

Complaint

19 F. T. C.

IN THE MATTER OF
AMERICAN DRUG CORPORATION

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

Docket 2170. Complaint, Apr. 24, 1934—Order, Nov. 21, 1934

Consent order requiring respondent corporation, in connection with advertisement and sale in interstate commerce of its preparation "Sinasiptec" to desist from representing in advertisements, newspapers, magazines, journals, radio, circular letters, or otherwise, that said preparation will cure, prevent, or relieve sinus trouble, except to the extent that inflammation and swelling may be relieved through the use thereof, as specified, or that said preparation has ever cured or prevented sinus trouble, or is an antiseptic.

Mr. John W. Hildrop for the Commission.

Fordyce, White, Mayne & Williams and *Mr. Wm. F. Fahey*, all of St. Louis, Mo., 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 American Drug Corporation, hereinafter referred to as respondent, has been and 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. Said American Drug Corporation, respondent, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of St. Louis, in the State of Missouri. It is, and for more than four years last past has been engaged in the business of manufacturing, selling, and distributing, to dealers, users, and the general consuming public throughout the United States, certain medicinal or therapeutic preparations or products denominated and designated by respondent as "Sinasiptec", "Sinasiptec Inhalant", "Sinasiptec Ointment", "Sinasiptec Liquid", and "Sinasiptec Salve", which preparations or products are indicated, sold and distributed by respondent for use in the treatment of human ailments,

such as nasal and head congestion, hay fever, sinus trouble, inflammation, respiratory diseases, and other ailments.

Such sale and distribution of said products or preparations is made and promoted by respondent through salesmen and agents employed by it for the purpose, also through and by means of trade promotional literature such as advertisements of said products published by respondent in newspapers, magazines, and other periodicals of general circulation among the purchasing public throughout the United States, and pamphlets, circulars, leaflets, letters, and other forms of communications and advertising matter, published and distributed by respondent to purchasers and prospective purchasers throughout the United States. In distributing said products and in executing the purchase orders therefor respondent caused and causes the same, as and when sold, to be shipped, transported and delivered from its place of business in the State of Missouri, through and into other States and Territories of the United States and the District of Columbia, to the respective purchasers thereof in such other States, Territories, and said District. In the sale and distribution of said products in the course of its business, respondent is and at all times herein mentioned has been engaged in commerce as "commerce" is defined in said act.

PAR. 2. At all times herein mentioned there have been and are various and sundry medicinal or therapeutic preparations, appliances, or products manufactured or sold and distributed by persons, partnerships, and other corporations to dealers, users, and the consuming public, in, between, and among the various States and Territories of the United States and the District of Columbia, for the prevention, treatment, alleviation, or cure of human ailments of the type, kind, or character for the treatment, prevention or cure of which respondent indicates, recommends, and sells its said medicinal preparations. Respondent's said products and the said preparations, appliances, or products of such persons, partnerships, and other corporations are and have been competitive products; and the respondent is and at all times herein mentioned has been conducting its said business and selling and distributing its said products in direct, active competition with such persons, partnerships, and other corporations and with actual and potential competitors generally throughout the United States and in various sections thereof.

PAR. 3. In promoting and effecting the sale and distribution of its aforesaid medicinal preparations or products in the course of its business and for the purpose of inducing and causing dealers, users, and consumers to purchase or use said preparations or products, respondent has caused and continues to cause various representations,

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statements, and assertions to be made and set forth, in its trade promotional literature and by its salesmen and agents and otherwise, to the purport and effect that each of said medicinal preparations or products of respondent is a specific and an effective and efficacious therapeutic agent, treatment, remedy, and cure for, and will prevent, relieve, and cure sinus headaches, sinus pains, sinus inflammation, sinus infections, and all other sinus troubles, hay fever, catarrh, colds, respiratory inflammation, and diseases and rhinitis in any person using or applying said preparations or products.

In the course and conduct of said business respondent has adopted the word "Sinasiptec" and has named, designated, and described said products and preparations with such word "Sinasiptec", with the purpose, tendency, and effect of thereby representing to the purchasing and consuming public, directly and by implication, that each such preparation or product so named and designated by it is a specific and a therapeutic agent or remedy indicated for, and will prevent, relieve, and cure sinus inflammation, sinus infection, and any sinus trouble or diseased condition of the sinus. Said representations, statements, and assertions made by respondent, and its use of said term "Sinasiptec" are and have been false, misleading, and deceptive in that none of such medicinal preparations or products of respondent is a specific for, or a therapeutic agent or remedy indicated for any of said diseases or ailments, nor will any of said preparations or products cure, prevent, or relieve said ailments or diseases or any of them, nor is any such medicinal preparation or product of respondent an effective, competent, or efficacious treatment, remedy or cure for such ailments or diseases, or any of them. Among such false, misleading and deceptive representations, statements and assertions published and circulated by respondent in its aforesaid trade promotional literature are the following:

DOCTORS WARN AGAINST SINUS INFECTION

Worst colds, catarrh, sore throat, headaches, caused by germs that settle in the sinus passages. Physicians tell how coughs, laGrippe, flu, pneumonia can follow if sinus condition is neglected.

Thousands of people here, who formerly suffered the painful pressure and stuffiness of threatened sinus trouble, now breathe freely since using Sinasiptec, the sensational discovery of a St. Louis doctor.

Within 5 seconds after using a little Sinasiptec in warm water, the head clears, and within a day the stuffed up nasal condition dries up. The faithful use of Sinasiptec in this way has no doubt saved many folks from dangerous surgical operations and hospital bills.

Long continued colds, headaches, excessive nasal discharge, accumulation of phlegm likewise vanish when the nasal passages are bathed daily with Sinasiptec. A large bottle of Sinasiptec costs little and is guaranteed to bring results, or money back. * * *

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YEARS OF UNBEARABLE

SINUS PAIN

CAN NOW BE AVOIDED

Any person afflicted with severe sinus trouble can tell you there is no human pain so terribly unendurable. Even surgical operations bring no relief from the excruciating torture in many cases. Besides, sinus infection brings other treacherous diseases that tear down bodily health. Be warned by frequent head colds, catarrh, mouth breathing, snoring, pressure at the bridge of the nose, congested nasal passages, headaches above the eyes, spells of temporary deafness, inflamed and phlegm-coated throat, bad odor from nasal mucous throat discharges.

Sinasiptec is a doctor's discovery for safe protection against threatened sinus trouble. It quickly clears the nose and washes away the fetid matter congested in the passages.

Thousands who formerly *feared* sinus infection, now prevent colds and other respiratory diseases, have a clear head, and breathe freely, since using Sinasiptec in warm water, as a twice-daily nasal bath. It's so easy and pleasant! The Sinasiptec treatment soon becomes a fine health habit, like brushing the teeth!

SINASIPTEC

(Pronounced "Sina-siptek")

Hay Fever?—Sinasiptec prevents—by a New Method

Sinasiptec Ointment acts quickly when used in both acute and more prolonged conditions. Where the nose is congested on one side or the other, and the case is one of longer standing, a fresh cold is apt to aggravate the condition and make the swelling more pronounced. A simple cold will congest the mucous membranes in the nose and cause one side or the other, or even both sides of the nose to become engorged and create that stuffy and clogged feeling in the head. In both such instances mentioned above Sinasiptec Ointment is a highly effective treatment and may be applied to advantage at the very inception of a Head Cold or at any stage during the progress of a cold and as an after treatment.

HAY FEVER

Successfully treated by New Method

Thousands of people who formerly suffered the misery of hay fever, have already found Sinasiptec a genuine blessing. Actual letters on file from enthusiastic and grateful users, show this treatment to be a magnificent success. Right now is the time to start using Sinasiptec. Use in warm water in a nasal douche and bathe nasal passages regularly. It will give your head a gloriously clear feeling. You will breathe with ease. Headaches and sinus "flare-ups" will become a rarity. And above all, you will be building up that nasal strength which staves off the agony of Hay Fever and Rose Cold.

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WHAT DO YOU KNOW ABOUT

HAY FEVER?

How a St. Louis doctor discovered Sinasiptec and forever solved the problem—millions can now be saved from suffering.

Gradually the preparation got used locally for other conditions—notably catarrh, sinus headaches, and sinus pains. And it came to be known as Sinasiptec.

The funny point is that Sinasiptec became so well known nationally for sinus conditions, that its original use, hay fever, remained largely confined to St. Louis.

Now we are broadcasting the virtues of Sinasiptec as a hay fever remedy, and believe the druggists of America will do a good business on it this summer.

If you have among your customers any hay fever sufferers, tell them about Sinasiptec.

PAR. 4. The use by the respondent of the false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth, have and had the capacity, tendency, and effect of misleading and deceiving the purchasing public into the erroneous belief that said statements, representations, and assertions are true in fact and purport, and of causing members of the purchasing public to buy and use respondent's said preparations or products in such erroneous belief. A capacity, tendency, and effect of the use of such false, misleading, and deceptive representations, statements, and assertions by respondent are (a) to prejudice and injure the public in that said products do not and will not accomplish or bring about the beneficial or curative results claimed therefor in said false, misleading, and deceptive representations hereinabove described; and (b) to prejudice and injure respondent's competitors in their business by tending to create and instill prejudice and distrust in the minds of purchasers and prospective purchasers against competing products indicated and sold for the treatment of the ailments of the type hereinabove mentioned; and further, in that said false, misleading, and deceptive representations of respondent attract custom and trade to respondent's said products, thereby unfairly diverting and tending to unfairly divert trade and custom from competitors' products, and (c) to otherwise prejudice and injure the public and respondent's competitors.

PAR. 5. The said false, misleading, and deceptive acts and practices as used by respondent are methods of competition which are unfair and which are prejudicial and injurious to the public interest and to legitimate trade and commerce in medicinal or therapeutic preparations, agents or appliances for the prevention or treatment of human

ailments, particularly the human ailments hereinabove mentioned; and said false misleading and deceptive acts and practices as used by respondent constitute unfair methods of competition in commerce in violation of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having come on for final hearing by the Federal Trade Commission upon the respondent's amended answer, waiving all further proceedings and consenting that the Commission may make, enter, and serve upon it an order to cease and desist from the methods of competition charged in the complaint, pursuant to paragraph 2 of rule III of the Commission's Rules of Practice, and the Commission being fully advised in the premises—

It is now ordered, That in the advertising and sale in interstate commerce of its certain preparation and article of merchandise known, designated, and described as Sinasiptec, the respondent cease and desist from representing by advertisements in newspapers, magazines, journals, radio, circular letters, or otherwise, that its certain preparation, known and designated as Sinasiptec, will cure, prevent, or relieve sinus trouble (except that by the use of said preparation, known and designated as aforesaid, as Sinasiptec, sinus trouble may be relieved to the extent that by its use the upper nasal passages, intersecting with the sinus passages, may be cleaned out, so that the sinus may properly drain and that by the use of said Sinasiptec inflammation and swelling may also be relieved) and/or that said preparation known and designated as Sinasiptec has ever cured or prevented sinus trouble, or that said Sinasiptec is an antiseptic.

It is further ordered, That the respondent shall, within 60 days after 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 and conformed to the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
PAUL F. BEICH COMPANY¹

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

Docket 2237. Complaint, Oct. 2, 1934.—Decision, Nov. 21, 1934

Where a corporation engaged in the manufacture and sale of candy, including such "break and take", "picks", or "draws" merchandise as assortments composed of, (1) penny packages, together with a number of larger pieces secured as prizes by chance purchasers of those of said packages, which contained and concealed within their wrappers pieces differing in color from that of the majority, and, (2) a number of small, individually wrapped penny candies of uniform size and shape, together with a number of larger pieces secured as prizes by chance purchasers of one of said individually wrapped pieces, the concealed color of which differed from that of the majority, and in both of which assortments purchaser of last package or piece also received one of the larger pieces,—

- (a) Sold said assortments, together with explanatory display cards for the retailer's use, or with advice as to their nature and plan through legends upon the containers thereof, and explanations of its salesmen, to wholesalers, jobbers, and retailers, in competition with concerns who were unwilling to offer and sell candies packed as above set forth or otherwise, so as to involve a game of chance contrary to the public policy of the States, the District of Columbia and the United States Government, and in violation of local criminal statutes of many States, and in competition with candy sold at retail without any such features connected therewith, and thereby placed in the hands of others the means of conducting lotteries in the sale of its products, as above set forth, as a means of inducing purchasers to buy its products in preference to those of its competitors'; and
- (b) Violated the code of fair competition for the candy manufacturing industry, in so selling such "break and take", "picks", or "draws";

With the tendency and capacity unfairly to divert trade and custom from such competitors to it, and to exclude from the trade all those who are unwilling to and do not use such methods, and all actual and potential competitors who do not use such methods or their equivalent for the reasons above set forth, or as detrimental to public morals or those of the purchasers, and to lessen competition in said trade and tend to create a monopoly thereof in it and such other distributors as use the same or equivalent methods, and with the result that gambling, especially among children, was taught and encouraged, the industry was injured through the merchandising of a chance or lottery instead of candy, retailers were provided with the means of violating the laws of the several States, competitors were put to a disadvantage and trade was diverted from them to it by reason of the preference of many dealers and ultimate purchasers for candy sold as aforesaid, sale of candy sold without the lottery or gambling feature was adversely affected by the competition of the other,

¹ On December 30, 1935, order in this case was rescinded, and amended complaint issued.