

Complaint

IN THE MATTER OF

R. C. MILLER TRADING AS R. C. MILLER & COMPANY
AND MARIE LEIBLINGER & COMPANY

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

Docket 5064. Complaint, Oct. 18, 1943—Decision, Dec. 3, 1945

Where an individual engaged in interstate sale and distribution of a medicinal preparation which she designated as "Nonat," active ingredients of which were turpentine, lead oleate and camphor; through statements in advertisements in the Bohemian and Czechoslovakian language, including reproductions of purported testimonials—

(a) Represented, directly or by implication, that her preparation would reduce the swelling and stop the pain resulting from insect bites and stings; cure festers and heal festering cuts and wounds; extract splinters and other foreign objects from the body; and that it was a competent and adequate treatment for sciatica and rheumatism, and constituted a cure for bodily ailments generally:

The facts being that while said product, by virtue of its turpentine content, had the properties of a mild counter irritant and as such might afford temporary relief from the pains resulting from sciatica and rheumatism, it was without therapeutic value in such cases and in the other respects claimed therefor; and

(b) Failed to reveal facts material in the light of the representations made in said advertisements with respect to the consequences which might result from the use of said preparation under prescribed or usual conditions in that, by virtue of its lead oleate content, use thereof on open sores or wounds might cause lead poisoning;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that her preparation possessed therapeutic properties which it did not in fact possess, and was in all cases safe, and thereby to cause such public 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. Jesse D. Kash for the Commission.

Merriam, Rinehart & Merriam, of Pasadena, Calif., 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 R. C. Miller, an individual trading as R. C. Miller & Company, and Marie Leiblinger & 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, R. C. Miller, is an individual trading as R. C. Miller & Company and Marie Leiblinger & Company, with her prin-

principal office and place of business located at 2614 McNally Street, in the city of Altadena, State of California.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, offering for sale and selling in commerce, as herein set out, a medicinal preparation designated as "Nonat."

PAR. 3. Respondent, being engaged in business, as aforesaid, has caused and now causes said product, when sold, to be transported from her place of business located in the city of Altadena, State of California, to purchasers thereof located at points in various States of the United States other than the State from which said shipments are made, and in the District of Columbia. Respondent, at all times herein mentioned, has maintained and now maintains a course of trade in commerce in said product so distributed and sold by her between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of her business, as aforesaid, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning the aforesaid product 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 disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all-inclusive, of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as aforesaid, by the United States mails, by advertisements inserted in newspapers and periodicals and other advertising literature, all in the Bohemian or Czechoslovakian language, which translated into the English language are as follows:

NONAT IS TRULY INDISPENSABLE

Last Saturday a wasp, or "yellow jacket," stung me on the hand. I soaked the hand in hot salt water, but the hand pained me and swelled. I thought of NONAT, applied it on the arm, and within three hours the swelling was gone. The pain, however, has ceased within a few minutes after the application of NONAT. No matter how our children get hurt, they come running at once and want NONAT on everything. It is indispensable for running a household. Thus writes our agent, Mrs. A. Becan, 404 W. Belknap, Ft. Worth, Texas.

FESTERING AROUND THE NAILS

Sometimes I have a festering around the finger nails. I have tried many things for this, but I happened to think of nonat. Now, at the first sign of pain around the nails, I put Nonat on at night, and the next morning there is no pain or sign of festering. Mrs. Marie Vyvlecka, Jourdanton, Tex

NONAT QUICKLY HEALS

I stuck a splinter in deep, and was unable to extract it. I put a NONAT plaster on the wound, which decreased the burning sensation and, to my surprise, the splinter was out in 24 hours. I would not be without NONAT any more. Respectfully,

Chas. Mertl, Prague, Minn.

Complaint

Are you tormented by Rheumatism or other pain?

Thank you for NONAT, we are satisfied with it both for pain in the back as well as in rheumatism. Send another 2-dollar one. J. Madera, Traverse City, Michigan.

I am sending you \$1.10 for NONAT. My finger festered awfully, but NONAT is the best salve of all that I have used.—Jos. Beseda, Watonga, Okla.

Less sickness for users of Nonat

You should remember the above statement the next time you suffer from bodily disorder. Give Nonat a real trial and you will be convinced of its perfection. For over 28 years it has been your reliable friend.

SPECIAL VALUE FOR FARMERS

While cutting grain with my horse I received an injury. I tried many remedies without results, and my cuts were continually festering. Then I remembered Nonat and began to apply it. It was wonderful to see how the wounds healed up. In a week I was well again and working with my horse. That is why I now keep Nonat on hand all the time, because it is so valuable. With thanks and best regards, I remain, Jos. Bendl, Disputanta Va.

SCIATICA

Mrs. E. Savage of Brooklyn, N. Y., writes: "I suffered for a long time from sciatica (inflammation of the sciatic nerve), and NONAT was the only thing that gave me relief."

For various pains, whether dry or open, Nonat proves its value, which draws out wood and steel splinters, bullets and other objects sticking in the body, but it must be

NONAT

Trade Mark Reg. U.S. Pat. Off.

ARE YOU SUFFERING FROM ANY AILMENTS * * *

Try Nonat and you will be convinced of its curative value. Thousands of trials prove it.

PAR. 5. By and through the use of the statements hereinabove set forth and others similar thereto, not specifically set out herein, respondent represents:

That Nonat will reduce the swelling and stop the pain of insect bites and stings, will cure festers, will heal festering cuts and wounds and will extract splinters, bullets and other foreign objects from the body; that said product is a competent and adequate treatment for sciatica and rheumatism and will relieve the pains resulting therefrom as well as all other pains and will reduce sickness and has curative powers for all ailments.

PAR. 6. The aforesaid representations and claims, are grossly exaggerated, false, misleading and deceptive. In truth and in fact, Nonat will have no significant effect in reducing the swelling or stopping the pain of insect bites and stings. It will not cure festers and will not heal festering cuts and wounds. It will not extract splinters, bullets, and other foreign objects from the body. Said product is not a competent and adequate treatment for sciatica and rheumatism and cannot be depended upon to relieve all pains resulting therefrom or to relieve all kinds of pains. It will not reduce sickness nor does it possess curative powers for any ailment. Respondent's product is a counter-irritant and possesses no properties in excess of that of a counter-irritant.

PAR. 7. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to

reveal facts material in the light of such representations and material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual. Respondent's said preparation contains Lead Oleate and its frequent use or continued use over a long period of time on large areas of the human body may be dangerous to health. It should not be used on open wounds or where skin is irritated or inflamed and care should be exercised in order that none of the preparation is transferred to and taken into the mouth. All of the aforesaid conditions may result in lead poisoning.

PAR. 8. The foregoing false, deceptive and misleading statements and representations, were and are calculated to have, and have had, and now have, a tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public, especially that portion of the purchasing public who use and speak the Czechoslovakian or Bohemian language, into the erroneous and mistaken belief that said statements and representations are true. As a result of such erroneous and mistaken belief, so engendered, the purchasing public is induced to purchase and does purchase substantial quantities of respondent's said product.

PAR. 9. 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 October 18, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, R. C. Miller, an individual trading as R. C. Miller & Company and as Marie Leiblinger & Company, charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondent of her answer to the complaint, testimony and other evidence in support of and in opposition to the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such 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 complaint, answer, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (no brief having been filed on behalf of the respondent, 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. The respondent, R. C. Miller, is an individual trading as R. C. Miller & Company, with her principal office and place of business located at 2614 McNally Street, Altadena, California. Respondent formerly traded under the name Marie Leiblinger & Company. Respondent is now and for some six years last past has been engaged in the sale and distribution of a medicinal preparation designated by her as "Nonat."

PAR. 2. Respondent causes and has caused her preparation, when sold, to be transported from her place of business in the State of California to purchasers thereof located in various other States of the United States. Respondent maintains and has maintained a course of trade in her preparation in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of her business respondent has disseminated, and has caused the dissemination of, numerous advertisements concerning her 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 of, numerous advertisements concerning her preparation by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent's advertisements were in the Bohemian or Czechoslovakian language, being addressed to persons familiar with that language. Among and typical of the statements (English translation) contained in the advertisements were the following:

NONAT IS TRULY INDISPENSABLE

"Last Saturday a wasp, or 'yellow jacket', stung me on the hand. I soaked the hand in hot salt water, but the hand pained me and swelled. I thought of NONAT, applied it on the arm, and within three hours the swelling was gone. The pain, however, had ceased within a few minutes after the application of NONAT. No matter how our children get hurt, they come running at once and want NONAT on everything. It is indispensable for running a household." Thus writes our agent, Mrs. A. Becan, 404 W. Belknap, Ft. Worth. Texas.

(Commission Exhibit No. 11-A)

FESTERING AROUND THE NAILS

"Sometimes I have a festering around the fingernails. I have tried many things for this, but I happened to think of Nonat. Now, at the first sign of pain around the nails, I put Nonat on at night, and the next morning there is no pain or sign of festering. Mrs. Marie Vylvlecka, Jourdanton, Tex."

(Commission Exhibit No. 11-A)

NONAT QUICKLY HEALS

"I stuck a splinter in deep, and was unable to extract it. I put a NONAT plaster on the wound, which decreased the burning sensation and, to my surprise, the splinter was out in 24 hours. I would not be without NONAT any more. Respectfully, Chas. Merti, Prague, Minn."

(Commission Exhibit No. 11-B)

Are you tormented by Rheumatism or other pain?

"Thank you for NONAT, we are satisfied with it both for pain in the back as well as in rheumatism. Send another 2-dollar one. J. Madera, Traverse City, Michigan."

(Commission Exhibit No. 2)

Less pain for users of Nonat.

You should remember the above statement the next time you suffer from bodily cuts and pains. Give Nonat a real trial and you will be convinced of its perfection. For over 28 years it has been your reliable friend.

(Commission Exhibit No. 4)

SPECIAL VALUE FOR FARMERS

"While cutting grain I received an injury. I tried many remedies without results, and the cut was continually festering. Then I remembered Nonat and began to apply it. It was wonderful to see the relief I received. In a week I was back at my work again. This is why I keep Nonat on hand all the time. It is valuable. With thanks and best regards, I remain, Jos. Bendl, Disputanta, Va."

(Commission Exhibit No. 6)

SCIATICA

Mrs. E. Savage of Brooklyn, N. Y., writes: "I suffered for a long time from sciatica (inflammation of the sciatic nerve), and NONAT was the only thing that gave me relief."

For various pains, whether dry or open, Nonat proves its value, which draws out wood and steel splinters and other objects sticking in the body, but it must be NONAT (Commission Exhibit No. 8)

ARE YOU SUFFERING FROM ANY AILMENTS?

Try Nonat and you will be convinced of its curative value. Thousands of trials prove it.

(Commission Exhibit No. 10)

PAR. 4. Through the use of these statements, and others of similar import, respondent has represented, directly or by implication, that her preparation will reduce the swelling and stop the pain resulting from insect bites and stings; that it will cure festers and heal festering cuts and wounds; that it will extract splinters and other foreign objects from the body; that it is a competent and adequate treatment for sciatica and rheumatism; and that it constitutes a cure for bodily ailments generally.

PAR. 5. Respondent's preparation is a salve and is intended for external use only. At the time the advertisements in question were being used the formula for the preparation was as follows:

One pound ten ounces resin
Nine ounces pure gum turpentine, U. S. P.
15 ounces lead oleate
One pound four ounces pure beeswax
Five and one half pounds Burgundy pitch
Seven ounces camphor.

The active ingredients in the formula are the turpentine, lead oleate, and camphor.

The expert testimony in the record establishes that the preparation does not possess the therapeutic properties claimed in respondent's advertisements. It has no significant effect in reducing the swelling or stopping the pain resulting from insect bites or stings. It will not cure festers nor heal festering cuts or wounds. It is incapable of extracting splinters or other foreign objects from the body. Nor is the preparation a competent or adequate treatment for sciatica or rheumatism. The turpentine content of the preparation serves to give it the properties of a mild counter-irritant, and by reason of such properties the preparation may afford a measure of temporary relief from the pains resulting from sciatica and rheumatism. Aside from this, it is without therapeutic value in such cases. The preparation is not a cure for any bodily ailment. On the contrary, it possesses no therapeutic properties other than those of a mild counter-irritant.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to her preparation were erroneous and misleading and constituted false advertisements.

PAR. 7. The advertisements were false for the further reason that they failed to reveal facts material in the light of the representations made therein and material with respect to consequences which might result from the use of the preparation under the conditions prescribed in the advertisements or under such conditions as are customary or usual. Because of the fact that the preparation contained lead oleate its use on open sores or wounds might cause lead poisoning. Respondent's advertisements contained no warning of this danger.

PAR. 8. The record discloses that respondent has discontinued the use of the advertisements in question and has also discontinued the use of the ingredient lead oleate in the preparation.

PAR. 9. The use by respondent of the false advertisements referred to herein had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that respondent's preparation possessed therapeutic properties which it did not in fact possess, and that the preparation was in all cases safe for use when such was not the fact, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparation 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, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint (no brief having been filed on behalf of respondent and 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, R. C. Miller, individually and trading as R. C. Miller & Company and as Marie Leiblinger & Company, or trading under any other name, and her 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 preparation designated "Nonat," or any other preparation containing substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, 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 respondent's preparation has any significant effect in reducing the swelling or stopping the pain resulting from insect bites or stings;

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(b) That said preparation will cure festers or heal festering cuts or wounds;

(c) That said preparation will remove splinters or other foreign objects from the body;

(d) That said preparation possesses any therapeutic value in the treatment of sciatica or rheumatism except insofar as it may afford temporary relief from the pains resulting from such conditions;

(e) That said preparation is a cure for any bodily ailment;

(f) That said preparation possesses any therapeutic properties other than those of a mild counter irritant.

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to reveal that the use of said preparation on open sores or wounds may result in lead poisoning; *provided, however*, that such advertisement need contain only the statement, "CAUTION: Use only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

3. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

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

Complaint

IN THE MATTER OF

OLIVE L. RICHARDS DOING BUSINESS AS TIPTEX

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

Docket 5305. Complaint, Apr. 21, 1945—Decision, Dec. 10, 1945

Where an individual engaged in the interstate sale and distribution of a cosmetic preparation designated as "Tiptex"—

Falsely represented, directly and by implication, in advertisements in newspapers and periodicals and in pamphlets, leaflets, circulars and other advertising literature, that her said preparation, when used as directed, would cause the fingernails to be more pliable or more resistant to breaking; would prevent fingernail brittleness and prevent fingernails from splitting, chipping, and peeling; would produce long, strong, break-resisting fingernails, and make the fingernails supple and pliant; and penetrated to and strengthened and lubricated the nail matrix;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby cause purchase of her said product by it:

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. Miles J. Furnas*, trial examiner.

Mr. B. G. Wilson for the Commission.

Haas & Home, of Los Angeles, Calif., for respondent.

COMPLAINT

Fursuant 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 Olive L. Richards, an individual doing business as Tiptex, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Olive L. Richards is an individual doing business as Tiptex, with her office and principal place of business located at 1709 West Eighth Street, Los Angeles, California.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the business of selling and distributing a cosmetic preparation designated as "Tiptex."

Respondent causes said preparation when sold to be transported from her said place of business in the State of California to purchasers thereof located in various of the 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 her said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her aforesaid business respondent