

IN THE MATTER OF
BEATRICE KORNSTEIN, TRADING AS NATURE SEED
COMPANY

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

Docket 4926. Complaint, Mar. 9, 1943—Decision, Sept. 27, 1943

Where an individual, engaged in interstate sale and distribution of her "Nature Seed" medicinal preparation; through such statements in advertisements thereof in newspapers, circulars and other advertising media, as "Women! A Doctor's Period Medicine—The good old Reliable Remedy. DOUBLE STRENGTH"; "Warning: These pills should not be taken in cases of pregnancy. * * * nausea, * * * or other possible signs of appendicitis. * * *"; and "Nature Seed: 'Natures Best Remedy' Period Pills—The action of these pills is such that they tend to increase menstruation when there is delay due to cold feet, nutritional lack of iron or functional inactivity * * *";

(a) Represented, directly and indirectly, that her said preparation was a doctor's prescription for delayed, unnatural, or suppressed menstruation and that it constituted a competent and adequate treatment for such conditions, regardless of their cause; and that it was of double strength and was safe and harmless in use;

(b) Represented thereby and through use of trade name "Nature Seed Company" that it was composed wholly of ingredients derived from nature;

The facts being it was not such a treatment or doctor's prescription; ingredients were not entirely derived from nature or in their natural state; lacking an established standard for comparison, it could not be said to be double strength; and it was not safe and harmless, in that prescribed use thereof might cause serious and irreparable injury to health; and

(c) Failed to reveal facts material in the light of said representations, or with respect to consequences which might result from use of preparation under prescribed or customary conditions, in that directions for use thereof provided for the administration of a laxative, potentially dangerous when taken by persons suffering from symptoms of appendicitis, and use thereof might result in gastrointestinal disturbances, leading to uterine hemorrhage, and, where used to interfere with pregnancy, might cause uterine infection, and septicemia;

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

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices.

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

Mr. William L. Taggart for the Commission.

Mr. George Landesman, of New York City, for respondent.

Complaint

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 Beatrice Kornstein, trading as Nature Seed Co., 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:

PARAGRAPH 1. Respondent, Beatrice Kornstein, is an individual, trading under the name of Nature Seed Co., with her place of business located at 175 East Broadway, New York City, N. Y.

PAR. 2. Respondent is now, and for the year last past, has been engaged in the sale and distribution of a medicinal preparation advertised and sold as "Nature Seed" which is a drug as that term is defined in the Federal Trade Commission Act.

Respondent causes her said preparation when sold to be transported from her place of business in the State of New York 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 preparation 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 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 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, false advertisements concerning said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as commerce is defined by the Federal Trade Commission Act. Among and typical of the false and misleading 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 and by circulars and other advertising media are the following:

WOMEN!

A

Doctor's
Period
Medicine

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The good old Reliable Remedy. Now only \$2. DOUBLE STRENGTH. Write now! Send no money! Pay Postman only \$2 plus few cents postage when he delivers your tablets or send \$2 cash or money order and we pay postage. Nature Seed Co., Dept. M3 175 East Broadway, New York City.

For Adults Use Only

Dose: One pill three times a day with a large glass of water. With the last dose during the day take two tablespoonfuls of Epsom Salts in a large glass of warm water.

Warning: These pills should not be taken in cases of pregnancy. Also, they should not be taken in cases of nausea, vomiting, abdominal pain or other possible signs of appendicitis. If stress persists, consult your doctor. Sold Only By Mail—In this way you get a freshly made product, at a saving in price, and mailed direct to you. Tell your friends so that they too may know.

NATURE SEED

"Natures Best Remedy"

Period Pills

The action of these pills is such that they tend to increase menstruation when there is delay due to cold feet, nutritional lack of iron or functional inactivity.

Contains Iron Sulfate Dried, Aloe Purified, Extract Cotton Root Bark, Ergotin (Bonjean), and Oil Savin.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents, directly and by implication, that her said preparation is a doctor's prescription for delayed, unnatural or suppressed menstruation and that it constitutes a competent and adequate treatment for such conditions, regardless of the cause thereof; that said preparation is composed of ingredients derived from nature; that it is of double strength and is safe and harmless in use.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, said preparation is not a doctor's prescription or such as would be prescribed by a doctor for the conditions set out in respondent's advertisements. Said preparation is not a competent, effective or adequate treatment for delayed, unnatural or suppressed menstruation regardless of the cause thereof. It is not composed entirely of ingredients derived from nature; and such ingredients are not natural products, nor are they in their natural state. It cannot be stated that said preparation is double strength since there is no established standard which may be taken as a basis for comparison. Said preparation is not safe or harmless; but on the contrary, its use may cause serious and irreparable injury to health when used under the conditions prescribed in said advertisements or under such conditions as are customary or

usual. Such use of said preparation may result in gastrointestinal disturbances, such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus, leading to uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, causing septicemia or blood poisoning.

The use by respondent of the trade name "Nature Seed Company" is, in itself, misleading and deceptive in that such use serves as a representation that said preparation is composed wholly of ingredients derived from nature, which is not the fact.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertising for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, the directions for the use of said preparation provide for the administration of a laxative, which is potentially dangerous when taken by persons suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis. Moreover, the use of said preparation may result in gastrointestinal disturbances, such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus, leading to uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, causing septicemia or blood poisoning.

PAR. 7. The use by the respondent of the foregoing false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity 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 as a result of such erroneous and mistaken belief to purchase substantial quantities of respondent's preparation.

PAR. 8. The aforesaid acts and practices of the respondent as hereinabove alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 the 9th day of March, A. D., 1943, issued and on the 10th day of March, A. D., 1943, served its complaint in this proceeding upon the respondent, Beatrice Kornstein, trading as Nature Seed Company, 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, the Commission by order entered herein, on May 24, 1943, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of facts set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which said substitute answer was duly filed in the office of the Commission on May 24, 1943. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Beatrice Kornstein, is an individual, trading under the name of Nature Seed Co., with her place of business located at 175 East Broadway, New York City, N. Y.

PAR. 2. Respondent is now and for the year last past has been engaged in the sale and distribution of a medicinal preparation advertised and sold as "Nature Seed," which is a drug as that term is defined in the Federal Trade Commission Act.

Respondent causes her said preparation when sold to be transported from her place of business in the State of New York 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 preparation 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 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 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, false advertisements concerning said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as commerce is defined by the Federal Trade Commission Act. Among and typical of the false and misleading 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, and by circulars and other advertising media are the following:

W O M E N !

A

Doctor's

Period

Medicine

The good old Reliable Remedy.

Now only \$2 **DOUBLE STRENGTH.**

Write now! Send no money! Pay Postman only \$2 plus few cents postage when he delivers your tablets or send \$2 cash or money order and we pay postage. Nature Seed Co., Dept. M3, 175 East Broadway, New York City.

For Adults Use Only

Dose: One pill three times a day with a large glass of water. With the last dose during the day take two tablespoonfuls of Epsom Salts in a large glass of warm water.

Warning: These pills should not be taken in cases of pregnancy. Also, they should not be taken in cases of nausea, vomiting, abdominal pain or other possible signs of appendicitis. If distress persists, consult your Doctor. Sold Only By Mail—In this way you get a freshly made product, at a saving in price, and mailed direct to you. Tell your friends so that they too may know.

NATURE SEED

"Natures Best Remedy"

Period Pills

The action of these Pills is such that they tend to increase menstruation when there is delay due to cold feet, nutritional lack of iron or functional inactivity. Contains Iron Sulfate Dried, Aloe Purified, Extract Cotton Root Bark, Ergotin (Bonjean), and Oil Savin.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents, directly and by implication, that her said preparation is a doctor's prescription for delayed, unnatural or suppressed menstruation and that it constitutes a competent and adequate treatment for such conditions, regardless of the cause thereof; that said preparation is composed of ingredients derived from nature; that it is of double strength and is safe and harmless in use.

Findings

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PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation is not a doctor's prescription or such as would be prescribed by a doctor for the conditions set out in respondent's advertisements. Said preparation is not a competent, effective or adequate treatment for delayed, unnatural or suppressed menstruation regardless of the cause thereof. It is not composed entirely of ingredients derived from nature; and such ingredients are not natural products, nor are they in their natural state. It cannot be stated that said preparation is double strength since there is no established standard which may be taken as a basis for comparison. Said preparation is not safe or harmless; but on the contrary, its use may cause serious and irreparable injury to health when used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Such use of said preparation may result in gastrointestinal disturbances, such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus, leading to uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, causing septicemia or blood poisoning.

The use by respondent of the trade name "Nature Seed Company" is, in itself, misleading and deceptive in that such use serves as a representation that said preparation is composed wholly of ingredients derived from nature, which is not the fact.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertising for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, the directions for the use of said preparation provide for the administration of a laxative, which is potentially dangerous when taken by persons suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis. Moreover, the use of said preparation may result in gastrointestinal disturbances, such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus, leading to uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, causing septicemia or blood poisoning.

PAR. 7. The use by the respondent of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity 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 as a result of such erroneous and mistaken belief causes them to purchase substantial quantities of respondent's preparation.

CONCLUSION

The aforesaid acts and practices of the respondent as hereinabove found are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 respondent, in which answer the respondent admits all the material allegations of fact set forth in said complaint, and states that she waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Beatrice Kornstein, her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the medicinal preparation now known as "Nature Seed," or any other medicinal preparation of substantially similar composition or possessing substantially similar properties, 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, directly or by implication—

(a) Represents that said preparation is a doctor's prescription or such as would be prescribed by a doctor for delayed, unnatural or suppressed menstruation.

(b) Represents that said preparation is a competent, effective or adequate treatment for delayed, unnatural or suppressed menstruation.

(c) Represents that said preparation is double strength and is safe and harmless for use.

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(d) Contains or makes use of the words "Nature Seed" as a part of the name for said product, or as a part of the name of the company under which respondent trades, or represents in any manner that said preparation is composed entirely of ingredients derived from nature, are natural products or are in their natural state.

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 that the use of said preparation may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy may cause uterine infection and blood poisoning.

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 respondent's preparation which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof or which fails to reveal that the use of said preparation may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy may cause uterine infection and blood poisoning.

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

Syllabus

IN THE MATTER OF
MONTGOMERY WARD & COMPANY, INC.

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

Docket 4638. Complaint, Nov. 19, 1941—Decision, Sept. 28, 1943

- In order to prevent deception of the public, the designation of a fabric made to resemble the peltry of a fur-bearing animal should be such as to clearly disclose that such fabric is not made of fur but merely resembles the peltry of a fur-bearing animal, as, for example, "fur-like fabric" or "a fabric made to simulate fur."

Where names of fur-bearing animals are used in connection with coats made of fabric closely resembling the peltries of the animals referred to, such names should be immediately accompanied by another word or words disclosing that the fabric is merely an imitation of the peltry of the animal named, as, for example, "Imitation Persian Lamb," "Imitation Seal," etc.

Where a corporation, engaged in the interstate sale and distribution by mail order, among other merchandise, of women's coats made of fabrics so manufactured as to resemble closely the peltries of fur-bearing animals; in advertising in widely distributed catalogues—

Represented, through use of term "Fur Fabric" to designate said coats generally, and through such terms as "Persian Lamb Fabric," "Seal Fabric," "Hudson Seal Fabric," "Broadtail Fabric," and "Ombre Krimmer Fabric"—accompanied by depictions of women wearing coats which appeared to have been made of the peltries of such animals—that the coats were made of the peltries of the various animals referred to, or of the fur or hair thereof;

When in fact such coats were made entirely of textile fabrics composed of various combinations of rayon, cotton, silk and ordinary wool fiber;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the composition of such coats, thereby causing purchase thereof as result of such mistaken belief:

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

As respects the use of the word "fabric" in such terms as "Fur Fabric," "Persian Lamb Fabric," etc., to designate and describe women's coats made of fabrics so manufactured as to simulate and closely resemble the peltries of the animals referred to, though in fact made entirely of textile fabrics composed of various combinations of rayon, cotton, silk and ordinary wool fiber: A contention that use of said word along with other descriptive words, as above indicated, was sufficient to apprise prospective purchasers of the fact that the coats were fabric or cloth rather than fur coats, and that any possibility of deception was removed through use of other statements in seller's advertisements including, in most cases, statement of the materials of which the coats were made, was not tenable as it does not preclude the belief or impression that the fabrics in question are made of the fur or hair of fur-bearing animals, and other statements