

Circuit Court of the United States
for the
Eastern District of Kentucky.

TO THE HONORABLE JUDGES OF SAID COURT, IN CHANCERY SITTING:

The Dr. Miles Medical Company, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana and a citizen of the State of Indiana, complainant, brings this bill of complaint, against JOHN D. PARK & SONS COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of Kentucky a citizen of the State of Kentucky, and a resident and inhabitant of the Eastern District of Kentucky, defendant, and thereupon your orator complains and states:

I.

That your orator is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana and is a citizen of said State of Indiana, and by its charter authorized and empowered to manufacture, sell and deal in medicines, remedies and cures, and to acquire, hold, use and employ all necessary trade methods, trade secrets, formulas, processes, trade rights, trade marks, real and personal property, and articles and rights necessary, proper and incident to such manufacture, sale and business. That your orator was organized as a corporation in the year A. D. 1865, and since said date has been engaged, under and pursuant to its charter powers and franchises, in the manufacture, exploitation and sale of various medicines, preparations and cures, with its labora-

2.

tory, factory and principal place of business in the City of Elkhart, Elkhart County, Indiana, where its medicines, remedies and cures are and have been manufactured, prepared, put up, sold and shipped in bottles, cartons, packages and receptacles as hereinafter more fully stated, and that said defendant, JOHN D. PARK & SONS COMPANY, is a corporation organized under the laws of the State of Kentucky for the purpose of, and now engaged in buying, selling and dealing in drugs, medicines, remedies and cures at wholesale and is a citizen of the State of Kentucky, and a resident and inhabitant of the Eastern District of Kentucky. The principal business place of defendant is in the City of Cincinnati, County of Hamilton, and State of Ohio, where it is engaged in operating a wholesale drug store, where it keeps and has kept for sale and offers for sale and sells, among other articles, various proprietary preparations, remedies, medicines and cures, including the medicines, cures and remedies of your orator, hereinafter more fully mentioned and described.

II.

Your orator further shows that heretofore, at various times both before and since the organization of your orator, Dr. Franklin Miles, a resident of the City of Elkhart, Elkhart County, Indiana, and a citizen of the State of Indiana, after many years of preparation, investigation and research, and after courses of study in a number of medical colleges and institutions, including the medical department of Columbia College, New York City, the Medical School of Michigan University, Rush Medical College of Chicago,

the Chicago Medical College, and the Illinois State Eye and Ear Infirmary, and after many years of extended experience in the practice of medicine, and after long courses of special investigation and experiments, discovered, devised, invented and compounded at various times certain new, useful and valuable medicines, remedies and cures theretofore unknown and undiscovered, and for a valuable consideration paid by your orator to and received by the said Dr. Franklin Miles, said Dr. Franklin Miles has kept and preserved said discoveries, medicines, remedies and cures, and the methods, processes, formulas, recipes, principal ingredients and proportions and methods thereof in each instance as trade secrets and has from time to time assigned, transferred and sold to your orator the said methods and processes, formulas and recipes for preparing, compounding and manufacturing the aforesaid medicines, remedies and cures so discovered, devised, invented, prepared and compounded by him as aforesaid, together with the sole and exclusive right to use and employ said methods, processes, formulas and recipes, and to manufacture, prepare and sell the aforesaid remedies and medicines and cures prepared under and in accordance therewith. That said Dr. Franklin Miles and your orator and the officers and employes of your orator have always kept and ~~preserved~~ the said processes, methods, formulas, recipes, principal ingredients and manner of preparation, compounding and putting up said medicines, remedies and cures secret and undisclosed, and have not divulged or disclosed the same to the public or other persons, and the said methods, processes, recipes, formulas, principal ingredients and manner of manufacturing, compounding

and preparing said remedies, medicines and cures have always been and are now trade and business secrets unknown to and undiscovered by the public, or to any person except the said Dr. Franklin Miles and the officers and employes of your orator, to whom the same have been divulged and disclosed in confidence and trust as trade and business secrets and with the express understanding and agreement that the same are not to be disclosed, divulged or communicated to or used or employed, by any person or other employe other than the officers and employes of your orator for the use and benefit of your orator. The said remedies, medicines and cures so invented, discovered, compounded and prepared and so preserved as trade and business secrets are each and all meritorious, useful and valuable, and are now and always have at all times during the manufacture, sale, marketing and use thereof been and continued to be secret and unknown articles and medicines whose principal ingredients and formulas, and the processes, methods and recipes for manufacture and compounding are known only to said Dr. Franklin Miles and the officers and employes of your orator, and to no other person. Upon and after the purchase and acquisition of the said processes, methods, formulas, recipes and manner of manufacturing, preparing and compounding said remedies, medicines and cures from the said Dr. Franklin Miles by your orator, as aforesaid, your orator, as the sole and exclusive owner thereof, and the possessor of the sole and exclusive right to manufacture, compound, prepare and sell the same, proceeded to and has since solely and exclusively manufactured, compounded, prepared, put up and sold the said medicines,

remedies and cures under and in accordance with said secret recipes, methods, processes and formulas, and has identified, designated and preserved each medicine as the sole and exclusive manufacture and product of your orator by original, distinctive and peculiar packages, bottles, boxes, cartons, labels, trade names and a trade mark, and has particularly identified the origin and manufacture thereof by various fancy names, in all of which the name "Dr. Miles" is used and employed in a conspicuous manner and by a certain fancy trade mark symbol or device consisting of a double reverse profile of the human head showing on one side the brain and nerve system, and which said packages, bottles, boxes, cartons, labels, trade names and trade mark have been extensively used and employed in the manufacture, exploitation, advertisement and sale of said remedies, medicines and cures, and are now well known to the public and are relied upon by the public as a means of identification and as indicating the manufacture and origin of said medicines, remedies and cures, ^{and the said remedies medicines and cures} and said packages, boxes, cartons, labels, trade names and trade mark thereon by reason of the extensive and widespread sale of said remedies, medicines and cures of your orator have long been and are now valuable advertising mediums to the public, of your orator's said medicines, remedies and cures. Said medicines, remedies and cures were at first two or three in number, but from time to time have been added to and increased, as the result of the experiments, investigations and practice of said Dr. Franklin Miles, until at present the same consist of the following: "Dr. Miles' Restorative Nervine"; "Dr. Miles' New Heart Cure"; "Dr. Miles' Wine of Sarsaparil-

1a"; "Dr. Miles' Restorative Tonic"; "Dr. Miles' Restorative Blood Purifier"; "Dr. Miles' Restorative Nerve and Liver Pills"; "Dr. Miles' Anti-Pain Pills"; "Dr. Miles' Laxative Cold Cure"; and "Dr. Miles' Restorative Nerve Plasters"; which said remedies, medicines and cures are intended to be and are a consistent and comprehensive system of remedies and medicines, and are advertised and known as "Dr. Miles' Restorative Remedies" and "Dr. Miles' System of Remedies," each of said remedies being intended, adapted and indicated as a specific for certain kindred ills and diseases. Said Dr. Franklin Miles is now and always has been connected and associated with your orator as president thereof, and has always had and exercised general care, oversight and supervision over the preparation, compounding, manufacture and sale of the aforesaid medicines, remedies and cures by your orator, and such medicines have been since the discovery thereof, respectively, manufactured and compounded, and prepared and put up secretly in said boxes, packages, bottles, cartons exhibiting said labels, trade names and trade mark at your orator's said laboratory

and has filed in the Department of Agriculture a general guaranty covering all of your orator's said products, and has been assigned by said Department a serial number, which said serial number and notice of said general guaranty have been placed by your orator upon the principal labels of each and all of its said products so that as a matter of fact each article is accompanied by your orator's guaranty of compliance with the "Food and Drugs Act of June 30, 1906."

of the sole and exclusive right to manufacture, prepare, put up, compound, advertise, exploit, make, sell and dispose

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of each and all of the aforesaid preparations and remedies in the aforesaid bottles, boxes, packages, cartons, labels under said trade names and trade mark, and no other person, firm or corporation has any interest therein or right thereto, to make or prepare said medicines, remedies and cures, or any thereof, or use or employ said boxes, packages, bottles, cartons, labels, trade names or trade marks *upon or in connection with similar products except and unless the same are the genuine preparations of your orator.*

III.

Your orator further shows unto your Honors that since the inauguration of the manufacture, compounding, preparation and sale of said remedies, medicines and cures by your orator as aforesaid, your orator has at its sole expense and cost, systematically, thoroughly and extensively exploited and advertised the same throughout the United States as proprietary medicines, remedies and cures made under secret processes, methods, formulas and recipes and of ingredients and under methods of compounding and manufacture unknown to the public and solely and exclusively by your orator. That the said advertisement and exploitation have consisted of extensive newspaper advertising, the publication and distribution of pamphlets, circulars, commendatory letters and testimonials, almanacs, street car signs and wall advertising. Said advertisements have, to a considerable extent, included pictures or reproductions of the various cartons, bottles, receptacles and the letter press, labels, names and devices thereon in which the said remedies of your orator have been offered for sale and sold, so that the public has become thoroughly familiar with the general appearance and dress thereof, and ^{the} letter press,

names and devices thereon, and is enabled thereby, and does as a matter of fact, by said distinctive appearance and dress, and said letter press, names and devices identify and designate said medicines, remedies and cures of your orator; that the sales of said medicines, remedies and cures in said packages, boxes and cartons bearing said letter press, names and devices, and use thereof by consumers from said packages, boxes and cartons with the letter press, names and trade mark thereon unobscured, unobliterated and legible, has always been and now is a valuable method of advertising, exploiting and introducing said medicines, remedies and cures. That since the inauguration of said business your orator has expended more than two million dollars in said advertisement, exploitation and introduction of said medicines, remedies and cures, and now expends upwards of two hundred thousand dollars annually therefor. That in all such advertisements the said remedies have been and are referred to as "Dr. Miles" remedies under the peculiar, distinctive and fancy names selected respectively therefor, and the prices at which the same are intended to be and are sold at retail in each instance mentioned and set forth in such advertisements; and said retail prices are and always have been plainly and distinctly marked, printed or stamped upon each package of said remedies, medicines and cures, and that in such advertisements, buyers for consumption and the public generally are directed to purchase and apply for the purchase of said remedies, medicines and cures of your orator at retail drug stores, where said medicines, remedies and cures of your orator have been and are kept for sale and on request

or demand supplied and sold to consumers, with all the letter press, trade names, trade mark and prices on said cartons and labels legible, unmutilated, unobliterated and unobscured and as prepared and arranged by your orator. As the result of the meritorious character and the superior and uniform manufacture, preparation and compounding of said remedies, medicines and cures, your orator has established a large and lucrative trade therein and demand therefor through, in and at retail drug stores and establishments which exceeds in volume the sum of five hundred thousand dollars annually, and which embraces the entire territory of the United States and exists in a smaller degree in such foreign countries as Canada, Australia, New Zealand and the East and West Indies. That in each instance as each medicine was placed upon the market, the retail price thereof to the consumer was by your orator fixed at a reasonable sum, and from the commencement of said manufacture, exploitation, advertising and sale of said remedies, medicines and cures, your orator has, in each instance, continued and maintained the aforesaid system of preparation, putting up, advertisement, introduction and sale at the same reasonable retail prices, and it has been and is the uniform custom of your orator, well known to the public and buyers for use, not to sell or supply said proprietary medicines, remedies and cures directly to consumers or buyers for use, but to sell said medicines, remedies and cures to jobbers and wholesale druggists, who in turn sell and dispose of the same to retail druggists for sale and distribution to the ultimate purchaser or consumer, invariably in said peculiar, distinctive, original and characteristic style and dress of packages and

carton with the letter press, names, prices and trade marks thereon unutilized, unbroken and legible, and thereby and by and through the system of advertising employed by your orator, the public and purchasers uniformly and generally understand and know that said proprietary remedies, medicines and cures of your orator are for sale to consumers and users at retail drug stores and establishments only and also associate the said peculiar and original style and dress of packages and cartons and the letter press, names, lists of ailments and trade mark thereon with the proprietary medicines, remedies and cures of your orator, and identify them both by the name "Dr. Miles" and "Miles", and by said peculiar, distinctive and original style, dress and general appearance of packages, wrappers and receptacles thereof, and the letter press, names and trade mark thereon, and that your orator has a valuable, extensive and exclusive good will and property right, both general and in retail drug stores and establishments in said reputation and trade in said proprietary medicines, remedies and cures and the peculiar, distinctive and original style and dress of packages and cartons and the letter press, names and trade mark thereon, and that said good will, demand, trade and reputation have been entirely created, established and maintained by your orator and at the expense and cost of your orator, and that as a matter of fact the advertisements, exploitation, reputation and merits of said proprietary medicines, remedies and cures have produced and created and now continue and maintain the demand and market therefor in retail stores and induce customers and buyers to resort to retail stores to purchase the same. That as each of said proprietary medicines,

remedies and cures has been placed upon the market by your orator, the retail price was fixed at which the same should be sold to the consumer, and in no instance has said retail price in any way been altered or changed from the price originally fixed. Said retail price has always been advertised and announced to the purchasing public by insertion of the same in the advertisements and on packages and cartons as stated. Your orator has also, in each instance, fixed at the outset of each proprietary medicine, remedy and cure being placed upon the market by your orator, the price thereof from your orator to the jobbers and wholesale dealers, and said price so established has been uniformly maintained and kept up without discrimination or distinction, and when any change in wholesale prices was made it extended to all wholesale dealers and affected all alike. Said jobbers and wholesale dealers have also been required to, and, as a general rule, have offered for sale, sold and disposed of said medicines, remedies and cures of your orator to retailers at fixed and uniform rates. As the result of the methods and system aforesaid, your orator's said remedies, medicines and cures have for a long time been extensively sold and distributed to and kept for sale in the hands of retail druggists and in retail stores where proprietary remedies and medicines are kept for sale to supply the demand and market for consumption thereof and have invariably until as hereinafter stated, been sold and disposed of by such retailers to the ultimate purchaser for consumption from such retail establishments at the said prices fixed, and in said peculiar, distinctive and original style and dress of packages aforesaid, with the letter

press, names and fancy devices thereon unaltered, unobliterated and unobscured, and the demand and market therefor by consumers created and maintained by the advertisements and exploitations of your orator and the reputation of said remedies, medicines and cures thus supplied.

Much the largest portion of your orator's said proprietary medicines, remedies and cures are offered for sale and sold through, at and by regular retail drug stores whose stock is limited to proprietary remedies, drugs and druggists' sundries, and much of the popularity and demand for your orator's proprietary medicines, remedies and cures, and the continuation thereof and of the sale and demand therefor depend largely upon the good will and commendation of such retail druggists and the fact that such druggists by selling at the prices fixed may realize a fair and reasonable profit. Certain retail stores and establishments some time since, particularly the class of stores known as department stores and cut-rate drug stores, have inaugurated and maintained a system of offering for sale well advertised and established proprietary medicines, remedies and cures, including your orator's proprietary medicines, remedies and cures, to consumers at retail prices lower than the prices fixed by the respective manufacturers and your orator and stamped upon the cartons and packages and inserted in the advertisements relating to said remedies, medicines and cures. Said system is known as ^{the} "Cut-Rate" or "Cut Price" system, and has resulted in much confusion, trouble and damage to your orator's business, and injuriously affected the reputation of your orator's remedies, medicines and cures, and depleted the sales thereof. The damage and injury to

your orator's said business and the reputation of and demand for your orator's said proprietary medicines, remedies and cures result from the fact that the majority of retail druggists as a rule cannot, or believe that they cannot realize sufficient profits by the sale of your orator's said proprietary medicines at the cut prices announced by the cut rate and department stores and are, therefore, unwilling to, and do not keep your orator's proprietary medicines in stock, or if kept in stock, do not urge or favor sales thereof, but endeavor to foist off some similar remedy or substitute, and from the fact that in the public mind an article advertised or announced at "cut" or "reduced" prices from the established price suffers loss of reputation and becomes of inferior value and demand. Whereupon, and in order to protect its trade sales and business and conserve its good will and reputation in the manufacture and sale of said proprietary medicines, remedies and cures, your orator adopted and established and put in force the following system and method of governing, regulating and controlling the sale and marketing of your orator's said proprietary remedies, medicines and cures. Contracts in writing were required to be executed by all jobbers and wholesale druggists to whom your orator sold its aforesaid remedies, medicines and cures, of the following tenor and effect:

"CONSIGNMENT CONTRACT.- WHOLESALE. THE DR. MILES MEDICAL COMPANY.

THIS AGREEMENT made by and between THE DR. MILES MEDICAL COMPANY, a corporation, of Elkhart, Indiana, hereafter referred to as the Proprietor, and

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hereinafter referred to as the Consignee, WITNESSETH:

That the said Proprietor hereby appoints said Consignee one of its Wholesale Distributing Agents, and agrees to consign to such Consignee for sale for the account of said Proprietor such goods of its manufacture as the Proprietor may deem necessary, the title thereto and property therein to be and remain in the Proprietor absolutely until sold under and in accordance with the provisions hereof, and all unsold goods to be immediately returned to said Proprietor on demand and the cancellation of this agreement. Said goods to be invoiced to consignee at the following prices:

Medicines, of which the retail price is \$1.00,
\$8.00 per dozen;
Medicines, (if any) of which the retail price is 50 cents,
\$4.00 per dozen;
Medicines, of which the retail price is 25 cents,
\$2.00 per dozen;

Freight on all orders, the invoice price of which amounts to \$100.00 or more, to be prepaid by the Proprietor; otherwise, freight to be paid by Consignee.

Said Consignee agrees to confine the sale of all goods and products of the said Proprietor strictly to and to sell only to the designated Retail Agents of said Proprietor as specified in lists of such Retail Agents furnished by said Proprietor and alterable at the will of said Proprietor, and to faithfully and promptly account and pay to the Proprietor the proceeds of all sales, after deducting as full compensation for all services, charges and disbursements a commission of ten per cent. of the invoice value, and a further commission of five per cent. on the net amount of each consignment, after deducting the said ten per cent. commission, on all advances on account remitted within ten days from date of any consignment, it being agreed between the parties hereto that such advances shall in no manner affect the title to such goods, which title shall remain in the Proprietor as if no such advances had been made; provided that such advances shall be repaid to said Consignee should the said Proprietor terminate this agreement and demand the return of any unsold goods on which advances have been made. Said Consignee guarantees the payment for all goods sold under this agreement and agrees to render a full account and remit the net proceeds on the first day of each month of and for the sales of the month preceeding. Failure to make such accounting and remittance within ten days from the first of each month shall render the whole account payable and subject to draft, but the proceeds of such draft shall not affect the title of any unsold goods, which shall remain in the Proprietor until actually sold, as herein provided.

It is further agreed that the Consignee shall furnish the Proprietor from time to time upon demand full statements of the stock of goods of the Proprietor on hand on any date specified and that a failure to furnish such

statements within ten days from date of such demand shall be a sufficient cause for the cancellation of this agreement, and a demand for the return of the consigned goods.

It is further agreed that the Proprietor will cause each retail package of its goods to be identified by a number and said Consignee hereby agrees to furnish the said Proprietor full reports upon proper cards or blanks furnished by said Proprietor of the disposition of each dozen or fraction of such goods by means of the identifying numbers, specifying the names and addresses of the Retail Agents to whom such goods have been delivered and the dates of such delivery, and to send such reports to said Proprietor at least semi-monthly, and at any other time on the request of said Proprietor.

It is understood and agreed between the parties hereto that the commissions herein specified shall not be considered as earned by said Consignee upon any goods of said Proprietor which shall have been delivered to dealers not authorized Agents of said Proprietor, as per list of such Agents, or upon any goods whose disposition by said Consignee shall not have been properly reported as herein provided, or sold at prices less than the prices authorized, and that said Consignee shall not credit any such commissions when making remittances on consignment account provided notice has been given by said Proprietor that such commissions are unearned; and that if such unearned commissions have been deducted by said Consignee in making advance payments or monthly remittances on account they shall be charged back to said Consignee and credited and paid to said Proprietor. It is understood that violation or non-observance of any provision hereof by the Consignee shall make this agreement terminable and all unsold goods returnable at the option of the Proprietor.

It is agreed that the goods of said Proprietor shall be sold by said Consignee only to the said Retail or Wholesale Agents of said Proprietor, as per list furnished, at not less than the following prices, to-wit:

Medicines, of which the retail price is \$1.00,	
	\$8.00 per dozen;
Medicines, (if any) of which the retail price is 50 cents,	
	\$4.00 per dozen;
Medicines, of which the retail price is 25 cents,	
	\$2.00 per dozen;

PROVIDED, that said Consignee may allow a cash discount not exceeding one per cent., if paid within ten days from date of invoice, and that when sales at one time and at one invoice, amount to \$15.00 or more, the said Consignee may allow three per cent. trade discount, and if said purchase amounts to \$50.00 or more, five per cent. trade discount, all without cost to the Proprietor, and if such \$50.00 quantity shall be shipped direct to the retail purchaser from the laboratory of said Proprietor, on the order from said Wholesale Distributing Agent, freight will be prepaid by the Proprietor, but not otherwise.

16.

This contract will take effect when the original, duly signed by the Consignee, has been received and accepted by The Dr. Miles Medical Company, at Elkhart, Indiana.

Done under our hands

Fill in Date on Above Line.

A. D., 1907.

THE DR. MILES MEDICAL COMPANY.

Wholesale Dealer, Sign Your Name on Above Line.

ORIGINAL. Return in Enclosed Envelope."

And written contracts were required with all retailers of your orator's said proprietary remedies, medicines and cures, as follows, to wit:

"RETAIL AGENCY CONTRACT.

THE DR. MILES MEDICAL COMPANY.

THIS AGREEMENT between The Dr. Miles Medical Company of Elkhart, Indiana, and

Retail Dealers Name on above line. of Town.

State.

hereinafter referred to as the Retail Agent, witnesseth:

Appointed Agent. The said Dr. Miles Medical Company hereby appoints said Retail Dealer as one of the retail distributing agents of its Proprietary Medicines and agrees that said Retail Agent may purchase the Proprietary Medicines manufactured by said Dr. Miles Medical Company (each retail package of which the said Company will cause to be identified by a number) at the following prices, to-wit:

Wholesale Prices.	Medicines of which the retail price is \$1.00,
	\$3.00 per dozen;
	Medicines of which the retail price is 50 cents,
	\$4.00 per dozen;
	Medicines of which the retail price is 25 cents,
	\$2.00 per dozen;

Quantity Discounts. Provided that when purchases at one time and on one invoice amount to \$15.00 (or more), Wholesale Distribu-

ting Agents are authorized to allow 3 per cent. trade discount; if such purchase amounts to \$50.00 (or more) 5 per cent. trade discount will be allowed, and if such \$50.00 quantity be shipped direct to the purchaser from the laboratory of said Dr. Miles Medical Company for the account of such Wholesale Agent, freight will be prepaid, but not otherwise.

Full Price. In consideration whereof said Retail Agent agrees in no case to sell or furnish the said Proprietary Medicines to any person, firm or corporation whatsoever, at less than the full retail price as printed on the packages, without reduction for quantity; and said Retail Agent further agrees not to sell the said Proprietary Medicines at any price to Wholesale or Retail Dealers not accredited agents of the Dr. Miles Medical Company.

Violation. It is further agreed between the parties hereto that the giving of any article of value, or the making of any concession by means of trading stamps, cash register coupons, or otherwise, for the purpose of reducing the price above agreed upon shall be considered a violation of this agreement, and further it is agreed between the parties hereto that the Dr. Miles Medical Company will sustain damage in the sum of twenty-five dollars (\$25.00) for each violation of any provision of this agreement, it being otherwise impossible to fix the measure of damage.

This contract will take effect when a duplicate thereof, duly signed by the Retail Agent, has been received and approved by The Dr. Miles Medical Company, at its office at Elkhart Indiana.

Done under our hands

Fill in Date on Above Line

A. D. 1907.

THE DR. MILES MEDICAL COMPANY.

Retail Dealer Sign Your Name on Above Line in Ink.

*
* To Retail Dealer: *
* Paste Printed Label, giving *
* Name and address, that *
* your name may be correctly *
* listed. *
*

DUPLICATE. Keep for Reference."

And in connection with said contracts and sales, and as a means of enforcing and maintaining said system of

prices and preventing the cutting and demoralization of prices, and to trace and identify each wholesale and retail package of said proprietary medicines, remedies and cures, your orator has stamped upon each package or carton of its said proprietary medicines, remedies and cures a serial number for identification and placed in each package of said proprietary remedies, medicines and cures manufactured by it and sold to jobbers and wholesale druggists, cards bearing corresponding serial numbers, and has required and provided in the said contracts that said jobbers or wholesale druggist agents of your orator upon the sale of any bottle or package of your orator's proprietary remedies, medicines or cures, as aforesaid, place upon said cards so furnished, which said cards bear the same serial number that is stamped upon the package or carton containing the proprietary remedy accompanying said card, the name and address of the retail druggist or establishment purchasing the same, and also the name of the wholesale druggist or jobber agent selling the same, and to return the same to your orator. That by and under the provisions of said wholesale agency contracts aforesaid, the title of your orator to the said proprietary medicines supplied thereunder to jobbers and wholesale druggists remains and is vested in your orator until actual sale in good faith to retail dealers, as therein provided. The entire purpose and object of the said system of contracts serial numbers, cards and stamping is to identify and trace the said proprietary medicines, remedies and cures of your orator upon the market and control the sale thereof, and prevent the cutting of prices and the demoralization of trade and the injury and damage resulting to your orator's aforesaid trade, business and good will in the manufacture and sale of said remedies, medicines and cures, as afore-

said, and your orator asserts and charges that said system and method, both in its form and purpose, are reasonable, regular, lawful and proper, and, if observed, will accomplish the aforesaid purposes and greatly benefit your orator in its aforesaid business, and in the sale of its said proprietary remedies and medicines, and conserve and advance the market, trade and good will therein, and increase the sales of and demand for said proprietary remedies, medicines and cures and that the introduction and establishment of said system and method of contracts and sales has been accomplished at the expense and cost of over twenty thousand dollars to your orator, and has been devised and established by your orator and put into force for your orator's said proprietary medicines and remedies without in any way ~~concerning, collecting, conspiring, joining with or~~ affecting any other manufacturer or medicine, remedy or cure whatsoever. All druggists, wholesale and retail, and all dealers in proprietary medicines and cures have been and are given full opportunity without distinction or discrimination to sign said contracts and are supplied with your orator's said proprietary remedies, medicines and cures without discrimination or distinction upon signing and observing the said contracts and system, and contracts of the kinds aforesaid are now in full force and effect between your orator and over four hundred jobbers and wholesalers and twenty-five thousand retail dealers in proprietary medicines in the United States by whom your orator's medicines, remedies and cures are now kept on sale and sold, as provided

in said contracts and in which said wholesale and retail authorized establishments receive only your orator's said proprietary medicines and remedies and cures ~~as~~ ^{as} procurable and on sale through said establishments where the same have been unlawfully and illegally and contrary to the law and provisions of said contracts and system by fraud and deception obtained and offered for sale and sold against the policy and to the injury of your orator.

Your orator further shews unto your Honors that

said system and method and the design and effect of said contracts and the purposes thereof are well known to the defendant, to the public and to jobbers, wholesale druggists, retail druggists and retail stores generally; that your orator's aforesaid system has been generally adopted and recognized, and most of the jobbers and wholesale druggists and a majority of the retail druggists of the country have executed the contracts and complied with the terms and conditions thereof, and that said system has been of great benefit and advantage to your orator and its aforesaid business, and has increased the trade and business of your orator in its said proprietary medicines, remedies and cures.

V.

Your orator further shows unto your Honors, that said packages and cartons containing your orator's medicines, remedies and cures show and exhibit as part of the letter press on the exterior the prices and said identifying serial numbers adopted by your orator for the purposes of identification herein set forth, and also statements of ailments and diseases for which the proprietary medicines, remedies and cures are adapted, intended and recommended by your orator and determined upon after much care, many experiments and much research, and which are intended to and do enable said medicines, remedies and cures to be taken properly and with beneficial results; and your orator shows that the said lists and statements of ailments for which said proprietary remedies, medicines and cures are adapted, intended and recommended are a valuable and indispensable adjunct to the va-

rious proprietary remedies, medicines and cures, and sale and use thereof, and, without such lists and statements, said proprietary remedies, medicines and cures cannot be advantageously used and employed, and that the same should not and cannot be properly and safely obliterated or defaced; and that said peculiar, distinctive, original and characteristic style and dress of packages and said trade mark, letter press and trade names used upon and in connection with its various proprietary remedies, medicines and cures were adopted both for the purpose of advertising and exploiting the same, and of enabling the public to identify the same as your orator's, and for the additional reason that thereby your orator's trade could be perpetuated and purchasers safeguarded against imitation by and the substitution of other products as and for your orator's for the reason that by means of said characteristic dress of packages, letter press, trade names and trade mark, your orator's products could be and are readily recognized by the public and buyers and that said statements and lists of ailments for which said proprietary medicines, remedies and cures are adopted, intended and recommended were adopted and employed for the purpose and with the result of enabling buyers to use said proprietary remedies, medicines and cures with safety and advantage, and to advertise, announce and promote the sale of said proprietary remedies, medicines and cures and that the said desired purposes and intentions have been and are now being accomplished and realized thereby, and that as a matter of fact the said packages and cartons and the letter press, trade names and trade mark thereon do indicate to the public, dealers and

22.

buyers for use, that the products to which the same are affixed are the manufacture and product of your orator and identify and advertise and promote the sale of said proprietary medicines, remedies and cures, and inform for what ailments adapted and intended, and the same are of great value and are the exclusive property of your orator for the purposes aforesaid. That it has long been and now is the universal custom of retailers, except in recent times of defendant, to offer for sale and sell your orator's said proprietary medicines, remedies and cures and proprietary remedies in general in the original packages unutilized and unobliterated and with the letter press, trade marks and insignia thereon legible and unobscured, and such has been and is the custom and understanding universally in the purchase and sale of your orator's said proprietary remedies, medicines and cures both on the part of your orator and of purchasing jobbers and retailers.

VI.

Your orator shows that it is therefore entitled to maintain and preserve the aforesaid system and method of contracts and sales adopted and established by it, as aforesaid, and prevent the marketing and sale of its proprietary medicines, remedies and cures except in conformity therewith *and* to have its said proprietary medicines, remedies and cures offered for sale and sold to buyers for use with the packages, cartons, labels, letter press, trade names, and trade mark thereon legible and unobscured, unobliterated and unutilized.

VII.

your orator further shows unto your Honors that the

said defendant was, prior to the adoption by your orator of the aforesaid system of contracts, serial cards, numbers and reports, and long after the adoption by your orator of the various distinctive, characteristic and original style and dress of package adopted by your orator as aforesaid, and the establishment of your orator's good will, trade and rights aforesaid, and with full knowledge thereof, a dealer in your orator's proprietary remedies, medicines and cures, and purchased said proprietary remedies, medicines and cures of your orator from your orator and wholesale druggists and jobbers, and sold and kept the said proprietary medicines, remedies and cures of your orator for sale at wholesale and sold and supplied the same to retail dealers upon inquiry and request, and that immediately upon the adoption and introduction by your orator of the aforesaid system and method, said defendant was notified by your orator of said system and method, and became and has since continued to be well advised and acquainted with the terms and conditions thereof, and of the terms and conditions of the contracts aforesaid required by your orator to be executed by jobbers, wholesale druggists, retail druggists and retailers in connection with the purchase and sale of your orator's proprietary medicines, remedies and cures; that the defendant has long been also well aware of ^{the} characteristics, purposes and value of the peculiar, distinctive, original and characteristic style and dress of packages adopted and used by your orator in connection with its said proprietary remedies, medicines and cures, and of the trade mark, trade names, lists of ailments, numerals and letter press thereon, and also advised that the public and buyers at retail identify

and recognize the same thereby, and of the value and necessity of the said trade marks, trade names, lists of ailments intended to be benefited, and of the numerals, prices and letter press upon and in connection with said proprietary medicines, remedies and cures, and of the universal custom and rule on the part of retail druggists and establishments of offering for sale and selling proprietary medicines in general, and your orator's proprietary medicines, remedies and cures in particular, in the original packages with the cartons, labels, trade names, trade mark, numerals, lists of ailments and letter press thereon unutilated, unobliterated, intact and legible and of the establishment of your orator's trade reputation and good will in retail stores, as aforesaid; that the said defendant has been tendered and has had full, ample and complete opportunity to execute said wholesale agency contract required by your orator, as aforesaid; that your orator has tendered to said defendant and requested it to sign, execute, observe and carry out said ~~wholesale~~ contract, and said defendant has wholly neglected and refused so to do; that at the City of Cincinnati, in the State of Ohio, where said defendant carries on and conducts a wholesale drug store, as aforesaid, are a large number of druggists, wholesale and retail, many of whom have executed the said contracts with your orator of the tenor, form and effect above set forth, and who have purchased, either from your orator or from jobbers and wholesale druggists who have executed said wholesale contracts with your orator the proprietary remedies, medicines and cures of your orator, and who keep the same on sale at the prices and under the terms and conditions pro-

vided in said wholesalers' and retailers' contracts, respectively, and who observe the terms and conditions of said contracts and offer for sale and sell the said proprietary remedies, medicines and cures of your orator upon request at the prices fixed by your orator respectively, and in said peculiar, distinctive, original and characteristic style and dress of packages adopted and used by your orator, with said trade marks, trade names and list of ailments for which adapted, intended and recommended and letter press thereon unutilated, unobliterated, unaltered and legible.

VIII.

Your orator further shows that as a result of the meritorious character of your orator's said proprietary medicines, remedies and cures, and the advertisement, exploitation, sale and preparation thereof, as aforesaid, there has arisen and now exists a steady and constant demand for the same at retail drug stores and establishments, both by former users and consumers who are acquainted with the meritorious and desirable character and beneficial effects of your orator's said proprietary medicines, remedies and cures, and who desire to make new, continued and further purchases thereof at said retail drug stores and establishments for use and consumption, and also by and on the part of others who desire and intend to purchase the same because of the established good reputation thereof, both of which classes of purchasers intend and desire to obtain bottles containing your orator's proprietary remedies, medicines and cures, with the wrappers and labels thereon

unmutilated, unobliterated and unbroken, and with the medical theory, list of ailments and directions for use thereon unobliterated, unobscured and legible, and that your orator is entitled to have its said proprietary remedies, medicines and cures reach consumers with the labels and wrappers in the same condition as when prepared and put up in your orator's laboratory and with the letter press, prices, serial numbers, trade marks and directions thereon legible and unutilated. That the defendant is well advised of all the facts and matters set forth in the premises and of the aforesaid custom among wholesale and retail dealers of selling your orator's proprietary remedies, medicines and cures with the wrappers, labels and letter press thereon unutilated and unobscured, and also of your orator's said established system and method of contracts and sales, relating to said proprietary medicines, remedies and cures, and that with full knowledge of the aforesaid facts the said defendant, ^{as your orator is informed and believes and charges by fact} who has not made or entered into ^{any} contract, wholesale or retail, with your orator, as required by your orator's said system and method, and who is, therefore, not entitled to buy or deal in your orator's proprietary medicines, remedies and cures and since the establishment of your orator's aforesaid system of contracts and sales, not for the purpose of fairly, honestly and legitimately dealing in your orator's aforesaid proprietary remedies, medicines and cures, but in combination and conspiracy with a number of wholesale and retail dealers in drugs and proprietary medicines, who have not entered into said wholesale and retail contracts required by your orator's system and method, and solely for the purpose of us-

ing, selling and disposing of your orator's aforesaid proprietary remedies, medicines and cures to wholesale and retail dealers to be advertised, sold and marketed at cut rates and prices less than the retail prices fixed by your orator for the same and thus attract and secure custom and patronage for other merchandise, and not for the purpose of making or receiving a direct money profit from the sale of your orator's said proprietary remedies, medicines and cures, has unlawfully and fraudulently obtained and procured from time to time your orator's said proprietary remedies, medicines and cures from your orator's wholesale and retail agents who have executed with your orator contracts respectively of the tenor and effect aforesaid and thereby and thereunder obtained your orator's said proprietary medicines, remedies and cures, both directly and indirectly, by means of false and fraudulent representations and statements, and by surreptitious and dishonest methods, and by persuading and inducing, directly and indirectly, your orator's said wholesale and retail agents, under contracts with your orator, as aforesaid, to violate and break said contracts, and in violation of the terms, and conditions thereof, and sell and supply your orator's

proprietary remedies, medicines and cures, to said defendant *that said defendant has obtained and the violation of said contracts accomplished by collusion, promises, payment of cash*
 That after having procured your orator's said proprietary remedies, medicines and cures, directly and indirectly by and through said unlawful and dishonest means, has advertised, announced, sold and supplied, and continues to advertise, announce, sell and supply your orator's said proprietary remedies, medicines and cures to dealers at less than the established retail prices thereof, and at less than *that said defendant has obtained and the violation of said contracts accomplished by collusion, promises, payment of cash*

that said defendant has obtained and the violation of said contracts accomplished by collusion, promises, payment of cash

the jobbing prices thereof; that said defendant is at all times fully advised and aware that the said wholesale and retail agents of your orator from whom defendant by the means aforesaid procures and obtains said proprietary medicines, remedies and cures of your orator are respectively at the time of so procuring and obtaining under contracts of the tenor and effect aforesaid with your orator and cannot sell or supply said medicines, remedies and cures to defendant without violation thereof; that defendant after so illegally and fraudulently obtaining and procuring from your orator's wholesale and retail agents in violation of their contracts with your orator, as aforesaid, the said proprietary medicines, remedies and cures, who have purposely and in collusion with defendant, and for the purpose of concealing the source of supply of defendant obliterated and scratched off said serial numbers, prices and mutilated and rendered the labels, lists of ailments and directions thereof illegible, or after so procuring said proprietary medicines, remedies and cures, with wrappers and labels intact, by the unlawful and dishonest methods, directly and indirectly, as aforesaid, deliberately scratches off, obliterates and erases the serial identification numbers which are stamped by your orator in the various places upon the labels and cartons of said proprietary medicines, remedies and cures, and the directions, prices, lists of ailments and letter press on said cartons and labels, and in so doing, thus destroys, mutilates, obliterates, obscures and renders illegible the said labels and cartons of your orator's said proprietary remedies, medicines and cures, and defaces and destroys

the letter press and renders the said list of ailments, and directions for use illegible and unintelligible, and after so having mutilated, altered, obliterated, changed and obscured the labels and cartons, offers for sale and sells at cut prices and rates your orator's proprietary remedies, medicines and cures in said condition, with the labels and cartons obscured, obliterated, broken, mutilated in the manner and to the extent aforesaid, to wholesale and retail dealers for ultimate sale at cut rates and prices to buyers for use, in said condition, which sales of said proprietary medicines, remedies and cures with wrappers and labels removed and mutilated as aforesaid, and at cut rates and prices are thereupon by said purchasers from defendant made and consummated and intended by defendant to be done and accomplished, all in violation of your orator's rights, and to the injury and detriment of your orator's trade and reputation, and of the reputation of and trade and good will in your orator's said proprietary remedies, medicines and cures. That the result of the conduct of the defendant in the premises is that irreparable injury and damage have resulted and will continue to result to your orator's trade and good will and to the said system and method of sales and contracts, and to the reputation and demand for your orator's proprietary medicines, remedies and cures; ^{that the defendant's sales have been and will be decreased and prevented and the reputation and demand for your orator's medicines and cures;} that the defendant gives out and announces that ^{it will} pursue its conduct in the premises, and your orator verily believes that it will do so unless prevented by legal process; that the conduct of the defendant in the premises both in unlawfully and illegally obtaining the proprietary medicines, remedies and cures of your orator and in the mu-

tilation, breaking, destruction, obliteration and defacement of the labels and cartons, and offering for sale and selling the same in that condition, each and all constitute a continuous and injurious trespass upon and invasion of your orator's trade and property rights, and if continued will not only inflict irreparable damage and injury upon your orator's trade and rights, but utterly destroy and ruin the sale and reputation of and good will and trade in *and* said method and system of sales of your orator's said proprietary medicines, remedies and cures. The value of your orator's said system of contracts and sales and of the labels and cartons upon your orator's proprietary remedies, medicines and cures, and the right to prevent the mutilation and alteration of each thereof, and the right to have your orator's remedies and medicines offered for sale and sold as and in the condition put out by your orator each exceeds the sum of five thousand dollars, and the sum or value in controversy herein exceeds, exclusive of interest or costs, the sum or value of five thousand dollars.

IX.

FORASMUCH, THEREFORE, as your orator is without remedy in the premises, save in a Court of Equity, and to the end that the said defendant may full, true, perfect and distinct answer make to each and all of the allegations herein, but not under oath, the answer under oath of the said defendant being hereby waived, as by rule provided; that a hearing may be had herein; that your orator's rights

in the premises may be established and defined; that the defendant, its agents, servants, employees, attorneys and associates, and each thereof may be, at first during the pendency of this suit and afterwards perpetually, enjoined and restrained from in any manner inducing or persuading, or attempting to procure, induce or persuade, directly or indirectly, any person, firm or corporation who has entered into the aforesaid wholesale or retail agency contracts, or any of them, with your orator, relating to the purchase and sale of your orator's proprietary remedies, medicines and cures, to in any way violate or break the same, or to sell or deliver to the defendant, or to any person for it, your orator's proprietary remedies, medicines and cures, to in any way violate or break the said contracts, or to sell or deliver to the defendant, or to any person for it, your orator's proprietary remedies, medicines and cures, or any thereof, and from procuring, or attempting to procure, in any way your orator's proprietary remedies, medicines and cures, directly or indirectly from any wholesale or retail dealer who has executed such wholesale or retail agency contract with your orator, in violation of the same; from advertising, selling or offering for sale the proprietary remedies, medicines and cures of your orator obtained in or by any of the aforesaid means at prices less than the established retail price thereof, or to wholesale or retail dealers who have not entered into such wholesale or retail contracts with your orator, and from in any way obliterating, defacing, mutilating, breaking, altering, removing, covering up, or destroying the labels and cartons upon the bottles containing your orator's pro-

proprietary remedies, medicines and cures, or any of the said cartons or labels, and from offering for sale or selling your orator's proprietary remedies, medicines or cures with cartons or labels or the letter press and numerals thereon in any way obliterated, mutilated, broken, altered, destroyed or covered up; that an accounting may be had with the defendant relative to the profits derived by it from its unlawful conduct in the premises, and the damages resulting to your orator therefrom; and that your orator may have such other and further relief as is consistent with justice and equity in the premises.

Your orator prays that the Writ of Injunction, first temporary and afterwards permanent, may issue out of this Court directed to the defendant, its officers, agents, servants, attorneys, employes, associates and assigns, commanding and enjoining it and them in manner and form aforesaid; and the Writ of Subpoena in Chancery, directed to the defendant, JOHN D. PARK & SONS COMPANY, commanding it to be and appear before this Honorable Court in the City of Covington on a day certain therein named, there to answer make and abide the further order of the Court in the premises, and thus your orator will ever pray, etc.

The Dr. Miles Medical Co.

Complainant.

Frederick W. Huicke

Solicitor for Complainant.

Frank F. Reed & Edward A. Rogers

Of Counsel for Complainant.

35.

State of Illinois, }
County of Cook. } ss.

F. K. FERNALD, being duly sworn, deposes and states that he is the Assistant Secretary and Manager of the Dr. Miles Medical Company, complainant in the above and foregoing bill of complaint; that he has read the said bill of complaint, and knows the contents thereof, and that the same, and the matters and facts therein stated, are true save the matters and facts stated to be upon information and belief, and that as to these affiant verily believes the same are true.

F. K. Fernald

Subscribed and sworn to before me, this 16
day of September, A. D., 1907.

Margaret Phelan
Notary Public.

2558

CIRCUIT COURT OF UNITED STATES,
EASTERN DISTRICT OF KENTUCKY.

DR. WILES MEDICAL COMPANY.

v.

JOHN D. PARK & SONS COMPANY.

BILL FOR INJUNCTION.

2-574
3591719
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BILLED

NOV 6 1907

J. A. O'FINNELL
CLERK

Record in
Record Book A-4
page 155