

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.

In said proceeding, as respects certain other charges, the evidence failed to show that said corporation affirmatively represented its diathermy device as being safe and harmless; and, as respects the effectiveness thereof in alleviating or relieving chronic pain in conditions for which advertised, the issue was not adequately raised by the complaint, and, as a consequence, no findings were made with respect thereto.

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

Mr. R. A. McOuat and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Mortimer Cole, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that United Diathermy, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, United Diathermy, Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at 1537 Chestnut Street, Philadelphia, Pa.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain device or apparatus designated as United Short Wave Diathermy.

In the course and conduct of its business the respondent causes said device or apparatus, when sold, to be transported from its place of business in the State of Pennsylvania 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 device or apparatus, 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 its aforesaid business the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now

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disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, by radio continuities, and other advertising literature, are the following:

ARTHRITIS

PAINS RELIEVED BY SHORT WAVE Diathermy. Ask Your Doctor if you're suffering chronic pains of SINUS TROUBLE, LUMBAGO, SCIATICA, RHEUMATISM, NEURITIS, BURSITIS, SHORT WAVE DIATHERMY helps alleviate pain because of the deep penetrating and soothing heat it produces in the acting muscles, nerves, and joints. UNITED SHORT WAVE treatments can now be taken easily and effectively in your own home after competent instructions. (Write for illustrated booklet.) **FREE TRIAL.**

Call or write for Free home demonstration.

UNITED DIATHERMY, INC.

1537 Chestnut St., Phila., Pa.

The illustrated booklet referred to in the above advertisement contains, among other things, a picture of a woman with the device applied to her leg above and below her knee, under which is the statement:

As you can see in the pictures throughout this booklet, the method of applying the UNITED SHORT WAVE Diathermy is so simple that you can use it easily and effectively.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that its device or apparatus, advertised as United Short Wave Diathermy, when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home, is a safe, harmless, and effective means and method for the relief of pain in chronic conditions of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, and sinus trouble, and that its use will have no ill effects upon the human body.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondent's device or apparatus, designated as United Short Wave Diathermy, is composed principally of a transformer, a short-wave generator, two radio tubes, and two coils housed in a portable cabinet. The device operates upon approximately a 13-meter wave length with a power output of approximately 160 watts. The power is obtained from house current by the necessary connection and transmitted through said device to the patient by means of two electric cords, each of which terminates in an insulated electrode. The application to the patient is made usually by placing the electrodes in such position that the power may pass between said electrodes through the affected area, at stated intervals for varying periods of time.

The individual self-application of said device by the unskilled lay public in the home, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, is not a safe, harmless, and effective means and method to be used in the treatment of self-diagnosed diseases and ailments of the human body, or for the alleviation of pain resulting therefrom. It is impossible for a layman to determine when a condition may be acute or chronic or may change from chronic to acute. Its use is contra-indicated and may result in serious and irreparable injury to health in all conditions involving acute inflammatory processes, in conditions involving the special senses and glandular structures, and in the treatment of conditions in close proximity to the special senses and glandular structures.

The said device does not constitute a competent treatment for conditions of acute inflammation of the nerves such as neuritis, neuralgia, sciatica, and lumbago, and acute inflammation of the joints, such as bursitis, arthritis, and lumbago or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, and its use in such conditions may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and spreading the inflammation to adjacent tissue and allowing the absorption of toxins, if present.

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

The application of diathermy in conditions of sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose, and throat, causing increased absorption of bac-

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terial toxins, if present, perpetuating the congestion of the mucous membrane.

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

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

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

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

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

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

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

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its device or apparatus, 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 induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the respondent's said device or apparatus.

PAR. 8. The foregoing acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 22, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, United Diathermy, Inc., a corporation, charging it with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent filed its 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 introduced before a trial examiner of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, report 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, United Diathermy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania. It has maintained its office variously at 1537 Chestnut Street, and 7151 Marsden Street, Philadelphia, Pa. From 1940 through 1944, it was engaged in the sale and distribution of a certain electrical device or apparatus designated as "United Short Wave Diathermy."

PAR. 2. In the course and conduct of its aforesaid business, respondent caused said device or apparatus, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof at their respective points of location in various other States of the United States; and maintained, and at all times mentioned herein has maintained, a course of trade in said device or apparatus in commerce between and among the various States of the United States.

PAR. 3. Respondent's device or apparatus is essentially a portable cabinet housing a transformer, a short-wave generator, two radio tubes, and two coils, which is designed and used for the generation of electrical short waves and the application thereof to parts of the human body by means of insulated electrodes. The electrical energy necessary for the operation of this device is secured by attaching it to domestic electrical current in the user's home. It operates upon approximately a 13 meter wave length, with a power output of about 160 watts. Said device has a control for modulating the power output and a time switch which will automatically limit its period of operation to a predetermined time, both of which may be regulated by the operator. When the two electrodes are applied to the user's body and the device or apparatus is put into operation, the passage of the electrical short waves between the electrodes creates heat within the body tissues of the user because of their resistance to the passage of such electrical currents. This device or apparatus has been offered for sale and sold to members of the public for use in giving self-administered applications of diathermy in their homes.

PAR. 4. In the course and conduct of its business as aforesaid, respondent, during the period 1940 through 1942, disseminated and caused the dissemination of false advertisements concerning its said United Short Wave Diathermy device or apparatus 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 has caused the dissemination of false advertisements concerning its device or apparatus by various means for the

purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said device or apparatus in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations disseminated and caused to be disseminated as aforesaid, by the United States mails, by advertisements in newspapers, by radio continuities, and other advertising literature, are the following:

ARTHRITIS

PAINS RELIEVED BY SHORT WAVE Diathermy. Ask your Doctor if you're suffering chronic pains of SINUS TROUBLE, LUMBAGO, SCIATICA, RHEUMATISM, NEURITIS, BURSITIS. **SHORT WAVE DIATHERMY** helps alleviate pain because of the deep penetrating and soothing heat it produces in the aching muscles, nerves and joints. **UNITED SHORT WAVE** treatments can now be taken easily and effectively in your own home after competent instructions. (Write for illustrated booklet.) **FREE TRIAL.** Call or write for Free home demonstration.

UNITED DIATHERMY, INC.

1537 Chestnut St., Phila., Pa.

The illustrated booklet referred to in the above advertisement contains, among other things, a picture of a woman with the device applied to her leg above and below her knee, under which is this statement:

As you can see in the pictures throughout this booklet, the method of applying the **UNITED SHORT WAVE Diathermy** is so simple that you can use it easily and effectively.

PAR. 5. By the use of the statements in the preceding paragraph and other similar representations not specifically set out herein, respondent represents that its device or apparatus, known as **United Short Wave Diathermy**, when used by members of the general public in the treatment of self-diagnosed diseases or ailments of the human body by individual self-application in the home is an effective means and method for the alleviation and relief of chronic pain in conditions of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, and sinus trouble.

PAR. 6. Respondent's representations concerning its said device or apparatus constitute false, deceptive, and misleading advertisements for the reason that they fail to reveal all of the facts material in the light of such representations or material with respect to the consequences which may result from the use of said device or apparatus

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under the conditions prescribed or under such conditions as are customary and usual.

The use of respondent's device or apparatus in applying high frequency electric currents to produce heat in body tissues for therapeutic purposes is a form of treatment powerful enough to do serious injury to the user if improperly applied. When used unskillfully, said device or apparatus may burn or otherwise seriously injure the person to whom it is applied. The application of diathermy treatment by an unskilled person in cases where there are advanced blood-vessel changes of the legs, which are usually characterized by severe pains in the extremities, may, in excess dosage, not only cause serious burns but may lead directly to gangrene and necessitate amputation of the leg. Neuritis is a symptom of some underlying cause or disease, such as tumor, tuberculosis, syphilis, cancer, or diabetes, and an attempt to relieve the pain resulting from such a condition by the use of a diathermy device or apparatus such as respondent's without seeking to secure proper diagnosis as to the cause of such pain may result in fatal delay in the seeking and securing such diagnosis and treatment of the underlying cause or disease. The application of diathermy in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue, and diathermy is definitely contraindicated in any acute inflammatory process, acute arthritis characterized by infection, acute bursitis, and sinus trouble where pus is present.

The safe and intelligent use of a diathermy device or apparatus such as respondent's 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. Diathermy is not a safe, therapeutic adjunct in the hands of an untrained person for unsupervised home use.

PAR. 7. The use by the respondent of the false, deceptive, and misleading statements and representations set out herein with respect to its device or apparatus, disseminated as aforesaid, has had the capacity and tendency to, and has, misled a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and has induced a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device or apparatus.

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CONCLUSION

The aforesaid acts and practices of the respondent 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. With respect to the other charges of the complaint, the evidence fails to show that respondent affirmatively represented its diathermy device as being safe and harmless; and as to the effectiveness of said device in alleviating or relieving chronic pain in conditions for which it was advertised, the issue was not adequately raised by the complaint, and consequently no findings have been made concerning it.

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, report 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 provisions of the Federal Trade Commission Act:

It is ordered, That respondent, United Diathermy, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of an electrical device or apparatus designated as "United Short Wave Diathermy" or any other device or apparatus of substantially similar character, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly disseminating or causing to be disseminated by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act any advertisement concerning said electrical device, or 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 said electrical device, which advertisement fails to reveal clearly, conspicuously, and unequivocally that said device or apparatus is not safe to use unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated

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and has prescribed the frequency and rate of application of such diathermy treatments and the user has been thoroughly and adequately instructed by a trained technician in the use of such diathermy device or apparatus.

It is further ordered, That for the reasons stated in the findings as to the facts herein, the other charges of the complaint be, and the same hereby are, dismissed without prejudice to the right of the Commission to institute such further proceedings as future facts may warrant.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF

MARYLAND GLASS & MIRROR CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5165. Complaint, May 24, 1944—Decision, Mar. 12, 1948*

Where glass used for window purposes was customarily sold by the manufacturers and sellers marked "Grade A" or "Grade B" according to its quality, and as "Double Strength" or "Single Strength" according to its strength or thickness, upon each sheet or pane, and upon the container in which packed; and thereafter a corporation engaged in the competitive interstate sale and distribution of said product to dealers and users, and in receiving, as thus engaged, "Grade B" glass, the individual sheets or panes of which were unlabeled—

- (a) Obliterated or altered the "Grade B" stamp, mark, or label upon the boxes or packages thereof and substituted therefor the term "Grade A," and sold and shipped or delivered such boxes or packages of "Grade B" window glass to dealers and users who had ordered and paid for "Grade A"; and
- (b) Affixed also to the unmarked individual sheets or panes of "Grade B" window glass a "Grade A" mark or label, and sold said "Grade B" window glass in less than case lots as and for "Grade A";

With the effect of misleading and deceiving customers and the purchasing public and inducing a substantial portion thereof to purchase its "Grade B" window glass as "Grade A" quality, whereby substantial trade was diverted unfairly to it from its competitors who did not thus misrepresent the quality of their products, to the serious injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and its competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. John L. York for the Commission.

Mr. Joseph Schottland, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Maryland Glass & Mirror Co., a corporation, 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