

Syllabus

IN THE MATTER OF
GLADYS GOLDBERG, TRADING AS WAKITA HERB
COMPANY

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

Docket 5091. Complaint, Dec. 1, 1943—Decision, Sept. 7, 1944

Where an individual engaged in interstate sale and distribution of her "Indian Herbal Roots" medicinal preparations; through advertisements in newspapers, circulars and other advertising media, directly and by implication—

- (a) Represented that nervousness, poor appetite, insomnia, back pains, dizziness, headaches, and gassy, sick and burning stomach are usually caused by or are symptomatic of faulty elimination, and that her said preparation as a competent and effective treatment for such conditions; that it would restore pep, energy and vitality, would purge the body of accumulated poisons, and was not habit forming;

The facts being that, while poor appetite, back pains, headaches and a gassy stomach may accompany faulty elimination or constipation, in which event the therapeutic value of said preparation would be limited to such temporary relief as might be provided by an evacuation of the bowels, in those more frequent cases in which the symptoms referred to are brought about by other conditions, use of said preparation would be of no therapeutic value whatever; frequent or continued use of the preparation might result in dependence on laxatives; and the other claims made by her, as above set forth, were false and misleading;

- (b) Falsely represented through the use of the trade name "Indian Herb Roots," together with the depiction of the head of an American Indian in her advertising, that her said product was composed entirely of roots and was used by the American Indians;

The facts being, it was not entirely thus composed and its several ingredients were not used by the American Indians; and

- (c) Failed to reveal facts material in the light of her said representations or with respect to the consequences which might result from the use of said preparation under usual and prescribed conditions, in that it was an irritant laxative and potentially dangerous when taken by one suffering from abdominal pains, stomach ache, or other symptoms of appendicitis;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and that her said preparation might be taken under all conditions without harmful effects, and into the purchase of substantial quantities thereof:

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. W. W. Sheppard*, trial examiner.

Mr. William L. Taggart for the Commission.

Sobell & Landesman, of New York City, for respondent.

Complaint

39 F. T. C.

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 Gladys Goldberg, an individual, trading as Wakita Herb Company, 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, Gladys Goldberg, is an individual, trading under the name Wakita Herb Co., with her place of business located at 110 West 42nd Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a medicinal preparation advertised and sold as "Indian Herbal Roots." Respondent causes the said preparation, when sold, to be transported from her said place of business in the State of New York to purchasers thereof located in the 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 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 in the Federal Trade Commission Act.

Among the 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 United States mails, by advertisements inserted in newspapers and by circulars and other advertising media, are the following:

AID NATURE With INDIAN HERBAL ROOTS

Are you satisfied with your health? Do you lack Pep, Energy and Vitality? Do you suffer from nervousness, discomfort, poor appetite, insomnia, back pains, dizziness, headaches or gassy, sick, burning stomach due to faulty elimination? Try INDIAN HERBAL ROOTS, made of concentrated derivations of Indian Herbs used from olden times. Easy to take, follow simple directions on package. Not habit forming. Useful for men and women. You will be amazed at the wonderful, pleasant action. After taking Indian Herbal Roots you will perform your daily duties with a smile. * *

Money back guarantee * * *

Don't Delay! The sooner you begin taking *Indian Herbal Roots*, the sooner you will notice the difference. After purging your body of accumulated poisons, you should feel more energetic and less sluggish.

In connection with the advertising of her preparation, respondent makes use of the depiction of the head of an American Indian.

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 nervousness, poor appetite, insomnia, back pains, dizziness, headaches, and gassy, sick and burning stomach are usually and ordinarily caused by or are symptomatic of faulty elimination and that her said preparation is a competent and effective treatment for such conditions; that her said preparation will restore pep, energy and vitality; that its use will rid or purge the body of accumulated poisons and is not habit forming. Respondent through the use of its trade name "Indian Herb Roots" together with the depiction of the head of an American Indian in her advertising, represents that her said product is composed entirely of roots and was used by the American Indians.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact nervousness, insomnia, dizziness, and a sick burning stomach are not symptoms or conditions indicating faulty elimination or constipation and the existence of one or more of such symptoms and conditions do not indicate that the individual is suffering from faulty elimination or constipation. Respondent's preparation will not constitute a competent and effective treatment for such symptoms or conditions. Certain, but not all discomforts, poor appetite, back pains, headaches and a gassy stomach may, and sometimes do, accompany faulty elimination or constipation. When these symptoms or conditions are caused by faulty elimination or constipation, then respondent's preparation will have no therapeutic value in the treatment thereof in excess of such temporary relief as may be provided by an evacuation of the bowels. Moreover, these symptoms or conditions which may be symptomatic or the result of faulty elimination or constipation are more frequently brought about by conditions other than faulty elimination or constipation, in which event the use of respondent's product would be of no therapeutic value whatsoever. Said preparation will not restore pep, energy or vitality. Its use will not rid or purge the body of accumulated poisons. Frequent or continued use of the preparation may result in dependence on laxatives. Said preparation is not composed entirely of roots and its several ingredients were not used by the American Indian.

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 the 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 respondents said preparation is an irritant laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms, of appendicitis.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and depictions 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 that said preparation may be taken under all conditions without harmful effects and into the purchase of 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 1st day of December, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Gladys Goldberg, an individual, trading as Wakita Herb Co., 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 the respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said 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, Gladys Goldberg, is an individual, trading under the name Wakita Herb Co., with her place of business located at 110 West 42nd Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a medicinal preparation advertised and sold as "Indian Herbal Roots." Respondent causes the said preparation, when sold, to be transported from her said place of business in the State of New York to purchasers thereof located in the 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 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 in 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 United States mails, by advertisements inserted in newspapers and by circulars and other advertising media, are the following:

AID NATURE With INDIAN HERBAL ROOTS

Are you satisfied with your health? Do you lack Pep, Energy and Vitality? Do you suffer from nervousness, discomfort, poor appetite, insomnia, back pains, dizziness, headaches or gassy, sick, burning stomach due to faulty elimination? Try INDIAN HERBAL ROOTS, made of concentrated derivations of Indian Herbs used from olden times. Easy to take, follow simple directions on package. Not habit forming. Useful for men and women. You will be amazed at the wonderful, pleasant action. After taking Indian Herbal Roots you will perform your daily duties with a smile. * * * Money back guarantee * * *.

Don't Delay! The sooner you begin taking *Indian Herbal Roots*, the sooner you will notice the difference. After purging your body of accumulated poisons, you should feel more energetic and less sluggish.

In connection with the advertising of her preparation respondent makes use of the depiction of the head of an American Indian.

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 nervousness, poor appetite, insomnia, back pains, dizziness, headaches, and gassy, sick and burning stomach are usually and ordinarily caused by or are symptomatic of faulty elimination and that her said preparation is a competent and effective treatment for such conditions; that her said preparation will restore pep, energy and vitality; that its use will rid or purge the body of accumulated poisons and is not habit forming. Respondent through the use of the trade name "Indian Herb Roots," together with the depiction of the head of an American Indian in her advertising, represents that her said product is composed entirely of roots and was used by the American Indians.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, nervousness, insomnia, dizziness, and a sick, burning stomach are not symptoms or conditions indicating faulty elimination or constipation and the existence of one or more of such symptoms and conditions does not indicate that the individual is suffering from faulty elimination or constipation. Respondent's preparation will not constitute a competent and effective treatment for such symptoms or conditions. Poor appetite, back pains, headaches and a gassy stomach may, and sometimes do, accompany faulty elimination or constipation. When these symptoms or conditions are caused by faulty elimination or constipation, then respondent's preparation will have no therapeutic value in the treatment thereof in excess of such temporary relief as may be provided by an evacuation of the bowels. Moreover, these symptoms or conditions which may be symptomatic or the result of faulty elim-

ination or constipation are more frequently brought about by conditions other than faulty elimination or constipation, in which event the use of respondent's product would be of no therapeutic value whatsoever. Said preparation will not restore pep, energy or vitality. Its use will not rid or purge the body of accumulated poisons. Frequent or continued use of the preparation may result in dependence on laxatives. Said preparation is not composed entirely of roots and its several ingredients were not used by the American Indian.

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 the 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 respondent's said preparation is an irritant laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, nausea, vomiting, or other symptoms of appendicitis.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and depictions 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 that said preparation may be taken under all conditions without harmful effects and into the purchase of substantial quantities of respondent's preparation.

CONCLUSION

The aforesaid 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 on the complaint of the Commission and the answer of the respondent, in which answer 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, Gladys Goldberg, an individual, trading as Wakita Herb Co., or trading under any other name, and her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's medicinal preparation now designated as Indian Herbal Roots, or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold

under the same name or 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 represents directly or by implication:

(a) That said preparation is a competent and effective treatment for nervousness, insomnia, dizziness or a sick burning stomach;

(b) That said preparation has any therapeutic value in the treatment of poor appetite, back pains, headaches or a gassy stomach in excess of providing temporary relief therefor when such symptoms and conditions are due to constipation;

(c) That said preparation will restore pep, energy or vitality;

(d) That said preparation will rid or purge the body of accumulated poisons;

(e) That said preparation is not habit forming;

(f) That nervousness, insomnia, dizziness, a gassy, sick, burning stomach, poor appetite, back pains and headaches are usually and ordinarily caused by constipation;

or which advertisement

(g) Uses the word "Indian" or "Roots" as a part of the trade name of said preparation or otherwise represents that said preparation is compounded from roots or that the ingredients thereof were used by the American Indians.

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 said preparation should not be used in the presence of nausea, vomiting, abdominal pains, or other symptoms of appendicitis; *provided, however*, that such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 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.

Complaint

39 F. T. C.

IN THE MATTER OF
CARLTON ROUTZAHN DOING BUSINESS AS BLAND
PRODUCTS COMPANY

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

Docket 5141. Complaint, Mar. 25, 1944—Decision, Sept. 7, 1944

Where an individual engaged in interstate sale and distribution of his "Flo Triple XXX Compound" and "An-Tex Inserts"; through advertisements of said medicinal preparations in circulars and other advertising literature—

- (a) Represented falsely that the former constituted an effective treatment for delayed menstruation caused by colds, over-exposure and similar conditions and could be depended upon to terminate pregnancy;
- (b) Represented that his "An-Tex Inserts" preparation was antiseptic or germicidal, and effective in the prevention of infection and diseases resulting therefrom, and was a dependable means of preventing conception;

The facts being that while said preparation might possess some antiseptic or germicidal properties, it would not, in use, destroy sufficient numbers of micro-organisms so as to prevent infection or diseases resulting therefrom, and use thereof was ineffective in preventing conception; and

- (c) Failed to reveal facts material in the light of said representations with respect to consequences which might result from the use of said "Flo Triple XXX Compound" under the prescribed or usual conditions, in that it was an irritant laxative and potentially dangerous when taken by persons suffering from abdominal pains, nausea, vomiting or other symptoms of appendicitis;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said "Flo Triple XXX Compound" might be taken at all times without ill effects; and that the aforesaid representations were true, and thereby to induce it to purchase said products:

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. William L. Taggart 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 Carlton Routzahn, an individual, doing business as Bland Products Co., herein 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. Carlton Routzahn, is an individual, doing business under the name of Bland Products Co., with his principal office and place of business at 3716 North Clark Street, Chicago, Ill.