this 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.

Furthermore, said advertisements are 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, 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 induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondents' said device.

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 the 26th day of January 1942 issued and thereafter served its complaint in this proceeding upon the respondents, The May Department Stores Co., a corporation, Physicians Electric Service Corporation, a corporation, and Solomon E. Mendelsohn, individually, and as an officer of Physicians Electric Service Corporation, charging them with the use of unfair and

deceptive acts and practices in commerce in violation of the provisions of said act.

On February 18, 1942, the respondents, Physicians Electric Service Corporation, a corporation, and Solomon E. Mendelsohn, individually, and as an officer, of Physicians Electric Service Corporation, filed their answer in this proceeding admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. On February 14, 1942, the respondent, The May Department Stores Co., a corporation, filed its answer in this proceeding denying the allegations of the complaint.

A hearing was held in this matter on July 30, 1942, at which time a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent, The May Department Stores Co., a corporation, was read into the record in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and which stipulation further provided that the Commission may proceed upon said statement of facts without oral argument or the filing of briefs to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding. Said respondent, The May Department Stores Co., a corporation, expressly waived the filing of a Trial Examiner's report upon the evidence.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer and stipulation read into the record, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Physicians Electric Service Corporation, is a corporation created, organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at the Professional Building, 1054-1056 West Sixth Street, Los Angeles, Calif.

Soloman E. Mendelsohn, is an individual, and is also president and treasurer, of Physicians Electric Service Corporation, with his office and principal place of business at the same address as the aforesaid corporate respondent.

The May Department Stores Co., is a corporation, duly organized and existing under the laws of the State of New York. The said

respondent's California office and principal place of business within said State is located at Eighth Street and Broadway, Los Angeles, Calif.

Respondent, Soloman E. Mendelsohn, as an officer, of said Physicians Electric Service Corporation, formulates, controls and directs the policies, acts and practices of said corporate respondent. The said respondents act and have acted in conjunction and in cooperation with each other and with The May Department Stores Co. in performing the acts and practices hereinafter alleged.

PAR. 2. The respondents, Physicians Electric Service Corporation, a corporation, and Soloman E. Mendelsohn, are now and for more than one year last past have been, engaged in the sale and distribution of a certain short-wave diathermic device advertised as Prescor SHORTWAVATHERM.

The respondent, The May Department Stores Co., a corporation, prior to January 4, 1941, was engaged in the sale and distribution of said device.

The said device is composed principally of a high frequency generator encased in an all steel cabinet. The circuit is a regenerative feed back circuit, incorporating two type T-55 oscillator tubes, powered by two transformers. Plate voltage supply through a specially constructed four position switch. This switch controls plate supply through separate primary voltage stages on the power transformer, the secondary voltage being varied from 1250, 1500 or 1700 volts. The filament supply transformer is also controlled through the above-mentioned special switch, with 125-volt primary and 7½-volt secondary. The patient's circuit is through a helix coil and variable condenser with two conventional sponge rubber encased diathermy pads, approximating 6 by 8 inches. The device is designed and operated at approximately 12 to 16 meters with a power output of 200 to 250 watts. 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 said device is manufactured by the Physicians Electric Service Corporation, and a substantial portion of the aforesaid sale and distribution has been effected by respondent, The May Department Stores Co., through deliveries of said device to said respondent on consignment by said Physicians Electric Service Corporation.

The aforesaid sale and distribution of said device has been further accomplished by respondent, The May Department Stores Co., through the collaboration of said Physicians Electric Service Corporation in preparing, editing and approving said respondent's drafts

of advertisements for newspaper publication and in printing for and supplying to said respondent, The May Department Stores Co., circulars, leaflets, or pamphlets used in local distribution.

In the course and conduct of their business, the respondents cause said device, when sold, to be transported from their places 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 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, Physicians Electric Service Corporation and Solomon E. Mendelsohn, have disseminated, and have caused the dissemination of, false advertisements concerning their said product by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and said respondents have also disseminated, and have caused the dissemination of, false 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 newspapers and by circulars, leaflets or pamphlets, are the following:

Pescor Engineers, after years of diligent research, now present the PESCOR SHORTWAVATHERM * * * incorporating safety features.

Applications may be made by any one following simple instructions.

Outstanding results—Exceptional results.

Physicians prescribe and recommend Short Wave Diathermy in many ailments, such as the following:

Addison's Disease	Dysmenorrhea
Adhesions	Empyema
Amenorrhea	Enuresis
Ankylosis	Erysipelas
Arthritis	Folliculitis
Arteriosclerosis	Fractures
Cardiac Ailments (Selected)	Gangrene
Chilblains	Gastric Ailments
Chorea	Golfer (Selected)
Colitis	Hay Fever
Constipation	Head Colds
Cystitis	Hodgkin's Disease

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Impetigo	Orchitis
Insomnia	Ovaritis
Intestinal Neurosis	Pancrea Ailments
Kidney Diseases	Paralysis
Laryngitis	Phlebitis
Leucorrhea	Rheumatism
Liver Diseases	Reynaud's Disease
Lumbago	Sciatica
Lymphadenitis	Septicemia
Marasmus	Sinus Infection
Migrane	Spinal Cord Ailments
Mumps	Spleen
Muscle Ailments	Synovitis
Nephritis	Tonsilitis
Neurasthenia	Urinary Ailments
Neuritis	Vaginitis
Onychia	

Save time * * * money! Powerful short-wave diathermy treatments taken at home * * *

PESCOR SHORTWAVATHERM

* * * Same power as physicians'. Extremely simple, sale in operation. New! * * * a short wave diathermy available for home use! Simple to operate and regulate.

Short wave diathermy treatments at home! Right when you need it most.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondents, Physicians Electric Service Corporation and Solomon E. Mendelsohn, represent that their device or apparatus, advertised as PESCOR SHORTWAVATHERM, 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, 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.

PAR. 5. In the course and conduct of its aforesaid business the respondent, The May Department Stores Co., has disseminated, and has caused the dissemination of, false advertisements concerning its said product by United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and said respondent has also disseminated, and has caused the dissemination of, false advertisements concerning its said product by various means, for the purpose of inducing, and which are likely

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to induce, directly or indirectly, the purchase of its 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, and by newspapers, are the following:

Save time—money! Powerful short wave diathermy treatments taken at home.

PESCOR SHORTWAVATHERM

used to treat arthritis, sinus infection, lumbago, bronchitis.

Same power as physicians.

Extremely simple, safe in operation.

Laryngitis or bronchitis treated through cuff electrode.

Head colds or sinus infection treated through the sinus mask.

New! * * * a short wave diathermy available for home use.

Short wave diathermy treatments at home! Right where you need it most.

Used by physicians in treating rheumatism, lumbago, arthritis * * *

PAR. 6. By the use of the representations hereinabove set forth, and other representations similar thereto, but not specifically set out herein, respondent, The May Department Stores Co., represented that said device or apparatus advertised as PESCOR SHORTWAVATHERM 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 relief, cure, or treatment of arthritis, sinus infection, lumbago, bronchitis, laryngitis, head colds, and rheumatism.

PAR. 7. The foregoing advertisements and representations are grossly exaggerated, false, and misleading.

In truth and in fact, the individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements, 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 or self-diagnosed diseases and ailments of the human body, or for the alleviation 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 conditions of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; acute inflammation of the muscles, such as

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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.

PAR. 8. The respondents' advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the device to which the advertisements relate under the conditions prescribed in such advertisements, or under such conditions as are customary or usual, and fail to reveal that the use of said device may result in serious and irreparable injury to health.

In truth and in fact, the use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptomatic 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 PESCOR SHORTWAVATHERM 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.

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There are many diseases and conditions in the treatment of which diathermy would be contraindicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and 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 this 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.

Furthermore, said advertisements are 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. 9. The Commission further finds that the respondent, The May Department Stores Co., has not advertised said device in any manner since April 28, 1940, has not sold any of said devices since January 4, 1941, and has not offered any for sale since January 31, 1941.

PAR. 10. The use by the respondents, The May Department Stores Co., a corporation, and Physicians Electric Service Corporation, a corporation, and Solomon E. Mendelsohn, individually, and as an officer, of Physicians Electric Service Corporation, of the foregoing false, deceptive, and misleading statements and representations respectively disseminated by them as aforesaid, with respect to their device, 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 to induce such portion of the purchasing public because of such erroneous and mistaken belief to purchase the respondents' device.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute unfair and

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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 respondents, Physicians Electric Service Corporation, a corporation, and Soloman E. Mendelsohn, individually, and as an officer of Physicians Electric Service Corporation, in which answer these respondents admit all of the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to the facts; and a stipulation as to the facts entered into upon the record between counsel for the Commission and counsel for respondent, The May Department Stores Co., a corporation, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon said respondent findings as to the facts and conclusions based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Physicians Electric Service Corporation, a corporation, its officers, and Soloman E. Mendelsohn, individually, and as an officer of said corporation, and said respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their short-wave diathermic device known as PESCOR SHORTWAVATHERM, or any other device or apparatus of substantially similar character, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly 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, concerning the device or apparatus designated PESCOR SHORTWAVATHERM; and from 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 the device or apparatus designated PESCOR SHORTWAVATHERM, which advertisement:

1. Represents, directly or through inference, that said device or apparatus is safe or harmless.

2. Represents, directly or through inference, that said device is a scientific, safe, and harmless means and method to be used by the

unskilled lay public for the treatment, relief, or cure of self-diagnosed diseases and ailments of the human body or for the alleviation of pain resulting therefrom.

3. Represents, directly or through inference, that said device constitutes a competent or effective treatment for rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble, head colds, painful menstruation of female troubles, or for the alleviation of pain resulting therefrom, or for any other ailment or condition of the human body, unless such advertisement is specifically limited to those cases which do not involve acute inflammatory processes.

4. Fails to reveal clearly, conspicuously and unequivocally that said device or apparatus is not safe to 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 such diathermy treatments, and the user has been thoroughly and adequately instructed by a trained technician in the use of such diathermy device or apparatus.

It is further ordered, That respondent, The May Department Stores Co., a corporation, 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 said device or apparatus designated as PESCOR SHORTWAVATHERM, or any other device or apparatus of substantially similar character, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement concerning the device or apparatus designated PESCOR SHORTWAVATHERM; and from 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 the device or apparatus designated PESCOR SHORTWAVATHERM, which advertisement:

1. Represents, directly or through inference, that such device or apparatus is safe or harmless.

2. Represents, directly or through inference, that said device is a scientific, safe, and harmless means and method to be used by the unskilled lay public for the treatment, relief or cure of self-diagnosed diseases and ailments of the human body or for the alleviation of pain resulting therefrom.

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3. Represents, directly or through inference, that said device constitutes a competent or effective treatment for arthritis, sinus infection, lumbago, bronchitis, laryngitis, head colds or rheumatism, or for the alleviation of pain resulting therefrom, or for any other ailment or condition of the human body, unless such advertisement is specifically limited to those cases which do not involve acute inflammatory processes.

4. Fails to reveal clearly, conspicuously and unequivocally that said device or apparatus is not safe to 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 such diathermy treatments, and the user has been thoroughly and adequately instructed by a trained technician in the use of such diathermy device or apparatus.

It is further ordered, That the respondent 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 service upon them of this order said 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.

Syllabus

IN THE MATTER OF
UNITED DRUG COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3729. Complaint, Mar. 4, 1939—Decision, Oct. 26, 1942*

Where a corporation, engaged in the compounding and in the competitive interstate sale and distribution of its "Cara Nome" face powder, among various cosmetic preparations—

Sold its said powder so packaged that outside container of package was twice the size of the inmost "powder pouch," in turn included in an intermediate container, whereby powder content much greater than was the fact was indicated, absent opening enabling prospective purchaser to determine size of pouch and opportunity of content inspection by reason of cellophane wrapping employed in recent years;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public with respect to the quantity of powder contained within said packages, and of causing it to purchase substantial quantities of powder in question; whereby trade was diverted unfairly to said corporation from its competitors who do not use any such misleading method;

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

As respects the insistence of a seller of face powder engaging in the alleged misleading practice of packaging the same so contained that innermost "powder pouch," enclosed by larger container, in turn included in a still larger container, size, and capacity of which were such as to indicate that quantity of powder was much greater than was the fact, in the absence of any visual or practical opportunity for determining the true content, that it is the custom and practice of the trade to package cosmetic products in attractive containers, frequently involving use of those which do not accurately indicate the exact quantity of the product enclosed; the Commission was of the opinion, nevertheless, after making due allowance for such factors, that the particular package in question was misleading, in that size of outside container was substantially in excess of that which could reasonably be considered necessary for packaging the quantity of powder therein contained.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash and *Mr. Carrel F. Rhodes* for the Commission.

Mr. William F. Davis, Jr., of Boston, Mass., and *Mr. Richard A. Mahar*, of Washington, D. C., for respondent.