

IN THE MATTER OF

MAX E. HEYMAN AND MAUDE S. JARET, TRADING AS
DOMESTIC DIATHERMY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4942. Complaint, Apr. 12, 1943—Decision, June 19, 1943*

Where two individuals engaged in interstate sale and distribution of their "Domestic Short-Wave Diathermy" device; by means of advertisements in newspapers, radio and other advertising literature—

- (a) Represented that their said device when used by the unskilled lay public in the home treatment of self-diagnosed diseases and ailments, provided a scientific, safe, harmless, and effective treatment of, and a competent remedy for, rheumatism, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsillitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women, and for the alleviation of pain resulting therefrom; and
- (b) Represented that through use thereof one might renew youthful vigor, establish body efficiency and resistance to disease, and restore both body and spirit; and that the treatment was similar to that known as "friendly fever" and produced comparable results;

The facts being that said representations were grossly exaggerated, false and misleading; use of said device as recommended might result in serious and irreparable injury to health in conditions involving acute inflammatory processes, or involving the special senses and glandular structures; use thereof for relieving pains which might be symptomatic of deeper and serious underlying diseases or causes, might fatally delay proper diagnosis and treatment; under certain circumstances, might stimulate growth of cancer cells or cause their spread to other tissues; in others, might increase congestion or result in severe burns and destruction of tissues; and question as to when diathermy is contra-indicated, and the method and duration of use to alleviate rather than aggravate the condition, requires competent medical diagnosis of the ailment and its underlying cause; and

- (c) Failed to reveal facts material in the light of such misrepresentations: that prescribed use of said device might result in serious and irreparable injury to health, and that it might be safely used only after determination by competent medical authority that diathermy was indicated, and prescription thereby of frequency and amount of application of the treatments, and adequate instruction of the user by a trained technician in operation of the device;

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

Held, That said 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.

Mr. J. W. Brookfield, Jr., for the Commission.

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 Max E. Heyman and Maude S. Jaret, individuals, and trading as Domestic Diathermy Co., 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. Respondents, Max E. Heyman and Maude S. Jaret, are individuals, trading as Domestic Diathermy Co., with their office and principal place of business located at 251 West Fifty-seventh Street, New York, N. Y.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of a certain device or apparatus designated as Domestic Short-Wave Diathermy. In the course and conduct of their business respondents cause and have caused said device or apparatus, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their points of location in other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said device or apparatus in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said product by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth

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by the United States mails, by advertisements in newspapers, by radio continuities, and other advertising literature are the following:

If you are suffering from any form of rheumatism such as arthritis, sciatica, neuralgia, lumbago, sinus or neuritis, learn how you may obtain relief from the pain caused by these ailments.

Short-Wave Diathermy, the scientific development that goes deep down into the tissues of the body to stimulate circulation and drive away the cause of the pain.

Here's a way to bring freedom from these crippling ailments—the Short-Wave Diathermy.

RELIEF FOR ARTHRITIS. Short-Wave Diathermy easily and simply applied by yourself in your own home helps the crippling pain of rheumatism, sciatica, neuritis, lumbago and sinus.

Rheumatism, arthritis, sciatica, neuritis, lumbago, asthma,—Science has found a proven remedy for relieving these victims, a remedy so simple and effective as to seem a miracle.

Heat—not the superficial heat of bands, poultices, electric pads and sunlamps—but soothing, gentle, healing heat which travels deep down into and through pain wracked bones, aching muscles and throbbing nerves.

A heat that not only relieves pain but fights off disease by reestablishing the body's efficiency and summing up bodily resistance.

The portable Short-Wave Diathermy machine perfected by the Domestic Diathermy Company, the organization with the most mature experience in this field, is designed to achieve for the patient in his own home the practical results he looks for from the larger, professional heat machines. * * * Now in the privacy of your own home, as frequently as you feel the need, you can call to your aid science's new health miracle and restore both body and spirit by the simple act of plugging your Domestic portable machine into the regular current socket.

Friendly Fever Domestic Short-Wave diathermy is simply and easily applied. Avoid that painful trip to the hospital or doctor's office. Spare yourself the inconvenience and expense of such trips without sacrificing their benefits.

Its simple and entirely safe operation.

Scientific Heat that heals

Blessed relief for rheumatism, arthritis, neuritis, sciatica, lumbago, laryngitis, tonsillitis, bursitis, muscular ailments, sinus conditions, common colds, neuralgia, bronchial asthma, traumatic injuries.

BRONCHIAL ASTHMA and BRONCHITIS. Beneficial results in these conditions have been well-established. Medical authorities report that respiration becomes freer and easier from the beginning of the treatment, and clinical records show that success was obtained in over 75% of the cases.

COMMON COLDS. The use of Short-Wave Diathermy at the first sign of a cold is often effective in breaking it up before it becomes serious, thus avoiding possible complications such as pneumonia, etc.

SINUS INFECTION. The alleviation and relief to sinus sufferers by Short-Wave Diathermy is truly amazing. Medical science is fast recognizing the superiority of this method.

FOR WOMEN. In the ailments common to women Short-Wave Diathermy has proved to be a veritable blessing for relieving much pain and suffering.

Arthritis, sciatica, neuralgia, lumbago, sinus or neuritis are all unnecessary if you will investigate the possible benefits of Domestic Short-Wave Diathermy. Do as thousands have already. You can again feel that inner warmth that is always present with intoxicating good health. Domestic Short-Wave Diathermy, now an important addition to the requirements of every hospital, is the means by which you can achieve healthful vigor. Its deep and invigorating warmth penetrates to every organ, stimulating circulation and thus aiding the blood.

PAR. 4. By the use of representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that its device or apparatus advertised as Domestic Short-Wave Diathermy, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self application in the home, is a scientific, safe, harmless, and effective means and method for the treatment of, and constitutes a competent remedy for rheumatism in its various forms in all parts of the body, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsilitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries and ailments common to women, and for the alleviation of pain resulting therefrom, and through its use one may renew youthful vigor, establish body efficiency and resistance to disease, and restore both body and spirit; that the treatment provided thereby is similar to that known as "friendly fever" and the results are comparable to those obtained through the use of such treatment, and that the use of said device will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. Respondents' device or apparatus is composed principally of a transformer, short-wave generator, two radio tubes and two coils housed in a portable cabinet. The device operates upon approximately a 12-meter wave length. The power is obtained from house current by the necessary connection and transmitted through said device to the patient by means of two electric cords, each of which terminates in an insulated electrode or pad. The application to the patient is usually made by placing the electrodes in such position that the power may pass between said electrodes through the affected area at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual is not an effective method for the treatment of, nor does its use constitute a competent remedy for, rheumatism in its various forms in all parts of the body, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsilitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women. The use

of said device will not renew youthful vigor nor will it establish body efficiency and resistance to disease or provide good health and restore both body and spirit. The treatment provided by said device is not similar to that known as "friendly fever" and the results are not comparable to those obtained through the use of such treatment.

Said device is not a scientific, safe, harmless, and effective means and method to be used in the treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom. Its use is contraindicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

In conditions of acute inflammation of the nerves, such as neuritis, neuralgia, sciatica and lumbago, and acute inflammation of the joints, such as bursitis, arthritis, and lumbago or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, its use may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and spreading the inflammation to adjacent tissue and allowing the absorption of toxins, if present.

Furthermore, the use of said device for the relief of pain due to neuralgia or neuritis, which may be symptoms of some deeper underlying disease or cause such as tumor, tuberculosis, syphilis, cancer, or diabetes, may fatally delay proper diagnosis and treatment.

The application of diathermy in conditions of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose and throat, causing increased absorption of bacterial toxins, if present, perpetuating the congestion of the mucous membrane.

The application of said device by the unskilled layman in the treatment of pains in the knees may fatally delay proper diagnosis and treatment, in that cancer of the spine may, and often does, evidence itself by severe pain in said areas.

Diathermy, when applied in excess dosage in the treatment of severe pains in the extremities in the presence of advanced blood vessel changes of the legs, may cause serious burns and may directly lead to gangrene and necessitate amputation of the legs.

When diathermy is applied to areas which may be affected by malignant tumors, such use may result in stimulating the growth of cancerous cells or in spreading the trouble to other tissues.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in tissue destruction and severe burns.

There are many diseases and conditions in the treatment of which diathermy would be contraindicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of the above classes of cases the use or improper use of diathermy might aggravate rather than relieve such conditions. Furthermore, many conditions, including some of those for which respondent recommends its device, are sometimes symptomatic or indicative of underlying systemic disorders for which treatment by diathermy would have no therapeutic value and might even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy.

Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority in order to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health.

The said advertisements are further false, as aforesaid, in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its device or apparatus, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondents' said device or apparatus.

PAR. 8. The foregoing acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 12, 1943, issued and thereafter served its complaint in this proceeding upon respondents, Max E. Heyman and Maude S. Jaret, individuals, and trading as Domestic Diathermy Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 8, 1943, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Respondents, Max E. Heyman and Maude S. Jaret, are individuals, trading as Domestic Diathermy Co. with their office and principal place of business located at 251 West Fifty-seventh Street, New York, N. Y.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of a certain device designated as Domestic Short-Wave Diathermy. In the course and conduct of their business respondents cause and have caused said device when sold to be transported from their place of business in the State of New York to purchasers thereof at their points of location in other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said product by the United States mails and by var-

ious other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers, by radio continuities and other advertising literature are the following:

If you are suffering from any form of rheumatism such as arthritis, sciatica, neuralgia, lumbago, sinus or neuritis, learn how you may obtain relief from the pain caused by these ailments.

Short-Wave Diathermy, the scientific development that goes deep down into the tissues of the body to stimulate circulation and drive away the cause of the pain.

Here's a way to bring freedom from these crippling ailments—Short-Wave Diathermy.

RELIEF FOR ARTHIRITIS. Short-Wave Diathermy easily and simply applied by yourself in your own home helps the crippling pain of rheumatism, sciatica, neuritis, lumbago and sinus.

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The portable Short-Wave Diathermy machine perfected by the Domestic Diathermy Company, the organization with the most mature experience in this field, is designed to achieve for the patient in his own home the practical results he looks for from the larger, professional heat machines. * * * Now in the privacy of your own home, as frequently as you feel the need, you can call to your aid science's new health miracle and restore both body and spirit by the simple act of plugging your Domestic portable machine into the regular current socket.

Friendly Fever Domestic Short Wave diathermy is simply and easily applied. Avoid that painful trip to the hospital or doctor's office. Spare yourself the inconvenience and expense of such trips without sacrificing their benefits.

Its simple and entirely safe operation.

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BRONCHIAL ASTHMA and BRONCHITIS. Beneficial results in these conditions have been well-established. Medical authorities report that respiration becomes freer and easier from the beginning of the treatment, and clinical records show that success was obtained in over 75% of the cases.

COMMON COLDS. The use of Short-Wave Diathermy at the first sign of a cold is often effective in breaking it up before it becomes serious, thus avoiding possible complications such as pneumonia, etc.

SINUS INFECTION. The alleviation and relief to sinus sufferers by Short-Wave Diathermy is truly amazing. Medical science is fast recognizing the superiority of this method.

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Arthritis, sciatica, neuralgia, lumbago, sinus or neuritis are all unnecessary if you will investigate the possible benefits of Domestic Short-Wave Diathermy. Do as thousands have already. You can again feel that inner warmth that is always present with intoxicating good health. Domestic Short-Wave Diathermy, now an important addition to the requirements of every hospital is the means by which you can achieve healthful vigor. Its deep and invigorating warmth penetrates to every organ, stimulating circulation and thus aiding the blood.

PAR. 4. By the use of representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that its device advertised as Domestic Short-Wave Diathermy, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a scientific, safe, harmless and effective means and method for the treatment of and constitutes a competent remedy for rheumatism in its various forms in all parts of the body, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsilitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women, and for the alleviation of pain resulting therefrom, and through its use one may renew youthful vigor, establish body efficiency and resistance to disease, and restore both body and spirit; that the treatment provided thereby is similar to that known as "friendly fever" and the results are comparable to those obtained through the use of such treatment, and that the use of said device will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. Respondents' device is composed principally of a transformer, short-wave generator, two radio tubes and two coils housed in a portable cabinet. The device operates upon approximately a 12-meter wave length. The power is obtained from house current by the necessary connection and transmitted through said device to the patient by means of two electric cords, each of which terminates in an insulated electrode or pad. The application to the patient is usually made by placing the electrodes in such position that

the power may pass between said electrodes through the affected area at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual is not an effective method for the treatment of, nor does its use constitute a competent remedy for, rheumatism in its various forms in all parts of the body, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsillitis, bursitis, muscular ailments, common colds, asthma, traumatic injuries, and ailments common to women. The use of said device will not renew youthful vigor nor will it establish body efficiency and resistance to disease or provide good health and restore both body and spirit. The treatment provided by said device is not similar to that known as "friendly fever" and the results are not comparable to those obtained through the use of such treatment.

Said device is not a scientific, safe, harmless and effective means and method to be used in the treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom. Its use is contraindicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

In conditions of acute inflammation of the nerves, such as neuritis, neuralgia, sciatica and lumbago, and acute inflammation of the joints, such as bursitis, arthritis, and lumbago or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, its use may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and spreading the inflammation to adjacent tissue and allowing the absorption of toxins, if present.

Furthermore, the use of said device for the relief of pain due to neuralgia or neuritis, which may be symptoms of some deeper underlying disease or cause such as tumor, tuberculosis, syphilis, cancer, or diabetes, may fatally delay proper diagnosis and treatment.

The application of diathermy in conditions of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose and throat, causing increased absorption of bacterial toxins, if present, perpetuating the congestion of the mucous membrane.

The application of said device by the unskilled layman in the treatment of pains in the knees may fatally delay proper diagnosis and treatment, in that cancer of the spine may, and often does, evidence itself by severe pain in said areas.

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Diathermy, when applied in excess dosage in the treatment of severe pains in the extremities in the presence of advanced blood vessel changes of the legs, may cause serious burns and may directly lead to gangrene and necessitate amputation of the legs.

When diathermy is applied to areas which may be affected by malignant tumors, such use may result in stimulating the growth of cancerous cells or in spreading the trouble to other tissues.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in tissue destruction and severe burns.

There are many diseases and conditions in the treatment of which diathermy would be contraindicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of the above classes of cases the use or improper use of diathermy might aggravate rather than relieve such conditions. Furthermore, many conditions, including some of those for which respondent recommends its device, are sometimes symptomatic or indicative of underlying systemic disorders for which treatment by diathermy would have no therapeutic value and might even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority in order to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences, which may result from the use of said device under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health.

The said advertisements are further false, as aforesaid, in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its device disseminated as aforesaid has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondent's said device.

CONCLUSION

The foregoing acts and practices of the respondent, 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, Max E. Heyman and Maude S. Jaret, individuals, jointly or severally, trading as Domestic Diathermy Co., or trading under any other name, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' device designated as "Domestic Short-Wave Diathermy," or any other device of 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, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That said device is safe or harmless.

(b) That said device, when used by unskilled laymen in the treatment of self-diagnosed conditions, constitutes a competent or effective treatment of or remedy for rheumatism, arthritis, sciatica, neuralgia, lumbago, sinus trouble, neuritis, laryngitis, tonsilitis, bursitis, mus-

cular ailments, common colds, asthma, traumatic injuries, or ailments common to women.

(c) That said device constitutes a competent or effective treatment for the alleviation of pain resulting from diseases and ailments of the human body unless specifically limited to conditions which do not involve acute inflammatory processes, glandular structures, or the special senses.

(d) That the use of said device will renew youthful vigor, establish body efficiency and resistance to disease, or restore body or spirit.

(e) That the treatment provided by said device is similar to that known as "friendly fever" or that the results of its use are comparable to those obtained through the use of "friendly fever."

2. 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 fails to reveal clearly and conspicuously that said device is not safe for use for any condition unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated, and has prescribed the frequency and rate of application of the treatments, and the user has been adequately instructed by a trained technician in the use of such device.

3. 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 respondents' device, which advertisement contains any representation prohibited in paragraph 1 hereof or which fails to contain the warning set forth in paragraph 2 hereof.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing stating whether they intend to comply with this order, and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order the respondents shall file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF
KOLA ASTIER CORPORATION AND GALLIA
LABORATORIES, INC.

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

Docket 4682. Complaint, Jan. 26, 1942—Decision, June 24, 1943

Where two corporations under common ownership and with identical addresses and officers, engaged in interstate sale and distribution of their "Kola Astier" medicinal preparation; by means of advertisements disseminated through the mails and otherwise, directly and by implication—

Represented that their said product had therapeutic value in the treatment of disorders and conditions which resulted from exhausted nerves, and constituted an effective treatment for poor digestion and insomnia; was a tonic which would strengthen, sustain, and promote abundant nerve force; acted directly on the nerve centers, and sped up the functions of every organ; strengthened heart action, increased blood circulation, activated liver and kidneys, and improved digestion; and that use thereof would restore nerve force and lost strength;

The facts being that in the recommended dosage of said product, the amount of caffeine—the only active ingredient—was approximately the same as that contained in a weak cup of coffee; the value of the preparation was limited to that of a temporary stimulant, and only to the extent of the stimulating effect obtained from a cup of coffee; it had no therapeutic value in the treatment of any disorder or condition resulting from exhausted nerves, other than that afforded by a mild, temporary stimulant; any beneficial effect upon poor digestion was negligible, and it might have a tendency to increase insomnia; the amount of caffeine in the recommended dosage would have a negligible effect upon heart action or circulation; and the diuretic action of both the caffeine and theobromine was negligible and would have no effect in activating the liver and kidneys;

With effect of misleading and deceiving a substantial number of the purchasing public into the mistaken belief that said preparation was of therapeutic value, thereby causing purchase thereof because of such mistaken belief:

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. Edward E. Reardon*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Walter L. Post, of New York City, 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 Kola Astier Corpora-