

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,

Inc., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Montgomery Ward & Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 619 West Chicago Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the offering for sale, sale and distribution of two laxative medicinal preparations, one of them being designated as Dr. Pierce's Purgative Pellets and the other being designated as Ward's Bile Salts Compound and Cascara Tablets. Respondent causes said preparations, when sold, to be shipped from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent in the course and conduct of its business, as aforesaid, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said medicinal preparations 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 medicinal preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The advertisements so disseminated by respondent are, in substance, that each of said preparations constitutes an effective treatment for constipation.

PAR. 4. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the 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 preparations to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, each of said preparations is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis.

PAR. 5. The failure of the respondent to disclose in its said advertising matter that the use of said preparations under the conditions prescribed in said advertisements or such conditions as are customary and usual may be potentially dangerous, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that each of said preparations is entirely safe and harmless, and may be taken at all times without ill effects to the user, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said medicinal preparations.

PAR. 6. The aforesaid acts and practices of the respondent, 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 September 22, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Montgomery Ward & Company, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer to the complaint, a stipulation of facts was entered into between the attorney for the Commission and the attorney for the respondent at a hearing before a trial examiner of the Commission theretofore duly designated by it. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, stipulation of facts, 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. The respondent, Montgomery Ward & Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 619 West Chicago Avenue, Chicago, Ill. Respondent is now, and for several years last past has been, engaged in the sale and distribution of two medicinal preparations, one being designated as Dr. Pierce's Purgative Pellets and the other as Ward's Bile Salts Compound and Cascara Tablets.

PAR. 2. Respondent causes and has caused the preparations, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the preparations 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 its business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning the preparations 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, advertisements concerning the preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The preparations are laxatives and are intended for use by the general public for the relief of constipation. Along with numerous other articles, the preparations are advertised by respondent in catalogs issued semi-annually and distributed among prospective purchasers.

In certain catalogs issued by respondent prior to January 15, 1943, the preparations were advertised as follows:

Dr. Pierce's Purgative Pellets

Concentrated root and herbal extracts. Only fine, pure quality ingredients are used. Help relieve constipation. Small—easy to take. Have been widely used for a great many years. (Comm. Ex. 2)

* * *

Bile Salts and Cascara Tablets

Bile Salts are often taken for sluggish liver, lack of bile. Help digestion of fats in intestines. Cascara acts as a laxative. Easy to take. (Comm. Ex. 1)

Although the preparations are laxatives and each is potentially dangerous when taken by one suffering from abdominal pains, nausea, vomiting, or other symptoms of appendicitis, the advertisements quoted above made no reference to such danger.

A later catalog, issued on or about January 15, 1943, contained the following advertisements:

Dr. Pierce's Pellets
Easy-to-take purgative
pellets. (Comm. Ex. 4)

* * *

Wards Bile Salts and
Cascara Tablets
Often taken for sluggish
liver. Aids digestion.
Cascara acts as a laxa-
tive. (Comm. Ex. 3).

Like the earlier advertisements quoted above, these advertisements contained no statement warning purchasers against the use of the preparations in the presence of symptoms of appendicitis. However, at the bottom of the pages on which the advertisements appeared (pages 532 and 533 of the catalog) there was printed, in small type, the following: "Read article on 'Laxatives' inserted between pages 536 and 537." The insert page referred to, which was inserted between pages 536 and 537 of the catalog, contained various statements with respect to several different types of medicines, such as headache remedies, cold remedies, nose drops and sprays, laxatives, rectal preparations, diuretics, etc. 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."

In the opinion of the Commission, this statement did not constitute an adequate warning against the potential danger in the use of the preparations here involved, because the statement did not appear in the body of the advertisements of the preparations but appeared on a separate page in the catalog. The statement would in many cases escape the attention of one reading the advertisements of the preparations. Moreover, the statement did not mention the specific preparations here involved but

referred only to laxatives generally. Also, it omitted any reference to nausea, which is one of the symptoms of appendicitis.

PAR. 4. The Commission therefore finds that the advertisements disseminated by respondent with respect to its preparations constituted false advertisements, in that they failed to reveal facts material in the light of the representations made therein, and material with respect to consequences which may result from the use of the preparations under the conditions prescribed in the advertisements or under such conditions as are customary or usual; that is, the advertisements failed to reveal that the preparations should not be used in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

PAR. 5. The use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparations are entirely safe and harmless and may be taken at all times without danger of ill effects to the user, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparations as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent, 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 respondent, a stipulation of facts entered into between the attorney for the Commission and the attorney for respondent, 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Montgomery Ward & Company, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's medicinal preparations designated "Dr. Pierce's Purgative Pellets" and "Ward's Bile Salts Compound and Cascara Tablets," or any other preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under 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 fails to reveal that the preparation advertised should not be used in the presence of abdominal pains, nausea, vomiting, 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

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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.

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 either of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to comply with the requirements set forth in paragraph 1 hereof.

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

Complaint

IN THE MATTER OF
CEIL MALK, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914 AND THE WOOL PRODUCTS LABELING ACT OF 1939 APPROVED OCT. 14, 1940

Docket 5138. Complaint, Mar. 14, 1944—Decision, Apr. 6, 1945

Where a corporation engaged in the interstate sale to the general public from their store of wool products, including women's coats, suits and other garments—

- (a) Sold some of the aforesaid wool products misbranded in violation of the Wool Products Labeling Act and the rules and regulations promulgated there under in that said products did not have affixed thereto the required stamp, tag, label or other means of identification showing the name of the manufacturer or that of a subsequent seller or reseller and in that one garment did not have affixed to its interlining a stamp, tag, label or other means of identification, as provided by aforesaid act; and
- (b) With intent to violate the same and said rules and regulations, mutilated and participated in and caused the mutilation of stamps, tags, labels or other means of identification which had been affixed to certain of said wool products by the manufacturer and which purported to contain the information required thereby, including the percentage of wool, reprocessed wool, and reused wool, etc. and adulterating matter and identification of the manufacturer, seller, etc., through removing that portion which contained the name of the manufacturer or seller of said products; and did not replace the same:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act, and the rules and regulations promulgated thereunder, and were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Mr. DeWitt T. Puckett and *Mr. G. M. Martin* for the Commission.

Cotton, Brenner & Wrigley, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Ceil Malk, Inc., a corporation hereinafter referred to as respondent, has violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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, Ceil Malk, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York and has its principal office and place of business at 202 Livingston Street, Brooklyn, N. Y.