

Complaint

IN THE MATTER OF
BERTHA M. URBANCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4761. Complaint, May 15, 1942—Decision, July 21, 1943*

Where an individual, engaged in interstate sale and distribution of her "Lakota" fruit-juice product; by means of advertisements in newspapers, circulars, etc., including excerpts from testimonial letters, directly and by implication—

Represented that her said product constituted a cure and effective treatment for migraine or sick headache, high blood pressure, abdominal pains, constipation, and ulcers; and that it would remove the cause of migraine headaches and relieve the pain and discomfort thereof;

The facts being that, while said product had some nutritive value and might be considered a very mild laxative if taken in sufficient quantities, it would have no effect upon constipation in the dosage prescribed, and it had no therapeutic significance in the other diseases and conditions listed;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby causing it to purchase substantial quantities of said product:

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. J. Earl Cox*, trial examiner.

Mr. Randolph W. Branch 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 Bertha M. Urban, an individual, 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. Respondent, an individual, maintains her office and principal place of business at Ewing, Nebr.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of offering for sale, selling and distributing in commerce, between and among the various States of the United States, a medicinal preparation designated as "Lakota." Respondent causes said preparation when sold to be transported from her aforesaid place of business in the State of Nebraska, to purchasers thereof located in various other States of the United States. Respond-

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ent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of her aforesaid business respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning her said preparation, by 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 dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

Removes cause of migraine headache.

For the relief of migraine headache.

—this safe, harmless remedy for migraine headaches.

Get Lakota for the relief of those dreadful sick headaches.

Migraine—I know its source—the laxative effect is to clear away the bile and mucus formation which "Lakota" does to give you the relief really needed—Lakota gets your cause if you give it a good chance.

The new product—relieves the oversupply of bile—. But when the bile-pressure is intense it must be forced in laxative amounts as it must be cleared away—.

I had high blood pressure and abdominal pains and since I began taking Lakota they have left me.

I was so constipated and miserable—I do not know what I should have done if I had not found your Lakota. After I had taken it for a while I began taking less and less all the time

I have taken lots of medicine for my headache and ulcers but never found such grand relief as with Lakota.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent has represented and now represents, directly and by implication, that her preparation "Lakota" is a cure and remedy for and constitutes a competent and effective treatment of migraine headache or sick headache, high blood

pressure, abdominal pains, constipation, and ulcers; that said preparation will remove the cause of migraine headaches and relieve the pain and discomfort thereof; that migraine headache is caused by an excess of bile and mucus formation, which is removed by the use of said preparation.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's said preparation, is not a cure or remedy for and has no therapeutic value in the treatment of migraine or sick headache, high blood pressure, abdominal pains, and ulcers. It will not remove the cause of migraine headache, nor will it relieve the pain and discomfort associated therewith. While said preparation is mildly laxative if taken in large quantities, it does not constitute a competent and effective treatment for constipation. Migraine headache is not caused by an excess of bile and mucus formation, and the use of said preparation will not remove bile and mucus from the system.

PAR. 6. The use by the respondent of the foregoing false, misleading and deceptive statements and representations with respect to respondent's said preparation, 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 said statements and representations were true, and into the purchase of substantial quantities of respondent's said preparation because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices, 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 May 15, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Bertha M. Urban, charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said

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complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief filed in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bertha M. Urban, is an individual, and maintains her office and principal place of business at Ewing, Nebr.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution in commerce among and between the various States of the United States of a fruit juice product designated as "Lakota." Respondent causes said product, when sold, to be transported from her place of business in the State of Nebraska to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of her aforesaid business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning her said product by 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 has caused the dissemination of, false advertisements concerning her said product by various means for the purpose of inducing and which are likely to induce directly or indirectly, the purchase of her said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature, some of which contain excerpts of testimonial letters, are the following:

Remove cause of migraine headache.

Safe, harmless remedy for migraine headache.

Get Lakota for the relief of those dreadful sick headaches.

I had high blood pressure and abdominal pain and since I began taking Lakota they have left me.

I was so constipated and miserable and other laxatives would not give relief without I took double dose and yet got no relief. I do not know what I should have done if I had not found your Lakota.

Order

I have taken lots of medicine for my headache and ulcers but have never found such grand relief as the Lakota.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said product, respondent represents directly and by implication that her product Lakota is a cure and remedy for, and constitutes a competent and effective treatment of, migraine headache or sick headache, high blood pressure, abdominal pains, constipation, and ulcers; and that said preparation will remove the cause of migraine headaches and relieve the pain and discomfort thereof.

PAR. 5. Respondent's product is composed entirely of the liquid obtained from boiling dried prunes, ordinary brown or white sugar, and water, which liquid is strained and sealed, while hot, in sterile bottles. This product has some nutritional value and might be considered a very mild laxative if taken in sufficient quantities. It has no therapeutic significance, and its use would have no effect upon migraine or sick headache. The cause of migraine headache is not generally known, and the usual treatment followed is the use of sedatives to alleviate the pain. Respondent's product will not reach the cause of migraine headache and has no beneficial effect in relieving the pain attendant or associated with such condition. The use of this product has no effect whatsoever upon high blood pressure, abdominal pains, or ulcers, and its laxative value in the dosage prescribed is too small to have any effect upon the condition of constipation.

PAR. 6. The use by respondent of the foregoing false, misleading, and deceptive statements and representations with respect to her said product has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's said product because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of 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, the answer of the re-

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spondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Bertha M. Urban, her agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of her fruit-juice product designated "Lakota," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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 through inference that respondent's product has any therapeutic value or beneficial effect in the treatment of migraine or sick headache, high blood pressure, abdominal pains, or ulcers; or that the use of said product will remove the cause of migraine headache or relieve the pain and discomfort associated with such condition; or that said product has any therapeutic value in the treatment of constipation.

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 product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

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IN THE MATTER OF

ALBERT E. VOADEN

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

Docket 4935. Complaint, Mar. 29, 1943—Decision, July 21, 1943

Where an individual, engaged in interstate sale and distribution of circulars with reply cards attached, for use by creditors and collection agencies in obtaining information concerning debtors, which informed the recipient that "Cigarette Smoker's Survey" was conducting a national survey to determine the preferred American-made cigarettes, and that if he would answer the questions on the business reply card, including reason for his preference, his name, address and place of employment, his favorite cigarette radio program, and name, address, and place of employment of a friend who smoked the same brand, he would receive free a package of his favorite cigarettes;

Making use of a scheme under which he placed upon his reply cards code numbers identifying his customer-purchasers, latter addressed cards and circulars to last known addresses of persons about whom information was sought, attached postage and caused the same to be delivered to said individual, who deposited them in the mail and, upon receipt of filled-in reply cards, forwarded them to his customers, and to persons returning them sent packages of their preferred cigarettes;

Through use of name Cigarette Smoker's Survey and said circular and card, falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, that he was engaged in completing a national survey to determine which of a number of brands of American-made cigarettes was preferred by the average man so that classification might be made to show preference of different types of workers;

With effect of misleading and deceiving many persons to whom said circulars and cards were sent into the mistaken belief that said representations were true, thereby causing said persons to give information which they would not have otherwise supplied:

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.

Mr. Randolph W. Branch 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 Albert E. Voaden, an individual, hereinafter referred to as respondent, has violated the provisions of 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: