

Complaint

45 F. T. C.

IN THE MATTER OF
ADOLFO ENRIQUE BESOSACOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5590. Complaint, Oct. 1, 1948—Decision Mar. 22, 1949*

Where an individual engaged in the sale and distribution to purchasers in other States and in Central and South America, of a medicinal preparation designed as "Becker's Pills" and "Pastillas de Becker" which he offered to aid in counteracting the consequences of excessive use of liquor; through advertisements in Spanish in certain San Antonio and Los Angeles papers, and otherwise—

- (a) Falsely represented that said product, used as directed, would counteract or beneficially affect damage to the kidneys resulting from the excessive use of alcohol; restore the normal function of the kidneys and bladder and stimulate said organs in a natural manner; and would relieve and correct conditions such as swollen ankles, pains in the regions of the back and waist, burning sensations in the urethra and scanty and too frequent urination; and that use thereof constituted a competent and effective treatment for every disease or disorder of the kidneys or bladder; and
- (b) Failed to reveal facts which were material in the light of such representations or with respect to the consequences which might result from the use of his said product under prescribed or usual conditions in that the juniper oil contained therein would irritate normal kidneys and use thereof should never be undertaken when the kidneys are diseased in view of the serious injury which may result; use of digitalis and squill, which act as powerful heart stimulants and tend to accumulate in the body, may lead to serious injury to the heart and circulatory system; and said drugs in the amount supplied by such product, taken as directed, should only be used at the discretion and under the supervision of a qualified physician;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true, and that use of said preparation was safe and harmless, and with tendency and capacity so to do, and to induce said public by reason of said erroneous beliefs to purchase substantial quantities of his said product:

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.

Mr. Charles S. Cox 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 Adolfo Enrique Besosa, an individual 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. Adolfo Enrique Besosa is an individual doing business and trading as A. E. Besosa Co. and The Becker Medicine Co., with his office and principal place of business at 88 Front Street, New York 5, N. Y.

PAR. 2. Respondent is now and has been for more than 5 years last past, engaged in the business of selling and distributing a drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for the said product and the formula and directions for use thereof, are as follows:

Designation: Becker's Pills

Formula:

Extr. Asparagus Seed.....	1/4 gr.
Extr. Buchu.....	3/4 gr.
Squill.....	1/2 gr.
Extr. Digitalis.....	1/4 gr.
Podophyllin.....	1/10 gr.
Potassium nitrate.....	1 gr.
Juniper Oil.....	1/2 min.

Directions:

For adults, four (4) tablets a day, that is, one (1) after each meal and one (1) on retiring for the night. For children between 12 and 16 years of age, two (2) tablets a day, also after meals, one (1) in the morning and one (1) in the evening.

Before commencing to take Becker's pills (stimulant diuretic for the kidneys) it is desirable to have the bowels acting regularly. Take one or two Becker's DEL-OGAR tablets the night before, and the following day commence with Becker's pills.

Avoid or eat very little meats, sweets and highly seasoned foods. Avoid or take very little tea, coffee and especially liquors and all kinds of drinks containing alcohol.

Respondent causes his said product, when sold, to be transported from his aforesaid place of business in New York to purchasers thereof located in various other States of the United States and from the United States and in Central and South America. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said product in commerce among and between the various States of the United States and between the United States and Central and South America.

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PAR. 3. In the course and conduct of his said business, respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning his said product by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in the newspaper *La Prensa* published in San Antonio, Tex., in the issues of June 13, 1943; October 17, 1943; March 3, 1946; June 30, 1946; October 27, 1946; December 15, 1946; and in the newspaper *La Opinion* published in Los Angeles, Calif., in the issues of March 24, 1946, and August 11, 1946, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has disseminated and caused the dissemination of, advertisements concerning his said product by various means, including, but not limited to the advertisements referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of his said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The advertisements in the aforesaid newspapers are printed in the Spanish language. The English translations are as follows:

LADIES.—Do not permit that your husbands, sons, brothers, make excessive use of liquor. Alcohol is an enemy of humankind, an ally of death.' Liquors and alcoholic drinks hurt the kidneys and interrupt their function, at times with fatal consequences. Persons who take liquor in excess ought to also take *Pastillas de Becker* to help their kidneys and to offset as far as possible the harm caused by alcohol.

URETHRA.—Ardor in the Urethra when making water; to make it with difficulty; to get up nights, pain in the region of the back and waist, are sometimes signs that something is wrong with the kidneys, that it is time to stimulate them or "oil" them, same as any other machinery is oiled. And to stimulate the action of the kidneys and give them the help they need, we recommend *Pastillas de Becker*, the antique and accredited diuretic.

ATTACK.—Attack in time any disorder or obstruction of the normal functions of the kidneys and bladder. Attack them with a good diuretic remedy that will contribute to stimulate and re-establish said functions; a remedy known and accredited such as *Pastillas de Becker*, manufactured for the last 30 years. Ardor in the urethra; getting up nights; a sensitive back; a slight swelling around the ankles are signs that the hour to attack has arrived.

ARDOR.—Ardor in the urethra is at times a sign of irritation of the bladder and urinary passage and this condition must be attended to before it gets worse. For these cases of ardor when urinating, getting up nights, sensitive back, etc., the public of the 3 Americas has made use for the last 30 years of the accredited *Pastillas de Becker*. There must be a reason. 30 years is one third of a century.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar

thereto, not specifically set out herein, respondent represented that the use of the product, as directed, will counteract or beneficially affect damage to the kidneys resulting from the excessive use of alcohol; will restore the normal functions of the kidneys and bladder and will stimulate these organs to act in a natural manner; will relieve and correct conditions such as swollen ankles, pains in the regions of the back and waist, a burning sensation in the urethra and scanty and too frequent urination, and that the use of said product is a competent and effective treatment for every disease or disorder of the kidneys or bladder.

PAR. 6. The aforesaid advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondent's product will have no beneficial effect in counteracting or offsetting damage to the kidneys resulting from the excessive use of alcohol or resulting from any other cause. It will not restore the normal functions of the kidneys or bladder and will not cause said organs to act in a normal manner by stimulation or otherwise. Its use will not relieve or correct swollen ankles, pains in the regions of the back or waist or in any other region, a burning sensation in the urethra or scanty or too frequent urination. Said product does not constitute a competent or effective treatment for any disease or disorder of the kidneys or bladder.

PAR. 7. The advertisements disseminated 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 said Becker's Pills to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, the Juniper Oil contained in the preparation will, under certain conditions, irritate normal kidneys, and this drug should never be used when the kidneys are diseased. To do so may result in serious injury. The drugs digitalis and squill act as powerful heart stimulants and tend to accumulate in the body. Their use over a period of time may lead to serious injury to the heart and circulatory system. These drugs in the amount supplied by respondent's product, taken as directed, should only be used at the direction and under the supervision of a qualified physician.

PAR. 8. The use by the respondent of the foregoing false, misleading and deceptive statements and representations has had, and now has,

the tendency and capacity 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 the use of the preparation is safe and harmless and to induce the purchasing public to purchase substantial quantities of respondent's said product because of such erroneous and mistaken beliefs.

PAR. 9. The aforesaid acts and practices of respondent, as alleged herein, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning and intent 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 1, 1948, issued and thereafter served its complaint in this proceeding upon respondent, Adolfo Enrique Besosa, an individual, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 29, 1948, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Adolfo Enrique Besosa is an individual doing business and trading as A. E. Besosa Co. and The Becker Medicine Co., with his office and principal place of business at 88 Front Street, New York 5, N. Y.

PAR. 2. Respondent is now and has been for more than 5 years last past, engaged in the business of selling and distributing a drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for the said product and the formula and directions for use thereof, are as follows:

Designation: Becker's Pills

Formula:

Extr. Asparagus Seed.....	¼ gr.
Extr. Buchu.....	¾ gr.
Squill	½ gr.
Extr. Digitalis.....	¼ gr.
Podophyllin.....	⅒ gr.
Potassium nitrate.....	1 gr.
Juniper Oil.....	½ min.

Directions:

For adults, four (4) tablets a day, that is, one (1) after each meal and one (1) on retiring for the night. For children between 12 and 16 years of age, two (2) tablets a day, also after meals, one (1) in the morning and one (1) in the evening.

Before commencing to take Becker's pills (stimulant diuretic for the kidneys) it is desirable to have the bowels acting regularly. Take one or two Becker's DEL-OGAR tablets the night before and the following day commence with Becker's pills.

Avoid or eat very little meats, sweets and highly seasoned foods. Avoid or take very little tea, coffee and especially liquors and all kinds of drinks containing alcohol.

Respondent causes his said product, when sold, to be transported from his aforesaid place of business in New York to purchasers thereof located in various other States of the United States and in Central and South America. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said product in commerce among and between the various States of the United States and between the United States and Central and South America.

PAR. 3. In the course and conduct of his said business, respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning his said product by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in the newspaper *La Prensa* published in San Antonio, Tex., in the issues of June 13, 1943; October 17, 1943; March 3, 1946; June 30, 1946; October 27, 1946; December 15, 1946; and in the newspaper *La Opinion* published in Los Angeles, Calif., in the issues of March 24, 1946, and August 11, 1946, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has disseminated and caused the dissemination of, advertisements concerning his said product by various means, including, but not limited to the advertisements referred to above, for the purpose of inducing, and

which were likely to induce, directly or indirectly, the purchase of his said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The advertisements in the aforesaid newspapers are printed in the Spanish language. The English translations are as follows:

LADIES.—Do not permit that your husbands, sons, brothers, make excessive use of liquor. Alcohol is an enemy of humankind, an ally of death. Liquors and alcoholic drinks hurt the kidneys and interrupt their function, at times with fatal consequences. Persons who take liquor in excess ought to also take Pastillas de Becker to help their kidneys and to offset as far as possible the harm caused by alcohol.

URETHRA.—Ardor in the Urethra when making water; to make it with difficulty; to get up nights, pain in the region of the back and waist, are sometimes signs that something is wrong with the kidneys, that it is time to stimulate them or "oil" them, same as any other machinery is oiled. And to stimulate the action of the kidneys and give them the help they need, we recommend Pastillas de Becker, the antique and accredited diuretic.

ATTACK.—Attack in time any disorder or obstruction of the normal functions of the kidneys and bladder. Attack them with a good diuretic remedy that will contribute to stimulate and re-establish said functions; a remedy known and accredited such as Pastillas de Becker, manufactured for the last 30 years. Ardor in the urethra; getting up nights; a sensitive back; a slight swelling around the ankles are signs that the hour to attack has arrived.

ARDOR.—Ardor in the urethra is at times a sign of irritation of the bladder and urinary passage and this condition must be attended to before it gets worse. For these cases of ardor when urinating, getting up nights, sensitive back, etc. the public of the 3 Americas has made use for the last 30 years of the accredited Pastillas de Becker. There must be a reason. 30 years is one third of a century.

PAR. 5. Through the use of the advertisements containing the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, respondent represented that the use of the product, as directed, will counteract or beneficially affect damage to the kidneys resulting from the excessive use of alcohol; will restore the normal functions of the kidneys and bladder and will stimulate these organs to act in a natural manner; will relieve and correct conditions such as swollen ankles, pains in the regions of the back and waist, a burning sensation in the urethra and scanty and too frequent urination, and that the use of said product is a competent and effective treatment for every disease or disorder of the kidneys or bladder.

PAR. 6. The aforesaid advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondent's product will have no beneficial effect in counteracting or offsetting damage to the kidneys resulting from the excessive use of alcohol or resulting from any other cause. It will not restore the

normal functions of the kidneys or bladder and will not cause said organs to act in a normal manner by stimulation or otherwise. Its use will not relieve or correct swollen ankles, pains in the regions of the back or waist or in any other region, a burning sensation in the urethra or scanty or too frequent urination. Said product does not constitute a competent or effective treatment for any disease or disorder of the kidneys or bladder.

PAR. 7. The advertisements disseminated 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 said Becker's Pills to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, the Juniper Oil contained in the preparation will, under certain conditions, irritate normal kidneys, and this drug should never be used when the kidneys are diseased. To do so may result in serious injury. The drugs digitalis and squill act as powerful heart stimulants and tend to accumulate in the body. Their use over a period of time may lead to serious injury to the heart and circulatory system. These drugs in the amount supplied by respondent's product, taken as directed, should only be used at the direction and under the supervision of a qualified physician.

PAR. 8. The use by the respondent of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity 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 the use of the preparation is safe and harmless and to induce the purchasing public to purchase substantial quantities of respondent's said product because of such erroneous and mistaken beliefs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This preceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent thereto, in which answer said respondent admitted all the

material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Adolfo Enrique Besosa, individually and trading as A. E. Besosa Co. and The Becker Medicine 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 or distribution of respondent's medicinal preparation now designated "Becker's Pills" and as "Pastillas de Becker," or any preparation of substantially similar composition or possessing substantially similar properties, under whatever name sold, 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 will have beneficial effect in counteracting or offsetting damage to the kidneys resulting from the excessive use of alcohol or resulting from any other cause;

(b) That said preparation will restore the normal functions of the kidneys or bladder or will cause said organs to act in a normal manner by stimulation or otherwise;

(c) That said preparation will relieve or correct swollen ankles, pains in the regions of the back or waist or in any other region, or a burning sensation in the urethra or scanty or too frequent urination;

(d) That said preparation constitutes a competent or effective treatment for any disease or disorder of the kidneys or bladder.

(2) 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 fails to reveal:

(a) That the Juniper Oil in said preparation will irritate normal kidneys, and that its use by a person whose kidneys are diseased may result in serious injury; and

(b) That each of the drugs digitalis and squill in said preparation tends to accumulate in the body, and that the use of these drugs, or either of them, over a period of time may result in serious injury to the heart and circulatory system of the user, and that said drugs should only be used at the direction and under the supervision of a qualified physician.

(3) 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 preparation, which advertisement contains any of the representations prohibited in paragraph (1) hereof or which fails to comply with the affirmative requirements set forth in paragraph (2) hereof.

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.'

IN THE MATTER OF
FAY A. NEWCOMB, DOING BUSINESS AS DR. F. A.
NEWCOMB

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

Docket 4962. Complaint, May 11, 1943—Decision, Mar. 23, 1949

Where an individual engaged in the interstate sale and distribution of a home treatment for various diseases and ailments, and, more particularly, cataract of the eye, and which consisted of (1) a double-contact electric device, (2) a liquid "Ray Solution" (formerly "Electric Ray Solution"), and (3) a liquid for internal use designated "Cataract Tonic," together with which said individual recommended the use of a prescribed and limited diet; in newspaper advertisements, pamphlets, form letters, testimonials, circulars, and other advertising—

- (a) Falsely represented that the use of his said home treatment constituted a competent, dependable and effective remedy or treatment for cataracts of the eyes, opacities of the vitreous and aqueous humor, corneal ulcers, optic nerve atrophy, amblyopia, asthenopia, dimness and painful vision, and some thirty-five other specified ailments including nervous conditions, arthritis, neuritis, sinus trouble, jaundice, colitis, anemia, diabetes, apoplexy, paralysis, rheumatism, asthma, pleurisy, constipation, prostatic trouble, high blood pressure, gout, appendicitis, bronchitis, bruises, boils and infections, deafness and earache and hay fever and diseases of the kidneys;

The facts being the value of said treatment was limited to such temporary palliative relief as the electric device, used as directed, might afford, due to the heat supplied to the affected area, for symptoms of arthritis, rheumatism, and earache;

- (b) Falsely represented that deposits of lime in the crystalline lens of the eye could be removed through absorption by the blood, and that the absorption method was recognized and used by the best doctors in Europe and the United States in the treatment of cataracts; and
- (c) Falsely represented that said "Cataract Tonic" eliminated excess salts from the blood and prevented the formation of cataracts in the eyes;

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

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 the complaint also charged respondent with false and misleading advertisements by reason of failure to disclose affirmatively in advertising facts material with respect to the harmful consequences which might result from the use of said preparations—which contained potassium iodide, and one of which contained an irritant laxative—in which it further appeared that subsequent to the issuance of the complaint the Commission