

Syllabus

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—

- (g) Adopted as one of his trade names, the name "Chemi-Culture Laboratories," and represented falsely through use thereof and the word "Laboratories" as included therein, as employed in soliciting the sale of and in selling his said preparations and as displayed on self-addressed envelopes distributed by him, that he owned and operated a laboratory in connection with his said business wherein his products were produced or compounded or tested; and
- (h) Represented that certain medical books were given free with each \$5 or \$10 purchase of his medicinal products, the facts being that such books were not in any sense a gift or gratuity, since the sum charged by him for the products concerned was the regular price of the combination of said products and books;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true and of thereby inducing its purchase of his said medicinal preparations, and with capacity and tendency so to do:

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.

In said proceeding, in which respondent also falsely represented, through dissemination of aforesaid advertising matter, that "Lee's Periodic Capsules" constituted a competent and effective treatment for delayed and painful menstruation and regulated the menses, and was compounded from a well and favorably known formula which had been successfully used for many years in the treatment of amenorrhea and dysmenorrhea; and failed to reveal facts material in the light of said representations or with respect to the consequences which might result from the use of said capsules under prescribed or customary conditions, in that, when used as directed, they would cause irritation of the kidneys, and in that they should not be taken under any conditions without the guidance of a competent physician; but in which it did not appear that said individual sold or distributed the same: The evidence failed to support the charge that the false advertising in question had induced or was likely to induce, directly or indirectly, the purchase thereof.

In said proceeding, in which the complaint also charged that said individual's advertisements concerning the laxative ingredients of "Lee's Periodic (XXX) Pills," and "Lee's Periodic Capsules" constituted false advertisements for the reason that they failed to reveal certain facts regarding the potential danger in the use of said preparation in that they were irritant laxatives, and their use was potentially dangerous when used in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis; the Commission was of the opinion that under the circumstances of the case no disclosure of such facts should be required in the advertisements thereof.

Before *Mr. John W. Addison*, trial examiner.

Mr. S. F. Rose, *Mr. Edward L. Smith* and *Mr. George M. Martin* for the Commission.

Mr. Morris A. Haft, of Chicago, Ill., for respondent.

Complaint

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 Milton L. Lieberman, an individual trading as Lee Products and as Chemi-Culture Laboratories, 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, Milton L. Lieberman, is an individual trading as Lee Products and as Chemi-Culture Laboratories, with his office and place of business located at 4730 Sheridan Road, Chicago, Ill. The respondent is now, and for more than 2 years last past, has been, engaged in the business of offering for sale, sale, and distribution of certain medical preparations designated as "Lee's Periodic (XXX) Pills," "Lee's Periodic (XXX) Capsules," and "Lee's Feminine Tablets."

PAR. 2. Respondent causes said preparations, when sold, to be transported from his place of business in the State of Illinois 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 his said preparations in commerce among and between 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 said medicinal preparations by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said medicinal preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of 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 advertisements, disseminated and caused to be disseminated, as above set forth, by the United States mails, by advertisements inserted in newspapers and by circu-

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lars, leaflets, price lists, and other advertising literature, are the following:

Ladies, always have them on hand to aid functioning. Lee's Periodic Pills standard of 25 years, triple strength * * *.

Ladies, always have them on hand to aid functioning. Lee's Periodic Pills * * * triple strength.

Directions for Lee's (XXX) Pills: One (1) or two (2) with a glass of water or hot lemonade after each meal and at bedtime, or three (3) or four (4) pills after each meal for one (1) day ONLY near the menstrual period * * *.

Lee's Periodic Pills (XXX)—One of the finest female regulators known for amenorrhea and dysmenorrhea * * *.

Lee's Periodic Capsules—A well-known formula for amenorrhea and dysmenorrhea used successfully for many years * * *.

Lee's Feminine Tabs—An excellent preparation for the relief of menstrual pain.

In connection with advertisements of Lee's Periodic (XXX) Pills respondent causes to be depicted a woman's head and a calendar month.

PAR. 4. Through the use of the foregoing statements, representations, and depictions, and others similar thereto, not specifically set out herein, the respondent represents and has represented directly and by implication that "Lee's Periodic (XXX) Pills" and "Lee's Periodic (XXX) Capsules" constitute competent and effective treatments for delayed and painful menstruation and regulate the menses; and that the preparation "Lee's Periodic (XXX) Capsules" is compounded from a well and favorably known formula which has been successfully used for many years in the treatment of amenorrhea and dysmenorrhea.

Through the use of the word "periodic" and the depiction of a calendar month and lady's head with directions to take "only near the menstrual period," respondent represents that the use of his periodic pills has a reliable, predictable, and regulating influence upon the menstrual period.

Through the use of the symbol "XXX" and the words "triple strength" as descriptive of his said periodic pills and capsules, respondent represents that such preparations are of a strength that will produce the results claimed for them and that they possess a high therapeutic potency.

In the same manner, through the use of the word "feminine" in the designation of "Lee's Feminine Tablets," respondent represents that said preparation is of peculiar benefit to and has a selective effect on women.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, the preparations Lee's Periodic (XXX) Pills and Lee's Periodic (XXX) Capsules are not competent and effective treatments for delayed and

painful menstruation, nor will they correct irregular menstruation. Lee's Periodic (XXX) Capsules are not compounded from a well and favorably known formula which has been successfully used in the treatment of amenorrhea and dysmenorrhea. The use of Lee's Periodic (XXX) Pills will have no predictable or reliable influence in regulating the menstrual period, or bringing on a delayed menstruation. Said preparation is not triple strength nor is it of a potency which will produce, with more certainty, the therapeutic claims made for it.

Lee's Feminine Tablets have no peculiar selective effect on women since they are merely an analgesic.

PAR. 6. Respondents' aforesaid advertisements and representations constitute false advertisements for the further 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 the preparations Lee's Periodic (XXX) Pills and Lee's Periodic (XXX) Capsules under the conditions prescribed in said advertisements, or under such conditions as are customary and usual. In truth and in fact, said preparations are irritant laxatives and their use is potentially dangerous when used in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis.

The use of Lee's Periodic (XXX) Pills will bring about congestion of the lower gastrointestinal tract and of the organs of the pelvis. Lee's Periodic (XXX) Capsules, when used as directed, would cause irritation of the kidneys and should not be taken under any conditions for more than three successive days.

PAR. 7. In the course and conduct of his business, the respondent adopted as and for one of his trade names "Chemi-Culture Laboratories," under which to carry on his business, which said name, including the word "Laboratories," respondent has used during the times herein mentioned, and now uses in soliciting the sale of and selling his said preparations, on self-addressed envelopes distributed in commerce among and between the various States of the United States and in the District of Columbia. Through the use of the word "Laboratories" as aforesaid, respondent represents that he owns and operates a laboratory in connection with his said business and that his said products are compounded and tested in said laboratory. In truth and in fact, respondent does not own or operate a laboratory in connection with his said business.

PAR. 8. In the course and conduct of his business, and for the purpose of inducing the purchase of his medicinal preparations, re-

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spondent has set forth in printed circulars distributed through the mails as aforesaid, and by other media, combination offers purporting to give free medical books with each \$5 or \$10 purchase of his medicinal products. Typical of the representations so made are the following:

FREE

FREE

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Valuable Medical Books

Here's how you can get either or both of these priceless medical books absolutely FREE. Simply make up an order of Lee's Superior Products amounting to \$5.00 and receive "The Family Doctor and Medical Adviser" Or, with every \$10.00 order of Lee's Circular Products we give you FREE this new and timely "Family Book of Medicine."

The books which respondent represents as being given free are not in any sense a gift or gratuity, for the price of the so-called "free" goods is included in the purported price of the other items of respondent's offer. The \$5 or \$10, as the case may be, purportedly charged by respondent for the medicinal products is the regular and customary price of the combination of the respective medicinal products and the books.

PAR. 9. The use by the respondent of the foregoing false, misleading, and deceptive statements and representations and the failure of respondent to reveal in advertising matter that the use of the preparations, Lee's Periodic (XXX) Pills and Lee's Periodic (XXX) Capsules, under the conditions prescribed in said advertisements, or under such conditions as are customary and usual, may be potentially dangerous, has had, and now 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 said statements and representations are true and that said preparations are entirely safe and harmless and may be used without ill effects to the user, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said medicinal preparations.

PAR. 10. 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 September 8, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Milton L. Lieberman, an individual trading as Lee Products and as Chemi-Culture Laboratories, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the respondent filed his 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, this proceeding regularly came on for final hearing by the Commission upon the complaint, the answer thereto, testimony, and other evidence, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed by the respondent and no oral argument 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. Respondent, Milton L. Lieberman, is an individual who from 1939 to December 1944 traded and did business as Lee Products, and during a portion of said period, also traded as Chemi-Culture Laboratories. He maintains, and has maintained, his principal place of business variously at 4701 and 4730 Sheridan Road, Chicago, Ill. He is now, and for more than 8 years last past has been, engaged in the advertising, sale, and distribution of various medicinal preparations.

PAR. 2. Among the medical compounds advertised and offered for sale are certain preparations designated as "Lee's Periodic (XXX) Pills," "Lee's Feminine Tablets," and "Lee's Periodic Capsules." Respondent sold and distributed Lee's Periodic (XXX) Pills and Lee's Feminine Tablets, but it does not appear that he sold or distributed Lee's Periodic Capsules.

PAR. 3. In the course and conduct of his business, the respondent causes Lee's Periodic (XXX) Pills and Lee's Feminine Tablets, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof at their respective points of location in

various 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. 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 medicinal 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 his said medicinal 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 statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinbefore set forth, by United States mails, by advertisements inserted in newspapers, and by circulars, leaflets, price lists, and other advertising literature, are the following:

Ladies, always have them on hand to aid functioning. Lee's Periodic Pills standard of 25 years, triple strength * * *.

Ladies, always have them on hand to aid functioning. Lee's Periodic Pills * * * triple strength.

Lee's Periodic Pills (XXX)—One of the finest female regulators known for amenorrhea and dysmenorrhea * * *.

Lee's Periodic Capsules—A well known formula for amenorrhea and dysmenorrhea used successfully for many years * * *.

Lee's Feminine Tabs—An excellent preparation for the relief of menstrual pain.

In connection with advertisements of Lee's Periodic (XXX) Pills, respondent causes to be depicted a woman's head and a calendar month.

PAR. 5. Through the use of the foregoing statements, representations, and depictions, and others similar thereto not specifically set-out herein, the respondent represents, and has represented, directly and by implication, that either Lee's Periodic (XXX) Pills or Lee's Periodic Capsules constitute a competent and effective treatment for delayed and painful menstruation and regulates the menses; and that the preparation Lee's Periodic Capsules is compounded from a well and favorably known formula which has been successfully used for many years in the treatment of amenorrhea and dysmenorrhea. Through

the use of the word "Periodic" and the depiction of a calendar month and lady's head, respondent represents that the use of his Periodic Pills has a reliable, predictable, and regulating influence upon the menstrual period. Through the use of the symbol "XXX" and the words "triple strength" as descriptive of his said Periodic Pills, respondent represents that said preparation is of a strength which will produce the results claimed for it and that it possesses high therapeutic potency. Through the use of the word "Feminine" in the designation of Lee's Feminine Tablets, respondent represents that said product is of a peculiar benefit to, and has a selective effect upon, women.

PAR. 6. The aforesaid statements and representations are grossly exaggerated, false, and misleading. Neither the preparation Periodic (XXX) Pills nor the preparation Periodic Capsules is a competent or effective treatment for delayed or painful menstruation. Neither will correct irregular menstruation. The Periodic Capsules are not compounded from a well and favorably known formula which has been successfully used in the treatment of amenorrhea and dysmenorrhea. The use of the Periodic (XXX) Pills will have no predictable or reliable influence in regulating the menstrual period or initiating or hastening delayed menstruation. Said preparation is not triple strength, nor is it of a potency which will produce with more certainty the therapeutic results claimed for it.

Yohimbine, aloes, iron reduced, and asafetida are the ingredients in the pills. These ingredients are not suitable for the treatment of the ailments for which said pills are advertised. Yohimbine and aloes are used little, if at all, by the medical profession. The action of the former is similar to the action of ergot in constricting uterine musculature and blocking sympathetic nerve impulses. Aloes is a very harsh cathartic. Asafetida is also a cathartic. Reduced iron is a bowel irritant, and its content in the pills is too small to be of value otherwise. Use of the pills as directed in treating dysmenorrhea would be harmful, rather than helpful, and in cases of amenorrhea caused by pregnancy, might interrupt early pregnancy or cause abortion.

The capsules are composed of apiol, ergot, oil of pennyroyal, and aloin. Apiol and pennyroyal are known as, and have been used as, abortifacients. They are closely related to turpentine and may irritate the kidneys. Ergot constricts the uterine musculature and, in general, blocks sympathetic nerve impulses. Aloin has a laxative effect. The capsules are of no therapeutic value for the ailments for which they are advertised as treatment. Their use is more harmful than the use of said Periodic Pills for dysmenorrhea, and if used in a

condition of pregnancy may terminate such pregnancy or cause an abortion and result in serious permanent injuries or death. Neither the pills nor the capsules should be taken without the guidance of a competent physician.

Lee's Feminine Tablets are not "feminine" for the reason that they are merely an analgesic and have no peculiar selective effect on women.

PAR. 7. The advertisements disseminated by the respondent as aforesaid constitute false advertisements for the further 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 the preparations Periodic (XXX) Pills and Periodic Capsules under the conditions prescribed in said advertisements or under such conditions as are customary and usual. The use of the Periodic (XXX) Pills will bring about a congestion of the lower gastrointestinal tract and of the organs of the pelvis. The periodic capsules, when used as directed, will cause irritation of the kidneys and should not be taken under any conditions without the guidance of a competent physician.

PAR. 8. In view of respondent's refusal to sell Lee's Periodic Capsules, the evidence does not support the charge that the false advertising disseminated or caused to be disseminated by the respondent relating to said product has induced or is likely to induce, directly or indirectly, the purchase thereof.

PAR. 9. In the course and conduct of his business the respondent adopted as and for one of his trade names "Chemi-Culture Laboratories," under which to carry on his business, which said name, including the word "Laboratories," respondent has used during part of the time herein mentioned, in soliciting the sale of and selling his said preparations, on self-addressed envelopes distributed in commerce among and between the various States of the United States and in the District of Columbia. Through the use of the word "Laboratories" as aforesaid, respondent represents that he owns and operates a laboratory in connection with his said business and that his said products are produced or compounded or tested in said laboratory. In truth and in fact, respondent does not own or operate, and has never owned or operated, any laboratory or laboratories in which all products concerned herein were made or compounded or tested.

PAR. 10. In the course and conduct of his business, and for the purpose of inducing the purchase of his medicinal preparations, respondent has set forth in printed circulars distributed through the mails as aforesaid, and by other media, combination offers purporting to give

free medical books with each \$5 or \$10 purchase of his medicinal products. Typical of the representations so made are the following:

FREE

FREE

2

Valuable Medical Books

Here's how you can get either or both of these priceless medical books absolutely FREE. Simply make up an order of Lee's Superior Products amounting to \$5.00 and receive "The Family Doctor and Medical Adviser" Or, with every \$10.00 order of Lee's Circular Products we give you FREE this new and timely "Family Book of Medicine."

The books which respondent represents as being given free are not in any sense a gift or gratuity, for the price of the so-called "free" goods is included in the purported price of the other items of respondent's offer. The \$5 or \$10, as the case may be, purportedly charged by respondent for the medicinal products is the regular and customary price of the combination of the respective medicinal products and the books.

PAR. 11. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his medicinal preparation, 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 to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations except as found in Paragraph Eight herein.

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. The complaint charged that the respondent's advertisements concerning the laxative ingredients of the preparations Lee's Periodic (XXX) Pills and Lee's Periodic Capsules constituted false advertisements for the reason that they failed to reveal certain facts regarding the potential danger in the use of said preparations. The Commission is of the opinion, however, that in the circumstances of this case no disclosure of such facts should be required in the advertisements of these preparations.

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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 introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed by the respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and conclusion that the respondent has violated the Federal Trade Commission Act:

It is ordered, That the respondent, Milton L. Lieberman, trading as Lee Products, as Chemi-Culture Laboratories, or under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of his medicinal preparations designated as Lee's Periodic (XXX) Pills or Lee's Feminine Tablets, or any other preparation or preparations of substantially similar composition or possession substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement (a) by means of the United States mails or (b) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(a) That said Periodic Pills constitute a competent or effective treatment, cure, or remedy for delayed or painful menstruation or will correct irregular menstruation.

(b) That said Periodic Pills will have any predictable or reliable influence in regulating the menstrual period or in initiating or hastening delayed menstruation.

(c) That said Periodic Pills are triple strength or that they possess any degree of therapeutic potency in excess of that attributable to their actual ingredients.

(d) That the use of said Periodic Pills is safe and harmless.

(e) Which advertisement fails to reveal that said Periodic Pills, when used as directed, will bring about congestion of the lower gastrointestinal tract and of the organs of the pelvis.

(f) That said Feminine Tablets are other than an analgesic or have any selective effect on women.

Order

2. Disseminating, or causing the dissemination of, 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 said preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails to reveal the dangerous consequences which may result from the use of said preparations as required in said paragraph 1 hereof.

3. Using the word "Laboratories" or any other word of similar import or meaning as a trade name, or representing through any other means or device or in any manner, that a laboratory equipped for the compounding of medicinal preparations or for research in connection therewith, is owned, or operated, or controlled unless and until such a laboratory is actually owned and operated or directly and absolutely controlled.

4. Representing that medical books or any other commodity or commodities for which a charge is made, directly or indirectly, or the cost of which is included in the regular and customary sales prices charged for combinations of medicines and books or any other commodity or commodities, are free, either by the use of the term "free" or by any other term or terms of similar import or meaning.

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 it.

IN THE MATTER OF
UNITED DIATHERMY, INC.

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

Docket 4952. Complaint, Apr. 22, 1943—Decision, Mar. 12, 1948

Diathermy is not a safe, therapeutic adjunct in the hands of an untrained person for unsupervised home use, and the safe and intelligent use of a diathermy device or apparatus designed and used for the generation of electrical short-waves, and the application thereof to parts of the body by means of insulated electrodes and the creation thereby of heat within the body tissues, requires that there first be a complete diagnosis by a competent physician, a determination of whether or not diathermy is indicated, and, if so, the frequency and rate of application, the placement of the electrodes, control and regulation of the dosage, and preventive measures against burns and tissue destruction.

Where a corporation engaged in the interstate sale and distribution of its "United Short Wave Diathermy" electrical device or apparatus, to members of the public for use in self-administered applications of diathermy in their homes, through attaching the device to the house current, applying the two electrodes to the user's body and thereby creating heat within the tissues through passage of the electrical short waves between them;

In representing through advertisements thereof in newspapers, radio continuities and other advertising literature and booklets, that said device, when used by members of the public in the treatment of self-diagnosed diseases or ailments through individual self-application in the home, was an effective means and method for the alleviation and relief of chronic pain in the conditions of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, and sinus trouble—

Failed to reveal all of the facts which were material in the light of said representations, or with respect to the consequences which might result from the use thereof under prescribed or usual conditions, in that such use might do serious injury to the user if improperly applied; application by an unskilled person, in excess dosage, might not only cause serious burns but lead directly to gangrene and necessitate amputation of the leg; attempt to relieve pain resulting from neuritis without proper diagnosis as to the cause of the pain, might result in fatal delay in the treatment of the underlying cause or disease; application in any area where appreciation of heat has been impaired or lost might result in serious burns or tissue destruction; and diathermy is definitely contraindicated in certain conditions;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true and of inducing it thereby to purchase said device, and with capacity and tendency so to do:

Held, That such acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.