

Complaint

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IN THE MATTER OF

GEORGIE A. COLEMAN, TRADING AS LIBERTY
CHEMICAL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4869. Complaint, Nov. 9, 1942—Decision, Aug. 20, 1945*

Where an individual engaged in the interstate sale and distribution of various medicinal preparations, including one designated as "Liberty Nose and Throat Cream" or "Liberty Nasal Cream;" in advertisements thereof in newspapers and other advertising literature—

Falsely represented, directly and by implication, that the use of her said medicinal preparation prevented colds and influenza and prevented the development in the nose and throat of organisms causing colds and influenza;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and thereby to induce the purchase of her said preparation:

Held, that such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices.

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

Mr. B. G. Wilson for the Commission.

Mr. Thurman L. Dodson, of Washington, D. C., 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 Georgie A. Coleman, individually, and trading under the style and firm name of Liberty Chemical Company, 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, Georgie A. Coleman, is an individual, trading under the style and firm name of Liberty Chemical Company, with her principal place of business located at 1813 18th Street, N. W., Washington, D. C.

PAR. 2. Acting in her individual capacity and trading under the style and firm name of Liberty Chemical Company, respondent is now, and for more than one year last past has been, engaged in the advertising, sale and distribution of a medicinal preparation de-

scribed as "Liberty Nasal Cream" and "Liberty Nose and Throat Cream," in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes said medicinal preparation designated as aforesaid, when sold, to be transported from her place of business in the District of Columbia to purchasers thereof located in the District of Columbia and in various States of the United States.

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

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 her said preparation by the United States mails and by various other means in commerce, as commerce is defined by 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 her said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in the aforesaid advertisements disseminated and caused to be disseminated by the United States mails, by advertisements inserted in newspapers, and by leaflets, stickers and other advertising literature, are the following:

Liberty Nose and Throat Cream is used to prevent development of germs which accumulate in the nose and throat; as a first aid remedy for colds; externally for congestion in the chest from the average colds and for protection from others with infectious colds. * * *

Play safe! Use Liberty Nasal Cream. Why wait until you get a cold or influenza? Use Liberty Nasal Cream every night to prevent development of the germs in your nose and throat. No one who used it during the last epidemic of Influenza, to our knowledge, was infected. * * *

PAR. 4. Through the use of the aforesaid statements and others of similar import not specifically set out herein, respondent represents, directly and by implication, that the use of her said medical preparation prevents colds and influenza; that it will prevent development of organisms causing colds and influenza and any other type of germ in the nose and throat; that it is of value when used externally for congestions of the chest due to colds; that its use will

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afford protection from others with infectious colds and that it is an adequate first aid remedy for colds.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading. In truth and in fact respondent's said preparation is of no value in preventing colds and influenza. It will not prevent the development of organisms causing colds and influenza and any other type of germ in the nose and throat. It is not of value when used externally for congestions of the chest due to colds. Its use will not afford protection from others with infectious colds and it is not an adequate first aid remedy for colds.

PAR. 6. The use by the respondent of the aforesaid false, deceptive and misleading statements and representations 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 such false statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondent's said preparation.

PAR. 7. 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 within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 9, 1942, issued and subsequently served its complaint in this proceeding upon respondent, Georgie A. Coleman, 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 respondent's answer thereto, testimony and other evidence were introduced before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, answer, testimony, and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Georgie A. Coleman, is an individual, trading under the firm name and style of Liberty Chemical Company, with her principal place of business located at 1813 Eighteenth Street, N. W., Washington, D. C. Respondent is now, and for several years last past has been, engaged in the sale and distribution of various medicinal preparations, including one formerly designated as "Liberty Nose and Throat Cream" and now designated as "Liberty Nasal Cream."

PAR. 2. Respondent causes her said medicinal preparation designated as "Liberty Nose and Throat Cream" or "Liberty Nasal Cream," when sold, to be transported from her place of business in the District of Columbia to purchasers thereof at their various points of location in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business, respondent has disseminated and has caused the dissemination of false advertisements concerning her said preparation by means of 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 has caused the dissemination for false advertisements concerning her said preparation by various means of the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in the aforesaid advertisements disseminated and caused to be disseminated by the United States mails, by advertisements inserted in newspapers, and by other advertising literature, are the following:

PLAY SAFE! USE
LIBERTY NASAL CREAM

Why wait until you get a cold or influenza? Use Liberty Nasal Cream every night to prevent development of the germs in your nose and throat. No one who used it during the last epidemic of Influenza, to our knowledge, was infected. Drug stores and the Liberty Chemical Co., Michigan 9423. Take no substitute.

PAR. 4. Through the use of the aforesaid statements, respondent represents, directly and by implication, that the use of her said medicinal preparation prevents colds and influenza and that its use will prevent the development in the nose and throat of organisms causing colds and influenza.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. Respondent's preparation consists of the following ingredients in the proportions stated: petrolatum album, 10 pounds; camphor, $\frac{1}{2}$ ounce; menthol, $\frac{1}{2}$ ounce; betanaphthol, $\frac{1}{2}$ ounce in 1 ounce of alcohol; lanolin, 1 pound; olive oil, 1 pint; soy bean oil, 1 pint; oil of eucalyptol, $\frac{1}{2}$ ounce; oil of thyme, $\frac{1}{2}$ ounce; mineral oil, 1 pint; honey, 8 ounces; tincture of benzoin, $\frac{1}{2}$ ounce. In truth and in fact, respondent's said preparation will not prevent colds and influenza and it will not prevent the development in the nose and throat of organisms causing colds and influenza. Other false claims have been made by respondent for her said preparation, as charged in the complaint, but actual dissemination of false advertisements containing such claims is not shown by the record.

PAR. 6. The use by respondent of the aforesaid false, deceptive, and misleading statements and representations has had, and has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce the purchase of respondent's said preparation because of such erroneous and mistaken beliefs.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), 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, Georgie A. Coleman, her representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "Liberty Nasal Cream," or any product of substantially

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similar composition 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, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That the use of said product will prevent colds or influenza.

(b) That the use of said product will prevent the development in the nose and throat of organisms causing colds or influenza.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of her said preparation.

It is further ordered, That the respondent shall within 60 days after the 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.

IN THE MATTER OF

GENERAL DIARIES, INC., AND ALBERT A. FRIEDMAN,
AND MRS. ELIZABETH FRIEDMAN, TRADING IN THE
NAME OF GENERAL DIARIES, AND AS OFFICERS OF
SAID CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5002. Complaint, July 10, 1943—Decision, Aug. 20, 1945*

Where a corporation and the individual who organized it and was its president, engaged in the interstate sale and distribution of their "Dial" appointment book for the use of doctors, dentists and other professional people; following acquisition by said individual of several hundred copies of the "Professional Diary" appointment book of a competitor; in canvassing drug stores, supply houses, and others who purchased quantities of appointment books for distribution to their customers at Christmas-time—

Falsely represented, through said individual and his salesmen, that said corporation and individual were the publishers and distributors of the "Professional Diary" or that they were affiliated with its publishers, and that purchasers of their product would receive the "Professional Diary," through making use of copies of said "Professional Diary" as samples of the appointment book they were offering, and representing to prospective purchasers who were familiar with it and wished to continue buying it, that aforesaid competitor was their agent and was now selling direct to purchasers; that they were the actual publishers of the "Professional Diary;" and that they now handled the "Professional Diary," which could not be obtained elsewhere;

The facts being that the "Diary" they actually delivered to purchasers bore said corporations name as publisher and was materially different from the "Professional Diary" sample exhibited, being substantially smaller, with a different type of binding, and carrying no marking ribbon, and with record-keeping pages which were different in number and content; they were not publishers or distributors of the "Professional Diary," and had no affiliation with its publisher;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, whereby a substantial number of the purchasing public purchased their said "Dial:"

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. Arthur F. Thomas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Samuel Herbsman, of New York City, for respondents.