

IN THE MATTER OF
A. C. LIEPE PHARMACY, INC. ET AL.

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

Docket 5873. Complaint, Apr. 17, 1931—Decision, June 29, 1953

The basic cause of varicose conditions is impaired circulation due to a dilated thickened vein condition known as a varicose vein; and varicose ulcers—sometimes referred to as leg sores, open legs, or discharging wounds—are ulcerated areas of the epidermis of the leg due to poor circulation caused by such a vein.

Proper treatment of a leg ulcer requires a careful diagnosis as the treatment is dictated by the underlying cause, there being many conditions which might result in an ulcer which would be indistinguishable by the layman from a varicose ulcer, proper treatment of which consists of treatment of the varicose vein and other measures, including, possibly, X-ray or ultra-violet therapy, use of antibiotics, and surgical treatment.

Eczema is a catarrhal inflammation of the skin characterized by redness and itching, among other things; there are many types of said ailment, and many causes; and it is necessary to diagnose carefully the conditions thereof before treatment, since the latter varies greatly depending upon the cause of the condition and its state at the time.

It is extremely difficult to distinguish between ulcers, inflamed areas around veins, and eczema, due to varicose conditions and those due to other causes such as tuberculosis, diabetes, syphilis and many others, and the ordinary layman patient is not able to make such a determination.

Early determination of the cause of such conditions is extremely important as what appears to the layman to be a condition due to a varicose vein may be in reality due to a very serious underlying cause; and certain of such conditions—for which the proper treatment is entirely different from that appropriate where the condition is due to varicose veins—may, if allowed to develop, endanger the patient's life.

Where a corporation and its two officers, engaged in the interstate sale and distribution of several preparations sold in combination and sometimes referred to as "The Liepe Methods," which included their "Liepe Cleansing Oil," "Bland Oil," "Dusting Powder Soothing," "Dusting Powder Protective," "Special Ointment No. 1," "Special Ointment No. 2" and their "Liepe Special Bandage";

In magazine and newspaper advertisements which invited persons suffering from varicose ulcers and open leg sores to write for their booklet "The Liepe Methods for Home Use," together with which they sent a "Question Blank" for use in the purchase of their said products; and through reproductions in said booklet and in folders and circulars, of excerpts from testimonials—

1520

Syllabus

- (a) Falsely represented, directly or by implication that the use of their said products as directed constituted a competent and effective treatment for, and would cure, varicose ulcers, leg sores, open legs, discharging wounds and inflamed areas around the veins; and
- (b) Represented that their said preparation would permanently relieve the pain, itching, burning, and swelling accompanying the aforesaid conditions, promote better circulation, prevent infection and ulcer formation, aid healing and eliminate pus and other discharges from leg sores;

The facts being that in cases of said leg ailments they would not relieve swelling in excess of preventing it while the bandage was applied; prevent any other than surface infections; aid healing other than by providing an anti-septic protective covering for the affected area; or relieve pain, itching, or burning in excess of providing relief while the preparations were in such area;

- (c) Represented that their said preparations would cure eczema and constituted a competent and effective treatment therefor;

The facts being that while their method, used as directed, would temporarily relieve itching and burning while their preparation, including the ointments with their content of zinc oxide—commonly used in such cases—were applied, it would not cure eczema or have any beneficial effect on its underlying causes;

- (d) Falsely represented that they would be able properly to diagnose the ailments of persons concerned and determine and supply the medicaments which would successfully treat them; and ascertain the condition of the particular person after using their said products and determine and supply proper medicaments for his continued treatment; through the use of and answers to said "Question Blank", with its questions concerning the general health and the symptoms of those who had "inflamed areas around the veins in legs due to varicose conditions", etc., or "symptoms of eczema", through the order blank upon which the person was instructed to check the nature of his afflictions and remit the amount set out, and through the accompanying "Report Blank" on which, along with order for additional preparations, the purchaser was to answer a list of questions as to the effect of the use of said preparation on his symptoms;

Notwithstanding the fact that the ordinary layman patient is not able to distinguish between ulcers, inflamed areas around veins, and eczema due to various conditions and those due to such causes as tuberculosis, diabetes, syphilis, and many others; nor to furnish sufficient information as to his condition by means of the "Question Blank" or "Report Blank" to enable even a very skilled reader to determine his true condition and the proper treatment therefor, including certain very serious conditions for which respondents' methods would not provide a successful treatment; and

- (e) Represented through the use of the heading "Prescription Laboratory" on form letters which they sent to purchasers in the solicitation of additional sales of their said preparations, that their medicaments were especially prepared for each person on the basis of information furnished;

Notwithstanding the fact that all orders were filled by one of said officers, a pharmacist, from their stock preparations;

Complaint

49 F. T. C.

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby into the purchase of substantial quantities of their said products:

Held, That said representations constituted false advertisements within the intent and meaning of the Federal Trade Commission Act, and that their said acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' use of the term "Prescription Laboratory" on their letters to prospective purchasers, as above set forth—which use, considered alone, under other circumstances, might appear innocuous—such a heading, employed in conjunction with respondents' "Question Blanks" and "Report Blanks", heightened the false implication that respondents were compounding the preparations for each purchaser individually on the basis of the information he furnished on said blanks as to his symptoms, and thus used, was admitted by respondents to have a misleading effect.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. B. G. Wilson for the Commission.

Mr. Charles H. Rowan, of Milwaukee, Wis., for respondents.

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 A. C. Liepe Pharmacy, Inc., a corporation, and William F. Lambeck, Warren G. Gehrs and Anne C. Gehrs, individually and as officers of said corporation, hereinafter referred to as respondents, have 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 A. C. Liepe Pharmacy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin. The corporation trades under the name of "Liepe Methods." Respondent William F. Lambeck is President, Warren G. Gehrs is Secretary-Treasurer, and Anne C. Gehrs is Vice-President of the corporate respondent. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondents is located at 3250 North Green Bay Avenue, Milwaukee 12, Wisconsin.

PAR. 2. The respondents are now and for several years last past have been engaged in the business of selling and distributing various

1520

Complaint

preparations containing drugs as "drug" is defined in the Federal Trade Commission Act. These preparations are sometimes referred to as "The Liepe Method" and "The Liepe Methods."

The designations used by respondents for their preparations, the formula and directions for use are as follows:

Designation: "Liepe Cleansing Oil."

Formula:

Olive Oil—oz. $\frac{1}{2}$
Mineral Oil—gr. oz. 4

Directions for use:

Liepe Cleansing Oil may be used as a bland cleansing agent preparatory to applications of Liepe Special Ointment. It should be "daubed on gently without rubbing."

Designation: "Liepe Bland Oil."

Formula:

Zinc Oxide Z VI
Olive Oil—oz. 3
Lime Water qs. oz. 4

Directions for use:

Liepe Bland Oil is intended for use in connection with Liepe Special Ointment No. 2. Shake the bottle thoroughly so that no sediment can be seen at the bottom. Then apply a thin layer of Liepe Bland Oil on top of the ointment.

Designation: "Liepe Dusting Powder Soothing."

Formula:

Thymol Iodide—gr. 2
Benzocaine—dr. 1
 $\frac{1}{8}$ oz.

Directions for use:

Liepe Dusting Powder Soothing is intended for use in conjunction with Liepe Special Ointment No. 2. Dust a little of the powder over the surface with a small brush as follows: After dipping the brush into the box of powder, hold it about an inch away from the surface and tap it gently with the index finger of the other hand. Then apply a thin layer of Liepe Special Ointment No. 2 over the powder.

Designation:

"Liepe Dusting Powder Protective."

Formula:

Zinc Oxide—dr. $2\frac{1}{2}$
Zinc Stearate—dr. $2\frac{1}{2}$
Starch—dr. 7
Carbolic Acid—gr. 22
 $1\frac{1}{2}$ oz.

Complaint

49 F. T. C.

Directions for use:

Liepe Dusting Powder Protective is intended for use in conjunction with Liepe Special Ointment No. 1. After applying the ointment, dust a thin layer of powder over it. Take a piece of cotton in the left hand, dip it in the box of dusting powder, and hold your hand directly above the spot where you wish the powder to fall. Then gently tap your left hand with the right hand, and the powder will fall where desired. Be careful that the cotton does not touch the ointment.

Designation: "Liepe Special Ointment No. 1."

Formula:

Zinc Oxide—8½ lbs.
Starch—6 lbs.
Mineral Oil—32 oz.
Prepared Ointment—2½ lbs.
Yellow Wax—½ lb.
Acid Salicylic—½ lb.
Carbolic Acid—oz. 2½
Liq. Carbonis Detergens—oz. 5
Oil Wintergreen—oz. 2½
White Petrolatum—32 lbs.

Directions for use:

Apply ointment to the skin as often as may be required to relieve itching and burning.

Designation: "Liepe Special Ointment No. 2."

Formula:

Carbolic Acid—oz. 8
Zinc Oxide—5 lbs.
Prepared Ointment—5 lbs.
Mineral Oil—½ gal.
Yellow Wax—1½ lbs.
White Petrolatum—qs.—50 lbs.

Directions for use:

First, clean skin with Liepe Cleansing Oil. Then apply a thin layer of Liepe Special Ointment No. 2 covering the same with a thin layer of Liepe Bland Oil, and protect with soft, white muslin. Repeat application daily.

PAR. 3. Respondents cause their said preparations, when sold, to be transported from their place of business in the State of Wisconsin to the purchasers thereof located in various States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said preparations between and among the various States of the United States. Their volume of business in said trade has been and is substantial.

PAR. 4. It is the practice of respondents to insert advertisements in magazines and newspapers of general circulation inviting persons

suffering from leg troubles, such as varicose ulcers and other leg sores, to write for the booklet "The Liepe Methods for Home Use." Upon receipt of a request for this booklet, it is sent, together with a "Question Blank" for use in case respondents' preparations are ordered. This blank consists of a list of questions concerning the general health of the person and specific questions with respect to "inflamed areas around veins in legs," "varicose ulcers or wounds" and "eczema." A part of the "Question Blank" consists of an order upon which the person is to check the nature of his affliction and remit the amount set out in connection therewith. Upon receipt of the completed "Question Blank" and order respondents forward the preparations to be used and detailed directions for use. These directions provide that Liepe Cleaning Oil, Liepe Special Ointment No. 2, Liepe Bland Oil and bandage be used for inflamed areas around veins; that Liepe Cleansing Oil, Liepe Dusting Powder Soothing, Liepe Special Ointment No. 2 and bandage be used for varicose ulcers (leg sores or open legs) and Liepe Cleansing Oil, Liepe Special Ointment No. 1, Liepe Bland Oil and Liepe Dusting Powder Protective and bandage be used for eczema. The letter acknowledging receipt of orders and other letters used in connection with the business bear a picture of a mortar and pestle and the words "Prescription Laboratory." Respondents' "Methods" also include "Report" blanks upon which the users of their preparations are supposed to report their progress from time to time.

PAR. 5. Through the use of the "Question Blank," respondents represent that by means of the answers to the various questions enumerated thereon, they are able to properly diagnose the ailments of the person furnishing the information and to supply the medicaments which will successfully treat such ailments and, through the use of the "Report" blanks, respondents represent that they are able to ascertain the condition of the person after using the medicaments and to supply proper medicaments for the continued treatment of their afflictions. Further, respondents, through the use of the depiction of a mortar and pestle and also the words "Prescription Laboratory," represent that the medicaments sold by respondents are especially prepared for each person according to the information obtained from the "Question Blank" and "Report" blank.

PAR. 6. The aforesaid representations are false, misleading and deceptive. In truth and in fact, respondents are not able by means of the answers supplied on the "Question Blank," or otherwise, to diagnose the ailments of persons or to supply medicaments for the successful treatment thereof nor can they ascertain, by the use of the information furnished on the "Report" blanks, the condition of the

person after using the medicaments nor supply proper medicaments for the continued treatment of their afflictions. The preparations supplied to purchasers are not especially prepared for each person in accordance with information obtained by use of the "Question Blank" and "Report" blank, or otherwise, but are the stock preparations heretofore described in Paragraph Two.

PAR. 7. In the course and conduct of their aforesaid business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of, certain advertisements concerning their said preparations by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including a booklet entitled "The Liepe Methods for Home Use," circulars, circular letters and other advertising matter, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations; and respondents have disseminated and caused the dissemination of advertisements concerning their said preparations, including, but not limited to the advertising matter referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not inclusive, of the statements and representations contained in said advertisements, disseminated as aforesaid, are the following:

Testimonials respecting leg sores and inflamed areas around veins:

The Liepe Methods has done me lots of good. I am no longer bothered with ulcers on my leg * * *.

I am so pleased that I can write you that my leg sores appear to be gone now. * * *

* * * I had two big ulcers on the right leg and one on the left leg. I am so happy and thankful to say the flesh seems solid and has been like that for one year.

After using Liepe Methods for a short time both my legs returned to their apparently normal condition * * *

I am happy to say that not even a scar remains of my Varicose Ulcers.

Other representations with respect to leg sores and inflamed areas around veins:

A condition which has taken years to develop may require more than a month of medication.

Originated in Europe, it was brought here to America where for almost fifty years it has helped put multitudes of leg sufferers back upon their feet.

A NEW HOPE FOR LEG SUFFERERS

Due to Varicose Conditions

1520

Complaint

Very likely you, like thousands of others, suffer in silence. The agonies, dull aches and pains of Varicose Ulcers, Leg sores or other leg ailments due to a varicose condition may have caused you to become discouraged.

A LIEPE METHOD usually brings prompt relief of pain and distress to those who conscientiously follow instructions. It soothes pain, burning, itching, and swelling, thus bringing peaceful rest to mind and body . . .

It is indeed sad to think of the number of people who live a life of tormenting pain and discomfort, simply because they neglect a small, harmless looking sore. It is a pity to see these sores, due to varicose veins, gradually grow into horrible appearing, painful and obnoxious smelling ulcers.

The LIEPE METHOD eases pain, itching and burning, and helps nature to promote the growth of health flesh and skin.

INFLAMED AREAS AROUND VEINS

. . . when caused by impeded circulation due to Varicose Veins, or the result of injury, . . . red hard spots are noticed on the leg,—hardness and pain increase . . . leg is swollen and very tender . . . pain is almost unbearable. . . . The LIEPE METHOD helps to promote better circulation, aids in lessening the swelling and soothes the pain.

Testimonials and other representations respecting eczema:

I want to tell you my leg feels fine now and has been for over a year.

My leg is O. K. Your medicine works good and I will tell everyone who needs help about your good Methods.

Symptoms of Eczema— * * * The Liepe Method for the Symptoms of Eczema.

PAR. 8. Respondents, through the use of the statements appearing in the advertising matter above referred to, represent that the use of their said preparations, as directed, will cure various kinds of leg troubles due to varicose conditions and inflamed areas around veins. Respondents further represent, by means of the advertisements aforesaid, that the use of their said preparations, as directed, constitute competent and effective treatments for varicose ulcers, leg sores, open legs, discharging wounds and inflamed areas around veins; will completely relieve the pain and distress accompanying such conditions; will relieve swelling, promote better circulation, prevent infection and ulcer formation, aid healing and help nature promote the growth of healthy flesh and skin; will eliminate puss and other discharges from leg sores; that the use of said preparations, as directed, will cure eczema and is a competent and effective treatment for all of the symptoms of eczema.

PAR. 9. The aforesaid representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, respondents' preparations, used as directed or otherwise, will not cure leg troubles due to varicose conditions or inflamed areas around veins and do not constitute competent or effective treatments for varicose

ulcers, leg sores, open legs, discharging wounds or inflamed areas around veins. Their use will not relieve swelling, promote better circulation, prevent infection or ulcer formation, aid healing or help nature promote the growth of healthy flesh and skin and cannot be relied upon to eliminate pus or other discharges from leg sores. The use of respondents' preparations may temporarily relieve pain, itching and burning in some, but not all, cases of leg sores. The location, size, extent, depth and condition of some ulcers are such that even temporary relief will not be afforded. While respondents' preparations may temporarily relieve such symptoms of eczema as itching and burning, it will not relieve even temporarily all of the symptoms of eczema and will not cure or have any beneficial effect upon the underlying cause, course or duration of eczema.

PAR. 10. The use by the respondents of the foregoing false, deceptive and misleading statements and representations 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 all such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said preparations.

PAR. 11. The aforesaid acts and practices of the respondents, 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 17, 1951, issued its complaint in this proceeding naming as respondents therein the A. C. Liepe Pharmacy, Inc., a corporation, and William F. Lambeck, Warren G. Gehrs, and Anne C. Gehrs, individually and as officers of said corporation. The complaint was subsequently served on each of the named respondents with the exception of William F. Lambeck who died on February 16, 1951, prior to the issuance of the complaint. After the filing of an answer to the complaint by the surviving respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly filed in the office of the Commission. Proposed findings as to the facts were filed by counsel for respondents and counsel supporting the complaint. Thereafter, on

1520

Findings

April 10, 1952, the hearing examiner filed his initial decision which was duly served on the parties.

Within the time permitted by the Commission's rules of practice, counsel for respondents filed with the Commission an appeal from said initial decision. Thereafter, this proceeding regularly came on for hearing by the Commission upon the record herein, including briefs in support of and in opposition to the appeal and oral argument of counsel, and the Commission issued its order granting said appeal in part and denying it in part.

The Commission is also of the opinion that the hearing examiner's decision is deficient in certain other respects including that the form of order therein does not in all ways provide appropriate relief from the practices shown by the record to be illegal. Therefore, the Commission, being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion and order to cease and desist, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent A. C. Liepe Pharmacy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin. This corporation trades under the name of "Liepe Methods." Respondent William F. Lambeck, President of the corporate respondent, died on February 16, 1951. Therefore, the term "respondents" as used hereinafter will not include William F. Lambeck. Respondent Warren G. Gehrs is Secretary-Treasurer, and respondent Anne C. Gehrs is Vice-President of the corporate respondent. These individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondents are located at 3250 North Green Bay Avenue, Milwaukee 12, Wisconsin.

PAR. 2. The respondents are now and for several years last past have been engaged in the business of selling and distributing various preparations containing drugs as "drug" is defined in the Federal Trade Commission Act, and in selling in connection therewith elastic bandages, referred to as "Liepe Special Bandage," which product is a device as "device" is defined in the said Act. These preparations and products, sold by respondents in various combinations, are sometimes referred to as "The Liepe Method" and "The Liepe Methods."

The designations used by respondents for their preparations, the formula and directions for use are as follows:

Findings

49 F. T. C.

Designation: "Liepe Cleansing Oil."*Formula*:

Olive Oil—oz. $\frac{1}{2}$
Mineral Oil—gr. oz. 4

Directions for use:

Liepe Cleansing Oil may be used as a bland cleansing agent preparatory to applications of Liepe Special Ointment. It should be "daubed on gently without rubbing."

Designation: "Liepe Bland Oil."*Formula*:

Zinc Oxide Z VI
Olive Oil—oz. 3
Lime Water qs. oz. 4

Directions for use:

Liepe Bland Oil is intended for use in connection with Liepe Special Ointment No. 2. Shake the bottle thoroughly so that no sediment can be seen at the bottom. Then apply a thin layer of Liepe Bland Oil on top of the ointment.

Designation: "Liepe Dusting Powder Soothing."*Formula*:

Thymol Iodide—gr. 2
Benzocaine—dr. 1
 $\frac{1}{8}$ oz.

Directions for use:

Liepe Dusting Powder Soothing is intended for use in conjunction with Liepe Special Ointment No. 2. Dust a little of the powder over the surface with a small brush as follows: After dipping the brush into the box of powder, hold it about an inch away from the surface and tap it gently with the index finger of the other hand. Then apply a thin layer of Liepe Special Ointment No. 2 over the powder.

Designation: "Liepe Dusting Powder Protective."*Formula*:

Zinc Oxide—dr. $2\frac{1}{2}$
Zinc Stearate—dr. $2\frac{1}{2}$
Starch—dr. 7
Carbolic Acid—gr. 22
 $1\frac{1}{2}$ oz.

Directions for use:

Liepe Dusting Powder Protective is intended for use in conjunction with Liepe Special Ointment No. 1. After applying the ointment, dust a thin layer of powder over it. Take a piece of cotton in the left hand, dip it in the box of dusting powder, and hold your hand directly above the spot where you wish

1520

Findings

the powder to fall. Then gently tap your left hand with the right hand, and the powder will fall where desired. Be careful that the cotton does not touch the ointment.

Designation: "Liepe Special Ointment No. 1."

Formula:

Zinc Oxide—8½ lbs.
 Starch—6 lbs.
 Mineral Oil—32 oz.
 Prepared Ointment—2½ lbs.
 Yellow Wax—½ lb.
 Acid Salicylic—½ lb.
 Carbolic Acid—oz. 2½
 Liq. Carbonis Detergens—oz. 5
 Oil Wintergreen—oz. 2½
 White Petrolatum—32 lbs.

Directions for use:

Apply ointment to the skin as often as may be required to relieve itching and burning.

Designation: "Liepe Special Ointment No. 2."

Formula:

Carbolic Acid—oz. 8
 Zinc Oxide—5 lbs.
 Prepared Ointment—5 lbs.
 Mineral Oil—½ gal.
 Yellow Wax—1½ lbs.
 White Petrolatum—qs. 50 lbs.

Directions for use:

First, clean skin with Liepe Cleansing Oil. Then apply a thin layer of Liepe Special Ointment No. 2 covering the same with a thin layer of Liepe Bland Oil, and protect with soft, white muslin. Repeat application daily.

The ingredient in the above formulae for "Liepe Special Ointment No. 1" and "Liepe Special Ointment No. 2" which is referred to as "Prepared Ointment" contains the following ingredients:

1 percent carbolic acid crystals—1.38 percent zinc oxide—16 percent aluminum acetate (basic powder), 1 percent of a mixture containing thymol, camphor, spirits of turpentine, oil of pine, Ugenol, Terpineol in Base of Oleo Stearin and Petrolatum.

The general directions for use of the Liepe Method provide that Liepe's Cleansing Oil, Special Ointment No. 2, Bland Oil, and Special Bandage be used in cases of inflamed area around veins; that Liepe's Cleansing Oil, Dusting Powder Soothing, Special Ointment No. 2, and Special Bandage be used in cases of varicose ulcers (sometimes called Leg Sore or Open Leg); and that Liepe's Cleansing Oil, Special Ointment No. 1, Bland Oil, and Dusting Powder Protective, in some cases with and in some cases without Liepe Special Bandage, be used in cases of eczema.

PAR. 3. Respondents cause their said preparations and products, when sold, to be transported from their place of business in the State of Wisconsin to the purchasers thereof located in various States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said preparations and products between and among the various States of the United States. Their volume of business in said trade has been and is substantial.

PAR. 4. In the course and conduct of said business, respondents for many years last past have advertised their preparations and products by inserting in magazines and newspapers of general circulation advertisements inviting persons suffering from varicose ulcers and open leg sores to write for their booklet "The Liepe Methods for Home Use." Upon receipt of a request said booklet is sent together with a blank entitled "Question Blank" for use in case respondents' preparations or products are purchased. Respondents have disseminated and caused the dissemination of said booklet, advertising circulars, circular letters, and other advertising matter concerning their said preparations and products by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertising matter was likely to induce, directly or indirectly, the purchase of their said preparations and products, and respondents have disseminated and caused the dissemination of advertisements concerning their said preparations and products, including, but not limited to the advertising matter referred to above, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said preparations and products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents' booklet "The Liepe Methods for Home Use," under the heading "A New Hope For Leg Sufferers Due to Varicose Conditions," describes in detail the symptoms of varicose ulcers, old leg sores, open legs, discharging wounds, and inflamed areas around veins due to varicose conditions, and eczema. Among the described symptoms are pain, burning, itching, swelling, open sores, discharging wounds, infection, poor circulation, inflamed areas around veins and reddened, rough or scaly skin. The claims for respondents' Liepe Methods in the narrative portion of this booklet are restricted to claims of soothing or easing pain, burning, itching or swelling, promotion of better circulation, helping nature promote the growth of healthy flesh and skin and relieving certain of the symptoms of eczema. However, at the bottom of practically every page and on several pages at the back of the booklet are quotations that purport to be excerpts from

testimonials of users of respondents' said Methods which state or imply that the users' leg troubles of the type referred to in the narrative portion of the folder have been eliminated through the use of respondents' said Methods. Examples of said excerpts from the testimonials are as follows:

Relating to varicose ulcers:

In regard to Liepe Method which I used on my varicose ulcer—It hasn't troubled me and I never think of it except when I notice the scar.

Just a few lines to let you know that I am no longer troubled with my leg ulcer. I used Liepe Methods for only 3 months.

The Liepe Methods has done me lots of good. I am no longer bothered with the ulcers on my leg, and work every day on the farm.

Relating to leg sores:

I am so pleased that I can write you that my leg sores appear to be gone now. I am thankful for what you have done for me, and hope that other leg sufferers will get the same relief from your Methods as I did.

Relating to leg troubles generally:

I am thankful to you for your Method. My leg is now O. K. I can't praise Liepe Methods too much and I will recommend it.

My leg is fine and has been for some time. I suffered with my leg for 9 years before I found out about Liepe Methods.

My leg is entirely satisfactory. In fact, I did not have to use all the medicine. I am glad indeed that I answered your advertisement and gave your Method a trial. I have been telling my friends about Liepe Methods. With many thanks and assuring you of my gratitude.

I want to tell you my leg feels fine now and has been for over a year. * * *

Similarly in a folder containing respondents' directions for use of certain of their preparations in cases of eczema, disseminated as aforesaid, respondents have set out excerpts from testimonials which represent or imply that permanent relief from the symptoms of eczema has been secured through the use of respondents' preparations. An example of such an excerpt is as follows:

I Have Not Had Any Trouble for the Last Year

I wish I were as well as my legs now feel. I had skin trouble which caused terrible itching. I have not had any for the last year. I have told many people about your method. I gave your last letter to a friend of mine and advised her to write you for particulars.

In a like manner advertising circulars entitled "Users Praise," containing similar excerpts from testimonials of users, have been disseminated as aforesaid by respondents.

PAR. 6. By means of the above-quoted testimonials and others of similar import as used in said booklets, folders, circulars, and other advertising matter disseminated as aforesaid, respondents have repre-

Findings

49 F. T. C.

sented, directly or by implication, that the use of their said preparations and products as directed constitutes a competent and effective treatment for and will cure varicose ulcers, leg sores, open legs, discharging wounds and inflamed areas around the veins, will permanently relieve the pain, itching, burning and swelling accompanying such conditions, promote better circulation, prevent infection and ulcer formation, aid healing, eliminate pus and other discharges from leg sores, cure eczema and constitute a competent and effective treatment for eczema.

PAR. 7. The record shows that the basic cause of the above-described varicose conditions is impaired circulation due to a dilated thickened vein condition known as a varicose vein. The inhibited circulation through this vein results in swelling and edema of the tissues and impaired nutrition of the skin. Such a condition of the leg may result in any of the above referred to varicose leg troubles. The use of respondents' methods will not cure leg trouble due to varicose conditions.

PAR. 8. Varicose ulcers, sometimes referred to as leg sores, open legs or discharging wounds, are ulcerated areas of the epidermis of the leg, due to poor circulation caused by a varicose vein. Swelling and edema occur as a result of this condition, and trauma or infection sets in, causing a breakdown of the tissue and an ulcer develops. Proper treatment of a leg ulcer requires a careful diagnosis, as the treatment is dictated by the underlying cause. There are many conditions which may result in an ulcer which would be indistinguishable by the layman from a varicose ulcer, for example, tuberculosis, diabetes, syphilis, cancer, fungus, etc.

Proper treatment of a varicose ulcer consists of treatment of the varicose vein, local application of mild, soothing and antiseptic applications to the ulcer, perhaps supplemented by X-ray or ultraviolet therapy of the ulcer to stimulate the healing process, and in severe cases use of antibiotics coupled with complete rest in bed and elevation of the affected part. The varicose vein must frequently be treated surgically to prevent recurrence of the ulcerated condition.

Respondents' method used as directed in cases of varicose ulcers, leg sores, open leg or discharging wounds may have a soothing effect, may temporarily relieve pain, itching and burning in some cases while the preparations are on the affected area, may prevent some surface infection and prevent swelling while the elastic bandage is applied. Said method is harmless in cases of varicose ulcers but does not have any effect on the cause of the condition. It will not cure and does not constitute an effective treatment for such conditions.

Respondents' method used in such cases or as used in cases of eczema or inflamed areas around veins due to a varicose condition will not completely relieve all pain and distress, permanently relieve swelling, pain, itching or burning or prevent or clear up any deep infection, will not prevent ulcer formation, aid healing other than to provide an antiseptic protective covering for the affected area, eliminate pus or other discharges, or promote better circulation.

PAR. 9. Respondents' method used as directed in cases of inflamed area around veins due to a varicose condition might have a temporary soothing effect, temporarily lessen any surface pain or irritation somewhat, and temporarily lessen the swelling while the elastic bandage is applied. Such a condition, however, should have internal as well as local treatment. Respondents' method will not cure and does not constitute a competent or effective treatment for this condition. Nothing in respondents' preparations would penetrate deeply enough to reach the source of the trouble. If the inflamed area is due to phlebitis, this treatment, including the application of pressure through the use of the elastic bandage as directed, would be contraindicated.

PAR. 10. Eczema is a catarrhal inflammation of the skin characterized by the appearance of redness, scaling, vesicles, weeping and itching. There are many types of eczema and many causes. It is necessary to carefully diagnose the conditions of eczema before treatment as the type of treatment varies tremendously depending upon its cause and upon the state of the eczema at the time of treatment.

Respondents' method, used as directed in cases of eczema, will relieve itching and burning temporarily while its prescribed preparations are applied to the affected area. Preparations containing zinc oxide, like respondents' special ointments, are commonly used as a palliative in some cases of eczema (i. e., sub-acute chronic). However, the use of this method will not cure eczema or have any beneficial effect on its underlying cause. It does not have any beneficial effect on the symptoms of eczema in excess of relieving itching and burning while said preparations are applied to the affected area as directed.

PAR. 11. In the course and conduct of their aforesaid business, respondents upon receipt of a request for their booklet "The Liepe Methods for Home Use" in addition to sending said booklet to the person requesting it also send a blank entitled "Question Blank" for use in case respondents' preparations or products are ordered. This blank consists of a list of questions concerning the general health of the person and specific questions with respect to the symptoms of those persons who have "inflamed areas around the veins in legs due to

varicosed conditions," "symptoms of varicose ulcers or wounds sometimes called leg sores or open legs" or "symptoms of eczema." Part of the Question Blank consists of an order blank upon which the person is instructed to check the nature of his affliction and to remit the amount set out in connection therewith. Upon receipt of the "Question Blank" and order, respondents forward those of its said preparations and products to be used in cases of the affliction indicated, together with detailed directions for use. These directions instruct the purchaser to send in an accompanying "Report Blank" when the preparations are almost used up. Said report blank consists of an order for additional preparations together with a list of questions as to the effects of the purchaser's use of said preparations on the purchaser's symptoms.

Respondents send various form letters to purchasers and prospective purchasers in the solicitation of additional sales of their said preparations. These letters bear the heading "Prescription Laboratory."

PAR. 12. Through the use of the "Question Blank" respondents represent that by means of the answers to the various questions they will be able to properly diagnose the ailments of the person furnishing the information and that they will be able to determine and to supply the medicaments which will successfully treat such ailments; and through the use of the "Report Blanks" respondents represent that they are able to ascertain the condition of the person after using their medicaments and to determine and to supply proper medicaments for the continued treatment of their afflictions.

Further, respondents, through the use of the heading "Prescription Laboratory" on their form letters to prospective purchasers, represent that the medicaments sold by respondents are especially prepared for each person on the basis of information furnished.

PAR. 13. In fact, it is extremely difficult to distinguish between ulcers, inflamed areas around veins, and eczema, due to varicose conditions, and those due to other causes such as tuberculosis, diabetes, syphilis, and many others. The ordinary layman patient is not able to make this determination. Also, he is not able to furnish sufficient information as to his condition by means of the "Question Blank" or "Report Blank" to enable even a very skilled reader to determine his true condition and the proper treatment therefor. Early determination of the cause of such conditions is extremely important as what appears to the layman to be a condition due to a varicose vein may be in reality due to a very serious underlying cause. Certain such conditions, if allowed to develop, may endanger the patient's life. The

1520

Order

proper treatment for such conditions is entirely different from that appropriate where the condition is due to varicose veins. Respondents' methods certainly would not provide a successful treatment for such serious conditions.

Respondents do not prepare the medicaments on an individual basis for each purchaser. All orders are filled by respondent Warren G. Gehrs, a pharmacist, from the stock preparations, the formulae for which are set out in Paragraph Two hereof. Respondents' use of the term "Prescription Laboratory" as a part of the heading on their letters to prospective purchasers, which implies that the medicaments sold are prepared on an individual basis, considered alone, under other circumstances might appear to be innocuous. But as used here in conjunction with their "Question Blanks" and "Report Blanks," this heading heightens the false implication that respondents are compounding the preparations for each purchaser individually on the basis of the information furnished on said blanks by the purchaser as to his symptoms. Respondents admit that their use of this term in connection with their sale of these preparations has a misleading effect.

PAR. 14. Respondents' representations concerning their preparations and products, as hereinabove found, are false and misleading in material respects; have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of said preparations and products; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The acts and practices of respondents, 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 meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That A. C. Liepe Pharmacy, Inc., a corporation, and its officers, Warren G. Gehrs and Anne C. Gehrs, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Liepe Cleansing Oil," "Liepe Bland Oil," "Liepe Dusting Powder Soothing,"

Order

49 F. T. C.

"Liepe Dusting Powder Protective," "Liepe Special Ointment No. 1," "Liepe Special Ointment No. 2," or "Liepe Special Bandage" or any product or preparation of substantially similar composition or possessing substantially similar properties, 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 which represents, directly or by implication, that the use of any of said products or preparations, either singly or in combination:

(a) Constitutes a competent or effective treatment for or will cure varicose ulcers, leg sores, open legs, discharging wounds inflamed areas around a vein, or any leg trouble, ailment or disorder due to varicose conditions.

(b) Promotes better circulation, prevents ulcer formation, eliminates discharge, completely relieves all pain and distress, relieves swelling in excess of preventing swelling while the bandage is applied, prevents any infection other than surface infection, aids healing other than by providing an antiseptic protective covering for the affected area, or relieves pain, itching or burning in excess of providing relief while the prescribed preparations are on the affected area, in cases of varicose ulcers, leg sores, open legs, discharging wounds, inflamed areas around a vein, eczema or any leg trouble, ailment or disorder due to a varicose condition.

(c) Cures eczema or has any beneficial effect upon its underlying causes.

(d) Has any beneficial effect in cases of eczema in excess of relieving itching and burning while the prescribed preparations are on the affected area.

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 defined in the Federal Trade Commission Act, of any said preparations or product, which advertisement contains any of the representations prohibited in paragraph 1 of this order.

It is further ordered, That the respondents A. C. Liepe Pharmacy, Inc., a corporation, and its officers, Warren G. Gehrs and Anne C. Gehrs, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade

1520

Order

Commission Act, of "Liepe Cleansing Oil," "Liepe Bland Oil," "Liepe Dusting Powder Soothing," "Liepe Dusting Powder Protective," "Liepe Special Ointment No. 1," "Liepe Special Ointment No. 2," or "Liepe Special Bandage" or any product or preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents can diagnose or determine a proper treatment in cases of ulcers, leg sores, open legs, discharging wounds, inflamed areas around a vein or eczema on the basis of written information as to their symptoms submitted by purchasers or prospective purchasers.

2. Using the term "Prescription Laboratory" in the heading of letters sent to purchasers or prospective purchasers; or otherwise representing that said preparations are especially prepared to order in each case individually.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent William F. Lambeck.

It is further ordered, That respondents, A. C. Liepe Pharmacy, Inc., Warren G. Gehrs and Anne C. Gehrs, shall, within sixty (60) days after service upon them 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.

Commissioner Howrey not participating for the reason that oral argument on respondents' appeal from the initial decision was heard prior to his appointment to the Commission.

Complaint

49 F. T. C.

IN THE MATTER OF

MME. C. J. WALKER MANUFACTURING COMPANY, INC.
ET AL.COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 6031. Complaint, Aug. 18, 1952—Decision, June 30, 1953*

Where a corporation and three officers thereof, engaged in the interstate sale and distribution of their "Madam C. J. Walker's" hair preparations, namely, their "Wonderful Hair and Scalp Preparation," "Wonderful Scalp Ointment" and "Wonderful Temple Salve"; in advertising in newspapers and periodicals and radio continuities, directly and by implication—

Represented falsely that their said "Hair and Scalp Preparation" contained penetrating oils that made the scalp healthy and put an end to short, thin, brittle, or falling hair, when the scalp was massaged therewith; that their "Double-Strength Scalp Ointment" was a competent and effective treatment for itchy scalp, dandruff, dandruff flakes, and tetter; and that massaging the temple areas with their "Wonderful Temple Salve" stopped hair falling out, and made the hair soft and silky with long-lasting texture and lustre;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of substantial quantities of said products:

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.

Before *Mr. Webster Ballinger*, hearing examiner.

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

Mr. Robert Lee Brokenburr and *Mr. Willard B. Ransom*, of Indianapolis, Ind., for respondents.

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 Mme. C. J. Walker Manufacturing Company, Inc., a corporation, and A'Lelia R. Nelson, Violet D. Reynolds, and Marie Overstreet, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission