

## Syllabus

## IN THE MATTER OF

MICHAEL E. LEE, MYRON E. LEE AND KENNETH L. LEE,  
TRADING AS LEE-SONS AND AS MERLEKCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4868. Complaint, Nov. 6, 1942—Decision, Oct. 19, 1943*

Where three individuals engaged in interstate sale and distribution of their "Merlek" mineral water consisting of filtered sea water to which at one time was added potassium iodide; through statements in pamphlets, circulars, and other advertising media, including testimonial letters—

- (a) Represented directly and by implication that a deficiency of minerals is responsible for 90 percent of all diseases or ailments; that mineral balance is the controlling factor in keeping one in health; and that the use of their product would correct mineral imbalance in the system;

The facts being that only a very small fraction of all diseases or ailments are attributable to mineral deficiency; and while mineral balance is necessary to good health, occurrence of mineral imbalance is rare, and product in question could not either correct it or correct conditions arising therefrom;

- (b) Represented that plant foods are produced from impoverished soils and do not contain the mineral elements essential to nourishment and good health; and that their product was the natural source of minerals and provided the body with adequate amounts in proper balance;

The facts being that the great bulk of food crops is produced on soil which contains most of the mineral elements required by man; the normal diet contains adequate minerals and it is difficult to provide a diet which does not contain sufficient quantities, with the exception of calcium, iron and iodine; as respects the latter, its said product did not contain sufficient calcium and iron to be effective in cases of their deficiency; and while in areas lacking iodine in the soil, it might have been useful in the prevention of simple goiter while potassium iodide was being added, this would not apply in nongoiter areas nor even in goiter areas where iodized salt or other sources of iodine are used; and product in question was not natural source of minerals—which is to be found in the plant and animal food consumed in the ordinary diet—and would not provide the body with adequate amounts of minerals in proper balance;

- (c) Represented that the efficiency of each mineral is enhanced by proper amounts of the others, and that their product furnished the proper amount of each to provide the greatest efficiency of all;

The facts being that proper balance of minerals in the body is maintained by the body processes and not by the intake of the minerals themselves; and no fixed percentage of minerals can be represented as a proper balance, since a lack of minerals, when it exists, varies with different persons; and

- (d) Falsely represented, through dissemination of printed excerpts from court testimony involving their product, that said preparation was a cure and effective treatment for a large number of diseases and ailments, including eczema, Bright's disease, high blood pressure, diabetes, arthritis, rheumatism, enlargement of the heart, nervousness, etc.;

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With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause it to purchase substantial quantities of such product as a result of the erroneous belief so engendered:

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

Before *Mr. James A. Purcell*, trial examiner.

*Mr. B. G. Wilson* for the Commission.

*O'Connor, Neubarth & Moran*, of San Francisco, Calif., 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 Michael E. Lee, Myron E. Lee, and Kenneth L. Lee, individually, and as copartners, trading as Lee-Sons and as Merlek, hereinafter referred to as respondents, have 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. Respondents, Michael E. Lee, Myron E. Lee, and Kenneth L. Lee are copartners, trading as Lee-Sons and as Merlek, having their office and principal place of business located at 1926 Grand Street, Alameda, Calif. All of said individuals have acted in conjunction and cooperation in carrying out the acts and practices hereinafter alleged.

Respondents are now, and for several years last past have been, engaged in the business of offering for sale, sale and distribution of a mineral water designated "Merlek," in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause their said product when sold to be shipped from their said place of business in the State of California to dealers located in various other States of the United States and in the District of Columbia. Said dealers in turn sell said product to the general public.

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

PAR. 2. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product, the respondents have disseminated and are now causing the dissemination of, false advertisements concerning their said product by United States

mails and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now causing the dissemination of false advertisements concerning their said product by various other 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, deceptive and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, and by means of pamphlets and circulars and other advertising material, including testimonial letters, are the following:

Some of our leading authorities claim that 90% of all ills are traceable to mineral deficiency.

Biochemistry teaches us that our health is no better than our mineral balance and as we correct our mineral balance our health improves.

Mineral elements must be available to the human body not only in adequate amounts, but in proper balance one to another, in their natural form.

Merlek is the natural source of minerals.

The efficiency of each mineral element is enhanced by the proper amounts of the other.

You use Merlek, the positive source of mineral elements, and prove to yourself that biochemistry is right.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, respondents represent and have represented, directly and by implication, that a deficiency of minerals in the system is responsible for 90 percent of all diseases or ailments of the human body; that mineral balance is the controlling factor in keeping one in health and that the use of respondent's product will correct mineral imbalance in the system; that our plant foods are produced from impoverished soils and do not contain the mineral elements essential to nourishment and good health; that respondents' product is the natural source of minerals and provides the body with adequate amounts of minerals in proper balance; that the efficiency of each mineral is enhanced by the proper amounts of the other, and that respondents' product furnishes the proper amount of each mineral to provide the greatest efficiency of all minerals.

PAR. 4. Respondents in the course and conduct of their aforesaid business have also disseminated printed excerpts from certain court testimony in which their said product was involved in which statements are made with respect to the therapeutic properties and values of said product. Respondents have caused such printed excerpts to be transported from their principal place of business in the State of

California and from the place of business of the firm printing such excerpts in the State of California to their dealers and distributors in States other than the State of California with the intent and purpose that such literature should be used by such dealers or distributors as an advertisement of their product, and such distributors and dealers have circulated such printed excerpts among customers and prospective customers for the purpose of inducing the sale of respondents' product. By means of the statements and representations contained in said printed excerpts respondents have represented, directly and by implication, that their said product is a cure or remedy of and constitutes a competent and effective treatment for prostatitis, weakness, psoriasis, eczema, rickets, headache, Bright's disease, high blood pressure, stomach trouble, indigestion, heart trouble, dizziness, pink-eye, sinusitis, diabetes, boils, hay fever, bronchitis, arthritis, rheumatism, pains in side, arms, shoulders, and neck, numbness in hands and arms, hemorrhoids, loss of weight, enlargement of the heart, nervousness, poor eyesight, paralysis, bow legs, colitis, sour stomach, run-down condition, osteomyelitis, overweight, shingles, stomach ulcers, gall bladder trouble, cancer, asthma, nausea, swollen tongue, low blood pressure, anemia, sores, goiter, tetany, bladder trouble, cataracts, bursitis, constipation, throat infection, kidney stones, and varicose veins.

PAR. 5. The foregoing statements and representations used and disseminated by the respondents in the manner aforesaid are false, misleading, and deceptive. In truth and in fact the number of diseases or ailments attributable to mineral deficiencies are few in number and are but a very small fraction of 90 percent of all diseases or ailments. While mineral balance is necessary to good health and the correction of mineral imbalance improves health, the occurrence of mineral imbalance is rare; and the respondents' product cannot be relied upon either to correct mineral imbalance or to correct conditions arising by reason of mineral imbalance. The great bulk of food crops is not produced on impoverished soil but on the contrary is produced on soil which contains most of the mineral elements required by man. The normal diet contains adequate minerals, and with the exception of calcium, iron and iodine, it is difficult to provide a diet which does not contain sufficient quantities of minerals. Respondents' product does not contain sufficient quantities of calcium and iron to be effective as a source of such minerals in cases of mineral deficiency. In certain localized areas where there is a lack of iodine in the soil, respondents' preparation may be useful in the prevention of simple goiter due to a deficiency of iodine in the food produced and consumed in such areas. In nongoiter areas or even in goiter areas, where iodized salt or other

sources of iodine are used in appropriate amounts, which is usually the case, respondents' preparation would have no therapeutic value in the treatment or prevention of goiter. As a matter of fact, respondents' product as presently constituted would have no value whatsoever as a source of iodine since potassium iodide is no longer added. Said preparation is not the natural source of minerals. The natural source of minerals is the plant and animal food consumed in the ordinary diet. Said product does not provide the body with adequate amounts of minerals in proper balance. The efficiency of minerals is dependent upon the body processes and not primarily by any combination of such minerals in a diet. While the efficiency of some minerals, as they exist in the body, is enhanced by the proper amounts of other minerals, this is not true as to all minerals. Respondents' product does not contain a proper balance of minerals so that, after being taken into the body, the efficiency of any one will be enhanced. Proper balance of minerals in the body is maintained by the body processes and not by the intake of the minerals themselves. Any fixed percentage of minerals in a product cannot be represented as a proper balance since the lack of various minerals in the body, where such lack exists, varies with different persons. Respondents' product is, in fact, nothing but filtered sea water to which was added, at one time, a quantity of potassium iodide. For some time this additive has not been used. The consensus of reliable medical authority is to the effect that filtered sea water has no therapeutic value in the treatment of any diseased condition or ailment of the human body.

Respondents' said product is not a cure or remedy of nor does it have any therapeutic value in the treatment of the various diseases, disorders, conditions and ailments enumerated in paragraph 4.

PAR. 6. The use of respondents of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to their said product "Merlek" 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, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase substantial quantities of respondents' said product.

PAR. 7. The aforesaid acts and practices of the respondents 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 November 6, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Michael E. Lee, Myron E. Lee, and Kenneth L. Lee, individually, and as copartners, trading as Lee-Sons, and as Merlek, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On December 3, 1942, the respondents filed their answer to the complaint. Thereafter, at a hearing held before a trial examiner of the Commission theretofore duly designated by it, and after certain testimony and other evidence had been introduced in support of the allegations of the complaint, the respondents stated upon the record that they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to such facts. Subsequently, the matter came on for final hearing before the Commission on the complaint, respondents' answer thereto, the admission made by respondents at the hearing, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents 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. The respondents, Michael E. Lee, Myron E. Lee, and Kenneth L. Lee, were, prior to June 15, 1942, copartners, trading as Lee-Sons, and as Merlek, with their office and principal place of business located at 1926 Grand Street, Alameda, Calif. For a year or more immediately preceding such date, respondents were engaged in the sale and distribution of a mineral water designated by them as "Merlek" and intended for use in the treatment of certain diseases and conditions of the human body. The record indicates that the business was discontinued by respondents in June 1942. Prior to the formation of the partnership, respondent Michael E. Lee had conducted the business for some 4 or 5 years as an individual.

PAR. 2. During the period of their business operations, respondents caused their product, when sold, to be shipped from their place of business in the State of California to dealers located in various other States of the United States and in the District of Columbia, who resold the product to the general public. Respondents maintained a course

of trade in their product 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 their business and for the purpose of inducing the purchase of their product, the respondents disseminated various advertisements concerning their product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents also disseminated advertisements concerning their product by various other means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in certain of the advertisements disseminated as hereinabove set forth, by United States mails and by means of pamphlets, circulars, and other advertising media, including testimonial letters, were the following:

Some of our leading authorities claim that 90% of all ills are traceable to mineral deficiency.

Biochemistry teaches us that our health is no better than our mineral balance and as we correct our mineral balance our health improves.

Mineral elements must be available to the human body not only in adequate amounts, but in proper balance one to another, in their natural form.

Merlek is the natural source of minerals.

The efficiency of each mineral element is enhanced by the proper amounts of the other.

You use Merlek, the positive source of mineral elements, and prove to yourself that biochemistry is right.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import, respondents represented, directly or by implication, that a deficiency of minerals in the system is responsible for 90 percent of all diseases or ailments of the human body; that mineral balance is the controlling factor in keeping one in health, and that the use of respondents' product would correct mineral imbalance in the system, that plant foods are produced from impoverished soils and do not contain the mineral elements essential to nourishment and good health; that respondents' product was the natural source of minerals and provided the body with adequate amounts of minerals in proper balance; that the efficiency of each mineral is enhanced by the proper amounts of the others, and that respondents' product furnished the proper amount of each mineral to provide the greatest efficiency of all minerals.

PAR. 5. Respondents, in the course and conduct of their business, also disseminated printed excerpts from certain court testimony in which their product was involved, in which excerpts statements were made with respect to the therapeutic properties and values of such

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product. Respondents caused such printed excerpts to be transported from their principal place of business in the State of California and from the place of business of the firm printing such excerpts in the State of California to their dealers in States other than the State of California, with the intent and purpose that such literature should be used by such dealers as advertisements of their product; and such dealers did in fact circulate such printed excerpts among customers and prospective customers for the purpose of inducing the sale of respondents' product. By means of the statements and representations contained in these printed excerpts respondents represented, directly or by implication, that their product was a cure or remedy and constituted a competent and effective treatment for prostatitis, weakness, psoriasis, eczema, rickets, headache, Bright's disease, high blood pressure, stomach trouble, indigestion, heart trouble, dizziness, pink-eye, sinusitis, diabetes, boils, hay fever, bronchitis, arthritis, rheumatism, pains in side, arms, shoulders, and neck, numbness in hands and arms, hemorrhoids, loss of weight, enlargement of the heart, nervousness, poor eyesight, paralysis, bowlegs, colitis, sour stomach, run-down conditions, osteomyelitis, overweight, shingles, stomach ulcers, gall bladder trouble, cancer, asthma, nausea, swollen tongue, low blood pressure, anemia, sores, goiter, tetany, bladder trouble, cataracts, bursitis, constipation, throat infection, kidney stones, and varicose veins.

PAR. 6. In truth and in fact, the number of diseases or ailments attributable to mineral deficiencies are few in number and are but a very small fraction of 90 percent of all diseases or ailments. While mineral balance is necessary to good health and the correction of mineral imbalance improves health, the occurrence of mineral imbalance is rare; and the respondents' product could not be relied upon either to correct mineral imbalance or to correct conditions arising by reason of mineral imbalance. The great bulk of food crops is not produced on impoverished soil but, on the contrary, is produced on soil which contains most of the mineral elements required by man. The normal diet contains adequate minerals and, with the exception of calcium, iron, and iodine, it is difficult to provide a diet which does not contain sufficient quantities of minerals. Respondents' product did not contain sufficient quantities of calcium and iron to be effective as a source of such minerals in cases of mineral deficiency. In certain localized areas where there is a lack of iodine in the soil, respondents' product might have been useful in the prevention of simple goiter due to a deficiency of iodine in the food produced and consumed in such areas. In nongoiter areas, or even in goiter areas where iodized salt or other sources of iodine are used in appropriate amounts, which

is usually the case, respondents' product would not have had therapeutic value in the treatment or prevention of goiter. While at one time it was respondents' practice to add a quantity of potassium iodide to their product, this practice was later discontinued, and the product then would have had no value whatsoever as a source of iodine.

The product was not the natural source of minerals. The natural source of minerals is the plant and animal food consumed in the ordinary diet. The product did not provide the body with adequate amounts of minerals in proper balance. The efficiency of minerals is dependent upon the body processes and not primarily upon any combination of such minerals in a diet. While the efficiency of some minerals, as they exist in the body, is enhanced by the proper amounts of other minerals, this is not true as to all minerals. Respondents' product did not contain a proper balance of minerals so that, after being taken into the body, the efficiency of any one would be enhanced. Proper balance of minerals in the body is maintained by the body processes and not by the intake of the minerals themselves. Any fixed percentage of minerals in a product cannot be represented as a proper balance since the lack of various minerals in the body, when such lack exists, varies with different persons. Respondents' product was, in fact, nothing but filtered sea water to which was added, at one time, as stated above, a quantity of potassium iodide. For some time prior to June 1942 this additive had not been used. The consensus of reliable medical authority is to the effect that filtered sea water has no therapeutic value in the treatment of any diseased condition or ailment of the human body.

Respondents' product was not a cure or remedy for nor did it have any therapeutic value in the treatment of the various diseases, disorders, conditions, and ailments enumerated above.

PAR. 7. The Commission therefore finds that the statements and representations made by respondents with respect to their product, as herein set forth, were erroneous and misleading and constituted false advertisements.

PAR. 8. The Commission finds further that the use by respondents of these false advertisements had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and value of respondents' product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such product as a result of the erroneous and mistaken belief so engendered.

#### CONCLUSION

The acts and practices of the respondents 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, respondents' admission upon the record, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, Michael E. Lee, Myron E. Lee, and Kenneth L. Lee, individually, and trading as Lee-Sons, and as Merlek, or trading under any other name, and 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' mineral water designated "Merlek," 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 by implication,

(a) That 90 percent or any substantial percentage of diseases or ailments are due to a deficiency of minerals in the body.

(b) That respondents' product corrects mineral imbalance, or corrects conditions arising by reason of mineral imbalance.

(c) That plant foods generally are produced from impoverished soils, or that such foods do not ordinarily contain the mineral elements essential to nourishment and good health.

(d) That respondents' product is the natural source of minerals, or that it provides the body with adequate amounts of minerals.

(e) That said product contains a proper balance of minerals, or that the use of said product enhances the efficiency of minerals in the body.

(f) That said product constitutes a cure or remedy for or possesses any therapeutic value in the treatment of prostatitis, weakness, psoriasis, eczema, rickets, headache, Bright's disease, high blood pressure,

## Order

stomach trouble, indigestion, heart trouble, dizziness, pink-eye, sinusitis, diabetes, boils, hay fever, bronchitis, arthritis, rheumatism, pains in side, arms, shoulders, or neck, numbness in hands or arms, hemorrhoids, loss of weight, enlargement of the heart, nervousness, poor eyesight, paralysis, bowlegs, colitis, sour stomach, run-down conditions, osteomyelitis, over-weight, shingles, stomach ulcers, gall bladder trouble, cancer, asthma, nausea, swollen tongue, low blood pressure, anemia, sores, goiter, tetany, bladder trouble, cataracts, bursitis, constipation, throat infection, kidney stones, varicose veins, or any other ailment or condition of the human body.

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 said product, which advertisement contains any representation prohibited in paragraph 1 hereof.

*It is further ordered,* That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

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## IN THE MATTER OF

LOUIS ULRICH, TRADING AS J-BEE DISTRIBUTING  
COMPANY, AND JULIUS WEINFELTCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4500. Complaint, May 10, 1941—Decision, Oct. 27, 1943*

Where an individual and his manager, engaged in competitive interstate sale and distribution of novelty merchandise, including watches, cameras, clocks, tableware, lamps, toilet articles, and numerous other items; in promoting the sale of their product—

Made use of a method involving distribution of descriptive advertising circulars incorporating a punch card, under a plan by which chance selection and detachment of the card's various tabs determined the article secured by a customer and the price paid therefor, and whether or not the customer received one of the articles, value of which was in excess of the stated price, and their agents were compensated by specified merchandise or cash premium following their remission of proceeds of such sale; and thereby

Supplied to and placed in the hands of their agents or sales representatives— notwithstanding notice on the card which, offering customer the privilege of declining purchase at the listed price, was inconsistent with working of the scheme and was not, apparently, taken advantage of—means of conducting lotteries in the sale and distribution of their merchandise in accordance with aforesaid sales plan involving a lottery scheme, contrary to established public policy of the United States Government and in competition with others who, unwilling to use method involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales method and the element of chance involved therein, and were induced to buy and sell their merchandise in preference to that of their aforesaid competitors, whereby substantial trade was diverted unfairly to them from such competitors:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and their competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Andrew B. Duvall*, trial examiner.

*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 Louis Ulrich, an individual, trading as J-Bee Distributing Co., and Julius Weinfelt, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that