

Syllabus

IN THE MATTER OF

CHARLES SHAPIRO DOING BUSINESS AS MODERN HOME
DIATHERMY

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

Docket 5032. Complaint, Aug. 19, 1943—Decision, Mar. 24, 1947

Where an individual engaged in the interstate sale and distribution of "Vitatherm Short Wave Diathermy" machines; through advertisements in newspapers, circulars, and other advertising media—

- (a) Represented that his said device, when used by the unskilled lay public by individual self-application in the home in the treatment of self-diagnosed diseases and ailments was a scientific and effective means and method for the treatment of, and constituted a competent remedy for, neuralgia, lumbago, sinusitis, neuritis, bronchitis, prostatitis, arthritis, asthma, rheumatism, and many kindred disorders;
- (b) Represented that it would alleviate pain resulting therefrom; and
- (c) Represented that it would establish body efficiency and provide resistance to infection and disease;

The facts being that use of said device in the treatment of self-diagnosed diseases and ailments or for the alleviation of pain resulting therefrom is contraindicated, and might result in serious and irreparable injury to health in the treatment of conditions involving acute inflammatory processes, of those involving the special senses and the glandular structures, and of conditions in close proximity to such senses and structures; where pains may be symptomatic of serious underlying causes, use of the device for treatment of pain may fatally delay proper diagnosis and treatment, while application in excess dosage in certain conditions may cause serious burns and tissue destruction; and it is impossible for a member of the lay public correctly to diagnose his ailment or condition and determine the underlying cause of the disorder and whether diathermy is indicated rather than contraindicated and even injurious, as well as to determine correctly the method and duration of its use, upon which efficacy thereof might be dependent; and

- (d) Failed to reveal in said advertisements facts material in the light thereof or with respect to consequences which might result from the use of said device under the prescribed or usual conditions, in that such use might result in serious and irreparable injury to health; and that the device might be safely used only after competent medical authority had determined, as a result of diagnosis, that diathermy was indicated, and had prescribed the frequency and amount of application of such diathermy treatments, and the user had been adequately instructed in operating the device by a trained technician;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true and that said device might be used without ill effects, and with capacity and tendency so to do, and thereby to induce a portion of said public to purchase his said device:

Complaint

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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. Clyde M. Hadley*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Samuel De Groot, of Los Angeles, 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 Charles Shapiro, an individual trading and doing business as Modern Home Diathermy, 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, Charles Shapiro, is an individual trading and doing business as Modern Home Diathermy, with his office and principal place of business located at 505 West 8th Street, Los Angeles, Calif.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of diathermy machines designated as "Vitatherm Short Wave Diathermy."

In the course and conduct of his business respondent causes and has caused said device or apparatus, when sold, to be transported from his place of business in the State of California to purchasers thereof at their respective points of location in 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 diathermy machines 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 his aforesaid business the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said 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 also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product by various means for the purpose of inducing, and which are likely to

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induce, directly and indirectly, the purchase of his said product 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 said false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements inserted in newspapers by means of pamphlets, circulars, and other advertising media are the following:

VITATHERM

Short Wave Diathermy

In Your Home!

Does the Doctor Say You Have

Arthritis, Asthma, Sinus,

Bronchitis, Prostate, etc.?

Free Demonstration!

In Your Home or Our Office

Rented, Sold On Budget Terms

Modern Home Diathermy

Vitatherm

Short Wave Diathermy

In Your Home

Does the Doctor Say You Have

ARTHRITIS! SINUS! NEURITIS!

BRONCHITIS! PROSTATE!

ASTHMA! Etc.

"Magic Eye"

"Circle of Heat"

Deep, penetrating, plentiful heat.

Only 'Vitatherm' combines Magic

Eye tuning with 'Circle of Heat'

Cable plus all body pad applicators.

Consult your Doctor About This

Treatment.

FREE DEMONSTRATION

In Your Home or Our Office

Rented, Sold on Budget Terms

3 Years Guarantee

Modern Home Diathermy.

Treatment at HOME with

Short Wave V I T A T H E R M Diathermy

MAY HELP YOU!

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Electro-Magnetic Waves generated by the oscillator of the VITATHERM produce a thorough, regulated heat directly within and throughout the body part under treatment—whereas old, outmoded heating devices can directly heat only the body surface—

This Deeply Penetrative Heat—known technically as “Short Wave Diathermy”—usually increases the local circulation of blood and lymph, thus supplying nourishment more rapidly to affected tissues and often hastening the removal of waste products—

White Blood Cells, the sentinels and defenders of the body against the inroads of disease, may be concentrated in troubled areas by the deep, internal heat, thus increasing the natural power of the body to resist and to throw off infection—

* * * * *

These Physiological Responses of the Body to Short Wave Diathermy have aided in relieving thousands of medically diagnosed cases of

ARTHRITIS,	ASTHMA,	BRONCHITIS,	LUMBAGO,
NEURALGIA,	NEURITIS,	RHEUMATISM,	SINUSITIS

and many kindred disorders. Eminent Medical practitioners regard Short Wave Diathermy as a great contribution of modern Science to the treatment of disease and the alleviation of pain. You too may be helped!

* * * * *

If You are Seeking

R E L I E F

From

P A I N * * *

PAR. 4. By and through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented and now represents that his Vitatherm Short-Wave Diathermy device, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a scientific and effective means and method for the treatment of, and constitutes a competent remedy for, neuralgia, lumbago, sinusitis, neuritis, bronchitis, prostatitis, arthritis, asthma, rheumatism, and many kindred disorders, and that it will alleviate pain resulting therefrom; that it will establish body efficiency and provide resistance to infection and disease.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false, misleading, and deceptive.

Respondent's aforesaid diathermy machines are manufactured in three models, the Standard, the Special, and the Deluxe, all of which have the same electronic generator but differ in the size and shape of

the steel cabinet in which the machines are housed and in certain input and output circuit features.

Said machines consist of (1) an electronic generator of electric and magnetic oscillations having a frequency of approximately 25 million per second, (2) a steel cabinet enclosing the said generator, and (3) capacitive and inductive applicators by means of which the said electric and magnetic oscillations, respectively, are caused to transverse the part of the body under treatment.

The electronic generator consists of (1) a self-rectified push-pull oscillator using 2 Taylor T-40-55 vacuum tubes, (2) a power transformer supplying the filament and plate voltages for the vacuum tubes, and (3) a coupling circuit which transfers electro-magnetic energy from the vacuum tube oscillator to the output applicators and an output control which regulates the amplitude of the oscillations in the output circuit.

The maximum power input of the electronic generator is 300 watts; the maximum power output approximates 115 watts.

The device operates on approximately a 12-meter wavelength. The power is obtained from house current by the necessary connection and transmitted through said device to the patient by means of two electric cords, each of which terminates in an insulated electrode or pad. The application to the patient is usually made by placing the electrodes or pads in such position that the power may pass between said electrodes through the affected area at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual is not an effective method for the treatment of, nor does its use constitute a competent remedy for, rheumatism in its various forms in all parts of the body, arthritis, neuralgia, lumbago, sinusitis, neuritis, bronchitis, asthma, prostatitis, and similar disorders. Its use will not establish body efficiency nor provide resistance to infection and disease.

Said device is not a scientific and effective means and method to be used in the treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom. Its use is contra-indicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

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In conditions of acute inflammation of the nerves, such as neuritis, neuralgia and lumbago, and acute inflammation of the joints, such as arthritis and lumbago or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, its use may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and spreading the inflammation to adjacent tissue and allowing the absorption of toxins, if present.

Furthermore, the use of said device for the relief of pain due to neuralgia or neuritis, which may be symptomatic of some deeper underlying disease or cause such as tumor, tuberculosis, syphilis, cancer, or diabetes, may fatally delay proper diagnosis and treatment.

The application of diathermy in conditions of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose, and throat, causing increased absorption of bacterial toxins, if present, perpetuating the congestion of the mucous membrane.

The application of said device by the unskilled layman in the treatment of pains in the knees may fatally delay proper diagnosis and treatment, in that cancer of the spine may, and often does, evidence itself by severe pain in said areas.

Diathermy, when applied in excess dosage in the treatment of severe pains in the extremities in the presence of advanced blood vessel changes of the legs, may cause serious burns and may directly lead to gangrene and necessitate amputation of the legs.

When diathermy is applied to areas which may be affected by malignant tumors, such use may result in stimulating the growth of cancerous cells or in spreading the trouble to other tissues.

In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in tissue destruction and severe burns.

There are many diseases and conditions in the treatment of which diathermy would be contra-indicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of the above classes of cases the use or improper use of diathermy might aggravate rather than relieve such conditions. Furthermore, many conditions, including some of those for which respondent recommends its device, are sometimes symptomatic or indicative of underlying systemic disorders for which treatment by diathermy would have no therapeutic value and might even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible

for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority in order to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said device, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health.

The said advertisements are further false, as aforesaid, in that said advertisements also fail to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its 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 that said device may be used without ill effects and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device.

PAR. 8. The foregoing 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 August 19, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Charles Shapiro, an individual trading and doing business as Modern Home Diathermy, charging him 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon said complaint and substitute answer; 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, Charles Shapiro, is an individual trading and doing business as Modern Home Diathermy, with his office and principal place of business located at 505 West Eighth Street, Los Angeles, Calif. He is now, and for more than 1 year last past has been, engaged in the sale and distribution of diathermy machines designated as "Vitatherm Short Wave Diathermy."

PAR. 2. In the course and conduct of his said business, respondent causes, and has caused, said diathermy device or apparatus, when sold, to be transported from his place of business in the State of California to purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said diathermy machines 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 his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said 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 also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by various means for the purpose of inducing, and which are likely to induce, directly and indirectly, the purchase of his said product 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 said false advertisements dis-

seminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers, by means of pamphlets, circulars, and other advertising media are the following:

VITATHERM

Short Wave Diathermy

In Your Home!

Does the Doctor Say You Have

Arthritis, Asthma, Sinus,

Bronchitis, Prostate, etc.?

Free Demonstration!

In Your Home or Our Office

Rented, Sold On Budget Terms

Modern Home Diathermy.

* * * * *

Vitatherm

Short Wave Diathermy

In Your Home

Does the Doctor Say You Have

ARTHRITIS! SINUS! NEURITIS!

BRONCHITIS! PROSTATE!

ASTHMA! Etc.

"Magic Eye"

"Circle of Heat"

Deep, penetrating, plentiful heat.

Only "Vitatherm" combines Magic

Eye tuning with "Circle of Heat."

Cable plus all body pad applicators.

Consult your Doctor About This

Treatment.

FREE DEMONSTRATION

In Your Home or Our Office

Rented, Sold on Budget Terms

3 Years Guarantee

Modern Home Diathermy.

* * * * *

Treatment at HOME with

Short Wave V I T A T H E R M Diathermy

MAY HELP YOU!

Electro-Magnetic Waves generated by the oscillator of the VITATHERM produce a thorough, regulated heat directly within and throughout the body part under treatment—whereas, old, outmoded heating devices can directly heat only the body surface—

This Deeply Penetrative Heat—known technically as "Short Wave Diathermy"—usually increases the local circulation of blood and lymph, thus supplying nourishment more rapidly to affected tissues and often hastening the removal of waste products—

Findings

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White Blood Cells," the sentinels and defenders of the body against the inroads of disease, may be concentrated in troubled areas by the deep, internal heat, thus increasing the natural power of the body to resist and to throw off infection—

* * * * *

These Physiological Responses of the body to Short Wave Diathermy have added in relieving thousands of medically diagnosed cases of

ARTHRITIS, ASTHMA, BRONCHITIS, LUMBAGO, NEURALGIA, NEURITIS,
RHEUMATISM, SINUSITIS,

and many kindred disorders. Eminent Medical practitioners regard Short Wave Diathermy as a great contribution of modern Science to the treatment of disease and the alleviation of pain. You too may be helped!

* * * * *

If You are Seeking

R E L I E F

From

PAIN * * *

PAR. 4. By and through the use of the statements and representations set forth above, and others similar thereto not specifically set out herein, respondent has represented, and now represents, that his Vitatherm Short-Wave Diathermy device, when used by the unskilled lay public by individual self-application in the home in the treatment of self-diagnosed diseases and ailments of the human body, is a scientific and effective means and method for the treatment of, and constitutes a competent remedy for neuralgia, lumbago, sinusitis, neuritis, bronchitis, prostatitis, arthritis, asthma, rheumatism, and many kindred disorders; that it will alleviate pain resulting therefrom; and that it will establish body efficiency and provide resistance to infection and disease.

PAR. 5. Respondent's diathermy machines are manufactured in three models: the Standard, the Special, and the Deluxe, all of which have the same electronic generator but differ in the size and shape of the steel cabinet in which the machines are housed and in certain input and output circuit features. Said machines consist of: an electronic generator of electric and magnetic oscillations having a frequency of approximately 25 million per second; a steel cabinet enclosing the said generator; and capacitive and inductive applicators by means of which the said electric and magnetic oscillations, respectively, are caused to transverse the part of the body under treatment. The electronic generator consists of: a self-rectified push-pull oscillator using 2 Taylor T-40-55 vacuum tubes; a power transformer supplying the filament and plate voltages for the vacuum tubes; and a coupling circuit which transfers electro-magnetic energy from the vacuum tube oscillator to the output applicators and an output control which regulates the amplitude of the oscillations in the

output circuit. The maximum power input of the electronic generator is 300 watts; the maximum power output approximates 115 watts. The device operates on approximately a 12-meter wave length. The power is obtained from house current by the necessary connection and transmitted through said device to the patient by means of two electric cords, each of which terminates in an insulated electrode or pad. The application to the patient is usually made by placing the electrodes or pads in such position that the power may pass between said electrodes through the affected area at stated intervals for varying periods of time.

PAR. 6. The aforesaid statements and representations disseminated by respondent are grossly exaggerated, false, misleading, and deceptive. The individual self-application of said diathermy device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, is not an effective method for the treatment of, nor does its use constitute a competent remedy for, rheumatism in its various forms in all parts of the body, arthritis, neuralgia, lumbago, sinusitis, neuritis, bronchitis, asthma, prostatitis, and similar disorders. Its use will not establish body efficiency nor provide resistance to infection and disease. Said device is not a scientific and effective means and method to be used in the treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom. Its use is contraindicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

In conditions of acute inflammation of the nerves, such as neuritis, neuralgia, and lumbago, and acute inflammation of the joints, such as arthritis and lumbago, or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, its use may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and spreading the inflammation to adjacent tissue and allowing the absorption of toxins, if present. Furthermore, the use of said device for the relief of pain due to neuralgia or neuritis, which may be symptomatic of some deeper underlying disease or cause such as tumor, tuberculosis, syphilis, cancer, or diabetes may fatally delay proper diagnosis and treatment. The application of diathermy in conditions of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose, and throat, causing increased absorption of bacterial

toxins, if present, perpetuating the congestion of the mucous membrane. The application of said device by the unskilled layman in the treatment of pains in the knees may fatally delay proper diagnosis and treatment, in that cancer of the spine may, and often does, evidence itself by severe pain in said areas. Diathermy, when applied in excess dosage in the treatment of severe pains in the extremities in the presence of advanced blood vessel changes of the legs, may cause serious burns and may directly lead to gangrene and necessitate amputation of the legs. When diathermy is applied to areas which may be affected by malignant tumors, such use may result in stimulating the growth of cancerous cells or in spreading the trouble to other tissues. In those areas of the skin where the sense of heat has been lost, due to injury or impairment of the peripheral nerves, the application of said device may result in tissue destruction and severe burns.

There are many diseases and conditions in the treatment of which diathermy would be contraindicated. There are other conditions in which the efficacy of diathermy is dependent upon the method and duration of its use. In both of the above classes of cases the use or improper use of diathermy might aggravate rather than relieve such conditions. Furthermore, many conditions, including some of those for which respondent recommends its device, are sometimes symptomatic or indicative of underlying systemic disorders for which treatment by diathermy would have no therapeutic value and might even be injurious. It would be impossible for a member of the lay public to correctly diagnose his ailment or condition or to determine the underlying cause of such disorder. It would also be impossible for such person to correctly determine the method and duration of the use of diathermy. Consequently, the use of diathermy requires the diagnosis of the ailment or condition by a competent medical authority in order to determine if diathermy is indicated and the method and duration of treatment which should be prescribed.

PAR. 7. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of said device, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to health. The said advertisements are further false, as aforesaid, in that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that

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diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his 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 that said device may be used without ill effects, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device.

CONCLUSION

The foregoing acts and practices of the respondent, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, in which answer respondent admits all material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Charles Shapiro, an individual trading and doing business as Modern Home Diathermy, or trading under any other name, his agents, representatives or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of a device designated as "Vitatherm Short Wave Diathermy," or any other device of substantially similar character, whether sold under the same name or under 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

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defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

(a) That said device, when used by unskilled laymen in the treatment of self-diagnosed conditions, is a scientific or an effective or competent treatment of, or remedy for, arthritis, neuralgia, asthma, neuritis, bronchitis, rheumatism, lumbago, sinusitis, prostatitis, or similar disorders.

(b) That said device constitutes a competent or effective treatment for the alleviation of pain resulting from diseases and ailments of the human body, unless specifically limited to conditions which do not involve acute inflammatory processes, glandular structures, or the special senses.

(c) That the use of said device will establish body efficiency or provide resistance to infection or disease.

2. 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 fails to reveal clearly and conspicuously that said device is not safe for use for any condition unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated, and has prescribed the frequency and rate of application of the treatments, and the user has been adequately instructed by a trained technician in the use of such device.

3. 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 of respondent's device 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 requirements set forth in paragraph 2 hereof.

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

ARTHUR E. WEISBERG, TRADING AS EXCELLEX CO.,
AND FRIZZELL ADVERTISING AGENCY, INC.¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5445. Complaint, June 17, 1946—Decision, Mar. 24, 1947*

Where an individual engaged in the interstate sale and distribution of a medicinal product designated "XLX Vita-Grey Tablets," in advertisements in newspapers and periodicals, and circulars, leaflets, and other advertising material—

Represented falsely that gray hair is caused by a vitamin deficiency and that said product is effective in restoring the original color thereto, through such statements as "Science has discovered a vitamin containing Calcium Pantothenate which has brought back the original color to thousands of gray heads. No drugs, dyes nor tints—just a simple, natural method of restoring a vitamin deficiency which has caused your hair to turn prematurely gray";

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

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.

Mr. B. W. Stanley for the Commission.

Mr. Frank E. Weisberg, of Minneapolis, Minn., for Arthur E. Weisburg.

Mr. Charles H. Rowan, of Milwaukee, Wis., for Frizzell Advertising Agency, Inc.

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

¹ The Commission on March 24, 1947, issued an order dismissing complaint without prejudice as to Frizzell Advertising Agency, Inc., as follows:

"This matter coming on to be heard by the Commission as to respondent Frizzell Advertising Agency, Inc., and it appearing that, through inadvertence, said respondent was not afforded an opportunity, prior to the issuance of the complaint herein, to dispose of this matter through the execution of a stipulation as to the facts and an agreement to cease and desist from the practices in question;

"And it further appearing that said respondent has now executed a stipulation as to the facts and an agreement to cease and desist from the practices charged in the complaint, and that such stipulation and agreement has been approved and accepted by the Commission, and the Commission being of the opinion that in the circumstances the complaint should be dismissed as to said respondent without prejudice;

"It is ordered, That the complaint herein be, and it hereby is, dismissed as to respondent. Frizzell Advertising Agency, Inc., without prejudice to the right of the Commission to institute further proceedings in the matter should future circumstances warrant such action."