

Syllabus

IN THE MATTER OF
WARD J. MILLER, TRADING AS AMBER-ITA

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

Docket 2103. Complaint, May 4, 1933—Decision, June 12, 1934

Where an individual engaged in the manufacture of a medicine for the cure and treatment of diabetes, and in the sale thereof through druggists, and direct to the consumer, whom he (1) contacted through advertisements in newspapers and periodicals of general circulation, (2) dealt with on the basis of inadequate and inconclusive requests and questions, without requiring blood sugar tests, and (3) supplied with suggestions for treatment and diet which were (a) ineffective and potentially detrimental and dangerous, and (b) made no provision for any variation in the dosage prescribed on the bottle (the sole directions thereon contained, or therewith provided, when sold through druggists), or (c) for medical attention or supervision, or (d) administrations, as required, of insulin, which the scientific world and medical profession had theretofore found and recognized as the most potent and effective agency and treatment for reducing the sugar content of the blood, and through which, as needed, and/or systematic and frequent examination of the patient and regulation of his diet and mode of life, it had theretofore succeeded in controlling said incurable, insidious, dangerous and wide spread disease, and assuring the person afflicted a life of normal activity and duration—

Represented in said newspaper and periodical advertising and through other printed matter and testimonials, that its said medicine constituted an efficacious, complete and proper remedy for said disease, through such statements as "A new preparation that a great many people claim has brought them wonderful results", "Many people who have taken it tell us that the symptoms of the disease disappear, that they are feeling fine, and are eating nourishing food * * * food which diabetics have not been able to eat", etc., "I give Amber-Ita full credit for bringing back my health", "I continued to take Amber-Ita until I had taken eight bottles, at which time I was feeling entirely normal and was eating a normal diet. * * * none of symptoms of diabetes have reappeared", "After taking a total of eight bottles I feel perfectly normal, I have gained several pounds in weight and do all my own housework", "All symptoms of the disease have left me and I feel normal", etc., and included and set forth a report of certain purported tests allegedly made on four diabetics, together with the statement, "The official report of the biologists should be very convincing to you, much time and money have been spent in gathering this material so you may see for yourself what Amber-Ita is capable of doing";

The facts being that members of the laity were incapable of understanding said tests, which were unscientific, unreliable, and misleading, and did not show or tend to show that medicine in question was a cure or proper treatment for diabetes, said medicine did not reduce the sugar content of the blood, or effect sugar metabolism, and did not and could not by reason of the ingredients therein contained constitute an adequate remedy or treatment or tonic for diabetics, and had no therapeutic value of any kind in the

Complaint

19 F. T. C.

treatment thereof, and testimonials in question were without probative value, in that givers thereof supplemented their use of the medicine in question with diet or insulin, or both, and presence of the disease was not shown as an established fact;

With the result of endangering the lives and harming the health of diabetics taking said preparation, either with or without the suggested diet, and postponing the beginning of proper and adequate treatment for the control of the disease, and with tendency and capacity to mislead and deceive purchasers and prospective purchasers of said medicine into the belief that the statements and representations in question were true, and preparation constituted a safe, efficacious and proper treatment for cure of diabetes, and to induce their purchase thereof in such belief, and divert trade from competitors:

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

Mr. E. J. Hornibrook for the Commission.

Jackson, Fitzgerald & Dalm, of Kalamazoo, Mich., and *Holt & Winn*, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, 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 charges that Ward J. Miller, trading as Amber-Ita hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Ward J. Miller, is an individual trading as Amber-Ita, with his principal place of business at 315 North Rose Street, Kalamazoo, Mich. He is now and for several years last past has been engaged at said Kalamazoo in the manufacture and sale of a drug or medicine which he designates as Amber-Ita. This drug or medicine is sold by respondent as a cure and treatment for the disease known as diabetes. It is sold by respondent in the several States of the United States and when orders are received therefor such orders are filled by respondent packing the same in the said city of Kalamazoo and shipping the same from said city to purchasers thereof, many of whom reside in States other than the said State of Michigan.

PAR. 2. In the course and conduct of said business respondent is in competition with individuals, copartnerships, and corporations likewise engaged in the transportation and sale between and among various States of the United States of medicines, drugs, and treat-

ments sold and used for the same purposes as is respondent's said Amber-Ita.

PAR. 3. In the aid of the sale of the said Amber-Ita respondent advertises in newspapers and magazines of general circulation throughout the United States and in circulars, booklets, letters, and other printed matter sent to its customers and prospective customers through the United States mails and in and through such media makes the following, among other false and misleading statements and representations, as to the merits of said Amber-Ita:

(a) That it will cure and is proper treatment for diabetes.

(b) Sets forth purported testimonials in which it is claimed that the writers thereof have been cured or relieved in cases of diabetes by the use of Amber-Ita.

PAR. 4. The statements and representations set forth in the preceding paragraph are false and misleading in that (a) Amber-Ita will not cure or aid in the cure of diabetes and is not proper treatment for diabetes; (b) the writers of said testimonials have not been cured or benefited by the use of Amber-Ita in cases of diabetes.

PAR. 5. The aforesaid use by respondent of the statements and representations described in paragraph 3 hereof has and has had the tendency and capacity to deceive the purchasing public into the belief that such statements and representations are true and to induce purchasers to buy said Amber-Ita and use the same in such belief and to prevent such purchasers from procuring proper treatment for diabetes and to unfairly divert trade from said competitors to the said respondent and to otherwise injure them.

PAR. 6. The above acts and practices are each and all of them to the prejudice of the public and to respondents' said competitors and constitute unfair methods of competition in interstate commerce, within the intent and meaning of Section 5 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."

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, on the 4th day of May, A. D. 1933, issued against and thereafter served its complaint upon the respondent, Ward J. Miller, trading as Amber-Ita, charging him with the use of unfair methods of competition in commerce in violation of

Findings

19 F. T. C.

the provisions of said act. Respondent having entered its appearance and filed an answer to the said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence taken in support of the charges stated in the complaint and in opposition thereto. Thereafter, this proceeding came on regularly for hearing and decision, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ward J. Miller, is an individual who trades under the name of Amber-Ita at and from the city of Kalamazoo, in the State of Michigan. He is now 69 years of age and for a period of 33 years, and up until about two years ago, was engaged in the business of selling real estate and the sale of eyeglasses. He is not a physician, has no scientific knowledge of the therapeutic action or value of drugs or medicine. Some time in the year 1924, respondent's brother, John F. Miller, became ill. This illness continued until the year 1930. The said John F. Miller thought he had diabetes and respondent, "following a tip" the source of which he declines to divulge, gathered some plants from the soil of Michigan and therefrom made a medicine, which in the future was to be called Amber-Ita, gave it to his said brother, who after taking 6 or 7 bottles of it maintained that he had become a well man because of the use of it.

From this alleged experience of his brother and noting, so he says, that this plant did not grow on soil adapted to the growing of sugar beets, respondent allegedly became so satisfied with the efficacy of Amber-Ita as a cure and proper treatment for diabetes that sometime in the year 1931 he began to manufacture and bottle it at said city of Kalamazoo and sell it, as a treatment and cure for diabetes, to drug stores and individuals located in several of the cities of the United States, and has continued to so sell it up to the present time. The retail price of Amber-Ita is \$3 for a 16-ounce bottle thereof.

PAR. 2. Respondent in his answer admits the allegations of the complaint as to his being engaged in interstate commerce in the sale of Amber-Ita.

Amber-Ita is shipped, usually through the mails, from Kalamazoo, Mich., to individuals in every State of the United States for use by them as a cure and proper treatment in diabetes. Recently it

has been placed by respondent on sale at retail in drug stores in Michigan, Wisconsin, and Indiana, and the same being resold by said drug stores to individuals for use as a cure and proper treatment for the disease of diabetes. At the time of taking testimony in this matter, negotiations were being carried on by respondent to place it in drug stores of New York City. It is shipped from the said city of Kalamazoo into and through other States of the United States to the places of location of these said individuals and drug stores.

PAR. 3. The allegation of the complaint as to competition is admitted by respondent in his answer.

Insulin is the only medicine or drug recognized by the medical profession as potent and proper in a case of diabetes. Insulin is an extract taken from the pancreas of animals, usually the pig, and sometimes the calf. It sells at retail for 75 cents per 100 units. Some patients will take 10 units a day and some, 100 units. It is administered by injection into the blood stream. It is manufactured in many cities of the United States and shipped to hospitals and drug stores all over the country. Physicians instruct their patients in the use of insulin and authorize them to purchase the same and use it as directed, and they do so. Insulin is sold without prescription direct to the laity in nearly every drug store in the United States. Insulin is in direct competition in interstate commerce in Amber-Ita. Respondent is selling \$4,500 worth of Amber-Ita per year and his business in the sale thereof is now growing at the rate of 16 percent per month. The manufacturers, wholesalers, and jobbers selling insulin in interstate commerce and retailers of the same are now injured by the sale of Amber-Ita and will suffer still greater injury as the sale of Amber-Ita increases.

PAR. 4. Diabetes is an incurable disease. It works insidiously and without proper treatment progresses and may, and often does, result fatally. With proper treatment one suffering from diabetes may live a normally efficient, and the usual span of life. There are approximately 1,400,000 cases of diabetes in the United States.

In the pancreas are what is known as the Islands of Langerhan. Their function is to secrete insulin. This insulin controls sugar metabolism or the handling of sugar in the body. A deficiency of this substance results in increased amounts of sugar in the blood. It is the accepted theory that it is the failure of these Islands of Langerhan to function that results in diabetes. Diabetes manifests itself by excessive thirst, excessive urine, excessive hunger, loss of weight, dizziness, delay in the healing of wounds, susceptibility to infection, weakness, fatigue, itching, boils, ulcers, dryness of skin,

acidosis, at times excessive sugar in the urine and always an excess of sugar in the blood. One may have many of these different symptoms and yet not have diabetes. The only reliable test for diabetes is the test for determining the amount of sugar in the blood. Many have excessive sugar in the urine and still do not have diabetes. In a case of that character, a treatment for diabetes would be dangerous. *A treatment in order to be efficacious in diabetes must lower the sugar content of the blood.*

PAR. 5. Respondent makes and bottles the medicine Amber-Ita at the said city of Kalamazoo in the said State of Michigan. There is nothing on the label of a bottle of Amber-Ita save the name of the medicine and the dosage. There is nothing with or about the bottle to indicate what it is sold for. Purchasers are apprised of its purported virtues in cases of diabetes through respondent's advertising.

In connection with the sale and offering for sale in interstate commerce of the said Amber-Ita, respondent advertised in newspapers and magazines in general circulation throughout the United States, in circulars, booklets, letters, and other printed matter sent to its customers and prospective customers through the United States mails. Typical of this newspaper advertising is Commission's Exhibit 3, which reads as follows:

DIABETES

MUST IT MEAN DIET AND DIE?

If you have symptoms of Diabetes, great thirst, excessive hunger, loss of weight and strength, write for our free booklet setting forth a new and revolutionary theory regarding cause and treatment of Diabetes. No obligation.

Amber-Ita, 315 North Rose St., Kalamazoo, Mich.

The above or similar advertisements have appeared in newspapers of general circulation such as Grand Rapids Press, of Grand Rapids, Mich.; in the Pathfinder and Grit and other magazines of general circulation throughout the United States.

Other advertisements appearing in magazines and newspapers of general circulation throughout the United States read as follows:

IF YOU HAVE

DIABETES

YOU SHOULD CERTAINLY INVESTIGATE

AMBER-ITA

A new preparation that a great many people claim has brought them wonderful results. Amber-Ita may be procured direct or through your nearest dealer.

Fill in the coupon below and mail it today, with a description of your case. It will bring you information of great interest.

57

Findings

AMBER-ITA 315 NORTH ROSE STREET, KALAMAZOO, MICH.

Please send me information regarding Amber-Ita.

Name _____

Street address _____

City and State _____

If respondent receives response to such advertisements, letters are sent to those responding to them. These letters state in substance that—

many people who have taken it (Amber-Ita) tell us that the symptoms of the disease disappeared, that they are feeling fine, and are eating nourishing food * * * food which, as diabetics, they have not been able to eat, we can refer you to a great many people who have obtained surprising relief after taking their first bottle of Amber-Ita; if you have any symptoms of diabetes, you owe it to yourself to give Amber-Ita a fair trial, we believe you will be surprised and delighted with the result.

A booklet entitled "Diabetes—Must it Mean Diet and Die?" is also sent to all who respond to said magazine and newspaper advertising. It sets forth purported symptoms of diabetes and respondent's theory of diabetes; suggestions as to treatment of diabetes; a history of the purported remarkable recovery from diabetes of said John J. Miller after taking Amber-Ita, and also of the purported recovery of a Mrs. Max Major and what purports to be a report of tests made with Amber-Ita on four patients alleged to have been afflicted with diabetes; a suggestion that some 20 people whose names and addresses are given and who it is said have taken Amber-Ita for diabetes be written to and asked their opinion as to the efficacy of Amber-Ita; and also so-called suggestions as to diet.

There is also a booklet sent to prospective patients residing in different States of the United States which is represented by Commission's Exhibit No. 16. This booklet is entitled "Here is the Proof. Sworn Statements of Those Who Have Taken Amber-Ita." It contains some fifteen purported testimonials, all laudatory of Amber-Ita as a cure or treatment for diabetes. These testimonials were not admitted by the examiner for the purpose of proving their truth but for the purpose of showing the character of respondent's advertising, and they are here considered by the Commission for such purpose only. These testimonials represent that the users of Amber-Ita have either been cured or relieved of the symptoms of their disease by its use.

The substance of some of them are:

Mrs. LEE GIBBONS:

* * * After taking 10 bottles of Amber-Ita I was feeling perfectly well and all symptoms of my disease have disappeared.

ERNEST W. HOAGUE:

I give Amber-Ita full credit for bringing back my health.

Mrs. ERIC TAYLOR:

I have taken no other medicine or treatment for diabetes since I started using Amber-Ita, and give full credit to Amber-Ita for my return to health.

Mr. JOHN F. MILLER:

I continued to take Amber-Ita until I had taken 8 bottles, at which time I was feeling entirely normal and was eating a normal diet. * * * None of the symptoms of diabetes have reappeared.

Mrs. ELLA MOHNEY:

I am still taking Amber-Ita. I really believe that it saved my life.

Mrs. HATTIE RHODES:

I continued to take Amber-Ita and now after taking a total of 8 bottles I feel perfectly normal, have gained several pounds in weight and do all my own housework.

OSCAR STEWART:

I intend to continue the use of Amber-Ita and I am more than satisfied with the results I have obtained by taking it.

Mrs. ELMER MILLER:

All symptoms of the disease have left me and I feel normal.

There are other similar testimonials in said Exhibit No. 16.¹ All of these testimonials hold out to the purchasers or prospective purchasers that Amber-Ita is a cure and proper treatment for the disease of diabetes.

Webster's Unabridged Dictionary defines the word "cure" as a restoration to health, or an abolishment of disease. Respondent claims in his answer that Amber-Ita is a proper treatment for diabetes.

It is found as a fact that respondent in all of his said advertising holds out to the public that Amber-Ita will cure diabetes, will relieve the symptoms of diabetes, and is a proper treatment for diabetes.

PAR. 6. The following scientific men testified for the Commission:

Dr. Morris Fishbein, a physician, editor of the Journal of the American Medical Association, and who has made a special study of the subject of diabetes.

Dr. Solomon Strouse, a Chicago physician, a specialist in metabolic diseases; connected with the Michael Reese Hospital of Chicago; a writer of books on the subject of diet for the sick.

Dr. Samuel Soskin, a Chicago physician; the director of metabolic research at the Michael Reese Hospital; assistant professor of pathology at the University of Chicago; head of the metabolic clinic of the Michael Reese Dispensaries; specialist in Carbohydrate Metabolism; carried on extensive experimentations with diabetic animals; acting head of the metabolic clinic of the Michael Reese Hospital where all patients with diabetes are treated.

¹ Exhibits not published.

Dr. Charles A. Elliott, a practicing physician of Chicago and a specialist in diagnosis and treatment of diseases, including the disease of diabetes, professor of medicine and chairman of the department of medicine of Northwestern University; has treated approximately 500 cases of diabetes personally.

Dr. Wm. M. LeFevre, a general practitioner of Muskegon, Mich., has specialized more or less in the disease of diabetes and has treated from 150 to 200 cases of diabetes.

Dr. H. D. Lightbody, connected with the Food & Drug Administration of the Department of Agriculture as a biochemist-pharmacologist.

Dr. Lewellys Barker, a physician of 43 years experience in the practice of medicine, successor to Wm. Osler as professor of medicine of the Johns Hopkins University, now professor emeritus of said institution; writer of books on medical subjects, and has treated hundreds of cases of diabetes and had thousands under his observation.

Dr. Paul W. Spickard, a physician and medical adviser with the Food & Drug Administration of the Department of Agriculture.

Dr. Virgil S. McDaniel, a physician and medical adviser of the Federal Food & Drug Administration of the Department of Agriculture.

Hereafter reference will be made only to the names of these said witnesses.

In the treatment prescribed by respondent, a patient receives no instructions except the booklet entitled "Diabetes, Must It Mean Diet and Die", Commission's Exhibits 14 and 15, and the directions on the bottle. The dosage is not varied and each patient controls his own diet. The last page of the booklets, Exhibits 14 and 15, contain the following questions with spaces for answering the same:

What is your age?

How long have you had diabetes?

Do you use insulin?

If so, how many units per day?

Are your feet and legs swollen?

Have you any running sores?

Give any other information you desire.

Upon answers to these questions the medicine is recommended, depending on what the answers are, and patients are asked for urine specimens and urine tests, but these are not always furnished. The medicine is sent regardless of whether or not urine tests are made or reported. Tests for blood sugar are never required.

A correct diagnosis as to whether a person has diabetes cannot be made from answers to the questions recited above the tests of the urine.

In instances of those who buy Amber-Ita from druggists, nothing is said to them by such druggists about tests, they are supplied with no instructions, save the instruction as to dosage on the label of the bottle, they answer no questions as to their condition, and are not supplied by the druggist with Commission's Exhibit 14 or 15.

There are but three methods of treating diabetes which are approved by members of the medical profession. In cases not too far advanced a proper diet often suffices. In many other cases both diet and insulin are prescribed and in still others only insulin is given. The insulin is always injected into the blood stream. This insulin so injected supplies the insulin which the Islands of Langerhan are failing to secrete. No medicine to be taken orally (i. e., through the mouth or other aperture of the body) has yet been found efficacious in the treatment of diabetes, although millions have been expended in an endeavor to find such a medicine. Amber-Ita is to be taken orally only. Some substances have been discovered which will reduce the blood sugar, but which have been proven to be either injurious to the liver or poisonous.

In detail these methods are: first, a thorough physical examination, including an examination and analysis of the urine and a test for blood sugar, and if the patient is found to have diabetes; second, proper diet, regulation of life in general, hygiene and exercise, and finally, in cases that require it, insulin. About half of the cases require insulin. This treatment requires frequent tests for blood sugar and regular observation and advice of skilled physicians. The amount of insulin should be varied from time to time as the tests and observations indicate the necessity therefor. Diet should be regulated in the same way. Insulin in addition to rendering sugar metabolism possible, gradually establishes a greater tolerance for sugar. In the orderly course of successful treatment the amount of insulin is gradually reduced as the assistance to metabolism relieves the handicap and permits nature to strengthen the organs involved. Nothing has been discovered that is as potent as insulin and no other medical treatment is recognized by the scientific world and the medical profession generally.

The services of a physician are not suggested by respondent in the treatment of diabetes when Amber-Ita is used. It is advertised by respondent for use by the laity as a complete, efficacious and proper remedy for diabetes; some suggestions as to diet are made to those purchasing Amber-Ita direct from respondent. This suggested diet will be referred to later.

Diabetes is considered by the medical profession as incurable, but may be controlled and the life of the patient prolonged for its natural duration. Reduction of the blood sugar is an essential

requirement of a proper treatment for diabetes. A medicine to be efficacious in the treatment of diabetes must cause the lowering of the content of sugar in the blood. This is admitted by respondent himself on page 12 of Commission's Exhibit No. 14. It is also testified to by every physician called by the Commission. The use of Amber-Ita does not cause the lowering of the content of sugar in the blood.

Respondent causes to be published a report of purported tests made on four persons alleged to be diabetic who used Amber-Ita. It appears on pages 10 and 11 of Commission's Exhibits 14 and 15, which are booklets called "*Diabetes, must it mean diet and die?*" In connection with this said published report of purported tests, the respondent causes to be published in said booklets the following:

The official report of the biologists should be very convincing to you, much time and money have been spent in gathering this material so you may see for yourself what Amber-Ita is capable of doing.

Members of the laity are incapable of understanding such report.

Dr. Soskin testifies that if the tables therein indicated that Amber-Ita was proper treatment for diabetes they would show a corresponding drop in the sugar in the urine and the sugar in the blood. This they do not show. He concludes that these tests as reported are unscientific and unreliable.

Dr. Elliott, after examining the said report set forth in Commission's Exhibits 14 and 15, concludes that the report is unreliable from the view point of a conclusion to be arrived at to be made as to the result of any form of treatment of diabetes.

It is found that the purported tests reported on pages 10 and 11 of Commission's Exhibits 14 and 15 are unscientific, unreliable and that they do not show or tend to show that Amber-Ita is a cure or a proper treatment for diabetes, but that they have the tendency and capacity to deceive the purchasing public into the belief that Amber-Ita is a cure and proper treatment for diabetes.

Dr. LeFevre was induced by respondent's salesman to give Amber-Ita a trial. He was furnished a case of Amber-Ita by respondent and three of his diabetic patients volunteered to take the treatment. Before beginning treatment he took a record of the blood sugar of each of these patients and began to give them Amber-Ita as directed on the label, which is "Take a tablespoonful after meals each day"; these patients did so. He intended to conduct these experiments for a month, in the meantime watching their blood sugar and the urine sugar each week. At the end of the first week they all returned for their blood-sugar tests and in each case the blood sugar had risen

considerably. He had kept a case record of each of these three patients. He testifies:

So I tried it (meaning Amber-Ita), to determine, if I could, its effect on a diabetic, and this is the effect that it has, apparently, from these three cases: that it raises the blood sugar in the first place, inasmuch as all three of these cases had a higher blood sugar a week after taking it than they did before starting, and it must raise the blood sugar.

Secondly, two of these patients had no sugar in the urine with their highest blood sugar. After taking Amber-Ita a week, had no sugar in their urine, it reveals, in which they always had sugar before, and therefore, my deduction was that some substance in the Amber-Ita apparently raised the renal threshold.

The renal threshold is a level of blood sugar in which the sugar will spill over into the urine. That level, that renal threshold may vary somewhat in different people, but it is relatively constant in the same individual.

My conclusions, therefore, are that the renal threshold is raised by the action of whatever substance is in the Amber-Ita, and this raising of the renal threshold makes it look like it was doing the diabetic some good by reducing a negative urine sugar.

The days of treating diabetes or controlling diabetes by ascertaining the urinary sugar are gone. * * *

At the conclusion of his testimony he was asked the following question:

After having made these experiments, Doctor, what do you have to say as to Amber-Ita being a proper treatment in a case of diabetes?

His answer was:

I don't think it would be safe to continue to give Amber-Ita to a severe diabetic or a moderate diabetic, for that matter, because if you were going to raise the renal threshold, you are eliminating one source the body has of getting rid of the excess sugar, and it will pile up sugar in the blood and produce more work for the pancreas, when you must consider at the same time the pancreas is already damaged. You are throwing more work on it and it will make the diabetic worse. I think it is dangerous and improper.

Through fear for the health of his patients he abandoned the tests with Amber-Ita.

Tests of Amber-Ita were made by the Food & Drug Administration of the Department of Agriculture, in October of 1933. These tests were made by H. D. Lightbody, pharmacologist of that department, upon rabbits which were given Amber-Ita and records of their blood sugar content made and kept during the time they were receiving it. The report of his said tests is to be found in Commission's Exhibits 22, 23 and 24. After an examination of such report, Dr. Spickard was asked whether it (meaning said report) indicated that Amber-Ita is a proper treatment or cure for diabetes. His answer was: "They do not."

Q. Why?

A. As far as I can see from the averages which he has reported, there is nothing to show that it would have any effect on sugar metabolism which is what would be needed in treating diabetes.

Dr. McDaniels testified that the Lightbody report conveyed to his mind that Amber-Ita was not a proper treatment in a case of diabetes and gave as his reason for such conclusion that the results of the tests indicated that the preparation does not affect the blood sugar, and since it does not affect the blood sugar, he would not expect it to be of value in the treatment of diabetes.

Dr. Barker, after having been shown the report testified that the records showed that the taking of Amber-Ita had no effect upon the blood sugar of the rabbits which had been given it. He was asked this question:

What does this report (referring to the Lightbody report) convey to you? Does it show Amber-Ita to be a proper treatment or a cure for diabetes?

His answer was:

It gives no evidence in favor of it. It gives evidence that it does not have any effect upon blood sugar.

Dr. Lightbody testified that his experiments showed that Amber-Ita did not lower the sugar in the blood.

Dr. Fuller, the only witness testifying as an expert for respondent and who conducted experiments with Amber-Ita on four diabetics, said (Dr. Fuller was in the employ of respondent at the time of giving his testimony):

I feel that Amber-Ita would be a proper treatment to use for diabetes if it were used in controlled manner; that is, if other things which should be used hand-in-hand with it are used, as for instance, proper dietary regime, and in severe cases insulin if necessary, because I am firmly convinced by what I have seen of it that it belongs to a group of tonics, having specific value for the diabetic. It would be a proper treatment in the sense that it would not be the only treatment. I do not feel you could say, "here is a bottle of Amber-Ita; your problem is settled." It is not a cure, nor a treatment that will effect a cure, nor a treatment that will effect a complete cure.

Insulin is not prescribed by this respondent, nor is a proper dietary regime suggested by him in conjunction with the use of Amber-Ita. Amber-Ita is not sold or advertised as a tonic. Dr. Fuller was asked this question:

Q. Well, do you think it is safe for a patient, without having the advice of a doctor or direction, to buy a bottle of Amber-Ita and with the information contained in the booklet to treat himself?

A. Not with the information that is contained in this, no. (Referring to the booklet "*Diabetes, must it mean diet and die?*")

Then he was asked:

Q. Doctor, assuming that Amber-Ita is sold to the laity through the druggist without any instructions as to diet, without the booklet, Commission's Exhibit

Findings

19 F. T. C.

14, accompanying it, but in just a plain package, and inside is a bottle of Amber-Ita and the directions say "Take one tablespoon after each meal"; would you say that in all cases with so meager instructions, if followed out, it is a proper treatment for diabetes?

A. Why no, certainly not.

In Commission's Exhibit 14, respondent makes this statement:

Amber-Ita not only removed the sugar from the urine but also reduced the blood sugar. This is the real test for a diabetic preparation.

Later respondent revised Commission's Exhibit 14 and issued Commission's Exhibit 15 with this statement left out. Dr. Fuller testified:

Of course you have insulin for the purpose of burning sugar and it does burn sugar. Of course, if you have a blood sugar of 500 to 550 milligrams you are getting into a definite danger zone.

Q. In that zone the only thing that would help—the only thing that would be proper to administer would be insulin?

A. Not the only thing, but it would be the thing to burn the sugar and to bring it down.

Q. You do not contend that Amber-Ita burns sugar?

A. No, sir.

An analysis of Amber-Ita was made by the Food & Drug Control of the Department of Agriculture. The report of this analysis is set forth in Commission's Exhibit 17. This report shows an unknown quantity of 2/100 of 1%, which the analyst said could not be ascertained unless the name of the plant from which Amber-Ita is made is known. The respondent declined to divulge the name, claiming it a trade secret. Dr. Elliott testified that this unknown quantity was so small that in his opinion it could not have therapeutic value. This report of analysis was shown to physicians who testified for the Commission and after examination thereof they said:

Dr. STROUSE: I see nothing in this chemical report that would indicate any drug that might effect diabetes favorably.

Dr. SOSKINS: I know of no such substance that has been demonstrated to the medical profession which is a proper treatment for diabetes.

Dr. ELLIOTT: Amber-Ita taken one tablespoon after each meal is not a proper treatment for diabetes.

Dr. BARKER: I see nothing in the analysis here to indicate the presence of anything that would have so-called tonic effect as doctors usually speak of tonics. The analysis shows glycerine and invert sugar, both of which would give the liver more work to do. Since Glycerine is a carbohydrate it has to be burned in the way that sugar has to be burned. * * * Glycerine throws an increased burden upon the carbohydrate metabolism. * * * But the burden would be slight. If Amber-Ita does anything, it would increase the blood sugar.

Dr. SPICKARD: There is nothing there (looking at the analysis) that would indicate that Amber-Ita would have a tonic effect. It would not be proper, in

my opinion, to treat diabetes with a tonic alone. In my opinion Amber-Ita is not a remedy for or a proper treatment for diabetes.

Dr. McDANIELS: In my opinion Amber-Ita is not a proper treatment for diabetes nor a cure for diabetes.

Dr. BARKER, again: Treating a diabetic patient alone with Amber-Ita would not only be dangerous to the patient but if it happened to be a mild case that improves spontaneously, and the patient reported he or she was better, it might influence other diabetics who tend to congregate together to talk over their cases and lead them to neglect very important treatment. I think the use of it alone is a dangerous thing and very pernicious on the ground mentioned. Every diabetic ought to be under the close supervision of a medical man, and the treatment often has to be modified from time to time. Steady control is the secret of successful treatment of diabetic patients. The report of analysis gives no evidence in favor of it as a proper treatment or cure for diabetes. It gives evidence that it does not have any effect upon the blood sugar.

Amber-Ita sold over the drug counter is accompanied by no suggested diet but when respondent makes contact direct with patients, he supplies them, usually through the mails, with a copy of Commission's Exhibits 14 and 15, which are little booklets heretofore referred to and called "*Diabetes, must it mean diet and die?*" These booklets contain suggestions for diet to be used in conjunction with Amber-Ita. As to this suggested diet three of the experts say:

Dr. Fuller, respondent's witness: I do not subscribe to it. It is not safe for a patient to buy a bottle of Amber-Ita and with the information contained in the booklet (Commission's Exhibit 14) to treat himself.

Dr. Strouse:

Q. Doctor, I will ask you to examine Commission's Exhibit 14, under the heading "Our Suggestions Regarding Diet" on pages 14 and 15, and ask you to state whether or no that is a proper diet for all persons in cases of diabetes?

A. I think that dietary advice on that page is as harmful, pernicious and dangerous as any kind of advice that one could give a diabetic patient.

Dr. Soskins: Well, I would say that the diet, as it was shown in there (Commission's Exhibit 14) that it would cover almost anything, and that a patient might very easily take out a very bad or indifferent diet from the very general instructions as shown there. The amounts are not specified and the essence of a diabetic diet is the specification of the amount. The statements are self-contradictory and the advice is so vague in that it is difficult to say anything excepting that it doesn't mean anything. In particular, "eat all you want of the things you know you can eat without injury to yourself." That is very harmful advice.

It is found that the suggestions as to diet contained in Commission's Exhibits 14 and 15, if followed by a diabetic, either with or without the use of Amber-Ita, will not cure or aid in the cure of his diabetes or relieve his symptoms thereof and is not proper treatment for his diabetes and may be detrimental to his health and dangerous to his life.

In addition to Dr. Fuller there was another physician who testified for respondent. He gave no expert testimony. He attended one

Findings

19 F. T. C.

patient who had diabetes and who was taking Amber-Ita. He prescribed diet, an approved treatment for diabetes. There was an improvement in the patient's condition. This doctor nowhere makes claim in his testimony that Amber-Ita is responsible for such improvement.

Respondent introduced the testimony of 13 lay witnesses. Each testified that he or she had been diabetic and had been benefited by taking Amber-Ita. These patients were, in some instances, taking insulin or diet, or both, along with their Amber-Ita; in other instances no control of these patients was exercised; and in still others the alleged diabetic condition was founded on heresay; that is to say these patients said that some doctor had told them that they had diabetes. If they were taking either insulin or diet or both with their Amber-Ita, its therapeutic value or lack of it could not be determined as either of the former, or both, is proper treatment in diabetes and no one could tell which was responsible for the improvement of these patients, if there was any improvement. The testimony of these lay witnesses is of no probative value.

PAR. 7. The statements and representations of respondent's advertising, described in paragraph 5 hereof, are false and misleading in that they and each of them hold out to the purchasing public that Amber-Ita is a safe, efficacious, and proper treatment and cure for diabetes; while in truth and in fact Amber-Ita is neither a safe, efficacious or proper treatment or cure or tonic in cases of diabetes, nor does it have any therapeutic value of any kind or nature in the treatment of such disease, and its use in such afflictions, either with or without the diet suggested by respondent, is dangerous to the lives and detrimental to the health of the diabetics who take it, and its use postpones the procurement by them of proper and efficacious treatment.

PAR. 8. Each and all of the statements and representations as to the efficacy of Amber-Ita contained in the advertising as set forth in said paragraph 5 and the sale of Amber-Ita through druggists as aforesaid had and have the tendency and capacity to mislead and deceive the purchasers and prospective purchasers of respondent's said Amber-Ita into the belief that such statements and representations were and are true and that Amber-Ita is a safe, efficacious and proper treatment and cure for diabetes, and to induce them to purchase respondent's said Amber-Ita in such belief, and had and have the tendency and capacity to unfairly divert trade from the competitors of respondent to the respondent.

Order

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate commerce, and constitute a 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 TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission on complaint of the Commission, the answer of respondent, the testimony of evidence, and the briefs of counsel, and the Commission having made a report in writing in which it stated its findings as to the facts, with its conclusion that the respondent had violated the provisions of Section 5 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", and the Commission being fully advised in the premises,

It is ordered, That respondent, Ward J. Miller, his agents, employees, and representatives, in connection with the advertising, offering for sale, and sale in interstate commerce, or in the District of Columbia, of the commodity Amber-Ita, or any other product of the same or substantially the same ingredients or compound, cease and desist from representing in any manner, including by or through the use of testimonials or endorsements, that the use of Amber-Ita in conjunction with diet, or otherwise, constitutes a safe, efficacious or proper treatment for diabetes, or that it will cure or aid in the cure of diabetes, or remove or relieve the symptoms thereof, or that it has any therapeutic value whatever in the treatment of diabetes, or that it is a proper tonic to be used by those afflicted with diabetes.

It is further ordered, That respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

19 F. T. C.

IN THE MATTER OF
NATIONAL SILVER COMPANY

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

Docket 2143. Complaint, Dec. 29, 1933—Order, June 12, 1934

Consent order requiring respondent corporation, its agents, etc., in connection with the advertisement, offer, or sale in commerce among the several States and in the District of Columbia, of silver-plated ware, including teaspoons or other flatware, to cease and desist from using the word, term, or symbol "A-1" as a trade name, stamp, brand, or label, or upon wrappers or containers or in advertising or otherwise, unless and until such silver-plated ware is "full" or "standard" plate, containing in the case of teaspoons not less than two ounces or better of silver to the gross, in the case of dessert spoons and forks not less than three ounces or better of silver to the gross, and in the case of tablespoons and table and medium forks not less than four ounces or better of silver to the gross.

Mr. Marshall Morgan for the Commission.

Brill, Bergenfeld & Brill, of New York City, for respondent.

COMPLAINT

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, having reason to believe that National Silver Company has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 61-65 West Twenty-third Street, in the City of New York, State of New York, and for several years last past has been engaged in the business of selling and distributing to jobbers, wholesale and retail dealers in cutlery, chain stores, hardware stores, department stores, and house furnishing stores, knives, other cutlery and tableware, including such flatware as silver-plated teaspoons. Said respondent causes said knives, cutlery and tableware, when sold by it, to be transported from its principal place of business in the State New York into and through the various other States of the United States to the purchasers thereof. In the course