

IN THE MATTER OF

F. A. STUART COMPANY, AND BENSON & DALL, INC.

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

Docket 4753. Complaint, Apr. 24, 1942—Decision, Mar. 11, 1943

Where a corporation, engaged in interstate sale and distribution of "Stuart's Laxative Compound Tablets," and an advertising agency, aiding in the preparation of its advertising material; by means of advertisements in newspapers and magazines, circulars, and other advertising literature—

- (a) Represented that product in question was entirely safe and harmless and might be used without danger of ill effects, through such statements as "Try Stuart's Laxative Compound * * * for its safe * * * results," and "No bad after-effects";

When in fact it was neither safe nor harmless in that it contained phenolphthalein in quantities sufficient to cause, in some instances, injury to health if used under prescribed or usual conditions; and

- (b) Failed to reveal facts material with respect to consequences which might result from use thereof under such conditions, in that said laxative was potentially dangerous when taken by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that use of said preparation was entirely safe and harmless, thereby inducing its purchase 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.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Alfred P. Stuart, of Marshall, Mich., 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 F. A. Stuart Co., a corporation, and Benson & Dall, Inc., a 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. Respondent, F. A. Stuart Co., is a corporation, existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 117 South Jefferson Street, Marshall, Mich.

PAR. 2. This respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated "Stuart's Laxative Compound Tablets."

In the course and conduct of its business, respondent, F. A. Stuart Co., causes said medicinal preparation, when sold, to be transported from its place of business in the State of Michigan to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Benson & Dall, Inc., is a corporation, existing under the laws of the State of Illinois, with its principal office and place of business located at 327 South La Salle Street, Chicago, Ill. This respondent is an advertising agency and as such is engaged in formulating, editing, selling, and disseminating advertising matter. This respondent is the advertising representative of the respondent, F. A. Stuart Co., a corporation and, as such, prepares and aids in the preparation of advertising material used by the respondent, F. A. Stuart Co., a corporation, and disseminates and aids in the dissemination of such advertising material, including the advertising matter hereinafter set forth, in connection with the sale and distribution of the medicinal preparation hereinabove designated.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the medicinal preparation sold and distributed by respondent, F. A. Stuart Company, a corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal preparation 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 said products by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by ad-

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vertisements in newspapers, magazines, and by circulars and other advertising literature, are the following:

Try Stuart's Laxative Compound * * * for its safe * * * results.
No bad after-effects.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, respondents represent that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 7. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, said preparation is not safe or harmless, as it contains the drug phenolphthalein in a quantity sufficient to cause, in some instances, injury to health if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

PAR. 8. The 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 the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis. In some instances, its use may cause a skin rash, and such use should be discontinued when a rash occurs. The frequent or continued use of said preparation may result in dependence on laxatives.

PAR. 9. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations 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 said statements and representations are true and that the use of the preparation designated "Stuart's Laxative Compound Tablets" is entirely safe and harmless, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said medicinal preparation.

PAR. 10. The aforesaid acts and practices of 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 April 24, 1942, issued and on April 27, 1942, served its complaint in this proceeding upon the respondents, F. A. Stuart Co., a corporation, and Benson & Dall, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance and service of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F. A. Stuart Co., is a corporation, existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 117 South Jefferson Street, Marshall, Mich.

PAR. 2. This respondent is now, and for more than two years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated "Stuart's Laxative Compound Tablets."

In the course and conduct of its business, respondent, F. A. Stuart Co., causes said medicinal preparation, when sold, to be transported from its place of business in the State of Michigan to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Benson & Dall, Inc., is a corporation, existing under the laws of the State of Illinois with its principal office and place of business located at 327 South La Salle Street, Chicago, Ill. This respondent is an advertising agency and as such is engaged in formulating, editing, selling, and disseminating advertising matter.

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This respondent is the advertising representative of the respondent, F. A. Stuart Co., a corporation, and as such prepares and aids in the preparation of advertising material used by the respondent, F. A. Stuart Co., a corporation, and disseminates and aids in the dissemination of such advertising material, including the advertising matter hereinafter set forth, in connection with the sale and distribution of the medicinal preparation hereinabove designated.

PAR. 4. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 5. In furtherance of the sale and distribution of the medicinal preparation sold and distributed by respondent, F. A. Stuart Co., a corporation, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal preparation 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 said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, by advertisements in newspapers, magazines, and by circulars and other advertising literature, are the following:

Try Stuart's Laxative Compound * * * for its safe * * * results.
No bad after-effects.

PAR. 6. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, respondents represent that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 7. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, said preparation is not safe or harmless, as it contains the drug phenolphthalein in a quantity sufficient to cause, in some instances, injury to health if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

PAR. 8. The advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts

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material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions are are customary or usual. In truth and in fact, said preparation is a laxative and is potentially dangerous when taken by one suffering from nausea, vomiting, abdominal pains, or other symptoms of appendicitis.

PAR. 9. The use by the respondents of the foregoing false, misleading, and deceptive statements and representations 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 said statements and representations are true and that the use of the preparation designated "Stuart's Laxative Compound Tablets" is entirely safe and harmless, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said medicinal preparation.

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 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 the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, F. A. Stuart Co., a corporation, and Benson & Dall, Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of a certain medicinal preparation designated "Stuart's Laxative Compound Tablets," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement—

(a) Represents, directly or by implication, that said preparation is safe or harmless and may be used without danger of ill effects upon the health of the user; or

(b) Fails to reveal that said preparation should not be used in cases of nausea, vomiting, abdominal pains, or other symptoms of appendicitis; *Provided, however,* That such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any representation prohibited in paragraph 1 (a) hereof, or which fails to comply with the affirmative requirements set forth in paragraph 1 (b) hereof.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, 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
JOSTEN MANUFACTURING COMPANY

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

Docket 3611. Complaint, Sept. 28, 1938—Decision, Mar. 13, 1943

Where a corporation, engaged in the manufacture of school class rings and similar jewelry, and in competitive interstate sale and distribution thereof, by means of circulars and other printed matter, and salesmen who called upon high-school principals, classes, and committees, and local jewelers—

(a) Represented that it was the world's largest producer of fine class rings, announcements, and awards, and incorrectly portrayed the size of its plant in circulars and photographs through a composite picture upon which a portion of the building appeared twice so as to give the appearance of greater length and width than was actually the fact;

When in fact volume of its business was less than that of certain of its competitors;

(b) Represented its "Dura-Tone" rings as "solid gold" and "10K solid gold," directly and through its salesmen, and in circulars;

When in fact said rings, in addition to 10-carat gold, contained from 25 percent to 35 percent of base metal, which was entirely covered by gold and could not be ascertained by examination; and such contradictory explanatory matter in its circulars as "with duro-gold reinforced center core" and "with duro-metal reinforced center core" did not eliminate the deception, intention of which was evidenced by its instructions to salesmen in its Sales Manual, wherein said base metal, composed entirely of bronze, was falsely described as having a "small fine gold content"; and

(c) Represented its so-called "truss ring" or "truss type ring" or "KT" ring, or "patented 10 K truss constructed ring," in advertising and through salesmen as a 10-carat solid gold ring, and in its sales manual described said "10 KT" ring as a "10 K solid gold ring," and in bulletins to its salesmen stated "Don't Explain KT". In general we don't want you to *explain* KT. Just sell it. Only discuss KT construction when forced to do so. Then take the offensive," and set forth that the "T after K" was "a signal to our factory calling for our finest and most expensive method of fabricating the gold;"

The facts being that while said ring was made of 10-carat gold, it had a hollow head and shoulder, the cavities extending down to about the first third or half of the ring, and bore no stamp or other information to indicate that the product was not in fact solid gold;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and to cause its purchase thereof because of such belief; whereby trade was diverted unfairly to it from competitors who do not misrepresent their merchandise or business:

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