

Complaint

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IN THE MATTER OF

MAGICURE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-12. Complaint, Oct. 31, 1961—Decision, Oct. 31, 1961

Consent order requiring Columbus, Ohio, distributors of their "Magicure" device to cease representing falsely in advertising in letters, circulars, pamphlets, etc., that use of the device would stop bed wetting and correct the bed wetting habit.

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 Magicure, Inc., a corporation, and Arthur C. Kinkead, Sr., and William Kinkead, individually and as officers of the 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 Magicure, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its office and principal place of business is located at 600 East Town Street, Columbus 15, Ohio.

Respondents Arthur C. Kinkead, Sr., and William Kinkead are officers of the respondent corporation. They formulate, direct and control the acts and practices of the respondent corporation, including those hereinafter set forth. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the offering for sale, sale and distribution of a device, which comes within the classification of devices as the term "devices" is defined in the Federal Trade Commission Act, designated as "Magicure", for use in cases of enuresis, or bed-wetting.

PAR. 3. Respondents, in the course and conduct of their business, have caused said device, when sold, to be transported from their place of business in the State of Ohio to purchasers located in various states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said device, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said "Magicure" 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, circulars, letters and pamphlets for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said "Magicure" and have disseminated, and caused the dissemination of, advertisements concerning the said "Magicure" by various means, including but not limited to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Bed-wetting can be corrected, without the use of diets, drugs, or even the restriction of liquids, just a short training program.

With the use of my remarkable new training method, you should not have a wet bed again even the first night you start the training.

. . . the Magicure methods that's guaranteed to stop bed-wetting.

PAR. 6. Through the use of said advertisements, and others similar thereto but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that the use of said device will stop bed-wetting and correct the bed-wetting habit.

PAR. 7. The said advertisements were, and are, misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, use of the said device will not be effective in stopping bed-wetting or correcting the bed-wetting habit except in cases of functional bed-wetting not involving organic defects or diseases.

PAR. 8. Respondents do not guarantee the device "Magicure" in every respect. The terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are not disclosed in the advertisements.

PAR. 9. The dissemination by respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents

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having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Magicure, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 600 East Town Street, in the City of Columbus, State of Ohio.

Respondents Arthur C. Kinkead, Sr., and William Kinkead are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Magicure, Inc., a corporation, and its officers, and respondents Arthur C. Kinkead, Sr., and William Kinkead, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of a device known as "Magicure", or any other device which functions in substantially the same manner, do forthwith cease and desist from, directly or indirectly:

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 the use of said device is of value in stopping bed-wetting or correcting the bed-wetting habit unless expressly limited, in a clear and conspicuous manner, to cases of bed-wetting not caused by organic defects or diseases.

(b) That said device is guaranteed, unless the terms, conditions and extent to which such guarantee applies and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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 of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in Paragraph 1, above.

It is further ordered, That the respondents herein 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