

Syllabus

IN THE MATTER OF

ED. W. ARNOLD COMPANY, A COMMON LAW TRUST
DOING BUSINESS UNDER THE TRADE NAMES, EDWARD
W. ARNOLD COMPANY AND EDW. W. ARNOLD COM-
PANY; AND ED. W. ARNOLD INDIVIDUALLY AND AS
SOLE TRUSTEE

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

Docket 4818. Complaint, Aug. 20, 1942—Decision, Dec. 20, 1944

Where a common law trust and an individual, its sole trustee, engaged in the manufacture and interstate sale and distribution of (1) a bath cabinet in two models, for patients sitting or reclining, designated, respectively as the "Electro Vaporized Mineral Bath" and as the "New DeLuxe Multi Treatment" heated electrically through a device installed in the bottom known as a vaporizer or vapor generator, in which there might also be placed some volatile medicinal product such as mineral oil or pine needle extract, and of (2) a massaging device consisting of a wooden handle and 12 small rubber rollers; in advertisements of its said products in periodicals of national circulation and through circulars, pamphlets and other advertising material, directly or by implication—

- (a) Falsely represented that the use of their said bath cabinet constituted a cure or remedy and a competent and effective treatment for diabetes, high blood pressure, asthma, fevers, toxic or acid conditions, kidney trouble, blindness, gonorrhea cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, tuberculosis of the bowels, rectal troubles, heart troubles, cramps, pains or tortures peculiar to women, weaknesses or worn down conditions, sleeping sickness, blood poison, poisons from bad teeth, or rheumatic fever, and various other ailments and conditions; and
- (b) Falsely represented that their said cabinet was a cure or remedy and a competent and effective treatment for rheumatism, lumbago, and neuritis, St. Vitus Dance, insomnia, and headaches;

The facts being that it possessed no therapeutic value in the treatment of said conditions except in so far as it might, through the application of heat, afford temporary relief for the pains accompanying rheumatism, lumbago and neuritis, temporary comfort and relaxation in the case of St. Vitus Dance, temporary soothing and relaxing in the case of insomnia, and upon the nerves in the case of nervous headache; and the therapeutic benefits afforded by the use of the cabinet were limited to such temporary benefits as might result from application of heat, substantially the same results being obtainable through an ordinary warm tub bath or, in certain cases, through a hot water bottle or electric pad;

- (c) Falsely represented that use of said cabinet would reduce obesity, build up underweight, restore vim and vigor, eliminate broken down tissues, increase vitality and liver activity, combat poisons, neutralize bacterial poisons, cell wastes and other undesirable matter, and eliminate them;
- (d) Falsely represented that use thereof would rejuvenate and vitalize the nervous system; cleanse and purify the blood, eliminate contraction of the blood capillaries, thin the blood, neutralize and eliminate toxins or poisons, increase oxidation and

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- "detoxinize" the body; and that such use constituted an effective method of health culture and health building, and of preventing disease; and that the cabinet contained healing elements, and aided in restoring perfect health to those diseased;
- (e) Falsely represented, through use of the word "mineral" in designating and describing their cabinet and through other statements as well, that the cabinet gave the user a mineral bath;

The facts being that while, as above noted, provision was made for the use of mineral oil or some other volatile oil in the cabinet, such oils are not minerals in the same sense as calcium, phosphorus, and others which have for a long time been associated with mineral baths, and their cabinet was incapable of affording the user a mineral bath within the correct and commonly accepted meaning of the term;

- (f) Falsely represented that said massaging device was a scientific instrument which produced a scientific massage, saved time and labor, would reduce fat spots and the waist line, and otherwise reduce the weight and recontour the body, and leave the flesh more firm, picking up and kneading it and oxidizing fatty deposits within the body; and
- (g) Falsely represented that said massaging device relieved constipation, promoted regularity, limbered up and relieved tension in sore, stiff or aching muscles, relieved insomnia and induced sleep, relieved nerve pressure or tension and afforded to the surface of the body benefits equivalent to those afforded by exercise;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products, and as a result cause it to purchase substantial quantities thereof:

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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Charles H. Rowan, of Milwaukee, Wisc., 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 Ed. W. Arnold Co., a common law trust, doing business under the trade names Edward W. Arnold Co. and Edw. W. Arnold Co., and Ed. W. Arnold, individually, and as sole trustee of Ed. W. Arnold Co., a common law trust, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Ed. W. Arnold Co., is a common law trust, doing business under the trade names of Edward W. Arnold Co. and Edw. W. Arnold Co. Ed. W. Arnold, is an individual, and the sole trustee of Ed. W. Arnold Company, a common law trust. The principal place of business and post office address of said respondents is Logansport, Ind.

PAR. 2. The respondents are now and for several years last past have been engaged in the manufacture, sale and distribution of bath cabinets

designated as Arnold's Electro-Vaporized Mineral Bath and New Deluxe Multi-Treatment Cabinets and a mechanical device designed for use in massaging, and designated as Tu-Way Massager.

In the course and conduct of their said business respondents cause said bath cabinet and device, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia.

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

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said bath cabinet and device by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said bath cabinet and device by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said bath cabinet and device in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements, disseminated and caused to be disseminated as aforesaid, by United States mails, by insertion in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature, are the following:

With respect to Arnold's Electro-Vaporized Mineral Bath and New Deluxe Multi-Treatment Cabinets—

These vital life elements when supplemented with radiated moist heat usually soon restores that coveted vim and vigor of youth.

Consequently a great many common ailments, particularly colds, sore throats, neuritis and some fevers often disappear with one treatment.

REGULATED MOIST HEAT... NATURE'S OWN PRODUCER OF LIFE

* * * A Modern Thermal Therapeutic Triumph * * *

A Natural, Reasonable, Rational Method in Scientific Efficient Health Culture.

SCIENTIFIC RESEARCH IN THE FORD HOSPITAL and wherever FEVER THERAPY is used has produced permanent relief in some of the worst diseases when all other methods of treatment fail.

* * * a very scientific, natural and effective method of combatting the body poisons and almost every form of disease.

FOR THE PAST FIFTEEN YEARS ARNOLD'S ELECTRO THERMOTHERAPY CABINETS have been building a monument of living evidence to the supreme value of artificial fever in the treatment of the most dreaded disease to which man has fallen a prey.

They vitalize and rejuvenate the entire nervous system, * * *. They reduce obesity and build up those under weight. * * * Doctors stand amazed at the marvelous results that are being obtained and most especially in old chronic maladies after the case had been given up as incurable.

These eliminative energizing treatments not only aid nature in making one well but are a true natural means of preventing disease and are especially valuable in the treat-

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ment of RHEUMATISM, NEURITIS, DIABETES, HIGH BLOOD PRESSURE, OBESITY, DROPSY, ASTHMA, INSOMNIA, FEVERS, TOXIC AND ACID CONDITIONS, DEPLETED NERVES, AND ALL FORMS OF SKIN ERUPTIONS AND BLOOD DISORDERS.

THESE VITALIZING VAPORIZED MINERALS AND OIL FUMES, aided by the relaxing medium of the moist warm air, act directly on the skin; neutralizing the bacterial poisons, toxins, cell wastes and morbid matter coming from broken down tissue and eliminating them from the body by setting up a normal functioning of the skin, increasing the liver activity and facilitating the work of the kidneys and other organs of elimination, thus cleansing and purifying the blood.

The SOOTHING, WARM VAPORS raise the temperature of the body, eliminating the contraction of the blood capillaries, warming up and thinning the blood; * * * increasing oxidation; * * * It is not uncommon for a severe cold, a sore throat, a case of neuritis, or a fever, to entirely disappear as a result of taking one of these simple treatments.

ELECTRO MINERAL BATHS are natural health builders. They detoxinize the body and rejuvenate the nerves. Those who take them usually soon feel their entire body surge with new life, vim and vigor.

... They promote that pleasant, youthful, buoyant feeling of increased vitality that is so ardently desired by both young and old. They neutralize and eliminate the toxins and broken down tissues.

Many chronic as well as acute ailments respond readily.

THE NEW DELUXE MULTI-TREATMENT RECLINING CABINETS are equipped with Ultra-Violet and Infra-Red Lamps to give the Sunray treatment and to give the artificial fever treatment and has become famous in the relief of chronic rheumatism, arthritis and other so-called incurable diseases.

Today scientists are using artificial fevers to cure many diseases previously considered incurable. Profiting frequently by curious accidents which are often forerunners of great discoveries, rheumatism, sleepy sickness, syphilis, arthritis, ulcers and a dozen other tortures of civilization have been entirely cured by artificial fevers produced at will.

The spread of crsipolas (sic) in a lunatic asylum left 30% of the paralytic insane cured when once its fever had subsided.

Multiple eye ulcers with adhesions have been cured in five treatments. Cysts in the breast have shrunk and disappeared without operation. Torn nerves have been regenerated. Racking cramps and pain and torture, so peculiar to some women, have vanished after a few treatments.

ARNOLD'S ELECTRO VAPORIZED MINERAL BATH is vastly different in action when compared with any other health bath, in that the patient is entirely surrounded by moist warm air and pure cleansing, vitalizing and invigorating electrically vaporized minerals and oils which surpass any and all mineral water baths.

A NATURAL BLOOD CLEANSER, NERVE VITALIZER, BODY INVIGORATOR, AND REJUVENATOR.

THE MINERALS AND OILS are principally an extract of mineralized vegetation and contain some of the greatest healing elements, combined with other health promoting plant and mineral products, secured from nature's own supply.

For six months I was troubled with headaches, rheumatism and neuritis. * * * The first four or five of Arnold's Electric Mineral Baths stopped all my pains * * *.

I don't believe that there ever was a woman so near down and out with complications of diseases. * * * Dr. ——— was called to treat me. By his treatments, the Electro Vaporized Mineral Fume Baths, I was made well.

For several years I had been nervous and worn out * * * in bed during the months of July and August with Intestinal Grippe. It left me in a very weakened condition. * * * After two courses of baths I never felt better.

* * * After being treated in Europe and by some of the best Specialists in this country for a discharge of the right ear, and head noises, with no results, I started taking your Electric Mineral Fume Baths. * * * One month treatment worked wonders in my case. * * *

The doctor made my diagnosis as T. B. of the Bowels. I also had kidney and rectal trouble. I took 22 of the Vaporized Mineral Fume Baths, * * * and the doctor said I was now O.K.

* * * have never found anything that has any place to be compared with your Electric Mineral Fume Bath. I think them most wonderful for rheumatism and obesity, which were my troubles.

When I had my teeth pulled the dentist broke one and left the root in. * * * A doctor said it had poisoned me. * * * I took the Mineral Baths. * * * I do think those Baths took the poison out when nothing else would. * * *

I was in a serious condition from blood poison in my leg. * * * I could not move about without help when I started taking Arnold's Electric Mineral Baths. * * * and now my leg is entirely well. * * *

* * * in some chronic degenerative diseases, especially multiple sclerosis, this form of treatment is most beneficial.

It's history how the Austrian doctor * * * changed fever from man's alleged enemy into a powerful friend—by daring to inoculate dangerous malaria microbes into nine doomed human derelicts, suffering from syphilis that had developed in the general paralysis of the insane. Malaria's fierce fever brought three of these doomed nine back to health. * * * They demonstrated finally that it wasn't malaria, as a disease, that fought the corkscrew microbe of syphilis. No, it was the fever, the heat stoked in the sufferers that did the trick. * * * A nine year old boy, blind from eye syphilis, * * * was cured. * * * The microbe causing gonorrhea has also found its most formidable enemy in the fever machine. * * * For still other serious afflictions, machine fever brings hope. In treating St. Vitus Dance, violent rheumatic fever, "Intractable asthma," and certain serious eye infections.

We believe it is through this same absorbing process that ARNOLD'S ELECTRIC MINERAL FUME TREATMENTS produce their wonderful rejuvenating and nerve exhilarating action.

ELECTRO-VAPORIZED MINERAL FUME BATHS are very invigorating. They vitalize and rejuvenate the entire nervous system. They soften and beautify the skin. They reduce obesity and build up those under weight . . . They not only aid in making one well but are a true natural means of preventing disease . . .

EDWARD W. ARNOLD . . . for eight years was under medical treatment in the hands of several prominent physicians for a variety of so-called disease conditions; during which time he steadily grew more depleted, going down from bad to worse until his case was finally pronounced internal cancer . . . Discharging his medical advisers he took his case in his own hands and is today a living example of the value of his own methods. He has since passed a 100% medical examination with every trace of the disease banished from his body.

With respect to the Tu-Way Massager—

Women Everywhere Want This Amazing TU-WAY MASSAGER that Works Off Fat * * *

. . . you can show eager hundreds all around you how—with the aid of this amazing new invention—they can quickly work off fat spots on any part of the body.

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THE TU-WAY METHOD OF REDUCING is founded on an exact scientific principle that will positively REDUCE the FAT SPOTS * * *.

SYSTEMATIC daily use of your TU-WAY MASSAGER will bring a gradual fat reduction.

Notice the scientific * * * construction of this * * * invention. When this Tu-Way Massager is rolled over the flesh, one set of rollers picks up and KNEADS the flesh, the other set smooths out the skin. It's the kneading action of the Tu-Way that tends to break down the surplus fat * * *.

The Tu-Way May Also Be Used: For—Relieving nerve pressure along the spine, nerve tension, fatigue and insomnia. * * * Relieving constipation and promoting regular bowel action. Limbering up and relieving tension in sore, stiff muscles. * * * soothing tired or sore feet.

The Tu-Way Massager gives you the practical surface value of violent exercise, increasing blood circulation in the parts of the body that through lack of exercise have accumulated an over-balance of fatty tissue.

A few minutes of massaging the spine before retiring usually can insure you going to sleep quickly. Sore, aching muscles, feet, legs and neck can usually be relieved in a few moments by simple application of the Massager.

Reduce the Waistline or Hips 2 to 6 Inches Within 30 to 60 days.

Scientific Massage. It is a sane and safe method to aid reducing. The efficacy of massage is in the kneading of the tissues. It is the kneading that tends to break down the fatty deposits, to be oxidized (burned up) within the body by oxygen carried by blood corpuscles. The residue is eliminated in the form of carbon dioxide exhaled by the lungs and also carried away by the blood stream; at the same time leaving the flesh more firm and solid.

The TU-WAY massager is built on an exact, scientific principle that will positively reduce fat spots, recontour * * * the body. * * * It saves time and labor. Its merits have been established beyond a vestige of doubt.

Four Inches Off Waistline in Four Weeks.

PAR. 4. By the use of the representations hereinabove set forth and others similar thereto, and not specifically set out herein respondents represent directly and by implication:

That use of its bath cabinet, designated Arnold's Electro-Vaporized Mineral Bath and New Deluxe Multi-Treatment Cabinet, constitutes a competent remedy or cure for rheumatism, neuritis, diabetes, high blood pressure and other blood disorders, dropsy, asthma, insomnia, fevers, toxic and acid conditions, sclerosis, kidney trouble, lumbago, blindness, St. Vitus Dance, gonorrhea, cancer syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, eye ulcers, adhesions and infections, all kinds of skin eruptions, cysts, ear and head noises, tuberculosis of the bowels, rectal troubles, heart troubles, headaches, cramps, pains and tortures peculiar to women, complications of diseases, weaknesses and worn down conditions, general debility, sleepy sickness, blood poison, poisons from bad teeth, excess acid, rheumatic fever and toxic poisons; that the use of said cabinet will reduce obesity, build up underweight, restore vim and vigor, eliminate broken down tissues, increase vitality and liver activity, combat body poisons, neutralize bacterial poisons, cell wastes and other undesirable matter and eliminate them from the body; that it will set up a normal functioning of the skin, rejuvenate, regenerate and vitalize the nervous system; that it will clean and purify

the blood, eliminate contraction of the blood capillaries, warm and thin the blood, neutralize and eliminate toxins and toxic poisons and will increase oxidation and detoxinize the body; that the use of said bath cabinet constitutes an effective method of health culture, health building and combatting poisons and preventing diseases; that said bath cabinet surpasses all health mineral water baths, contains healing elements, gives relief in chronic maladies and diseases where other methods of treatment fail, in cases given up as incurable, and gives one a mineral bath and aids in restoring perfect health to those who are diseased. That its device designated Tu-Way Massager is a scientific instrument which produces a scientific massage and saves time and labor; that by its use one can work off fat, reduce fat spots, and reduce the waist line; that its use will leave the flesh more firm and solid and bring gradual weight reduction; that its use will pick up and knead the flesh and oxidize fatty deposits within the body; that its use will relieve constipation and promote regular bowel action, limber up and relieve tension in sore, stiff aching muscles, feet, legs and neck; that its use constitutes a reliable and effective treatment for charley horse, will soothe tired and sore feet, relieve insomnia and induce sleep, give practical surface value of violent exercise and will relieve nerve pressure, nerve tension, fatigue and recontour the body.

PAR. 5. The aforesaid representations and advertisements used and disseminated by the respondents, as hereinabove described, are grossly exaggerated, false and misleading. In truth and in fact, use of respondents' said bath cabinet designated as Electro-Vaporized Mineral Bath and New Deluxe Multi-Treatment Cabinet does not constitute a competent remedy or cure for—

Rheumatism, neuritis, diabetes, high blood pressure and other blood disorders, dropsy, asthma, insomnia, fevers, toxic and acid conditions; sclerosis, kidney trouble, lumbago, blindness, St. Vitus Dance, gonorrhea, cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, eye ulcers, adhesions, and infections, all kinds of skin eruptions, cysts, ear and head noises, tuberculosis of the bowels, rectal troubles, heart troubles, headaches, cramps, pains and tortures peculiar to women, complications of diseases, weaknesses and worn down conditions, general debility, sleepy sickness, blood poison, poisons from bad teeth, excess acid, rheumatic fever and toxic poisons.

Its use will not reduce obesity, it will not build up underweight, it will not restore vim and vigor, it will not eliminate broken down tissues, it will not increase vitality and liver activity, it will not combat body poisons, it will not neutralize bacterial poisons, cell wastes and other undesirable matter and eliminate them from the body; it will not set up a normal functioning of the skin, it will not rejuvenate, regenerate and vitalize the nervous system; it will not clean and purify the blood, or eliminate contraction of the blood capillaries; it will not warm and thin the blood; it will not neutralize and eliminate toxins and toxic poisons and will not increase oxidation and detoxinize the body.

The use of said bath cabinet does not constitute an effective method of health culture, health building and combatting poisons and preventing diseases; said bath cabinet does not surpass all health mineral water baths, does not contain healing elements, does not give relief in chronic maladies and diseases where other methods of treatment fail, in cases given up as

incurable, does not give one a mineral bath, and does not aid in restoring perfect health to those who are diseased.

In fact, respondents' said bath cabinet has no therapeutic value whatever in the treatment of physical and mental disorders in excess of its ability to produce profuse sweating. And further, respondents' Tu-Way Massager is not a scientific instrument which produces a scientific massage and saves time and labor; by its use one cannot work off fat, reduce fat spots, or reduce the waist line; its use will not leave the flesh more firm and solid and bring gradual weight reduction; its use will not pick up and knead the flesh and oxidize fatty deposits within the body; it will not relieve constipation and promote regular bowel action, limber up and relieve tension in sore, stiff aching muscles, feet, legs and neck; its use does not constitute a reliable and effective treatment for charley horse; it will not soothe tired and sore feet, relieve insomnia and induce sleep; it will not give practical surface value of violent exercise, and will not relieve nerve pressure, nerve tension, fatigue and recontour the body.

PAR. 6. The use by respondents of the term "mineral bath" with reference to their said bath cabinet is further deceptive and misleading in that there is nothing in the chemical or mechanical make-up of the said bath cabinet which renders it possible for one to obtain a mineral bath by its use.

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

PAR. 8. 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 August 20, 1942, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answers were filed by respondents to the complaint. Thereafter, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondents), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission on the complaint, testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (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, Ed. W. Arnold Co., is a common law trust, doing business under the trade names Edward W. Arnold Co. and Edw. W. Arnold Co. Respondent, Ed. W. Arnold, is an individual, and is the sole trustee of respondent, Ed. W. Arnold Co. Respondents' place of business is located in Logansport, Ind.

For a number of years last past respondents have been engaged in the manufacture, sale, and distribution of a bath cabinet and a mechanical device designed for use in massaging. The bath cabinet is manufactured in two models or types, one being designated by respondents as "Arnold's Electro-Vaporized Mineral Bath" and the other as "New Deluxe Multi-Treatment Cabinet." The massaging device is designated by respondents as "Tu-Way Massager."

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents have disseminated and have caused the dissemination of numerous advertisements concerning their products by means of the 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 have caused the dissemination of advertisements concerning their products by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Through the use of various statements and representations contained in such advertisements, disseminated and caused to be disseminated by the United States mails, by insertion in periodicals having national circulation, and by means of circulars, pamphlets, and other advertising material, the respondents have represented, directly or by implication:

That the use of their bath cabinet constitutes a cure or remedy and a competent and effective treatment for rheumatism, neuritis, diabetes, high blood pressure, blood disorders, dropsy, asthma, insomnia, fevers, toxic and acid conditions, sclerosis, kidney trouble, lumbago, blindness, St. Vitus's dance, gonorrhea, cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, adhesions, all kinds of skin eruptions, cysts, ear discharges, head noises, tuberculosis of the bowels, rectal troubles, heart troubles, headaches, cramps, pains and tortures peculiar to women, weaknesses and worn down conditions; general debility, sleeping sickness, blood poison, poisons from bad teeth, excess acid, and rheumatic fever; that the use of the cabinet will reduce obesity, build

up underweight, restore vim and vigor, eliminate broken down tissues, increase vitality and liver activity, combat poisons, neutralize bacterial poisons, cell wastes and other undesirable matter and eliminate them from the body; that the use of the cabinet will rejuvenate and vitalize the nervous system; that the use of the cabinet will cleanse and purify the blood, eliminate contraction of the blood capillaries, thin the blood, neutralize and eliminate toxins or poisons, increase oxidation and "detoxinize" the body; that the use of the cabinet constitutes an effective method of health culture and health building, and of preventing diseases, and that the cabinet contains healing elements, and aids in restoring perfect health to those who are diseased.

That the massaging device is a scientific instrument which produces a scientific massage and saves time and labor; that through its use one can work off fat, reduce fat spots, and reduce the waist line; that its use will leave the flesh more firm and solid, bring gradual weight reduction, and recontour the body; that its use will pick up and knead the flesh and oxidize fatty deposits within the body; that its use will relieve constipation and promote regular bowel action, and will limber up and relieve tension in sore, stiff, aching muscles and in the feet, legs, and neck; that its use will relieve insomnia, induce sleep, and relieve nerve pressure and nerve tension; and that the benefits afforded to the surface of the body by its use are equivalent to those afforded by violent exercise.

PAR. 4. Respondents' bath cabinet is heated electrically. The principal feature of the cabinet is a device known as a vaporizer or vapor generator, which was designed by respondent, Arnold. The device is installed in the bottom of the cabinet. When the cabinet is in use, air is drawn into the generator, heated, and mixed with the water vapor. If the operator so desires, some volatile medicinal product such as mineral oil or pine needle extract may also be placed in the generator. The heated vapor mixture thus obtained passes into the cabinet through a perforated sheet of metal, and is distributed around the patient.

The principal difference between the two types or models of the cabinet is that one, the "Electro-Vaporized Mineral Bath" model, is an upright cabinet in which the patient occupies a sitting position, while in the other, the "New Deluxe Multi-Treatment" model, the patient reclines. The latter model is also equipped with certain additional features, including ultra-violet and infra-red lamps. There is, however, no appreciable difference in the method of operation of the two models, nor in the therapeutic effects produced by them.

PAR. 5. The expert testimony in the record establishes that the therapeutic benefits afforded by the use of the cabinet are limited to such temporary benefits as may result from the application of heat. Substantially the same results may be obtained through the use of an ordinary warm tub bath. The cabinet is wholly without therapeutic value in the treatment of diabetes, high blood pressure, blood disorders, dropsy, asthma, fevers, toxic or acid conditions, sclerosis, kidney trouble, blindness, gonorrhea, cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, adhesions, skin eruptions, cysts, ear discharges, head noises, tuberculosis of the bowels, rectal troubles, heart troubles, cramps, pains or tortures peculiar to women, weaknesses or worn down conditions, general debility, sleeping sickness, blood poison, poison from bad teeth, or rheumatic fever.

As to rheumatism, which term is usually employed by the layman to denote any condition involving the joints, it is possible that in some types of arthritis the use of the cabinet might bring about a soothing and comforting effect. Such effect, however, would be only temporary, and would reach only the pain accompanying the disease, not the disease itself. The same is true as to neuritis and lumbago. The cabinet is not a cure or remedy for any of these conditions, and any therapeutic benefit afforded by it would be limited to that referred to above. In the case of insomnia, the cabinet, while not providing a cure, might afford some soothing and relaxing effect, just as might be obtained by a warm tub bath at bedtime. In the case of St. Vitus's dance, the use of the cabinet would likewise prove ineffectual except insofar as it might afford some comfort and relaxation by reason of the application of heat. Substantially the same result could be obtained by a tub bath, a hot water bottle, or an electric pad. The only type of headache which could be beneficially affected by the use of the cabinet is that type usually referred to as "nervous headache," in which case the heat produced by the cabinet might temporarily soothe and relax the nerves.

The cabinet is not an effective or dependable means of reducing obesity. It is incapable of building up underweight, restoring vim or vigor, eliminating broken down tissues, increasing vitality or the activity of the liver, combating poisons, neutralizing bacterial poisons, cell wastes or other undesirable matter, or eliminating such conditions from the body. The cabinet is likewise incapable of rejuvenating or vitalizing the nervous system, cleansing or purifying the blood, eliminating contraction of the blood capillaries, thinning the blood, neutralizing or eliminating toxins or poisons, increasing oxidation, or "detoxinizing" the body. Nor does the use of the cabinet constitute an effective method of health culture or health building, or of preventing diseases. The cabinet does not contain healing elements, nor aid in restoring health to those who are diseased.

PAR. 6. Respondents' massaging device consists of a wooden handle about fourteen inches long and twelve small rubber rollers, the rollers being attached to the handle midway between the two ends. The device is not a scientific instrument and will not produce a scientific massage. It does not save time or labor. Its use will not reduce fat spots, reduce the waistline, or otherwise reduce the weight or recontour the body. Nor will its use leave the flesh more firm or solid, pick up or knead the flesh, or oxidize fatty deposits within the body. The device is wholly incapable of relieving constipation or promoting regular bowel action. It will not limber up or relieve tension in sore, stiff, or aching muscles in the feet, legs, neck, or any other part of the body. It will not relieve insomnia nor induce sleep, nor will it relieve nerve pressure or nerve tension. Nor are the benefits afforded to the surface of the body by the use of the device equivalent to those afforded by exercise.

PAR. 7. The Commission, therefore finds, that the representations made by respondents with respect to their products, as set forth in paragraph 3 hereof, are erroneous and misleading and constitute false advertisements.

Respondents have also represented, through the use of the word "Mineral" in designating and describing their bath cabinet, and through other statements, as well, that the cabinet gives the user thereof a mineral bath. This representation is likewise erroneous and misleading, and constitutes a

false advertisement. While; as heretofore pointed out, provision is made for the use of mineral oil or some other volatile oil in the cabinet, such oils are not minerals in the same sense as calcium, phosphorous, and other minerals which have for a long period of time been associated with mineral baths. Respondents' cabinet is incapable of affording the user a mineral bath within the correct and commonly accepted meaning of the term.

PAR. 8. The use by the respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the characteristics and therapeutic properties and value of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products 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 (no answer having been filed by respondents), testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (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, Ed. W. Arnold Co., a common law trust, trading as Edward W. Arnold Co. and as Edw. W. Arnold Co., or trading under any other name, and Ed. W. Arnold, individually, and as sole trustee of Ed. W. Arnold Co., and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' bath cabinet designated "Arnold's Electro-Vaporized Mineral Bath" and "New Deluxe Multi-Treatment Cabinet" and respondents' massaging device designated "Tu-Way Massager," or any other articles or devices of substantially similar construction or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from:

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 respondents' bath cabinet is a cure or remedy for or possesses any therapeutic value in the treatment of diabetes, high blood pressure, blood disorders, dropsy, asthma, fevers, toxic or acid conditions, sclerosis, kidney trouble, blindness, gonorrhea, cancer, syphilis, paralytic insanity, colds, sore throat, catarrhal conditions, ulcers, erysipelas, adhesions, skin

eruptions, cysts, ear discharges, head noises, tuberculosis of the bowels, rectal troubles, heart troubles, cramps, pains or tortures peculiar to women, weaknesses or worn down conditions, general debility, sleeping sickness, blood poison, poisons from bad teeth, or rheumatic fever.

(b) That said cabinet is a cure or remedy for rheumatism, lumbago, or neuritis; or that it possesses any therapeutic value in the treatment of such conditions except insofar as it may, through the application of heat, afford temporary relief for the pains accompanying such conditions.

(c) That said cabinet is a cure or remedy for St. Vitus's dance; or that it possesses any therapeutic value in the treatment of such condition except insofar as it may afford temporary comfort and relaxation through the application of heat.

(d) That said cabinet is a cure or remedy for insomnia; or that it possesses any therapeutic value in the treatment of such condition except insofar as it may afford temporary soothing and relaxing effects through the application of heat.

(e) That said cabinet is a cure or remedy for headaches; or that it possesses any therapeutic value in the treatment of headaches except insofar as it may, through the application of heat, afford temporary soothing and relaxing effects upon the nerves in the case of nervous headaches.

(f) That said cabinet will reduce obesity, build up underweight, restore vim or vigor, eliminate broken down tissues, increase vitality, increase the activity of the liver, or combat poisons; or that said cabinet will neutralize bacterial poisons, cell wastes, or other undesirable matter, or eliminate such conditions from the body.

(g) That said cabinet will rejuvenate or vitalize the nervous system, cleanse or purify the blood, eliminate contraction of the blood capillaries, thin the blood, increase oxidation, neutralize or eliminate toxins or poisons, or "detoxinize" the body.

(h) That said cabinet constitutes an effective method of health culture or health building, or of preventing disease.

(i) That said cabinet contains healing elements or aids in restoring health to those who are diseased.

(j) That said cabinet affords any therapeutic benefits in the treatment of any ailment or condition other than such temporary benefits as may result from the application of the heat generated by the cabinet.

(k) That respondents' massaging device is a scientific instrument or produces a scientific massage.

(l) That said device saves time or labor.

(m) That said device will reduce fat spots, reduce the waistline, or otherwise reduce the weight or recontour the body.

(n) That the use of said device leaves the flesh more firm or solid, picks up or kneads the flesh, or oxidizes fatty deposits within the body.

(o) That said device relieves constipation or promotes regular bowel action.

(p) That said device limbers up or relieves tension in sore, stiff, or aching muscles in the feet, legs, neck, or any other part of the body.

(q) That said device relieves insomnia or induces sleep.

(r) That said device relieves nerve pressure or nerve tension.

(s) That said device affords to the surface of the body benefits equivalent to those afforded by exercise.

or which advertisement

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(t) Uses the word "Mineral" to designate, describe, or refer to respondents' bath cabinet, or otherwise represents, directly or by implication, that a mineral bath may be obtained through the use of said cabinet.

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 of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, 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.

Syllabus

IN THE MATTER OF
E. J. BRACH & SONS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (f) OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914,
AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4548. Complaint, July 28, 1941—Decision, Dec. 21, 1944

Where a corporation which (1) was engaged in the manufacture and competitive interstate sale and distribution of candy and confectionery products; (2) was one of the few large candy manufacturers with annual sales in excess of \$8,000,000; (3) sold many of its candies containing as much as 90 percent glucose, at but a few cents a pound, to large buyers such as chain and syndicate stores, who purchase for resale and buy from one manufacturer rather than another on the basis of a difference in price of a small fraction of a cent only; (4) purchased from various manufacturers, through its Director of Purchases, accurately informed, as in duty bound, as to prices, products and terms, about 30 million pounds or 315 railroad tank carloads of glucose annually, price of which since June 19, 1936, ranged between \$2.09 and \$3.59 per cwt., and, at any given time, was substantially the same in the case of all manufacturers, as was the quality of their glucose—relative cost of which product, in high glucose content candies, was of importance to competing manufacturers thereof in attracting patronage of aforesaid buyers, and in which a saving to said corporation of 10 cents per cwt. in cost amounted to from 5 to 10 percent of said corporation's annual profit—

- (a) Knowingly received benefit of discriminations in price from some of the manufacturers who were concerned in concurrent sales of glucose of like grade and quality to it and some of its competitors, and who charged and invoiced to it glucose at the price preceding its increase to the trade generally, including, as typical, 92 tank cars of about 95,000 pounds each, sold and delivered to it at \$2.29 per cwt. over a five month period, by a certain concern, during which time its prices to the trade generally varied between \$2.39 and \$2.64 per cwt.;
- (b) Knowingly received the benefit of discriminations in price in the purchase of glucose by deducting from the current prices at which some manufacturers invoiced glucose to it and to the trade generally, amounts sufficient in some instances, and almost sufficient in others, to make the cost to it equal to the discriminatory prices it was receiving from others including aforesaid concern, and received thereby, as typical, prices ranging from \$2.29 to \$2.39 on 85 tank cars through deducting 10 cents to 20 cents from prices ranging from \$2.39 to \$2.59, charged to and received from its competitors by the two manufacturers concerned, from whose said prices it made deductions as aforesaid;
- (c) Knowingly induced discrimination in prices in its favor by some of aforesaid various manufacturers by making deductions from their invoice prices in remitting, and informing them falsely that competing manufacturers were then selling to it at such lower price; continuing, as illustrative, after the refusal of the concern first referred to, to sell to it further at said discriminatory price, deductions predicated on said price on 150 tank cars of glucose, sold it by the two manufacturers, whom it led to believe, upon their objecting, that more than one manufacturer was selling to it for less;