

Order

IN THE MATTER OF

FLOYD IRL SORRELLS, TRADING AS TEXAS TASTY
COMPANY

MODIFIED ORDER TO CEASE AND DESIST

Docket 3487. Order, April 5, 1945

Modified order in proceeding in question—in which original order issued on January 10, 1939, 28 F. T. C. 64—requiring respondent, his representatives, etc., in connection with offer, etc., in commerce, of "Penny Nips" confections, to cease and desist from representing the same as noncompetitive, from misrepresenting qualities and properties thereof, endorsement by city officials, etc., terms and conditions to agents and representatives, necessity for securing state or municipal license for sale thereof, etc., and from use of term "free" to refer thereto, as in said order specified.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having heretofore been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, which answer admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to the facts, and the Commission having, on January 10, 1939, issued and subsequently served upon the respondent its findings as to the facts and conclusion and its order to cease and desist; and the Commission having further considered said order to cease and desist and having given due notice to the respondent to show cause, if any be had, why the proceeding should not be reopened for the purpose of modifying said order in the respects and to the extent set out in said notice, and the respondent having made no objections to the proposed modification of said order; and the Commission having duly considered the matter and the record herein, and having concluded that the public interest requires the modification of said order to cease and desist in the respects and to the extent set out in said notice.

It is ordered, That the respondent, Floyd Irl Sorrells, an individual, trading as the Texas Tasty Company or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of confections known as "Penny Nips," whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing directly or in any manner whatever

1. That such confection is a noncompetitive article of merchandise.
2. That such confection will remain in marketable condition in weather temperature up to 132° Fahrenheit.
3. That the city officials of Fort Worth, Texas, or of any other city, have certified the purity of such confection, until and unless such officials have so certified respondent's confection.
4. That the liquid in such confection is pure fruit juice.
5. That respondent's representatives or agents will remain in the territory allotted to a dealer under contract, for the purpose of aiding the dealer in his sale of respondent's product, until the dealer has sold

merchandise equaling the amount the dealer advanced to respondent's representative or agent as a consideration for the contract.

6. That such confection will be shipped by respondent to a bonded warehouse, where the dealer may withdraw it in small quantities by paying the amount due on each small box so withdrawn.

7. That free merchandise will be shipped to the dealer to reimburse him for expense incurred in paying shipping charges, unless such merchandise is actually shipped.

8. That such confection will be shipped to purchasers charges prepaid, unless it is in fact so shipped.

9. That products similar to respondent's confection or respondent's confection have never been sold in the territory allotted to the dealer, when such is not the fact.

10. That no state or municipal license will be charged the dealer for selling respondent's confection in the territory allotted to such dealer; and from

11. Using the term "free" or any other term of similar import and meaning to describe, designate or refer to any merchandise which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

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

Complaint

IN THE MATTER OF

MONTGOMERY WARD & COMPANY, INC.

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

Docket 5052. Complaint, Sept. 22, 1943—Decision, Apr. 6, 1945

Where a corporation engaged in interstate sale and distribution of its "Dr. Pierce's Purgative Pellets" and "Ward's Bile Salts Compound and Cascara Tablets"; in advertisements of its said laxatives, in its semi-annual catalogs—

Failed to reveal facts material in the light of the representations made therein with respect to consequences which might result from use of the preparations under prescribed or usual conditions and that the preparations should not be used in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis, through any reference to said danger, in the early advertisements or through adequate warning with reference thereto in a later one;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that its preparations were entirely safe and harmless, thereby causing 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.

As respects the giving of adequate warning by the advertiser of medicinal preparations against the potential danger of laxatives concerned when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis where it appeared that the advertisement in its semi-annual catalog contained no reference to the aforesaid danger other than the statement in small type at the bottom of the pages involved: "Read article on 'Laxatives' inserted between pages 536 and 537"; that such insert page contained various statements with respect to several different types of medicines, such as headache remedies, cold remedies, nose drops and sprays, laxatives, rectal preparation, diuretics, etc., and at that portion of the page which dealt with laxatives contained, among others the following statement: "Warning: Never take a laxative when abdominal pain (stomach ache, cramps), vomiting, or other symptoms of appendicitis are present": The quoted statement did not constitute an adequate warning against the potential danger in the use of the preparations concerned because it did not appear in the body of the advertisements thereof, but on a separate page in the catalog, would in many cases escape the attention of one reading the advertisements of the preparations, did not mention the specific preparations involved but referred only to laxatives generally, and omitted any reference to the symptom of nausea.

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

Mr. Joseph Callaway for the Commission.

Mr. R. G. Crandall and *Mr. F. G. Keiper*, of Chicago, Ill., for respondent.

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 Montgomery Ward & Company,