

Syllabus

IN THE MATTER OF

NATHANIEL COLBERT, FORMERLY KNOWN AS NATHANIEL GOLDBERG, TRADING AS NORTH EASTERN RADIO CO. AND AS MIDWEST RADIO SERVICE CO.

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

Docket 5127. Complaint, Feb. 4, 1944—Decision, Mar. 8, 1948

Where a large business concern, which was established under a trade name including the words "Midwest Radio" some 25 years ago, since which time it had advertised and sold radios extensively in the United States under the name "Midwest"; and had become well and favorably known to a substantial portion of the radio purchasing public in the United States; and thereafter an individual, who had been associated with it as service manager of its place of business in New York City, and became its authorized service representative in said city in June 1938, when it closed its New York place of business, at about which time he began the operation of his own business—

- (a) Adopted, as one of his two trade names, one which included the words "Midwest Radio Service," and continued to make use thereof after the complete severance of relations between him and the aforesaid concern some 2 years later, and featured the words in his trade name and in much of his advertising, and represented thereby that he was connected with aforesaid corporation and that the radios and radio parts sold by him were its products; notwithstanding the fact that since said severance of relations he had had no connection with said corporation or its products; and
- (b) Represented through letters, circulars, folders, and other advertising material and advertisements in periodicals, telephone directories, and other publications, that he was a radio engineer, had radio engineers in his employ, and maintained a radio laboratory; the facts being that while he had certain testing equipment in his place of business, he did not maintain a laboratory, and neither he nor any of his employees was a radio engineer;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his identity and business status, and his products, and thereby to cause it 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.

In said proceeding in which the complaint also charged that respondent falsely and misleadingly represented that his prices were factory or manufacturer's prices, and that the repaired radios sold by him were factory rebuilt radios, and would give new radio performance, the Commission was of the opinion and found that such additional charges were not sustained by the evidence.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Abraham J. Halprin, of New York City, for respondent.

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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 Nathaniel Goldberg, an individual trading as North Eastern Radio Co. and Midwest Radio Service Co., 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 this respect as follows:

PARAGRAPH 1. Respondent, Nathaniel Goldberg, is an individual trading and doing business as North Eastern Radio Co. with his office and place of business located at 799 Broadway, New York, N. Y., and also trading and doing business as Midwest Radio Service Co. located at 80 East Eleventh Street, New York, N. Y.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the sale and distribution of radios and radio parts in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said radios and radio parts, when sold, to be transported from his aforesaid places of business in the State of New York to purchasers at their respective points of location in various other States of the United States other than in the State of New York and in the District of Columbia. There is now and has been for more than 2 years last past a course of trade by respondent in such merchandise 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 and for the purpose of inducing the purchase of his radios and radio parts the respondent has circulated and is now circulating among prospective purchasers throughout the United States by United States mails advertisements in trade journals and by means of advertising folders, pamphlets, circulars, letters, and other advertising material of general circulation many false statements and representations concerning his said radios and radio parts. Among and typical of such false statements and representations are the following:

NORTH EASTERN RADIO CO.

Laboratory and Showroom

Factory Servicemen

Genuine MIDWEST Parts

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A PERSONAL MESSAGE FROM OUR MANAGER TO MIDWEST RADIO OWNERS

I am presenting to you facts which show you clearly and decisively why the North Eastern Radio Co. is best able to render you the most efficient and lowest cost service consistent with the High Quality Workmanship your Midwest Radio demands.

HERE ARE THE FACTS

Our Company is the only Company employing Midwest Factory Trained Servicemen.

We are the only Company offering you complete Factory Service and Facilities at exceptionally Low Factory Prices.

Repairs by Factory Trained Midwest Mechanics.

We use Laboratory Tested Parts—for our engineers have designed parts Custom Built for your Midwest Radio.

Factory Prices which means Lowest Prices for the best grade of work.

NORTH EASTERN RADIO COMPANY

Manufacturing

Super Challenger

Radios

Factory to You . . . Up to A 50% Saving.

Just as Swiss Watchmakers have always been famous for their accuracy and attention to detail in producing the fine Swiss Movements, so it has been with the engineers of our Company in producing the new Super Challenger Chassis used in many of the radios illustrated on the following pages.

Custom Made to the Highest Standards.

Custom Built Radios.

Factory-To-You.

Buy Direct and Save up to 50%.

NORTH EASTERN RADIO COMPANY, representing the world's fourth largest radio manufacturer, offers to Radio Service Men A NEW SALES PLAN . . . YOU DEAL DIRECTLY WITH THE MANUFACTURER . . . SAVE UP TO 60% on Nationally Advertised RADIO PARTS AND TUBES. Our Production surplus is available to you at our cost . . . Also Free Technical Advice by our Engineering Department on your Service Problems.

NEW RADIOS FOR OLD—FOR ONLY \$10.00

You, as a Midwest Radio Owner, and an old friend and customer of this Company, will eagerly want to take advantage of it . . . These chassis are COMPLETELY FACTORY REBUILT—overhauled completely by our engineers. You will have the satisfaction of NEW RADIO PERFORMANCE.

FOR THE FIRST TIME IN RADIO HISTORY, YOU CAN OBTAIN A FACTORY REBUILT CHASSIS—for less than the cost of average repairs.

This Factory Reconditioned Chassis will give you NEW RADIO PERFORMANCE.

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MIDWEST RADIO SERVICE CO.

A Complete Service Department for Midwest Radios Exclusively. Midwest Factory-Trained Mechanics. Genuine Midwest Parts. Low, Flat Rate Factory Prices. Complete Line of Factory-to-You Radios. Affiliated with North Eastern Radio Co.

PAR. 4. Through the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent has represented, directly or by implication, that he maintains a radio laboratory and that he is a manufacturer or operates a factory where radios are manufactured; that he is a radio engineer and that his employees are radio engineers; that his prices are factory or manufacturers' prices; that the repaired radios sold by him are factory-rebuilt radios and that they will give new radio performance.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent does not maintain a radio laboratory where research or experiment is carried on. He does not operate or own a radio factory, nor does he manufacture radios, but only assembles radios from parts manufactured by others and rebuilds radios with new and used parts manufactured by others. He is not a radio engineer, nor does he employ any radio engineers. Respondent is not a manufacturer of radios and his prices are not "manufacturers'" or "factory prices," and do not effect to the purchasing public manufacturers' savings; the repaired radios sold by him are not rebuilt at a radio factory, but are only repaired radios in which both new and used parts are installed. The repaired radios sold by him will not in all cases or generally give new radio performance.

PAR. 6. That Midwest Radio Corp. is a large, well-established radio manufacturer located at Cincinnati, Ohio, which manufactures and sells radios under the trade name "Mid West." Through advertising and long and satisfactory service to the public, said Midwest Radio Corp. is well and favorably known to the radio-purchasing public of the United States, and there is a preference on the part of a substantial number of members of the purchasing public for radios and radio parts manufactured and sold by it.

Respondent was formerly an employee of the Midwest Radio Corp. and in charge of its New York branch, and in this connection, was furnished with a list of purchasers of radios from the Midwest Radio Corp. in the New York area.

Through the use of the name Midwest Radio Service Co. and through the use of the above-quoted statements from his advertise-

ments, addressed to owners of Midwest radios and customers and former customers of the Midwest Radio Corp., respondent has led the purchasers and prospective purchasers of his radios to believe he is connected with the Midwest Radio Corp. or maintains a factory branch for Midwest Radio Corp.

PAR. 7. The use by respondent of the name "Midwest Radio Service Co." and the statements hereinabove stated relative to "Midwest trained mechanics" and other references to "Midwest" is deceptive and misleading, and it has had and now has the tendency and capacity to deceive and mislead, and it has deceived and misled, members of the purchasing public into the belief that respondent's radios were the products of the Midwest Radio Corp. or were rebuilt in the factory of the Midwest Radio Corp. and as a result of such erroneous belief, the public has been induced to purchase substantial quantities of respondent's radios and radio parts.

PAR. 8. The use by the respondent of all the foregoing false and misleading statements and representations and the use of the name "Midwest Radio Service Co." and the word "Midwest," as aforesaid, has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and that respondent represents or is connected with said Midwest Radio Corp. as alleged, and to induce the public to purchase substantial quantities of respondent's products as a result of such belief.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are all to the injury and 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 4, 1944, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him 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 his 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

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final consideration by the Commission upon 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 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, Nathaniel Colbert, formerly known as Nathaniel Goldberg, is an individual trading and doing business as North Eastern Radio Co. and as Midwest Radio Service Co., with places of business at 799 Broadway and 80 East Eleventh Street, both in New York, N. Y. These two places of business are located in the same building but front on different streets. Respondent is now, and since 1938 has been, engaged in the sale and distribution of radios and radio parts.

PAR. 2. In the course and conduct of his business respondent causes his products, when sold, to be transported from his places of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintains and since 1939 has maintained a course of trade in his products in commerce between and among various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent advertises his products by means of letters, circulars, folders, and other advertising material distributed through the United States mails and also by means of advertisements inserted in periodicals, telephone directories and other publications. In this advertising material respondent has represented that he is a radio engineer and has radio engineers in his employ and that he maintains a radio laboratory.

PAR. 4. The Commission finds from the evidence that these representations are erroneous and misleading. While respondent has certain testing equipment in his place of business, he does not maintain a laboratory. Neither respondent nor any of his employees is a radio engineer.

PAR. 5. As stated above, one of the names under which respondent trades is Midwest Radio Service Co. There is located in Cincinnati, Ohio, a large business concern known as Midwest Radio Corp. which is

engaged in the sale of radios and radio parts. This concern was established under this name some 25 years ago and since that time has advertised and sold its radios extensively in the United States under the name "Midwest." The company and its products have become well and favorably known to a substantial portion of the radio purchasing public in the United States.

In 1935 respondent became associated with this company as service manager of its place of business in New York City and in June 1938, when the company closed this place of business, he became the company's authorized service representative in that city, his duties being to look after the servicing of Midwest radios in that trade area. At about this time respondent began to operate his own business, adopting the trade names North Eastern Radio Co. and Midwest Radio Service Co. Respondent's relationship with Midwest Radio Corp. as authorized service representative in the New York area continued until April 1940, when there was a complete severance of relations. There has been no connection whatever between the two since that time.

Respondent, however, has continued to use the word "Midwest" in his trade name and has in fact featured the word in much of his advertising. In this way respondent represents that he is connected with Midwest Radio Corp. and that the radios and radio parts sold by him are Midwest products; that is, products of Midwest Radio Corp. As indicated above, these representations are wholly without foundation in fact, as respondent has had no connection with the corporation or its products since April 1940.

PAR. 6. While the complaint contained certain charges against respondent in addition to those discussed above, the Commission is of the opinion and finds that such additional charges are not sustained by the evidence.

PAR. 7. The use by respondent of the erroneous and misleading representations herein set forth, including the use of the word "Midwest," has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's identity and business status and with respect to his products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of respondent, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and

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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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Nathaniel Colbert, formerly known as Nathaniel Goldberg, individually and trading under the names North Eastern Radio Co. and Midwest Radio Service Co., or trading 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 radios and radio parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent maintains a radio laboratory.
2. Representing, directly or by implication, that respondent is a radio engineer or that he has radio engineers in his employ.
3. Using the word "Midwest," or any simulation thereof, in respondent's trade name; or otherwise representing, directly or by implication, that respondent has any connection with Midwest Radio Corp, of Cincinnati, Ohio, or that his products are the products of said corporation.

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.

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IN THE MATTER OF

MILTON L. LIEBERMAN, TRADING AS LEE PRODUCTS
AND AS CHEMI-CULTURE LABORATORIES

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

Docket 5215. Complaint, Sept. 8, 1944—Decision, Mar. 11, 1948

Where an individual engaged in the interstate sale and distribution of certain medicinal preparations which were designated as "Lee's Periodic (XXX) Pills" and "Lee's Feminine Tablets"; through advertisements in newspapers, and in circulars, leaflets, price lists, and other advertising literature, directly and by implication—

- (a) Represented falsely that "Lee's Periodic (XXX) Pills" constituted a competent and effective treatment for delayed and painful menstruation and regulated the menses;
 - (b) Represented falsely, through the use of the word "Periodic" in said designation and the depiction of a calendar month and lady's head, that use of his said pills had a reliable, predictable, and regulating influence upon the menstrual period;
 - (c) Represented falsely, through the use of the symbol "XXX" and the words "triple strength," that said preparation was of a strength which would produce the results claimed for it and possessed high therapeutic potency; and
 - (d) Represented falsely that use of said pills was safe and harmless;
- The facts being that the ingredients thereof—namely, yohimbine, aloes, iron reduced, and asafetida—were not suitable or effective for the treatment of the ailments for which said pills were advertised, and the pills should not be taken without the guidance of a competent physician;
- (e) Failed to reveal facts which were material with respect to the consequences which might result from use of said pills under prescribed or usual conditions in that such use would bring about a congestion of the lower gastrointestinal tract and the organs of the pelvis, in treatment of dysmenorrhea would be harmful rather than helpful, and in cases of amenorrhea caused by pregnancy, might interrupt pregnancy or cause abortion;
 - (f) Represented through the use of the word "feminine" in the designation of his said "Feminine Tablets," that the product concerned was of peculiar benefit to and had a selective effect upon, women; the facts being said tablets were merely an analgesic and had no such peculiar selective effect; and

Where said individual, engaged in the advertisement and interstate sale and distribution of various medicinal preparations, including those aforesaid noted—