

Syllabus

IN THE MATTER OF

M. A. CLEMENS, FORMERLY TRADING AND DOING BUSINESS AS CLARK'S DRUGS & SUNDRIES, CLARK'S DRUGS, AND CLARK'S

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 4968. Complaint, May 26, 1943—Decision, Oct. 23, 1947

Where an individual engaged in the sale and distribution of drugs and sundries including male and female sex hormone preparations which consisted of testosterone and alpha estrodiol, cholesterol derivatives, synthesized to simulate the properties of natural so-called male and female hormones, and which were very potent and widely used by physicians in the treatment of individuals having hormone deficiencies—

Failed to reveal facts which were material with respect to the consequences which might result from the use of said preparations, under customary or usual conditions, in his advertisements thereof in newspapers circulated both within and without the State in which his business was located, in that said preparations should not be administered unless an actual need for them had been established by a thorough physical examination, a careful history inventory, and laboratory tests designed to explore the individual patient's functional capacity, should be then used only upon a prescription and under constant specialized medical supervision; and indiscriminate and continued use of the drugs might produce an unfavorable influence upon highly sensitized reproductive tissues, a disturbance of the menstrual and other reproductive functions, and temporary or permanent sterility, resulting in serious disturbances to the sex life of an individual, and other serious injuries; and his said advertisements contained no statement of any of the aforesaid hazards to health, and natural implication of such unqualified advertisements was that the preparations might be taken under customary and usual conditions without diagnosis or supervision;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said hormone preparations might be indiscriminately used by the lay public without ill effects and thereby into the purchase thereof:

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.

Sturzenacker & Isenberg, of Los Angeles, Calif., for respondent.

Complaint

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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 M. A. Clemens, an individual trading and doing business as Clark's Drugs & Sundries, Clark's Drugs, and Clark's 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, M. A. Clemens is an individual trading and doing business as Clark's Drugs & Sundries, Clark's Drugs, and Clark's, with his place of business at 426 South Spring Street, Los Angeles, Calif. He is now, and for more than 1 year last past has been, engaged in the sale and distribution of drugs and sundries, including male and female sex hormone preparations.

In the course and conduct of his aforesaid business respondent causes said hormone preparations, when sold, to be transported from his place of business in the State of California 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 said preparations in commerce between and among the various other States of the United States and in the District of Columbia.

PAR. 2. 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 the said 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 preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparations 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 and by advertisements inserted in newspapers, are the following:

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HORMONES FOR MALE &
FEMALE \$7.50 Box. Send
\$1 for Trial Size. Clark's
426 S. Spring. R. 503

HORMONES
For Male and Female
\$7.50 box. Send \$1 Trial,
Clark's Drug, 426 S. Spring,
Room 503.

PAR. 3. The foregoing advertisements disseminated by respondent 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 said 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, the preparations advertised and sold by respondent contain various forms of testosterone and alpha estradiol. These are both compounds which are generally used by physicians to supply deficiencies of the hormones where such deficiencies exist. The unsupervised use of said preparations by the lay public is potentially dangerous and may result and is likely to result in a serious disturbance of the sex life, in both males and females, and serious consequences and injury to the user. Said preparations should not be used except after competent medical authority has determined, by diagnosis, that hormone deficiency exists, and only upon prescription and under the direction and supervision of such medical authority.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its hormone preparations 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 said preparations may be safely used by the lay public without diagnosis and supervision by medical authority and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondent's said hormone preparations.

PAR. 5. 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 May 26, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, M. A. Clemens, an individual formerly trading and doing business as Clark's Drugs & Sundries, Clark's Drugs, and Clark's, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondent's answer, testimony, and other evidence in support of and in opposition to the allegations of 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 upon the complaint, the answer thereto, testimony and other evidence, the trial examiner's recommended decision, 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, M. A. Clemens, is an individual formerly trading and doing business as Clark's Drugs & Sundries, Clark's Drugs, and Clark's, but now trading under his own name, with his place of business located at 426 South Spring Street, Los Angeles, Calif. Said respondent is engaged in the sale and distribution of drugs and sundries, including male and female sex hormone preparations.

PAR. 2. In the course and conduct of his business and for the purpose of inducing the purchase of the hormone preparations sold by him, the respondent has disseminated, through the medium of advertisements published in certain Los Angeles, Calif., newspapers circulated both inside and outside the State of California, the following statements:

HORMONES FOR MALE & FEMALE \$7.50 Box. Send \$1 for Trial Size.
Clark's, 426 S. Spring, R. 503.

HORMONES
\$7.50 Box.
Clark's Drugs.

For Male and Female
Send \$1 Trial
426 S. Spring. Room 503.

HORMONES—Genuine Testosterone (male-female). Eliminate unnecessary injections. Adequate doses of hormone tablets produce clinical effects. Equal to injections. For comparison—one tablet is equal to 250 capon units. Read Paul De Kruif's excellent book. "The Male Hormone." Complete information available. M. A. CLEMENS, Pharmacist. 426 S. Spring, Rm. 503, Los Angeles 13. MA. 6379 (successor to Clark's Drugs).

PAR. 3. The hormone preparations advertised as aforesaid consist of testosterone and alpha estrodiol, cholesterol derivatives, synthesized to simulate the properties of natural so-called male and female hormones. Such preparations are very potent and are widely used by physicians in the treatment of individuals having hormone deficiencies. They should not be administered, however, unless an actual need for them has been established by a thorough physical examination, a careful history inventory, and laboratory tests designed to explore the individual patient's functional capacity, and should be used then only upon a prescription and under constant specialized medical supervision. The indiscriminate and continued use of the drugs may produce an unfavorable influence upon highly sensitized reproductive tissues, a disturbance of the menstrual and other reproductive functions, and temporary or permanent sterility, resulting in serious disturbances to the sex life of an individual, and other serious injuries.

The respondent's advertisements of the sex hormone preparations sold by him contain no statement of any of the aforesaid hazards to health. The natural implication of said unqualified advertisements is that the preparations may be taken under customary and usual conditions without diagnosis or supervision. The Commission therefore finds that said advertisements constitute false advertisements, as defined in the Federal Trade Commission Act, for the reason that they fail to reveal facts material with respect to the consequences which may result from the use of the preparations to which they relate under such conditions as are customary or usual.

PAR. 4. The use by the respondent of the foregoing advertisements with respect to said hormone preparations, disseminated as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said hormone preparations may be indiscriminately used by the lay public without ill effects and into the purchase of said preparations because of such mistaken and erroneous belief.

Order

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CONCLUSION

The 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, the answer of the respondent, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and briefs in support of the complaint and in opposition thereto (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, M. A. Clemens, individually and trading as Clark's Drugs & Sundries, Clark's Drugs, Clark's, M. A. Clemens, or under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of male and female sex hormone preparations, under whatever designation sold, do forthwith cease and desist from directly or indirectly disseminating, or causing to be disseminated, any advertisement thereof by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that the unsupervised use of said preparations, or any other preparation of substantially similar composition, by persons not skilled in the diagnosis and treatment of hormone deficiency conditions, may result in serious injury to health.

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
UNITY STAMP COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION (a) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5048. Complaint, Sept. 15, 1943—Decision, Oct. 23, 1947

Where a corporation engaged in processing and manufacturing straight-line rubber stamps, and in the competitive interstate sale and distribution thereof direct to the consuming public—

Discriminated in price between different purchasers of its said stamps in that, among general discriminatory practices it (1) sold to some customers, stamps 3 inches or less in length and three-eighths inch or less in height, at 4 cents per line plus 4 cents for each additional line or fraction thereof, while charging other purchasers of the same type of stamp, prices which varied from 5 to 35 cents per line plus an additional sum for each additional line or fraction thereof; and (2) sold rubber stamps of like grade and quality at prices which varied from 4 to 15 cents per line 2 inches or less in length and three-eighths inch or less in height, plus an additional sum for each additional line or fraction thereof;

Effect of which discriminations in price had been and might be substantially to lessen competition and to injure, destroy, and prevent competition between it and its competitors in the sale and distribution of said products in interstate commerce, and had been and might be to tend to create in it a monopoly in such line of commerce:

Held, That such acts and practices, under the circumstances set forth, were in violation of the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. William C. Kern and *Mr. James B. Truly* for the Commission.
Mr. Frank D. Chaiken, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has been and is now violating the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Unity Stamp Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 7 West Thirtieth Street, New York, N. Y.