

Complaint

44 F. T. C.

IN THE MATTER OF
RUTH WHEELER COLLINS, TRADING AS WHEELER
LABORATORY

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

Docket 5233. Complaint, Oct. 11, 1944—Decision, Jan. 15, 1948

Where an individual engaged in the compounding and in the interstate sale and distribution of her drug preparation designated "Climate"—

(a) Represented, directly and by implication, through advertisements in newspapers, circulars, and other advertising literature, and by radio continuities, that said preparation was a cure or remedy for asthma, hay fever, sinus trouble, and rose fever; was a new discovery; and was safe and harmless for use by all persons;

When in fact it had no therapeutic value in the treatment of conditions concerned in excess of facilitating the removal of secretions caused by asthma, and her said claims were otherwise false;

(b) Represented through use of the word "laboratory" as a part of her trade name that she owned, controlled, or operated a laboratory with appropriate equipment and personnel for conducting research, testing, developing, and preparing medicinal preparations;

The facts being that while she compounded said preparation, she did not own, control, or operate a laboratory;

With tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous belief that said representations were true and into the purchase of substantial quantities of her said preparation:

Held, That said 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.

In said proceeding in which the complaint charged also that respondent's advertisements concerning her preparation "Climate" constituted false advertisements for the further reason that they failed to reveal certain facts as to the potential danger of the preparation involved because of its potassium iodide content, the Commission was of the opinion that in view of the present limited scientific information concerning iodide-containing preparations, no disclosure of such facts should be required in the advertisements for the preparation in question.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. William L. Taggart for the Commission.

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 Ruth Wheeler

Collins, doing business as Wheeler Laboratory, 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, Ruth Wheeler Collins, is an individual doing business as Wheeler Laboratory with her place of business located at 1190 West Euclid Avenue, Detroit, Mich., and has been for more than 1 year past engaged in compounding and selling a preparation known as "Climate." Respondent causes said preparation, when sold to be transported from her place of business in the State of Michigan, 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 her said preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of her aforesaid business, respondent had disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning her said preparation by 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 her said preparation by various means, for the purpose of inducing, and which are likely to induce, directly, or indirectly, the purchase of said products 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 United States mails, by advertisements inserted in newspapers, by circulars and other advertising literature and by radio continuities are the following:

For ASTHMA and HAY FEVER

Permanent Relief Discovered at Last. No Narcotics. Take CLIMATE The Liquid Form Remedy and Breathe Freely. Unlimited Health Value In One Bottle. Excellent for Children.

Price ----- \$2.85

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U. S. Pat. Reg. No. 366,696

(Accept No Substitutes)

People having sinus trouble have found permanent relief by taking this wonderful remedy. Why doubt? Try a bottle of Climate and be convinced.

Thousands of Men, Women and Children have received lasting benefits from Climate and are enthusiastic boosters of this Wonderful Medical Discovery. Order at once from

Wheeler Laboratory
1190 Euclid Avenue, W.
Detroit, Mich.

Climate is a remedy that's safe for either adults or children.

Asthma, hay fever, sinus trouble and rose fever relieved by taking Climate in liquid form remedy.

PAR. 3. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, respondent represents, that her preparation is a cure or remedy for asthma, hay fever, sinus trouble and rose fever; that the preparation is a new discovery and that the preparation is safe and harmless for use by all persons.

By the use of the word "Laboratory," as a part of the trade name under which her business is conducted respondent represents that she owns, operates or controls a place with appropriate equipment and personnel for the purpose of conducting research, testing, developing and preparing the preparation, Climate.

PAR. 4. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's said preparation is not a cure or remedy for asthma, hay fever, sinus trouble, or rose fever and has no therapeutic value in the treatment of such conditions in excess of facilitating the removal of secretions caused by asthma. Said preparation is not safe and harmless for indiscriminate use by the public and does not constitute a new discovery. Respondent does not own, operate, or control a place with appropriate equipment and personnel for the purpose of conducting research, testing, developing, or preparing the preparation, Climate, or any other preparation.

PAR. 5. The advertisements disseminated by respondent constitute false advertisements for the further reason that they fail to reveal facts material in the light of the representations contained therein or material with respect to the consequences which may result from the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual. In truth and in fact, said preparation contains sufficient quantities of the drug potassium iodide so that, when taken as directed, serious injury may result to the health of a user afflicted with tuberculosis in either the

active or arrested stage, goiter or thyroid disease and should not be used by them.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations has had and now has the capacity and tendency to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that said preparation may be taken by all persons without ill effects and to induce a portion of the public, because of such erroneous and mistaken belief, to purchase said medicinal 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 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 11, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Ruth Wheeler Collins, an individual trading and doing business as Wheeler Laboratory, charging her 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 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. The respondent thereafter, having first obtained leave of the Commission, withdrew her original answer to the complaint and substituted therefor a substitute answer, in which she admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. The proceeding regularly came on for final hearing before the Commission upon the complaint, the substitute answer thereto, testimony and other evidence, the trial examiner's recommended decision (no briefs having been filed 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, Ruth Wheeler Collins, is an individual trading and doing business as Wheeler Laboratory, with her place of business located at 1190 West Euclid Avenue, Detroit, Mich. Said respondent is engaged in the compounding and in the sale and distribution of a drug preparation designated "Climate."

PAR. 2. The respondent causes said preparation, when sold, to be transported from her place of business in Detroit, Mich., to purchasers thereof located in various other States of the United States and in the District of Columbia, and respondent, at all times mentioned herein, has maintained a course of trade in said preparation among and between the various States of the United States and in the District of Columbia.

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

For ASTHMA and HAY FEVER

Permanent Relief Discovered at Last. No Narcotics. Take CLIMATE The Liquid Form Remedy and Breathe Freely. Unlimited Health Value In One Bottle. Excellent for Children. Price..... \$2.85

U. S. Pat. Reg. No. 366,696

(Accept No Substitutes)

People having sinus trouble have found permanent relief by taking this wonderful remedy. Why doubt? Try a bottle of Climate and be convinced.

Thousands of Men, Women and Children have received lasting benefits from Climate and are enthusiastic boosters of this Wonderful Medical Discovery. Order at once from

Wheeler Laboratory
1190 Euclid Avenue, W.
Detroit, Mich.

Climate is a remarkable remedy—that's safe for either adults or children.

Asthma, hay fever, sinus trouble and rose fever relieved by taking Climate in liquid form remedy.

PAR. 4. Through the use of the foregoing statements and representations and others similar thereto, the respondent has represented, directly and by implication, that the preparation Climate is a cure or remedy for asthma, hay fever, sinus trouble, and rose fever, that said preparation is a new discovery, and that it is safe and harmless for use by all persons.

Through the use of the word "Laboratory" as a part of the trade name under which her business is conducted, the respondent has also represented that she owns, controls, or operates a laboratory with appropriate equipment and personnel for the purpose of conducting research, testing, developing, and preparing medicinal preparations.

PAR. 5. The respondent's preparation Climate is not a cure or remedy for asthma, hay fever, sinus trouble, or rose fever, and said preparation has no therapeutic value in the treatment of such conditions in excess of facilitating the removal of secretions caused by asthma. The preparation is not safe and harmless for indiscriminate use by the public, and it is not a new discovery. The respondent compounds the preparation Climate, but she does not own, control, or operate a laboratory with appropriate equipment and personnel for the purpose of conducting research, testing, developing, or preparing any medicinal preparation.

PAR. 6. The Commission therefore finds that the foregoing representations are erroneous and misleading and that the advertisements wherein they have been made constituted false advertisements.

PAR. 7. The complaint charged also that the respondent's advertisements concerning the preparation Climate constitute false advertisements for the further reason that they fail to reveal certain facts as to the potential danger of the preparation because of its potassium iodide content. The Commission is of the opinion, however, in view of the present limited scientific information concerning iodide-containing preparations that no disclosure of such facts should be required in the advertisements for this preparation.

PAR. 8. The use by the respondent of the aforesaid false advertisements has had the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that the representations made in said advertisements were true and into the purchase of substantial quantities of the respondent's preparation.

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CONCLUSION

The acts and practices of the respondent as herein found were all to the prejudice and injury of the public and constituted 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 the respondent, testimony and other evidence in support of the allegations of the complaint taken before a trial examiner theretofore duly designated by it (no evidence having been introduced in opposition to the allegations of the complaint), and the trial examiner's recommended decision (no briefs having been filed 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, Ruth Wheeler Collins, individually and trading under her own name or trading under any other name or designation, and her agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of the preparation Climate, or any other preparation of substantially similar composition 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 advertisement represents, directly or by implication:

a. That said preparation constitutes a cure or remedy for asthma, hay fever, sinus trouble, or rose fever, or that it possesses any therapeutic value in the treatment of such conditions in excess of facilitating the removal of secretions caused by asthma.

b. That said preparation is safe or harmless for indiscriminate use by either adults or children.

c. That said preparation is a new discovery.

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

ration, which advertisement contains any representation prohibited in paragraph 1 hereof.

3. Using the word "Laboratory," or any word of similar import or meaning, in her trade name or in connection with her business, or representing through any other means or device, or in any manner, that she owns, operates, or controls a laboratory equipped for the compounding of medicinal preparations or for the conduct of research in connection therewith.

It is further ordered, That the respondent shall, within 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.

Syllabus

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IN THE MATTER OF

WILLIAM A. FREW, TRADING AS PARADISE SEED CO.,
LANCASTER COUNTY SEED CO., GARDEN SEED CO. OF
AMERICA, NATIONAL INVESTIGATORS, AND W.
ANDREW

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

Docket 5499. Complaint, June 4, 1947—Decision, Jan. 16, 1948

Where an individual engaged under various trade names in the interstate sale and distribution of garden and flower seeds, and, theretofore, in promoting the collection of unpaid accounts in connection with such sales under the names of "National Investigators" and "W. Andrew";

In soliciting selling agents under the "return or remit plan," which especially attracted children, and consisted of an offer in the form of an advertisement to award certain prizes, premiums, gifts, or money to anyone who would sell a specified number of packages of seed at a stipulated price, stating that no money need be sent until the goods had been sold, when the consignee or seller was required to remit the money due and the premium would be delivered, consignee being required to return seeds not sold within the time specified—

- (a) Represented through statements in catalogs distributed by him, entitled respectively "Premiums from Paradise" and "Gifts for You from the Garden Spot of the World," that various articles therein depicted, including a horoscope, a bird cage, a pistol, a guitar, a fountain pen, an automatic pencil, a ring, a wrist watch, a rifle, a book, and a football were gifts and given free of any charge;

The facts being the cost or value of the horoscope was included in the services required for the earning of a birthstone bracelet; cost or value of the canary bird cage was similarly included in the services required for the earning of the bird itself; and the other articles above referred to were not in fact gifts, but had to be earned by selling certain required quantities of said individual's seeds; and

Where said individual, engaged as aforesaid, in promoting the collection of claims under a scheme pursuant to which (1) a first letter, which displayed the name "National Investigators" and a mailing address at a nearby place, advised addressee that unless he made prompt remittance to the "Paradise Seed Company" an investigation would be conducted in his community of his financial standing, and family connections, and (2) a second letter, which displayed the name "W. Andrew," and purported signature of said individual as "Acting for the Creditor," and which (enclosing paper captioned "Final Notice before Suit," along with the words "State of Pennsylvania, County of Lancaster, SS" and "Paradise Seed Company, (Consignor) vs. -----, (Consignee)," addressed "To the above named consignee:" and purportedly sent by "W. Andrew, Acting for Consignor"), advised those who did not reply to the first that said company was preparing