

Syllabus

IN THE MATTER OF
PAUL T. LYNCH TRADING AS LYNCH'S DIATHERMY
COMPANY

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

Docket 5999. Complaint, June 16, 1952—Decision, Nov. 18, 1952

The use of a diathermy device in applying high frequency electrical current 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. Application of such treatment by an unskilled person in cases where there are advanced blood vessel changes of the legs, usually characterized by severe pains in the extremities, may, in excess dosage, not only cause serious burns but may lead to gangrene and necessitate amputation of the leg; and application of heat produced thereby in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue.

Pains commonly believed to be associated with neuritis are frequently symptomatic of some underlying cause or disease, such as tumor, tuberculosis, syphilis, cancer and diabetes, and an attempt to relieve the pain resulting from such conditions by the use of a diathermy device such as respondent's without securing proper diagnosis may result in fatal delay in the treatment of the underlying cause.

Where an individual engaged in the interstate sale and distribution of his "Lynch's Short Wave Diathermy" to members of the purchasing public for use in treatment of self-diagnosed diseases by self-application in the home; in advertising through newspapers, booklets and circulars, and otherwise—Represented that said device, used by members of the general public in the treatment of self-diagnosed diseases, would relieve the pains of chronic arthritis, neuritis, sciatica, sinus, and rheumatism, and might be safely used by them in their homes, without revealing that the safe use of such a device by the public required diagnosis by a competent physician, determination of whether or not diathermy was indicated and, if so, the frequency and rate of application, thorough and adequate instruction by a trained technician in the use thereof, including proper placement of the electrodes, control and regulation of the amount of heat applied, and preventive measures against burns and tissue destruction;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said device was entirely safe and its use free from ill effects, and with effect of inducing such public, because of its mistaken belief, to purchase the device:

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.

Complaint

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Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Paul L. Lynch, of Philadelphia, Pa., 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 Paul T. Lynch, an individual trading as Lynch's Diathermy Company, 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 Paul T. Lynch is an individual trading as Lynch's Diathermy Company with his office and principal place of business located at 1539 72nd Avenue, Philadelphia, Pennsylvania.

PAR. 2. The respondent is now, and for more than one year last past has been engaged in the sale and distribution of a certain device, as "device" is defined in the Federal Trade Commission Act, designated "Lynch's Short Wave Diathermy."

In the course and conduct of his said business, the respondent causes said device, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device in commerce between and among the various States of the United States.

PAR. 3. Respondent's device is essentially a portable cabinet housing a transformer, a short wave generator, radio tubes and coils, designed 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 the domestic electrical current in the user's home. When the electrodes are applied to the user's body and the device is put into operation, the passage of the electrical short waves between the electrodes creates heat within the body tissue of the user because of their resistance to the passage of such electrical currents. Respondent's device is offered for sale and sold to members of the purchasing public for use in the treatment of self-diagnosed diseases by self-application in the home.

PAR. 4. In the course and conduct of his aforesaid business respondent has disseminated and is now disseminating, and has caused and

is now causing the dissemination of, advertisements concerning his said device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and in booklets and circulars for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said device 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 said device 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 hereinabove set forth, by advertisements inserted in newspapers and in other advertising literature are the following:

CHRONIC PAINS of
RHEUMATISM
ARTHRITIS
NEURITIS
SCIATICA
and SINUS
ALLEVIATED
by SHORT WAVE
DIATHERMY

If you suffer the excruciating pains of chronic muscular and rheumatic ailments * * * take hope! Yes, if your recurring aches and pains prevent you from working efficiently * * * deprive you of the happiness that is rightfully yours * * * take hope! In many cases SHORT WAVE DIATHERMY has brought blessed relief where all other methods have failed. This pamphlet has been prepared to acquaint you with SHORT WAVE DIATHERMY * * * to tell you what it may do to bring new joy and happiness into your life!

THE FIRST STEP IS UP TO YOU!

Today—call or write for a FREE demonstration in your own home. You may be suffering needlessly * * * you owe it to yourself, and your family to investigate Short Wave Diathermy.

ARTHRITIS

FREE BOOKLET

* * * tells all about proven method for alleviating pains of chronic Arthritis, Neuritis, Sciatica, Sinus, Rheumatism! Just send your name and address (or phone) for your free copy! It describes in full the modern method prescribed by doctors and used in hospitals and homes throughout America! You must read the exciting information this Free Booklet contains * * * for you may be

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suffering needlessly. Learn how after medical examination and complete instruction, you can have his modern method in your home for possible alleviation of excruciating chronic muscular and rheumatic pains. Send your name and address * * * or phone * * * today! No obligation, of course!

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 his device, use by members of the general public in the treatment of self-diagnosed diseases, will relieve the pains of chronic arthritis, neuritis, sciatica, sinus and rheumatism, and may be safely used by members of the public in their homes.

PAR. 6. The aforesaid advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act for the reason that they fail to reveal facts material in the light of the representations made and facts material with respect to the consequences which may result from the use of said device under the conditions prescribed or under such conditions as are customary and usual.

The use of respondent's device in applying high frequency electrical 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 may burn or otherwise seriously injure the person to whom it is applied. The application of such 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. Pains commonly believed to be associated with neuritis are frequently symptomatic of some underlying cause or disease, such as tumor, tuberculosis, syphilis, cancer and diabetes and an attempt to relieve the pain resulting from such conditions by the use of a diathermy device such as respondent's without securing proper diagnosis as to the cause of such pain may result in fatal delay in the treatment of the underlying cause of such symptoms. The application of heat produced by respondent's device in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue.

The safe use of a diathermy device such as respondent's, by members of the general public in their homes, requires that there first be a competent diagnosis by a competent physician, a determination of whether or not diathermy is indicated, and, if so, the frequency and rate of application, thorough and adequate instruction by a trained technician in the use of the device including, among other things, the proper

placement of the electrodes, control and regulation of the amount of heat to be applied and preventive measures against burns and tissue destruction.

PAR. 7. The use by the respondent of the statements and representations set out herein with respect to respondent's device, without revealing facts material in the light of the representations made, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's device is entirely safe and its use free from ill effects and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device.

PAR. 8. 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated November 18, 1952, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 16, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Paul L. Lynch, designated and referred to in the complaint as Paul T. Lynch, an individual trading as Lynch's Diathermy Company, charging him with unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After respondent filed his answer in this proceeding and at the initial hearing, a stipulation was entered into by and between Jesse D. Kash, counsel in support of the complaint, and said respondent that a statement of facts dictated into and made a part of the record in this proceeding may be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, without presentation of proposed findings and conclusions or oral argument. The said stipulation as to the facts expressly provides

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that upon appeal to or review by the Commission said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer and stipulation, said stipulation having been approved by the hearing examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Paul L. Lynch, designated and referred to in the complaint as Paul T. Lynch, is an individual trading as Lynch's Diathermy Company with his office and principal place of business located at 1539 72nd Avenue, Philadelphia, Pennsylvania.

PAR. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a certain device, as "decisive" is defined in the Federal Trade Commission Act, designated "Lynch's Short Wave Diathermy."

In the course and conduct of his said business, the respondent causes said device, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device in commerce between and among the various States of the United States.

PAR. 3. Respondent's device is essentially a portable cabinet housing a transformer, a short wave generator, radio tubes and coils, designed 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 the domestic electrical current in the user's home. When the electrodes are applied to the user's body and the device 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. Respondent's device is offered for sale and sold to members of the purchasing public for use in the treatment of self-diagnosed diseases by self-application in the home.

PAR. 4. In the course and conduct of his aforesaid business respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his

said device by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and in booklets and circulars for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said device by various means including, but not limited to, the advertisements referred to above for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said device 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 hereinabove set forth, by advertisements inserted in newspapers and in other advertising literature are the following:

CHRONIC PAINS of
RHEUMATISM
ARTHRITIS
NEURITIS
SCIATICA
and SINUS

ALLEVIATED
by SHORT WAVE
DIATHERMY

If you suffer the excruciating pains of chronic muscular and rheumatic ailments * * * take hope! Yes, if your recurring aches and pains prevent you from working efficiently * * * deprive you of the happiness that is rightfully yours * * * take hope! In many cases SHORT WAVE DIATHERMY has brought blessed relief where all other methods have failed. This pamphlet has been prepared to acquaint you with SHORT WAVE DIATHERMY * * * to tell you what it may do to bring new joy and happiness into your life!

THE FIRST STEP IS UP TO YOU!

Today—call or write for a FREE demonstration in your own home. You may be suffering needlessly * * * you owe it to yourself, and your family to investigate Short Wave Diathermy.

ARTHRITIS

FREE BOOKLET

* * * tells all about proven method for alleviating pains of chronic Arthritis, Neuritis, Sciatica, Sinus, Rheumatism! Just send your name and address (or phone) for your free copy! It describes in full the modern method prescribed by doctors and used in hospitals and homes throughout America! You must read the exciting information this Free Booklet contains * * * for you may be suffering needlessly. Learn how after medical examination and complete instruction, you can have this modern method in your home for possible alleviation

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of excruciating chronic muscular and rheumatic pains. Send your name and address * * * or phone * * * today! No obligation, of course!

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 his device, used by members of the general public in the treatment of self-diagnosed diseases, will relieve the pains of chronic arthritis, neuritis, sciatica, sinus and rheumatism, and may be safely used by members of the public in their homes.

PAR. 6. The aforesaid advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act for the reason that they fail to reveal facts material in the light of the representations made and facts material with respect to the consequences which may result from the use of said device under the conditions prescribed or under such conditions as are customary and usual.

The use of respondent's device in applying high frequency electrical 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 may burn or otherwise seriously injure the person to whom it is applied. The application of such 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. Pains commonly believed to be associated with neuritis are frequently symptomatic of some underlying cause or disease, such as tumor, tuberculosis, syphilis, cancer and diabetes and an attempt to relieve the pain resulting from such conditions by the use of a diathermy device such as respondent's without securing proper diagnosis as to the cause of such pain may result in fatal delay in the treatment of the underlying cause of such symptoms. The application of heat produced by respondent's device in any area of the body where appreciation of heat has been impaired or lost may result in serious burns and destruction of tissue.

The safe use of a diathermy device such as respondent's, by members of the general public in their homes, requires that there first be a competent diagnosis by a competent physician, a determination of whether or not diathermy is indicated, and, if so, the frequency and rate of application, thorough and adequate instruction by a trained technician in the use of the device including, among other things, the proper placement of the electrodes, control and regulation of the amount of

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heat to be applied and preventive measures against burns and tissue destruction.

PAR. 7. The use by the respondent of the statements and representations set out herein with respect to respondent's device, without revealing facts material in the light of the representations made, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's device is entirely safe and its use free from ill effects and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said device.

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.

ORDER

It is ordered, That the respondent Paul L. Lynch, designated and referred to in the complaint as Paul T. Lynch, an individual trading as Lynch's Diathermy Company, or under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the sale, offering for sale or distribution of a device designated as "Lynch's Short Wave Diathermy" or any other device of substantially similar character, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. 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 for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of respondent's device, which advertisement fails to clearly and conspicuously reveal that said device is not safe for use in the home for any self-diagnosed condition unless and until a competent medical authority has determined, as a result of diagnosis, that the use of diathermy is indicated and has prescribed the frequency and rate of application of the treatments and the user has been adequately instructed by a trained technician in the use of such device;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, of respondent's device, which advertisement fails to comply with the requirements set forth in Paragraph 1 hereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (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 they have complied with the order to cease and desist [as required by said declaratory decision and order of November 18, 1952].

Syllabus

IN THE MATTER OF

C. G. WHITLOCK CHEMICAL COMPANY

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5823. Complaint, Nov. 1, 1950—Decision, Nov. 20, 1952*

Solutions generally known as "anti-freeze" for the protection of gasoline engines have been on the market and sold to the purchasing public throughout the United States for many years and have proved dependable in protecting the engines from the effect of cold without themselves causing damage, so that when such a product is thus designated a substantial portion of said public believes that it may be used without harm.

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Frigid-O-BG" product to protect the cooling system of gasoline engines from freezing—

Represented in advertising and through labels attached to the container that its product was an anti-freeze preparation which prevented freezing without harm to the engine or cooling system, that it contained an effective rust inhibitor and would prevent rust or corrosion of all parts of the engine it contacted, and particularly the cooling system; that it would maintain a water level in the radiator to the extent that the engine would not overheat; and that it was a permanent type anti-freeze;

The facts being that it would cause serious corrosion of the cylinder block, water pump, radiator, and especially aluminum parts; through such corrosion would cause partial or complete stoppage of the water passages in the radiator with consequent overheating; would expand and create foam with resulting leakage and loss of the material and impairment of circulation; would not maintain a water level and so would result in overheating; and was not a permanent anti-freeze;

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

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.

As respects the fact that it appeared that respondent in July 1950 filed a petition in the District Court of Illinois for reorganization under the Bankruptcy Act and that an amended petition was thereafter filed and approved, and the assets, with certain exceptions, sold to a purchaser who agreed to sell those pledged and remit the proceeds to the court: it further appeared that the purchaser had continued to use the corporate name and was continuing the business in which the corporation was engaged before such reorganization.