

IN THE MATTER OF

FRANK B. MORAN, DOING BUSINESS AS MAGNETIC RAY
COMPANY AND MAGNETIC RAY CLINIC¹

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

Docket 4164. Complaint, June 19, 1940—Decision, June 8, 1943

Where an individual engaged in the manufacture and interstate sale and distribution of his "Magnetic Ray" electrical device, which was a low-frequency coreless solenoid producing a magnetic field of the same frequency as that of the electric circuit into which it was plugged; producing heat approximately equal to a 40-watt bulb, and claimed efficiency of which, in treatment of various disorders and diseases, was entirely dependent upon the magnetic field produced thereby; by means of newspapers, periodicals, circulars, leaflets, pamphlets and other advertising media—

- (a) Represented that the use of said device constituted a cure or remedy and a competent and effective treatment for numerous diseases and disorders, including rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart diseases, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, and tumors; and
- (b) Represented that said "Magnetic Ray" exceeded electricity, light, heat, X-rays, radium rays, violet and ultra-violet rays in therapeutic value, and that the use of his said device stimulated a normal and healthful functioning of the various organs and glands of the body, equalized the circulation, relieving congestion or lack of blood supply in any part of the body, produced marked relaxation, relieved pain and muscular and nervous tension, and stimulated rapid increase in the oxidation and elimination of accumulated poisons, thereby removing the condition of autotoxemia;

The facts being that the device in question, or the magnetic field produced thereby, had no effect upon the body or any living organism, or therapeutic value in the treatment of any disease or disorder, did not exceed electricity or the other named rays in therapeutic value, and did not accomplish the other results claimed;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and of inducing it, because of said belief, to purchase his said device:

Held, That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practise in commerce.

As respects the therapeutic value of a so-called "magnetic ray" electrical device, which was a low-frequency coreless solenoid producing a magnetic field of the same frequency as that of the electric circuit into which it was

¹ Findings as to the facts and order to cease and desist issued by the Commission on December 23, 1941 (not published), were vacated and set aside and case was reopened for taking of testimony on May 27, 1942. (See 34 F. T. C. 1538.)

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plugged, producing heat approximately equal to a 40-watt bulb, and with claimed efficiency entirely dependent upon the magnetic field produced thereby: expert testimony established what is a recognized and accepted principle in medical science, namely, that magnetic fields are without therapeutic value, and testimony of two physicians, one the seller of the device, as to beneficial results claimed to have been obtained in their practice through use thereof, and of several members of the lay public, who testified to certain benefits which they claimed to have derived from it, was at such variance with generally accepted and recognized scientific opinion that its accuracy was open to serious question, and was insufficient to overcome the expert testimony introduced at the instance of the Commission.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Donovan Divet and *Mr. Edw. W. Thomerson* for the Commission.

Thompson & Meek and *Mr. Paul McCarroll*, of Dallas, Tex., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Frank B. Moran, an individual trading and doing business under the names of Magnetic Ray Co. and Magnetic Ray Clinic, hereinafter referred to as respondent, has 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. The respondent, Frank B. Moran, is an individual, trading and doing business under the names of Magnetic Ray Co. and Magnetic Ray Clinic, and having its office and principal place of business at 2023 Main Street, in the city of Dallas, State of Texas.

PAR. 2. Respondent is now and for several years last past has been engaged in the manufacture and in the sale and distribution of an electrical device designated as "Magnetic Ray" for use in the treatment of various ailments and diseases of the human body. The respondent causes said device, when sold, to be shipped from his said place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device by the United States mails and by various other

means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said device; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said device in commerce, as commerce is defined in the Federal Trade Commission Act. By means of false, misleading, and deceptive statements and representations contained in false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers and periodicals and by circulars, leaflets, pamphlets, and other advertising literature, the respondent has represented and now represents:

1. That the use of respondent's device, "Magnetic Ray," provides a cure or remedy for rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, disorders of digestion, constipation, biliousness, hemorrhoids, varicose veins and ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, neurasthenia, anemia, debility, catarrhal conditions, bronchitis, functional heart troubles, obesity, ulcers of the stomach and duodenum, low blood pressure, vertigo, epilepsy, lumbago, impotence, painful or irregular menstruation, catarrhal deafness, colds, sinus troubles, tuberculosis, and tumors, and constitutes a safe, scientific, competent, and effective treatment for such diseases and disorders.

2. That respondent's device, "Magnetic Ray," far exceeds electricity, light, heat, X-rays, radium rays, violet and ultra-violet rays in therapeutic value.

3. That the use of respondent's device stimulates a normal and healthful functioning of the various organs and glands of the body.

4. That the use of respondent's device equalizes the circulation of the human blood, relieving congestions or lack of blood supply in any part of the body, relieves pain, produces marked relaxation, and relieves muscular and nervous tension.

5. That the use of respondent's device stimulates rapid increase in the oxidation and elimination of accumulated poisons, thereby removing the condition of autotoxemia.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact respondent's device, "Magnetic Ray," is a low frequency coreless solenoid which produces a magnetic field of the same frequency as that of the electric circuit to which it is attached when plugged into an electric current, and does not produce magnetic rays and has no therapeutic value or use in the treatment or alleviation of any diseases or ailments of the human body.

The use of respondent's device does not provide a cure or remedy for rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, disorders of digestion, constipation, biliousness, hemorrhoids, varicose veins and ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, neurasthenia, anemia, debility, catarrhal conditions, bronchitis, functional heart troubles, obesity, ulcers of the stomach and duodenum, low blood pressure, vertigo, epilepsy, lumbago, impotence, painful or irregular menstruation, catarrhal deafness, autotoxemia, colds, sinus troubles, tuberculosis, or tumors, and the use of said device does not constitute a safe, scientific, competent or effective treatment for such diseases and disorders.

The heat produced by respondent's device is approximately equal to that produced by a 40-watt bulb, and consequently, would have no therapeutic value whatsoever and would not be comparable to X-ray, radium rays, violet and ultraviolet rays. The use of said device would not stimulate normal and healthful functioning of the various organs and glands of the body. Said device would have no effect upon the circulation of the human blood and would not relieve congestion or lack of blood supply in any part of the body. The use of respondent's device would not relieve pain, produce relaxation or relieve muscular or nervous tension and will not cause any increase in the oxidation or elimination of accumulated poisons.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said 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 false statements, representations and advertisements are true, and induces a portion of the purchasing public because of such erroneous and mistaken belief to purchase said device.

PAR. 6. The aforesaid acts and practices of the respondent 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, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 19, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Frank B. Moran, an individual, doing business as Magnetic Ray Co. and as Magnetic Ray Clinic, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions

of that act. After the filing of respondent's answer to the complaint testimony, and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorneys for the respondent, before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being fully advised in the premises, on December 23, 1941, issued and subsequently served upon the respondent its findings as to the facts and conclusion based thereon and an order requiring the respondent to cease and desist from the practices charged in the complaint.

Thereafter, respondent filed with the Commission a petition asking that the proceeding be reopened and a rehearing granted therein, and on May 27, 1942, the Commission entered its order vacating the findings as to the facts and order to cease and desist theretofore issued, and reopening the proceeding for the taking of such further testimony and other evidence as might be offered by respondent in opposition to the complaint or by counsel for the Commission in rebuttal of such additional evidence. Pursuant to this order, additional hearings were held before the trial examiner, at which hearings further testimony was introduced on behalf of respondent. Subsequently, the proceeding again came on for hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, original and supplemental reports of the trial examiner upon the evidence and the exceptions to the original report, original and supplemental briefs in support of the complaint and original brief in opposition thereto (no supplemental brief having been filed on behalf of respondent and oral argument not having been requested); and the Commission, having duly considered the matter and 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. The respondent, Frank B. Moran, is an individual, trading and doing business under the names Magnetic Ray Co. and Magnetic Ray Clinic, with his office and principal place of business located at 2023 Main Street, Dallas, Tex. For several years last past

respondent has been engaged in the manufacture and in the sale and distribution of a device designated by him as "Magnetic Ray" and intended for use in the treatment of various ailments and diseases of the human body.

PAR. 2. Respondent causes and has caused his device, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in various other States of the United States. Respondent maintains and has maintained a course of trade in his device in commerce among and between various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his device, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his device in commerce, as "commerce" is defined in the Federal Trade Commission Act. Through various statements and representations contained in these advertisements, respondent has represented:

1. That the use of respondent's device constitutes a cure or remedy and a competent and effective treatment for rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart disease, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, and tumors.

2. That respondent's device exceeds electricity, light, heat, X-rays, radium rays, violet rays, and ultra-violet rays in therapeutic value.

3. That the use of respondent's device stimulates a normal and healthful functioning of the various organs and glands of the body.

4. That the use of respondent's device equalizes the circulation of the blood, relieving congestion or lack of blood supply in any part of the body, relieves pain, produces marked relaxation, and relieves muscular and nervous tension.

5. That the use of respondent's device stimulates rapid increase in the oxidation and elimination of accumulated poisons, thereby removing the condition of autotoxemia.

PAR. 4. Respondent's device is a coil of copper wire covered with a leather material and equipped with an electric wire and plug for connecting the device with an ordinary electric light socket. The device is a low-frequency coreless solenoid which produces a magnetic field of the same frequency as that of the electric circuit to which it is connected. Respondent's claims that the device possesses therapeutic

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value are based entirely upon the fact of this magnetic field. While the device produces heat approximating that produced by a 40-watt electric light bulb, the heat is incidental to the operation of the device and is not claimed by respondent to possess any therapeutic value.

To undergo treatment with the device, the patient merely suspends it over or around the affected area of the body. For example, if it is desired to treat the abdomen, the device is placed around that portion of the body somewhat in the nature of a belt. The principal theory upon which respondent asserts the therapeutic value of the device is that the tissue and organs of the body react to the magnetic field produced by the device and that, in consequence, there is an increased circulation of blood to the different parts of the body and the elimination of poisons or toxins from the body is facilitated.

The expert testimony introduced at the instance of the Commission establishes that magnetic fields are without therapeutic value. This is a recognized and accepted principle in medical science. The Commission therefore finds that respondent's device is incapable of affecting the tissues or organs of the body, or increasing the circulation of the blood, or assisting in the elimination of toxins from the body. The device does not constitute a cure or remedy for rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart diseases, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, or tumors, nor does it possess any therapeutic value in the treatment of these or any other ailments or conditions of the human body.

The device does not exceed or equal electricity, light, heat, X-rays, radium rays, violet rays, or ultra-violet rays in therapeutic value, and in fact is not comparable with such agencies. It is incapable of stimulating a normal or healthful functioning of any of the organs or glands of the body, or equalizing the circulation of the blood, or relieving congestion or the lack of blood supply in any part of the body. It does not relieve pain, produce relaxation, or relieve muscular or nervous tension. The device is likewise incapable of stimulating any increase in the oxidation or elimination of poisons in the body, or of removing the condition of autotoxemia.

The principal testimony offered on behalf of respondent consisted of the testimony of respondent himself, who is a physician, and that of another physician, both of whom testified to beneficial results alleged to have been obtained in their practice through the use of the device.

Several members of the lay public who had used the device also testified to certain benefits which they claimed to have derived from it. After consideration of all of this testimony, the Commission is of the opinion and finds that it is at such variance with generally recognized and accepted scientific opinion that its accuracy is open to serious question, and that it is insufficient to overcome the expert testimony introduced at the instance of the Commission.

PAR. 5. The Commission therefore finds that the representations made by respondent with respect to his device, as set forth in paragraph 3 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 6. The Commission finds further that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and value of respondent's device, and the tendency and capacity to cause such portion of the public to purchase the device as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, original and supplemental reports of the trial examiner upon the evidence and the exceptions to the original report, original and supplemental briefs in support of the complaint, and original brief in opposition thereto (no supplemental brief having been filed on behalf of respondent and oral argument not having been requested); and the Commission having made its modified findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Frank B. Moran, individually and trading as Magnetic Ray Co. and as Magnetic Ray Clinic, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connec-

tion with the offering for sale, sale or distribution of respondent device designated "Magnetic Ray," or any other device of a substantially similar character, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That respondent's device constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of, rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart diseases, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, tumors, or any other ailment or condition of the human body;

(b) That respondent's device exceeds, equals, or is comparable with electricity, light, heat, X-rays, radium rays, violet rays, or ultra-violet rays in therapeutic value;

(c) That the use of respondent's device stimulates a normal or healthful functioning of any of the organs or glands of the body;

(d) That the use of respondent's device equalizes the circulation of the blood, relieving congestion or lack of blood supply in any part of the body; or that such use relieves pain, produces relaxation, or relieves muscular or nervous tension; or

(e) That the use of respondent's device stimulates any increase in the oxidation or elimination of poisons in the body, or that it removes the condition of autotoxemia.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's device which advertisement contains any representation prohibited in paragraph 1 hereof.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

FRATELLI BRANCA & COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4828. Complaint, Aug. 31, 1942—Decision, June 9, 1943*

Where a corporation engaged in competitive interstate sale and distribution of its "Fernet-Branca" medicinal preparation; by advertisements in Italian and in English in newspapers, periodicals, radio continuities, and other advertising, directly and by implication—

- (a) Represented that use of its said preparation was a remedy and effective treatment for stomach disorders, indigestion, headaches, insomnia, liver ailments, and constipation;
- (b) Represented that it regulated the stomach, bowels, and intestines, relieved overfullness of the stomach, regulated the bodily functions, and aided in digestion;
- (c) Represented that it gave the body resistance to the inclemency of the weather, acted as a digester, was a bile stimulant, and was of value in the treatment of menstrual disturbances; and
- (d) Represented that it was an effective tonic for convalescents; that use thereof would promote, maintain, and improve health generally, and that by taking it regularly all common ailments might be avoided;

The facts being that the product in question—essentially an appetizer, alcoholic stimulant, and laxative when taken as directed—had no therapeutic value as a tonic for convalescents in excess of that afforded by a bitter appetizer, and had no such value in the treatment of constipation in excess of affording temporary relief; and did not justify the other claims above set forth; and

- (e) Failed to reveal facts material in the light of said misrepresentations, or with respect to the consequences which might result from use thereof under usual and prescribed conditions, in that its use in the dosage indicated was potentially dangerous when taken by one suffering from abdominal pains or other symptoms of appendicitis, and in that frequent and continued use thereof might result in dependence on laxatives;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and into the purchase of substantial quantities of its preparation, with result that trade was diverted unfairly to it from its competitors, many of whom do not misrepresent the therapeutic value and efficiency of their products, to their injury:

Held, That said 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 and unfair and deceptive acts and practices in commerce.

Before Mr. W. W. Sheppard, trial examiner.

Mr. William L. Taggart for the Commission.

Frank, Weil & Strouse, of New York City, for respondent.