

IN THE MATTER OF
HYGIENIC CORPORATION OF AMERICA ET AL

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

Docket 3303. Complaint, Jan. 17, 1938—Decision, Apr. 15, 1943

Where a corporation, its two subsidiaries, and the principal stockholder of all three, doing business under the names of "American Health Association of Washington, D. C.," "Women's Advisory Bureau," "Women's Co-Operative Service," "Protex-U-Hygienic Service," "American Bureau of Hygiene," and "Surete Laboratories," engaged in the manufacture, and competitive interstate sale and distribution of medicinal preparations and appliances for women's use, which, designated generally as "Protex-U" and "Surete," consisted substantially of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, sold in sets and separately;

In advertising their said products through newspapers, periodicals, and other advertising material, including a set of six booklets entitled "The Happy Family Series," and booklets entitled "New Knowledge for Women" and "Feminine Secrets," dealing with prevention of conception—

- (a) Falsely represented, directly and by implication, that their said various products constituted competent and effective contraceptive agents;
- (b) Falsely represented that their said products possessed substantial therapeutic value in the treatment of ailments and diseases peculiar to women, particularly delayed menstruation, constituted a competent means for the destruction of germs in the female genital organs, and were effective prophylactics;
- (c) Represented, as aforesaid, that their said appliances, and particularly that designated vaginal diaphragm, would fit all female anatomies, and that vaginal syringe designated "Health Shield" might be used with safety by all women; facts being none of their said appliances would fit all female anatomies, and said "Health Shield" was regarded by physicians as potentially dangerous in that use thereof forced bacteria into the uterus; and

Where said corporations and individual, in advertising in newspapers and other periodicals for solicitors and in their dealings with prospective solicitors, and in offer and sale thereafter of their said products through such solicitors and through advertisements—

- (d) Made use of words "Nurse-Membership Application" and "American Health Association, Washington, D. C." in blank forms which they sent in response to inquiry from prospective solicitor for her use in addressing an application to aforesaid "association" for "Nurse Membership and appointment as Visiting Nurse in the American Health Association," with further provision that "It is understood that I shall be employed in work tending to elevate the healthful conditions and hygienic standards of our nation. I pledge myself to fully cooperate with the association in its aims of more healthful living through public education and to this end I will devote a definite portion of my time to this cause";
- (e) Made use of terms "Certificate of Membership" and "American Health Association, Visiting Nurse Division" on cards which it issued to solicitors

certifying that solicitor was enrolled as a "Nurse Member, Class A, in the American Health Association and has been appointed Visiting Nurse while engaged in Health Extension Activities * * *," and also issued badges of identification reading "American Health Association—Visiting Nurse Division—Washington, D. C.," to their solicitors who thereupon exhibited such cards, badges, and other advertising material through house-to-house solicitation for sale of said products; and

- (f) Represented that their business activities were conducted under the auspices or with the approval of the United States Public Health Service, and that their products had the approval of such service, that the "American Health Association" was a benevolent, nonprofit organization engaged in promoting the public health, and that their solicitors were nurses and qualified to advise women with respect to matters of health and sex hygiene, through their advertising literature and solicitors;

Facts being their said representations were false in their entirety; there was in fact no such organization as "American Health Association," which was merely a fictitious name used by them as one of their trade names; their business was conducted solely as a commercial enterprise for profit; and their solicitors were merely saleswomen, without training or experience as nurses;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that their said misrepresentations were true, and into the purchase of substantial quantities of their products and, as a result, of diverting trade unfairly to them from their competitors, including those who deal in products for women for legitimate hygienic use, treatment and prevention, and who do not misrepresent their products or business status; to the substantial injury of competition in commerce:

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.

Before *Mr. Arthur F. Thomas, Mr. Randolph Preston, Mr. Edward E. Reardon*, and *Mr. Lewis C. Russell*, trial examiners.

Mr. William L. Taggart for the Commission.

Mr. August P. Coviello, of Los Angeles, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Hygienic Corporation of America, Hygienic Co. of America, Merrill-Saunders Co., Ltd., corporations, and Harold L. DeBar, individually and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a pro-

Complaint

36 F. T. C.

ceeding 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 Hygienic Corporation of America is a corporation organized and operating under the laws of California.

Respondent Hygienic Co. of America is a Delaware corporation and markets products known as "Protex-U."

Respondent Merrill-Saunders Co. is a Delaware corporation and markets products known as "Surete" and "Surete Laboratories."

The Hygienic Co. of America and the Merrill-Saunders Co. are operated as subsidiaries of the Hygienic Corporation of America and respondent Hygienic Corporation of America also uses the names of these two corporations, as well as other names, as trade names for the carrying on of portions of its business activities. The principal place of business of these respondents is 5256-58 South Hoover Street, Los Angeles, Calif.

Respondent Harold L. DeBar is an individual trading under the names American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, Surete Laboratories and Surete Products at 5256-58 South Hoover Street, Los Angeles, Calif. He is the principal stockholder of the aforesaid corporate respondents and directs and controls the business activities and sales policies of the corporate respondents Hygienic Corporation of America and its subsidiaries, the Hygienic Co. of America and the Merrill-Saunders Co.

The respondents are all engaged in a general combination and confederation for the purpose of manufacturing, advertising, distributing, and selling certain products and preparations hereafter named to the public or to customers in the various States of the United States and the District of Columbia and in carrying out the acts and practices herein charged.

The respondents have been, and are now engaged in the business of manufacturing, advertising, distributing, and selling certain medical preparations and appliances for so-called feminine hygiene use and for use in preventing pregnancy and diseases common to the female anatomy. The respondents cause these products, when sold, to be transported from their aforesaid places of business in the State of California or from some other point to the purchasers thereof located at points in various States other than the States from which said shipments of said products originate and in the District of Columbia, and maintain a course of trade and commerce in said products so distributed and sold by them in commerce among and between the various States of the United States.

In the course and conduct of said business, respondents have been, and are, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and sale of similar products and other products intended and designed for similar use by women, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The products marketed by respondents, and sold to customers in commerce, as herein set out, are variously known and described at "Protex-U" and "Surete." An assortment of said products consists of douche powder, ointment, jelly, syringe (called health shield), applicator, and vaginal diaphragm (called medicator) and are sold in sets and otherwise.

PAR. 3. In the operation of their business and for the purpose of inducing the purchase of said products by the members of the public, the respondents have made use of various means and ways of advertising said products, among which are the distribution of booklets, pamphlets, show window displays, and circulars bearing the names of various ones of the aforesaid respondents and in some instances all of them. Some of the advertising literature describes and makes certain representations as to the efficacy of the products of respondents.

PAR. 4. For the purpose of selling and distributing their products, respondents publish and cause to be published as a part of their combination, as herein described, six booklets entitled "Happy Family Series," and named as follows:

1. The Ten Commandments of Happy Marriage,
2. How To Hold Your Husband's Love,
3. How To Remain Your Husband's Pal,
4. How To Beat the Divorce Court,
5. How To Win Back a Husband, and
6. The Woman Desired.

These pamphlets are purported to be published by the Educational Publishing Corporation; and other pamphlets entitled "New Knowledge for Women," copyrighted by American Health Association, Washington, D. C., "Feminine Secrets" and a circular entitled "The Protex-U System" are distributed with said pamphlets.

In referring to their products in their aforesaid pamphlets and other advertising, as aforesaid, such statements as the following are made:

"Surete Antiseptic Ointment"—" * * * Germ life is positively arrested by its presence. * * * A valuable aid in preventing delayed menstruation. * * * Preserve the Body Beautiful Thru Feminine Hygiene * * * by use

Complaint

36 F. T. C.

of the Protex-U System * * * every woman is assured that she is fortified against all conditions * * * The Health Shield assures absolute cleanliness and also relief from congestion, delayed or painful menstruation. The Vaginal Antiseptic combats infection. * * * The distending douche assists the organs to regain their normal position and causes that tired depressed feeling to disappear. The after-rest adds to the permanency of the treatment. As a result, you will arise feeling like a young woman in the full bloom of youth * * *."

"* * * Frequent douches are very essential in every married woman's life to keep the numerous creases and wrinkles of the vaginal passage clean and healthy. * * * It absolutely assures every part of the vaginal lining being contacted by the douche. Germs cannot get away from it. * * * Protex-U Health Shield * * * Prevents Delayed Menstruation. If for any reason women appreciate Protex-U more than for any other, it is because of its ability to hold a hot douche or "hot pack" around the womb, which is extremely helpful in preventing delayed menstruation. * * * It eliminates the uncertainties of the usual douche, is nonpoisonous and absolutely harmless to the most sensitive body membrane. * * * wonderful germicide "Glyquinal" * * * Germ life cannot thrive in its presence * * * So effective, so safe, so reliable has it proved itself that within a few short years it has become known * * * There is nothing else like it. It works where other preparations fail. * * * It also has the peculiar property of drawing infected secretions from the mucous membrane. * * *"

The Three Point Scientific Method. The Protex-U System is based on the well-known "Three Point Scientific Method of Marriage Hygiene." This requires:

1. An effective antiseptic, effectively applied before exposure to prevent infection (pathogenic).
2. A vaginal syringe (Health Shield) far more effective than the ordinary in cleansing and preventing many menstrual disorders.
3. A douche powder that promotes healing and is not an irritant or merely a perfume carrier. These requirements are fully met in the Protex-U Ointment, Protex-U Health Shield and Protex-U Douche Powder, the following illustrations and simple directions fully explain their use.

Using the Protex-U Medicator. The use of a medicator (vaginal diaphragm) and antiseptic ointment is the method outstandingly approved by physicians and Marriage Hygiene Clinics. First, it is necessary to obtain the correct size, which is easily done by the following table:

In classifying oneself as to "under average," "average," or "over average," disregard the amount of flesh and consider bony frame alone. Note.—A woman does not need a large size because she is fleshy.

In said statements, together with other similar statements not herein set out with respect to their products and in their general advertising, respondents directly and through implication represent that their products form safe, competent, and effective preventatives against conception; that the use of said products is a guarantee against pregnancy; that said products are composed, in whole or in part, of agents which are fully effective, among other things, in insuring health and youth to wives and mothers; that said products keep the body perfectly clean and sanitary and the mind free from

worry and anxiety, and keep the bloom of youth in the user; that use of said products prevents disease, insures health and strength, causes the rapid elimination of bacteria, including leucorrhea (whites) and disagreeable discharges, and acts as a preventative of female irregularities; and that said products are effective as prophylactics and heal the delicate membranes and tissues in the vaginal tract; and form competent and effective treatments for subnormal or unhealthful conditions of the uterus and vagina, venereal diseases, nervousness, pain and discomfort, burning sensation, and mental depression.

PAR. 5. In truth and in fact said products do not form or constitute safe and competent remedies against conception and are not a guarantee against pregnancy. Said products do not contain ingredients or medicinal agents which are fully effective, among other things, to insure health and youth to wives and mothers. They do not keep the body perfectly clean and sanitary; or the mind free from worry and anxiety. Said products are not effective as preventatives against disease; are not effective to keep the bloom of youth, or to insure health and strength; and will not cause the rapid elimination of bacteria, including leucorrhea (whites) or disagreeable discharge; neither are they preventatives of female irregularities generally. They do not act as prophylactics or heal the delicate membranes or tissues of the vaginal tract; and are not competent and effective treatments for subnormal or unhealthful conditions of the uterus or vagina, venereal diseases, nervousness, pain or discomfort, burning sensations, and mental depression.

PAR. 6. Statements and representations such as the following are made under the name of the American Health Association:

"* * * Why, it was only a few years ago that our Congress was appropriating millions to educate our farmers how to raise and care for their cattle, sheep and hogs, but spending practically nothing on the more important task of educating us wives and mothers—human beings, mind you—on how to take care of ourselves and our families. Finally Congress woke up to the tremendous need and the fact that the family and the home were more important than animals and recently enacted legislation authorizing the educating and assisting of wives, mothers, and prospective mothers. In full sympathy with this splendid, if belated, movement the American Health Association is carrying on this special campaign to bring the vital sex truths regarding herself to every wife and mother as soon as possible.

But, what troubles me most is the fact that the need throughout the entire country is so great, so huge, so tremendous, that it is impossible for the American Health Association, as for any other benevolent non-profit organization, to equip enough of us nurses to reach the millions and millions of wives who are just as needy but who are living on a farm, in a small town or even in a larger city where no staff of visiting nurses has yet been organized. To those women we have to bring this message, which we two are privileged to talk over in person, by mail to the best of our ability * * *

Complaint

36 F. T. C.

The solicitors who are employed by the respondents in calling upon prospective purchasers for the purpose of making the claims herein set out in said advertising, and selling the products herein named, exhibit to them a visiting nurse's button and certificate of membership, together with the following paper called:

NURSE-MEMBERSHIP APPLICATION

AMERICAN HEALTH ASSOCIATION,

Suite 402 Baltic Bldg., Washington, D. C.

Date ----- Feb. ---- 24 ----- 192 ----

I hereby apply for nurse-membership and appointment as visiting nurse in the AMERICAN HEALTH ASSOCIATION.

It is understood that I am now employed in work tending to elevate the healthful conditions and hygienic standards of our nation. I pledge myself to fully cooperate with the association in its aims of more healthful living through public education and to this end will devote a definite portion of my time to this cause.

----- Signed	----- Address	----- City	----- State
----- Employing Company	----- Vouched for by		

I am enclosing 30 cents (stamps accepted) to pay the expense of issuing CERTIFICATE OF MEMBERSHIP and VISITING NURSES BUTTON. It is understood that there are no initiation or membership fees.

In said statements, and in other statements not herein set out, respondents represent, directly and through implication, that their products have been put to a successful scientific test by the American Health Association, an independent nonprofit organization devoted to scientific research; that they are a part of, or in some manner connected with the American Public Health Association, whose object is to protect and promote public and personal health and whose membership consists of several prominent officials of the United States and State Public Health Services; that they are a part of the United States Public Health Service; that the United States Government has appropriated money for their work; that they are organized and do business under the educational laws of the District of Columbia, and are licensed to train and school nurses and that their representatives are trained and schooled in accordance with the educational laws of the District of Columbia and are trained nurses.

PAR. 7. In truth and in fact the American Health Association of Washington, D. C., does not actually exist but is a fictitious name used by respondents to further the fraudulent sale of their products by their solicitors. No such association or organization known as

the American Health Association is in any manner connected with the Public Health Service of the United States; nor is it a part of or connected in any manner with the American Public Health Association of the United States. Further, no such organization has ever been organized or chartered to do business such as training and schooling of nurses under the educational laws of the District of Columbia. None of the respondents are connected in any way with the Public Health Service of the United States, nor the American Public Health Association.

Such articles and drugs, named herein, when manufactured, advertised, and distributed are then and there misrepresented in that the statements, designs, and devices regarding the therapeutic, curative, and other benefits and effects thereof borne on the directions slip, circulars, and in the advertising, as aforesaid, are false and fraudulent and the same are applied to said articles knowingly and in reckless and wanton disregard of their truth or falsity.

There are among the respondents' competitors in commerce, as herein set out, those who do not in any way misrepresent the character and nature of their respective businesses and who do not misrepresent in any way the nature, character, and efficacy of their respective products, and do not make use of any of the misleading representations herein set out or others similar thereto.

PAR. 8. The aforesaid false and misleading statements and representations used by the respondents, in offering for sale and selling their various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken beliefs that said representations are true and into the purchase of substantial quantities of respondents' various products on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted to respondents from competitors of respondents who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States.

PAR. 9. The methods, acts, and practices of respondents herein set forth are all to the prejudice of the public and respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for the purposes," approved September 26, 1914.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 17, 1938, issued and thereafter served its complaint upon the respondents, Hygienic Corporation of America, Hygienic Co. of America, Merrill-Saunders Co., Ltd., corporations, and Harold L. DeBar, individually, and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, charging respondents with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, before trial examiners of the Commission theretofore duly designated by it (no evidence being offered by the respondents), 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 examiners upon the evidence, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being fully advised in the premises, on June 8, 1940, made its findings as to the facts and its conclusion based thereon, and issued its order requiring the respondents to cease and desist from the use of the unfair methods of competition charged in the complaint.

Subsequently, the respondents filed a petition setting forth that, through the alleged negligence or mistake of the attorney originally employed to represent them, they had not had an opportunity to offer evidence in opposition to the allegations of the complaint, and requesting that the proceeding be reopened in order that they might present such evidence. Upon consideration of this petition, and after testimony had been introduced by respondents in support thereof, the Commission on February 4, 1942, issued its order reopening the proceeding for the taking of such further testimony and other evidence as might be offered in support of the allegations of the complaint or in opposition thereto. Thereafter, additional hearings were held, at which the respondents introduced testimony and other evidence in opposition to the allegations of the complaint. Subsequently, the proceeding again came on for hearing before the Commission on the complaint, the answer thereto, the testimony and other evi-

dence introduced in both the original and supplemental hearings, the original and supplemental reports of the trial examiners upon the evidence, and the original and supplemental briefs in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission, being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its modified findings as to the facts and its conclusion based thereon:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Hygienic Corporation of America, is a corporation, organized under the laws of the State of California. Respondents, Hygienic Co. of America and Merrill-Saunders Co., Ltd., are corporations, organized under the laws of the State of Delaware. The Hygienic Co. of America and the Merrill-Saunders Co., Ltd., are operated as subsidiaries of the Hygienic Corporation of America, and the Hygienic Corporation of America uses the names of these two corporations, as well as other names, as trade names for the carrying on of its business activities.

Respondent, Harold L. DeBar, is an individual, trading under the names of American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories. He is the principal stockholder of all of the corporate respondents, and directs and controls the business activities and sales policies of the corporate respondents.

All of the respondents formerly had their office and principal place of business at 5256-5258 South Hoover Street, Los Angeles, Calif. Their present address is 4306 Brighton Avenue, Los Angeles, Calif. All have acted in conjunction and cooperation with one another in carrying on the acts and practices herein set forth.

PAR. 2. The respondents are now and for a number of years last past have been engaged in the manufacture, sale, and distribution of certain medicinal preparations and appliances recommended by them for so-called feminine hygiene, and for use in the treatment of diseases and ailments peculiar to women and in preventing pregnancy. The products are designated generally by respondents as "Protex-U" and "Surete," and consist principally of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm. They are sold both in sets and separately.

The respondents cause and have caused their products, 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondents have been and are now in substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of products designed and intended for legitimate hygienic use by women and for use in the treatment and prevention of diseases peculiar to women.

PAR. 4. In the course and conduct of their business and for the purpose of promoting the sale of their products, the respondents have made use of various means of advertising their products, among which are advertisements inserted in newspapers and other periodicals, and in booklets, pamphlets, circulars, and other advertising material distributed among prospective purchasers. As a further part of their advertising campaign and in order to create interest among prospective purchasers, the respondents distribute a set of six booklets entitled "The Happy Family Series," and also booklets entitled "New Knowledge for Women" and "Feminine Secrets." All of these booklets deal, directly or by implication, with the prevention of conception.

Among and typical of the representations made by respondents in their advertising material are the following:

The Three Point Scientific Method

The Protex-U System is based on the well-known
"Three Point Scientific Method of Marriage Hygiene." This requires:

1. An effective antiseptic, effectively applied before exposure to prevent infection (pathogenic).
2. A vaginal syringe (Health Shield) far more effective than the ordinary in cleansing and preventing many menstrual disorders.
3. A douche powder that promotes healing and is not an irritant or merely a perfume carrier. These requirements are fully met in the Protex-U Ointment, Protex-U Health Shield and Protex-U-Douche Powder, the following illustrations and simple directions fully explain their use.

Using the Protex-U-Medicator. The use of a medicator (vaginal diaphragm) and antiseptic ointment is the method outstandingly approved by physicians and Marriage Hygiene Clinics. First, it is necessary to obtain the correct size, which is easily done by the following table:

In classifying one's self as to "under average," "average," or "over average," disregard the amount of flesh and consider bony frame alone. Note: A woman does not need a large size because she is fleshy.

"Surete Antiseptic Ointment"—" * * * Germ life is positively arrested by its presence. * * * A Valuable Aid in Preventing Delayed Menstruation. * * * Preserve the Body Beautiful Thru Feminine Hygiene * * * By

use of the Protex-U-System * * * every woman is assured that she is fortified against all conditions * * * The Health Shield assures absolute cleanliness and also relief from congestion, delayed or painful menstruation. The Vaginal Antiseptic combats infection. * * * The distending douche assists the organs to regain their normal position and causes that tired depressed feeling to disappear. The after-rest adds to the permanency of the treatment. As a result you will arise feeling like a young woman in the full bloom of youth!"

"* * * Frequent douches are very essential in every married woman's life to keep the numerous creases and wrinkles of the vaginal passage clean and healthy. * * * It absolutely assures every part of the vaginal lining being contacted by the douche. Germs cannot get away from it. * * * Protex-U-Health Shield * * * Prevents Delayed Menstruation. If for any reason women appreciate Protex-U more than for any other, it is because of its ability to hold a hot douche or "hot pack" around the womb, which is extremely helpful in preventing delayed menstruation. * * * It eliminates the uncertainties of the usual douche, is non-poisonous and absolutely harmless to the most sensitive body membrane. * * * wonderful germicide "Glyquinol" * * * Germ life cannot thrive in its presence * * * so effective, so safe, so reliable has it proved itself that within a few short years it has become known. * * * There is nothing else like it. It works where other preparations fail. * * * It also has the peculiar property of drawing infected secretions from the mucous membrane. * * *

PAR. 5. Through the use of these representations, together with many other representations of a similar nature, the respondents have represented, directly and by implication, that their products constitute competent and effective contraceptive agents; that they possess substantial therapeutic value in the treatment of ailments and diseases peculiar to women, particularly delayed menstruation; that they constitute a competent and effective means or method for the destruction of germs in the female genital organs, and are competent and effective prophylactics; that respondents' appliances, particularly the vaginal diaphragm, will fit all female anatomies; and that the appliance designated "Health Shield" (vaginal syringe) may be used with safety by all women.

PAR. 6. The Commission finds that there is no basis in fact for the foregoing representations, and that such representations are false, deceptive, and misleading. Respondents' products do not constitute competent or effective contraceptive agents. They possess no therapeutic value in the treatment of delayed menstruation or any other ailments or diseases peculiar to women. They do not constitute a competent or effective means or method for the destructions of germs in the female genital organs, nor are they competent or effective prophylactics. Neither the vaginal diaphragm nor any other of respondents' appliances will fit all female anatomies. The appliance designated "Health Shield" (vaginal syringe) cannot be used with safety. This appliance is known generally by physicians as a "ballooning douche,"

and is regarded by physicians as possessing dangerous potentialities in that its use may result in the forcing of bacteria from the vagina into the uterus.

PAR. 7. Much of the respondents' selling activity is thorough solicitors or saleswomen, who call on prospective purchasers. In order to obtain such solicitors, the respondents advertise in newspapers and other periodicals, and upon receiving inquiries from prospective solicitors the respondents send to such persons a blank form designated "Nurse-Membership Application." Such application is addressed to the "American Health Association, Washington, D. C.," and by means of this application the prospective solicitors apply for "Nurse Membership and appointment as Visiting Nurse in the American Health Association." The application further provides that:

It is understood that I shall be employed in work tending to elevate the healthful conditions and hygienic standards of our nation. I pledge myself to fully cooperate with the association in its aims of more healthful living through public education and to this end I will devote a definite portion of my time to this cause.

The respondents, upon receiving such applications, issue to the solicitor a card designated "Certificate of Membership" in the "American Health Association, Visiting Nurse Division." This card certifies that the solicitor is enrolled as a "Nurse Member, Class A, in the American Health Association and has been appointed Visiting Nurse while engaged in Health Extension Activities * * *." The respondents also issue to their solicitors badges of identification reading "American Health Association—Visiting Nurse Division—Washington, D. C." Upon receiving the identification card and badge, the solicitor undertakes the work of selling respondents' products by making house-to-house calls on prospective purchasers. In contacting prospective purchasers and soliciting sales, the solicitor exhibits the card and badge and uses circulars, pamphlets, and other advertising material supplied by the respondents.

PAR. 8. The respondents, both in their advertising literature and by means of solicitors, make other representations with respect to their business activities and products. Of such representations the following are typical:

* * * Why, it was only a few years ago that our Congress was appropriating millions to educate our farmers how to raise and care for their cattle, sheep and hogs, but spending practically nothing on the more important task of educating us wives and mothers—human beings, mind you, on how to take care of ourselves and our families. Finally Congress woke up to the tremendous need and the fact that the family and home were more important than animals and recently enacted legislation authorizing the educating and assisting of wives, mothers and prospective mothers. In full sympathy with this splendid, if belated, movement the American Health Association is carrying on

this special campaign to bring the vital sex truths regarding herself to every wife and mother as soon as possible.

But, what troubles me most is the fact that the need throughout the entire country is so great, so huge, so tremendous, that it is impossible for the American Health Association, as for any other benevolent non-profit organization, to equip enough of us nurses [to reach the millions and millions of wives]¹ who are just as needy but who are living on a farm, in a small town or even in a larger city where no staff of visiting nurses has yet been organized. To those women we have to bring this message, which we two are privileged to talk over in person, by mail to the best of our ability * * *.

Through the use of these representations and others of a similar nature, the respondents lead prospective purchasers to believe that respondents' business activities are conducted under the auspices or with the approval of the United States Public Health Service, and that respondents' products have the approval of the Public Health Service; that the American Health Association is a benevolent, non-profit organization engaged in promoting the public health; and that respondents' solicitors are nurses and are qualified to advise women with respect to matters of health and of sex hygiene.

PAR. 9. The Commission finds that these representations are false in their entirety. Neither respondents' activities nor their products are sponsored or approved by the United States Public Health Service or by any public health service. There is, in fact, no such organization as respondents' "American Health Association." This name is merely a fictitious name used by the respondents as one of their trade names. Respondents' business is in no sense a benevolent or nonprofit enterprise, but is a business conducted solely as a commercial enterprise and for the profit of respondents. The respondents' solicitors are not nurses and are not qualified to advise women as to matters of health or sex hygiene. They are merely saleswomen, and have no training or experience as nurses.

PAR. 10. The use by the respondents of the false and misleading statements and representations herein set forth has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations are true, and into the purchase of substantial quantities of respondents' products. As a result thereof, trade has been diverted unfairly to the respondents from their competitors, among whom are those who do not misrepresent their products or their business status, and in consequence, substantial injury has been done and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

¹ See ante, p. 509.

Order

86 F. T. C.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of the respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED 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 in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, original and supplemental reports of the trial examiners upon the evidence, and original and supplemental briefs in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission having made its modified 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, Hygienic Corporation of America, Hygienic Co. of America, and Merrill-Saunders Co., Ltd., corporations, and their officers, and Harold L. DeBar, individually, and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Cooperative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, or trading under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' so-called feminine hygiene preparations and appliances now designated as "Protex-U" and "Surete" and consisting principally of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, whether sold together or separately, or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, or any other appliance possessing substantially similar characteristics, whether sold under the same name or under any other name, do forthwith cease and desist from: .

1. Representing, directly or by implication, that any of said preparations or appliances, whether used alone or in conjunction with any other of said preparations or appliances, will prevent conception.

2. Representing, directly or by implication, that any of said preparations or appliances, whether used alone or in conjunction with .

any other of said preparations or appliances, possesses any therapeutic value in the treatment of delayed menstruation or any other ailment or disease peculiar to women.

3. Representing, directly or by implication, that any of said preparations or appliances, whether used alone or in conjunction with any other of said preparations or appliances, constitutes a competent or effective means or method for the destruction of germs in the female genital organs, or constitutes a competent or effective prophylactic.

4. Representing, directly or by implication, that respondents' appliances will fit all female anatomies.

5. Representing, through failure to reveal that the use of the appliance designated by respondents as "Health Shield" (vaginal syringe) is not wholly safe, or representing through any other means or device, or in any other manner, that such appliance may be used with safety or without injurious effects.

6. Representing, directly or by implication, that the respondents or their business activities are connected in any way with, or that any of respondents' products is approved by, the United States Public Health Service or any public health service.

7. Using the name "American Health Association," or "American Health Association of Washington, D. C.," or any other name of similar import or meaning, to designate or describe the respondents or their business.

8. Using the term "Nurse," or "Visiting Nurse," or any other term of similar import or meaning, to designate or describe respondents' solicitors or saleswomen; or otherwise representing, directly or by implication, that respondents' solicitors or saleswomen are nurses.

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.

IN THE MATTER OF

LEO GREENBERG, TRADING AS BUREAU OF RESEARCH,
RECLASSIFICATION DEPARTMENT, AND WILLIAM
EDGAR SPICERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4810. Complaint, Aug. 12, 1942—Decision, Apr. 22, 1943*

Where an individual, engaged in interstate sale and distribution of printed mailing cards for use by collection agencies, merchants, and others in obtaining information concerning their debtors, which consisted of two perforated cards to be used, as below described, in mailing on one a request for information to the debtor or a person acquainted therewith, and in the supplying, on the other, of information pertaining to the debtor's affairs, for return to said individual's associate, as below set forth—

- (a) Represented, and placed in the hands of his customers a means of representing to their debtors and others, that the request for information came from an agency or branch of the United States Government, through displaying on such cards the words "Bureau of Research, Reclassification Department," along with the words "Bond Building, Washington, D. C.," to which the information cards were to be returned; setting forth similar words and "Employment Division, Dept. 303" on the request for information card, advising the debtor that the Bureau requested the information for the purpose of reclassifying his present employment, that all answers must be correct and returned within 5 days, and that the classification "would be permanent until new employment is secured"; and setting forth on the reverse side such matter as "Present Classification No. D 0000," and under the words "Do Not Write Below This Line"—preceded by arrangement for full information as to the debtor's name, address, occupation, and employment—such words as "Reclassified as follows—Classification Number—and Department Signature"; and through similar cards to be sent to a person believed to have information concerning the debtor;

The facts being that the request did not come from the Government but from private persons; said "Bureau of Research, Reclassification Department" was merely the trade name employed by said individual; and "Bond Building, Washington, D. C." was the address of said associate; and

Where said associate of said individual in the city of Washington, to whom he sent said cards for mailing and who, upon having the cards and information returned to him at said "Bureau of Research," Bond Building, Washington, D. C., forwarded the same to said individual, to be by him sent on to his customers with the information as to their debtors—

- (b) Similarly falsely represented to such customers and debtors that the request for information came from an agency or branch of the Government, and, through returning to said individual information concerning debtors, secured as aforesaid, assisted in the fruition of the purpose for which the original misrepresentation was made by individual and his customers, and thus participated actively in the acts and practices in question;