

# FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 19, 1933, TO APRIL 23, 1934

IN THE MATTER OF

E. GRIFFITHS HUGHES, INC.

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

*Docket 1966. Complaint, Aug. 13, 1931—Decision, June 19, 1933*

Where a corporation engaged in the sale of a laxative salts, and a bath salts, to wholesale and retail druggists;

(a) Represented in advertisements in newspapers and magazines that said laxative salts constituted a cure for obesity and would reduce excess fat, facts being that preparation in question, sold with detailed directions for diet recommended in connection with taking thereof, constituted a saline laxative similar to numerous other preparations in competition with which it was sold, and, while of possible value, along with other similar laxatives, in connection with treatment of obesity through diet and exercise, did not itself constitute a cure or remedy for such condition;

With capacity and tendency through additional appeal thus given said preparation over and above the properties also claimed for it as a saline laxative, eliminant, and aperient, to drive other similar laxatives not thus misrepresented from the market, and thereby unduly restrain trade in the general class of commodities concerned, injuriously affect competitors dealing in bona fide preparations adapted to and used for reduction of excess fat and sold through drug stores to the general public, at its solicitation or on prescription of a physician, and mislead and deceive purchasing public and induce their purchase of preparation in question as and for an obesity remedy; to the substantial injury of said competitors; and

(b) Represented said bath salts in advertisements in newspapers and magazines as a preparation, which (1) radiated great quantities of oxygen, with invigorating effect, (2) had physiological and therapeutic effects upon the body, (3) was imported from England, (4) had the properties of the famous old spas and produced the effects of treatment at such places, and, (5) had medicinal and therapeutic effect, facts being preparation had no such effects as claimed, and aforesaid statements and representations were false and unwarranted in every respect; with capacity and tendency to mislead and deceive the purchasing public as to said preparation and induce purchase thereof in such mistaken belief;

With effect of diverting business to it from competitors who in no way misrepresent the quality, uses, effects, properties, or origin of the products dealt in by them, and with tendency so to divert, to the substantial injury and prejudice of such competitors:

## Complaint

18 F.T.C.

*Held*, That such practices, under the conditions and circumstances set forth, were all to the injury and prejudice of the public and competitors, and constituted unfair methods of competition.

*Mr. Harry D. Michael* for the Commission.

*Mr. Albert Edward Maves*, of New York City, for respondent.

## SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of certain proprietary preparations to wholesale and retail druggists in States other than the State of New York, for ultimate resale to the consuming public, and with principal office and place of business at Rochester, with advertising falsely or misleadingly, and misbranding or mislabeling as to properties, results, and source or origin of product, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth for more than one year last past in the sale of its "Kruschen Salts" and "Radox Bath Salts" or "Radox" through advertisements in newspapers and magazines and through statements on the cartons of its said bath salts, and on leaflets and circulars enclosed therewith, makes false and misleading statements which represent or imply that said Kruschen Salts constitute a cure or remedy for obesity and will reduce excess fat, and that said Radox Bath Salts, when used in bath and as otherwise directed, releases and radiates great quantities of oxygen, thereby producing an invigorating and energizing effect upon the body as well as other physiological and therapeutic effects; also that "the use of said preparation relieves pain and that it has medicinal or therapeutic value in various uses; that it is imported from England; and that it combines the properties of the world-famous medical spas and produces the effects of treatment at such places."<sup>1</sup>

<sup>1</sup> Advertisements set forth in the complaint relating to said Kruschen Salts include the following:

"The Modern Way to Slenderize."

"Kruschen Salts has proved itself a thoroughly dependable, quick, pleasant, and what's best—a Safe and, Healthy method of reducing."

"Here's the recipe that banishes fat and brings into blossom all the natural attractiveness that every woman possesses. Every morning take one-half teaspoonful of Kruschen Salts in a glass of hot water before breakfast. Be sure and do this every morning for 'It's the little daily dose that takes off the fat.'"

"Kruschen method of weight reduction sensible and safe."

"Get on the scales today and see how much you weigh—then get an 85-cent bottle of Kruschen Salts (lasts 4 weeks), take one-half teaspoonful every morning in a glass of hot water and when you have finished the first bottle weigh yourself again."

"The Modern Safe Way—Right Way to Lose Fat."

## Complaint

The facts are, as alleged, that said first named product does not materially reduce excess fat, but merely acts as a purgative or laxative or diuretic, and said bath salts "when used in the bath and as otherwise directed, do not release and radiate any material amount of oxygen and not sufficiently to have any material physiological or therapeutic effect upon the human body; that said salts, when used as aforesaid, do not have any material medicinal or therapeutic value, and statements and representations to that effect are greatly exaggerated, unwarranted, and misleading; that said salts are not imported from England but are prepared for respondent in this country; and that said salts do not combine the properties of the world-famous medical spas nor does their use at home produce the effects of treatment at such places."

Said misleading, erroneous and exaggerated representations of respondent, as charged, have had and do have the tendency and capacity to (a) confuse, mislead, and deceive members of the public into believing that said Kruschen Salts are a cure or remedy for obesity and that their use will reduce excess fat, and that said "Radox" bath salts "when used in the bath and as otherwise directed, radiate oxygen in great quantities and sufficiently to produce an invigorating and energizing effect and to produce material physiological and therapeutic effects; that said salts, when used as aforesaid, have material medicinal and therapeutic value; that they are imported from England and that they combine the properties of the world-famous

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Advertisements relating to "Radox"—

"Radox Bath Salts not only combines the same valuable properties of the world-famous Spas of Marienbad, Carlsbad and Vichy, but it also radiates great quantities of oxygen in your bath water—and everyone knows what wonderful effects oxygen has on the system! Never before have you ever felt so refreshed and soothed, your entire system is stimulated to a new life and activity."

"Right from England—"

Statements appearing on the cartons and packages of said "Radox Bath Salts"—

"Radox Radiates Oxygen."

"A balanced preparation which impregnates the water of the bath or hand basin with valuable salts, and super-charges it with oxygen, forming an artificial mineral water combining the properties of the world-famous medicinal spa waters of Carlsbad, Vichy, Marienbad and Similar Baths."

"When you add Radox to your bath—Oxygen is liberated—enlivening and gloriously stimulating the entire body."

"It has an antiseptic action."

"Promotes the elimination through the pores of the skin of acid secretions from the blood, often the basic cause of Many Skin Affections."

"Radox Bath Water is a \* \* \* sedative in cases of skin affections."

"All soreness, inflammation, due to chilblains \* \* \* soreness pains \* \* \* are relieved quickly by a Radox Foot Bath."

Statements appearing on the leaflets or circulars enclosed therewith—

"Tired, fidgety nerves are quieted—"

"Here from England—"

"Radox (a balanced preparation of mineral salts), dissolved in the bath form an artificial mineral water super-charged with energizing oxygen, bringing within reach of all the cleansing, rejuvenating, energizing benefits of many of the World Famous Spa Waters of Europe and similar medicinal baths hitherto only enjoyed by the wealthy."

## Findings

18 F.T.C.

spas and that their use produces the effects of treatment at such places", and to (b) induce members of the public, by reason of the erroneous beliefs thus engendered, to purchase and use such products and to divert trade to respondent from competitors engaged in sale in interstate commerce of similar preparations; all to the prejudice and injury of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

**REPORT, FINDINGS AS TO THE FACTS, AND ORDER**

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission issued and served its complaint upon the respondent, E. Griffiths Hughes, Inc., a corporation, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had and evidence was introduced in support of the allegations of said complaint and in opposition thereto before a trial examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and having been heard in oral argument before the Commission, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

**FINDINGS AS TO THE FACTS**

PARAGRAPH 1. The respondent, E. Griffiths Hughes, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its principal place of business in the city of Rochester in the State of New York. Said respondent is now and has been engaged for more than five years last past in the sale in interstate commerce of certain proprietary preparations, known and designated respectively as "Kruschen Salts" and "Radox Bath Salts", or "Radox", to wholesale and retail druggists located in the various States of the United States, other than the State of New York, for ultimate resale to members of the public. Said respondent causes and has caused its said products when so sold to be transported in interstate commerce from its said

1

## Findings

place of business in the State of New York to, into and through States of the United States other than New York, to such wholesale and retail dealers to whom said products are and have been sold.

PAR. 2. The respondent herein, in soliciting the sale of said Kruschen Salts has made use of advertisements inserted in newspapers and magazines circulated in and among the various States of the United States to members of the public, which said advertisements contain statements which represent or imply that said preparation is a cure or remedy for obesity and that it will reduce excess fat. Among such statements so used by respondent in referring to said salts are the following:

Its the little daily dose that does it.

The modern Way to Slenderize.

Kruschen Salts has proved itself a thoroughly dependable, quick, pleasant, and what's best—a *safe and healthy* method of reducing.

Here's the recipe that banishes fat and brings into blossom all the natural attractiveness that every woman possesses. Every morning take one half teaspoonful of Kruschen Salts in a glass of hot water before breakfast. Be sure and do this every morning for it's the little daily dose that takes off the fat.

If you want to lose fat with speed get an 85-cent bottle of Kruschen Salts.

A youthful slender figure means everything today and women have at last found an unusually effective, pleasant, and actually healthy way to control their rebellious curves with Kruschen Salts.

Kruschen method of weight reduction sensible and safe.

Get on the scales today and see how much you weigh—then get an 85-cent bottle of Kruschen Salts (lasts 4 weeks), take one half teaspoonful every morning in a glass of hot water and when you have finished the first bottle weigh yourself again.

The Modern Safe Way—Right Way to lose Fat.

A fashionable slender figure as well as glorious magnetic health can now be yours! Just take a half teaspoonful of Kruschen Salts in a glass of hot water every morning before breakfast.

and other statements of like import. <sup>1</sup>

PAR. 3. Kruschen Salts is a saline laxative, the qualitative and quantitative analysis of which, as shown by the testimony, is as follows:

|                                  | Approximate<br>percentage |
|----------------------------------|---------------------------|
| Magnesium sulphate .....         | 66.70                     |
| Sodium sulphate .....            | 2.17                      |
| Potassium sulphate .....         | 8.30                      |
| Sodium chloride .....            | 10.70                     |
| Potassium chloride .....         | (trace)                   |
| Citric acid .....                | 1.45                      |
| Water of hydration to make ..... | 100.00                    |

The above is the analysis of said product as deduced from the testimony of the chemists who testified on behalf of the Commission. Qualitatively, said analysis is corroborated by respondent's testi-

mony. No quantitative analysis was given by respondent's witnesses. The president of respondent company, appearing as a witness for respondent, testified that said ingredients represented the qualitative composition of Kruschen Salts and stated in regard to potassium chloride merely that there was no question about it being contained therein. However, he did not state the percentage of potassium chloride and refused to give the quantity when asked for it by counsel for the Commission on cross-examination, said refusal being insisted upon after an objection to the question by respondent's attorney was overruled. Consequently, the presence of said ingredient in the quantity of a trace, as stated above, is taken as correct.

However, respondent has not contended that potassium chloride is the effective ingredient in Kruschen Salts in the treatment of obesity, and no evidence was offered to that effect. On the other hand, there is substantial evidence in the record that potassium chloride is not indicated in the treatment of obesity, and there is no evidence to the contrary. There is also unrefuted testimony that the addition of potassium chloride to a preparation of the foregoing analysis in a greater amount than a trace would not result in a mixture constituting a treatment for obesity, or indicated in such treatment. Respondent offered no evidence to refute said percentages given in the above analysis, other than the testimony given by the president of respondent company, referred to above, in regard to potassium chloride. Said witness refused to answer such questions as were put to him by the attorney for the Commission on cross-examination in regard to the quantity of ingredients, although he was instructed to do so by the examiner who presided at the hearing. There is no evidence that the claimed function of Kruschen Salts in reducing excess fat is due to the proportions in which the various ingredients are present.

Five doctors of medicine and one pharmacologist testified on behalf of the Commission to the general effect that a preparation of the constituents as given above, and taken in the dosage recommended by respondent, does not constitute a treatment for obesity and will not of itself reduce excess fat. Some of these witnesses also testified that no single ingredient taken by itself is so indicated. Only one medical witness gave contrary medical opinions on behalf of respondent, and this witness gave no satisfactory scientific explanation of the action of said preparation or of any of its ingredients in this regard, nor was any given by any other witness. Said witness advanced the theory that a loss of fat results because of the formation of insoluble soaps in the small intestine after the ingestion of magnesium sulphate (epsom salts), because of the formation of

1

## Findings

magnesium bicarbonate and sodium sulphate, and the subsequent combining of the magnesium bicarbonate with fats contained in the ingested meal, and thus the fats so affected would not be absorbed.

However, said witness stated that he had no experimental knowledge of the theory advanced, and that he did not know that anyone else had such knowledge. It was shown by Commission's evidence that such effect would not result to any appreciable extent. It was further shown that it would not likely ensue because of the fact that the Kruschen Salts, when taken before breakfast, as directed, as a treatment for obesity, is taken long after the food of the day before has passed from the stomach and small intestine into the colon. Besides, the salts pass from the stomach ahead of any fats that may be included in the morning meal, with the result that there is little, if any, fats to be so acted upon. Moreover, it was shown that even if such action took place, the amount of fat so affected would be insignificant. Said theory, moreover, fails to take into account the effects of carbohydrates as fat-producing foods. It is shown by the testimony that carbohydrates constitute the chief part of the diet and are one of the chief sources of excess fat in the body.

Said medical witness for respondent is the author or editor of various books in which methods of treatment of obesity are given which prescribe diet as the controlling factor and which do not give saline laxatives as the effective medium in such treatment. Extracts from said books introduced in evidence are not in harmony with the testimony of said witness but support the scientific opinions expressed by witnesses for the Commission.

Five other doctors of medicine testified on behalf of respondent but their testimony does not consist of medical opinions on the question involved. All gave testimony to the effect that they gave Kruschen Salts to various patients and that such patients after a time showed losses of weight. The medical witness previously referred to gave similar testimony in addition to his other testimony. The Commission finds that said tests, so-called, were not scientifically conducted or controlled and were not of such a character as to warrant the conclusion or to be the basis of an opinion that the taking of the Kruschen Salts effected any reduction in weight that might have ensued in such cases. Further, such tests were not so conducted as to eliminate from consideration intervening causes or factors which bring about loss of fat or loss of body weight. The evidence in regard to such so-called tests is unsatisfactory, inconclusive, and entitled to but little weight. Respondent's claim that Kruschen Salts of itself will effect reduction is further not in harmony with detailed directions for dietary treatment contained in a circular

## Findings

18 F.T.C.

enclosed in the package of salts which are recommended to be followed in connection with the taking of the medicine, as well as such suggestions embodied in some of the advertising matter.

After considering all the evidence the Commission finds that Kruschen Salts does not constitute a cure or remedy for obesity and does not of itself reduce excess fat.

PAR. 4. There are many proprietary preparations sold in interstate commerce in the United States of the same general character as Kruschen Salts. Among such products, as shown by the evidence, are Carlsbad Salt, Carlsbad Water, French Lick Salts, Pluto Water, Sal Hepatica, Squibb's Epsom Salts, Squibb's Laxative Salt, Squibb's Milk of Magnesia, Jad Salts, Eno's Effervescent Salt, Sal Vita, ADS Laxative Salt, Abbott's Sal Lithia, Abbott's Saline Laxative and Puretest Epsom Salts. All of said preparations come under the general classification of saline laxatives as does Kruschen Salts. All produce a laxative effect when taken in proper dosage, the extent of the laxative effect depending upon the size of the dose. Kruschen Salts produces a mild laxative effect when taken in the dosage advertised by respondent for the treatment of obesity. Larger doses increase such effect.

Kruschen Salts is described as "an agreeable aperient employed when an intestinal flush and bowel activator is indicated" on the cartons in which it is displayed for sale and sold. Further, it is recommended thereon for its "therapeutic efficiency" in "promoting the elimination of the waste from the intestinal tract" and for use where "a mild saline laxative is required."

In some of its published advertisements, as shown by exhibits in evidence, respondent makes many statements indicating the use of its salts as a laxative and as an eliminant. Among such statements are the following:

\* \* \* the six revitalizing salts of Kruschen that keep your body free from toxins and acid and cause your internal organs to function properly \* \* \*.

Kruschen is more than just a mere laxative salt—it's an ideal blend of six separate minerals which not only eliminate poisons and waste accumulations but which \* \* \*.

\* \* \* Kruschen keeps the bowels, kidneys and liver in fine condition—it frees you from poisons and toxins \* \* \*.

\* \* \* Kruschen is a superb combination of SIX separate mineral salts which act on glands, nerves and body organs as do the salts at the famous and expensive Spas of Europe.

It keeps the body free from harmful acids and poisons \* \* \*.

\* \* \* they clean out the impurities in your blood by keeping the bowels, kidneys and liver in splendid working shape \* \* \*.

\* \* \* Remember Kruschen is more than just a laxative salt \* \* \*.

## Findings

\* \* \* When you take a half teaspoonful of Kruschen Salts in a glass of hot water every morning before breakfast, you are putting into your system a superb combination of 6 mineral salts which help the blood, glands, nerves, and body organs to function properly—and eliminate waste accumulations \* \* \*.

Kruschen Salts are the daily health dose of millions of people the world over.

One-half teaspoonful of Kruschen in a glass of hot water every morning gently but surely stimulates the liver, bowels and kidneys to a healthy elimination.

One bottle of Kruschen Salts (lasts 4 weeks) costs but a trifle and one bottle will prove a vast benefit to people who have constipation, headaches, indigestion, rheumatism, depression, acidity, and autointoxication through improper elimination.

A half teaspoonful in a glass of hot water every morning amazingly helps to keep one healthy and the stomach, liver, bowels and kidneys in splendid condition—frees your system from harmful toxins and acids.

Unlike most salts Kruschen isn't simply a laxative—if that's all you want any old kind of salts with any kind of a label will do—but is that all you want?

There is evidence that in some drug stores saline laxatives, including Kruschen Salts, are displayed together on the shelves. There is some evidence that lay people entertain a belief that saline laxatives are effective in reducing excess fat. The evidence discloses that a saline laxative may be used in connection with other treatment for obesity for the purpose of relieving constipation or producing evacuation of the bowels if such is desirable for any reason where conditions for such use exist. Such conditions may exist in many cases of obesity. Any of the saline laxatives named herein could be used for such purpose and any could be advertised for such use in connection with a true reducing treatment.

At least two of the saline laxatives named above, to wit, Carlsbad Salts and Carlsbad Water, are recommended for use in the treatment of obesity in connection with diet and exercise. All of said saline laxatives, doubtless, could properly be advertised in the same way, provided their true functions were indicated and it were not represented or implied that such salts constituted the reducing medium. It further appears that French Lick Salts is recommended as being useful in the treatment of obesity.

The Commission finds that Kruschen Salts is in competition with the products referred to and that trade would necessarily be diverted to respondent from such competitors by reason of misleading representations as to the effects of Kruschen Salts in the treatment of obesity. Since Kruschen Salts is designated and known as a saline laxative and advertised for its use as a laxative in addition to its advertised use as a treatment for obesity, the latter claim gives the

product an additional sales appeal calculated to increase its sale at the expense of other saline laxatives not so advertised. Advertising by respondent that Kruschen Salts of itself effects reduction, since such claim is unwarranted, is unfair to competitors who sell saline laxatives for use with a reducing diet without any claim that the saline laxatives effect reduction.

Several representatives of dealers in saline laxatives were asked for their opinions as to whether or not their products were in competition with Kruschen Salts and as to the competitive effects of representation as to the latter as a treatment for obesity. Mr. Neville R. Ashcroft, treasurer of Harold F. Ritchie & Co., Inc., sales agent for Eno's Effervescent Salts, testified that his company considered their product to be in competition with Kruschen Salts. When asked his opinion as to the effect of representations that Kruschen Salts is a remedy or treatment for obesity on the sale of other saline laxatives, he said that it was a hard question to answer, that Eno's is in a class by itself and that users of his product would use no other. However, he said:

We have never advertised it as a fat reducer. We feel that, if a person goes into a store and has the two products put side by side, if they want the saline laxative properties as well as the fat-reducing properties, there might be a tendency to buy Kruschen's and not buy Eno. But, if they are looking for Eno's, or are looking for a laxative and are not particularly interested in a fat reducer, we do not think that the mere fact that Kruschen is selling it as a fat reducer would affect the sale of Enos.

Henry C. Young, in charge of the medicine department of Louis K. Liggett Co., when asked if his company handled "other saline laxatives that are in competition with Kruschen Salts", replied, "Yes, sir", and then explained his answer by saying, "We carry other saline salts."

Lee H. Bristol, vice president of Bristol-Myers Co., manufacturers of and dealers in proprietary articles, among which is Sal Hepatica, an effervescent saline laxative, stated that, as a matter of opinion, Sal Hepatica is in competition with Kruschen Salts. He further testified that misrepresentation of a saline laxative for weight reduction, if such representations are accepted, would have a general tendency to increase the sales of the product so misrepresented and decrease the sale of other saline laxatives. He further stated that exaggerated claims might cast reflection upon the entire field of competition. On cross-examination he was asked, "Has any advertising of Kruschen Salts, to your definite and certain knowledge, resulted in any injury to the sale of your product, Sal Hepatica?", to which he replied, "I could never prove that it had." However, on redirect examination, he testified that regardless of his inability

1

## Findings

to point out concrete instances his "opinion still stands." His company does not advertise Sal Hepatica for weight reduction.

Dr. H. Sidney Newcomer, connected with E. R. Squibb & Sons, manufacturers of and dealers in proprietaries and biological preparations, including Squibb's Epsom Salts (packaged), Squibb's Laxative Salt and Squibb's Milk of Magnesia, all classified as saline laxatives, said that he assumed that Kruschen Salts was in competition with all saline laxatives including those of his company. He was asked the following question:

What would be your opinion, Doctor, as to the effect of misrepresentation of a saline laxative as a treatment for obesity or excess fat, on the sale of other saline laxatives which were not so represented?

To which he replied:

We feel that there is only a certain business in this sort of product to be obtained, and that we could obtain a larger business, if we could use more startling claims.

He was further asked:

Would the effect of more startling claims, as you term it, be to increase the sale of the saline laxative so advertised at the expense of others, in your opinion?

To which he replied:

Yes, I think that is true. It is a matter of opinion.

Dr. Newcomer testified that his company did not advertise any of its saline laxatives as a treatment for obesity or excess fat. On cross-examination he adhered to his opinion as previously shown but said that he did not know of his own knowledge that his company's business had been injured or interfered with by the advertising of Kruschen Salts for weight reduction and obesity.

Moritz Eisner, president of Carlsbad Products Co., importers of and dealers in Carlsbad Salt and Carlsbad Water, differentiated these preparations from saline laxatives generally on the ground that these are natural products while "the others are artificial products" and, consequently, in his opinion, they are not in competition. However, he stated that both are used for the same purpose and in that sense they are in competition, namely, as a laxative. When asked to state his opinion as to the effect of misrepresentation of a saline laxative as a treatment for obesity or for the reduction of excess fat, he said he did not know. Then when asked if the tendency of such a practice would be to increase the sale of the one at the expense of the others, he replied:

I could not tell you about that. I have not bothered about anything else. I have tried to sell that Carlsbad Salts and tried to increase the sale—.

William H. Wulfleff, manager of Wyeth Chemical Co., manufacturers of and dealers in proprietary medicines, including Jad Salts, a saline laxative, testified that Kruschen Salts and Jad Salts are in competition "Just as a saline laxative." On cross-examination he replied in the negative to the following question:

Insofar as Kruschen Salts is advertised nationally to the public as a treatment for obesity and weight reduction, are Kruschen and Jad Salts in competition?

However, on re-direct examination, when asked if such was a misrepresentation and the product involved was "merely a saline laxative", whether it would still be "in competition with all other saline laxatives", he replied:

If it is a saline product, advertised as such, it is in competition.

The representation that Kruschen Salts is a treatment for obesity and that it will reduce excess fat, taken in connection with the fact that Kruschen Salts is a saline laxative and is designated as such by respondent and is advertised as having the therapeutic functions of saline laxatives in general gives it such an additional sales appeal as not only to increase its sale at the expense of others but also has the tendency and capacity to eventually drive other saline laxatives from the market that are not so represented and thus unduly to restrain trade in the general commodity of which Kruschen Salts is a type.

In addition to the competition of Kruschen Salts with saline laxatives, said product, when advertised and offered for sale as a treatment for obesity, is in competition with bona fide preparations, adapted to and used for the reduction of excess fat, such as thyroid extract preparations, among which are Squibb's Thyroxin, Parke Davis & Co.'s Thyroid Extract, and Burroughs-Wellcome & Co.'s Thyroid Extract, as shown by the evidence. These products are kept in drug stores and are for sale to the general public on their own solicitation or on the prescription of a physician. Such competitors would likewise be injuriously affected by respondent's representations in regard to Kruschen Salts as a treatment for obesity, and such representations are unfair to such competitors as well as to the others previously mentioned, since, as heretofore shown, they are not warranted by the facts and are beyond the therapeutic effects of respondent's said product.

In the course and conduct of its said sale of Kruschen Salts, respondent has been, and is now, in competition in interstate commerce with such other dealers heretofore mentioned as well as with other individuals, firms and corporations engaged in the sale in interstate commerce of preparations similar in kind and as to pur-

1

## Findings

poses of use to said Kruschen Salts sold by respondent as aforesaid. The Commission further finds that respondent's said misrepresentations of its said product have the tendency and capacity to cause substantial injury to its said competitors and probably will result in such injury.

PAR. 5. The use by respondent in its advertising matter of statements which represent or imply that Kruschen Salts is a cure or remedy for obesity and that it will reduce excess fat has the tendency and capacity to mislead and deceive members of the purchasing public into the belief that such is the fact and to induce the purchase of said product as the result of such mistaken belief.

PAR. 6. The respondent herein, in soliciting the sale of Radox Bath Salts, has made use of advertisements inserted in newspapers and magazines circulated in and among the various States of the United States to members of the public which said advertisements contain statements which represent or imply that said preparation, when used in the bath, radiates great quantities of oxygen; that such radiation of oxygen produces an invigorating and energizing effect upon the body, as well as other physiological and therapeutic effects; that said product is imported from England; that it combines the properties of the world-famous spas and produces the effect of treatment at such places; and that it has medicinal and therapeutic value when used as aforesaid. Among such statements so used by respondent are the following:

Radox Bath Salts not only combines the same valuable properties of the world-famous Spas of Marienbad, Carlsbad and Vichy, but it also radiates great quantities of oxygen in your bath water—and everyone knows what wonderful effects oxygen has on the system? Never before have you ever felt so refreshed and soothed, your entire system is stimulated to a new life and activity.

Right from England.

PAR. 7. Radox Bath Salts, when used in the bath, produces no therapeutic effects upon the body. This was the substance of the testimony given by the Commission's medical witnesses. No testimony was given to the contrary by respondent's witnesses. Said preparation, when used in the bath, releases a small amount of oxygen and such release has no therapeutic effect upon the body. There is no warrant for the representation that said preparation radiates *great quantities* of oxygen in the bath water. Radox Bath Salts do not combine the properties of the world-famous spas, as represented, nor does its use at home produce the effects of treatment at such places. Said preparation is not imported from England but is prepared and packaged in this country as testified to by the president of respondent company. The representation that one's "entire

## Conclusion

18 F.T.C.

system is stimulated to a new life and activity " by the use of said preparation is unwarranted.

PAR. 8. The use by respondent in its advertising matter of statements which represent or imply that Radox Bath Salts, when used in the bath, radiates great quantities of oxygen; that such radiation of oxygen produces an invigorating and energizing effect upon the body, as well as other physiological and therapeutic effects; that the preparation is imported from England; that it combines the properties of the world-famous spas and produces the effects of treatment at such places; and that it has therapeutic value when used as aforesaid, has the tendency and capacity to mislead and deceive members of the purchasing public into the belief that such are the facts and to induce the purchase of said product as the result of such mistaken beliefs.

PAR. 9. In the course and conduct of its said business, in the advertising, sale and distribution of said Radox Bath Salts, respondent has been and is now in competition with other individuals, firms, and corporations engaged in the sale in interstate commerce of preparations similar in kind and as to purposes of use to said Radox Bath Salts sold by respondent as aforesaid.

PAR. 10. Said competitors of respondent in the sale of its said products have caused and do now cause their said products when sold by them to be transported from various States of the United States to, into and through States of the United States other than the State of the origin of the shipment thereof.

PAR. 11. There are among the competitors of respondent in the sale of said products those who in no wise misrepresent the qualities, uses, effects, properties or origin of said competing products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of said competitors.

## CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and are in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## Order

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony in support of the charges of said complaint and in opposition thereto, briefs filed herein and oral argument by counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes",

*It is ordered*, That respondent, E. Griffiths Hughes, Inc., its officers, directors, agents, representatives, servants, and employees, in connection with the offering for sale, sale or distribution in interstate commerce of "Kruschen Salts" and "Radox Bath Salts", or of said preparations under any other name or names, cease and desist from representing directly or indirectly:

(1) That said "Kruschen Salts" constitutes a cure or remedy for obesity or that it will of itself reduce excess fat.

(2) That said "Radox Bath Salts" has therapeutic value when used in the bath; that it releases great quantities of oxygen when so used; that its use at home combines the properties of world famous spas or produces the effects of treatment at such places; that it stimulates or energizes the body; or that it is imported from England.

*It is further ordered*, That such respondent shall, within 90 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
GEORGE L. WALKER, DOING BUSINESS UNDER THE  
NAME AND STYLE OF WALKER MEDICINE CO.

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

*Docket 2059. Complaint, July 11, 1932—Decision, July 18, 1933*

Where an individual engaged in the compounding, preparation, and sale of proprietary or so-called patent medicines,

- (a) Included in designation of one of said preparations, the words "Indian health tonic", and represented said preparation as "the unfailing remedy for laziness and a drowsy, tired, sleepy feeling", and as relieving "weakness and tired feeling in one day", facts being preparation in question was not a general health restorative and use of the word "health" without proper limitations, in the name of the medicine, or otherwise in connection therewith, was unwarranted, and said medicine did not constitute a remedy for laziness and a sleepy feeling, unless due to constipation, and would not relieve weakness and a tired feeling, unless caused by anemia, and then only to a slight extent;
- (b) Represented said preparation as one for liver, kidneys, and blood, relieving bladder and kidney trouble, and as one which relieved in one day a bad cold or cough, grippe, or fever, facts being said medicine had no specific effect on the liver or any particular effect on the kidneys, and no therapeutic effect on any disease of the blood, except, possibly, in cases of anemia, would not relieve bladder trouble, and did not constitute an effective treatment for colds or grippe, nor a treatment for fevers generally, nor an effective one for ordinary fever and one which would relieve fever in one day; and
- (c) Represented said preparation as one which relieved pain in the neck, side, shoulder, back, or hips in one day, and one which relieved rheumatism, giving quick relief from pain, and also female diseases and women's troubles, facts being it would not relieve pain in the neck, etc., and was not generally beneficial in the treatment of rheumatism, other than as a laxative or purgative where the condition was connected in some way with constipation, and would not give quick relief from pain in such cases and had no effect in female diseases and women's troubles and would not be beneficial in treatment thereof unless in cases of constipation;

With tendency and capacity, through said exaggerated, misleading, and unwarranted representations which passed beyond the medicinal value of the preparation and did not truthfully and accurately state the therapeutic effect thereof, to confuse, mislead and deceive the general public into believing that said medicine had general curative properties in restoring health, without regard to the particular ailment, and constituted a remedy for, or would give relief in, the diseases and ailments named, or constituted such remedy or relief generally, without qualification or limitation, and to induce the purchase and use of such medicine because of such erroneous beliefs thereby caused, and divert trade to said individual