

Syllabus

IN THE MATTER OF
PLOUGH, INCORPORATED

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

Docket 2817. Complaint, May 21, 1936—Decision, Dec. 7, 1936

Where a corporation engaged in the distribution and sale of a certain acetyl salicylic acid product under the designation "St. Joseph Aspirin," in substantial competition with those likewise engaged in the distribution and sale of such products, and including many who manufacture, distribute, and sell aspirin without misrepresenting the quality or character of their respective products or the effectiveness thereof in use for the treatment of various conditions of the body, and who do not falsely disparage such products of their respective competitors; in advertising the same in newspapers and periodicals of general circulation throughout the United States, together with featured display of the aforesaid name of its said product—

- (a) Represented that same gave quicker relief than, and was superior to, other aspirin and was fully effective for pains and colds and always brought prompt relief to those suffering therefrom, and that it exceeded in purity and accuracy of ingredients the rigid standards set by the United States Government, through such statements, in substance, as thus indicated, and "Brings quicker relief", etc.;

Facts being that it does not give quicker relief than other aspirin of standard quality that meets requirements of United States Pharmacopoeia, is not fully effective for treatment of pains and colds and has no effect on the causative factors thereof, its use does not always bring prompt relief to those suffering from conditions named, Government has no stipulated standards for aspirin, and specifications of the said Pharmacopoeia are minimum, with no upper limit, and its aforesaid representations and statements, with respect to nature and effect of its said product, were exaggerated, misleading and untrue, and unfairly disparaged such products of its competitors; and

- (b) Represented that the cellophane wrappings of the containers of its said aspirin protected the purity of said product and were materially beneficial thereto, and that such a product required such wrapping under usual and normal conditions of sale to protect it from deterioration caused by moisture, and that failure so to wrap such products decreased their value or potency, through such statements as "Purity further protected by moisture-proof cellophane wrapping," and "to guard this purity further, each package is wrapped and sealed in moisture-proof cellophane;"

Facts being aspirin does not dissolve or deteriorate under usual and customary methods of merchandising, and wrapping of the containers of such product in moisture proof cellophane wrapping does not add to or protect the purity thereof and is not materially beneficial thereto, and failure of manufacturer or distributor of such products thus to wrap same does not decrease their value or potency;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that its said "St. Joseph Aspirin"

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gave quicker relief than other aspirin and had the properties thus claimed and implied therefor as above set forth, and that aspirin requires such cellophane wrapping as above indicated, and further to mislead and deceive a substantial portion of such public into erroneous and mistaken beliefs that aspirin products of competitors were inferior to and less effective than its said products for the reason they were not thus enclosed and for other reasons, and with result that a substantial number of the consuming public bought a substantial volume of its said product, and trade was unfairly diverted to it from competitors likewise engaged in distribution and sale of aspirin and who truthfully advertise and represent their products and the effectiveness thereof in use; to the injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

Mr. J. T. Welch for the Commission.

Lake-Spiro-Cohn and *Goodman & Galella*, of Memphis, Tenn., 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 Plough, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Plough, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the city of Memphis, State of Tennessee. Respondent is now, and has been for some years, engaged in the business of distributing and selling, in commerce as herein set out, a certain acetyl salicylic acid product known as "St. Joseph Aspirin."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said aspirin, when sold, to be transported from its principal place of business in the State of Tennessee to purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondent now maintains, and has maintained at all times, a constant current of trade and commerce in said aspirin so distributed and sold by it, among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations, firms, and individuals likewise engaged in the business of distributing and selling acetyl salicylic acid products such as aspirin, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of said business, and for the purpose of inducing individuals, firms, and corporations to purchase said St. Joseph aspirin, respondent has caused advertisements to be inserted in newspapers and periodicals of general circulation throughout the United States. In all of said advertisements, respondent has caused the name of said product to wit: St. Joseph aspirin, to be prominently and conspicuously displayed, together with the following statements:

- (1) Brings quicker relief.
Fully effective for pains and colds.
Challenges the world in prompt pain relief.
Stops pain promptly.
It always brings prompt relief from pain and colds.
- (2) Even exceeds in purity the rigid standards of the United States Government.
So pure and accurate that it exceeds the rigid standards of the United States Government.
- (3) Purity further protected by moisture proof cellophane wrapping.
And to guard this purity further, each package is wrapped and sealed in moisture proof cellophane.

All of said statements, together with many similar statements, appearing in respondent's advertisements purport to be descriptive of its product. In all of its advertising literature, the respondent represents, through the statements and representations herein set out and other statements of similar import and effect, that (1) St. Joseph aspirin gives quicker relief than, and is superior to, other aspirin; (2) that St. Joseph aspirin is fully effective for pains and colds and its use always brings prompt relief to those suffering from pain and colds; (3) that St. Joseph aspirin exceeds in purity and accuracy of ingredients rigid standards set by the United States Government; (4) that wrapping of containers for St. Joseph aspirin in cellophane wrappings protects the purity of, and is materially beneficial to, said aspirin; and (5) that aspirin requires wrapping in cellophane, under usual and normal conditions of sale, to protect it from deterioration caused by moisture and failure to so wrap aspirin products decreases their value or potency.

PAR. 5. The representations made by respondents with respect to the nature and effect of its aspirin when used are grossly exaggerated,

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false, misleading, and untrue. In addition, said representations and statements serve to, directly and by inference, disparage aspirin products of respondent's competitors. In truth and in fact, St. Joseph aspirin does not give quicker relief than other aspirin of standard quality and is not superior to other aspirin of standard quality. It is not fully effective for the treatment of pains and colds and has no effect on the causative factors of such conditions of the human body and its use does not always bring prompt relief to those suffering from the conditions named. The United States Government has not established standards for aspirin and such specifications for aspirin as are set out in the United States Pharmacopoeia are minimum specifications and there is no upper limit thereof. In truth and in fact, aspirin does not dissolve or deteriorate under the usual and customary methods of merchandising and the wrapping of the container of said product in a cellophane wrapping does not add to or protect the purity of said product and is not materially beneficial to said product. Failure to wrap aspirin in cellophane wrapping does not decrease the value or potency thereof.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell aspirin who in no way misrepresent the quality or character of their respective aspirin or its effectiveness in use for the treatment of various conditions of the human body and who do not falsely disparage the aspirin products of their respective competitors.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing its product and the effectiveness of its product, as hereinabove set out, in offering for sale and selling St. Joseph aspirin was, and is, calculated to, and had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and to the further erroneous belief that aspirin products of its competitors are inferior to and less effective than St. Joseph aspirin for the reason that said products are not enclosed in cellophane wrappings and for other reasons. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and misrepresentations of the respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of respondent's St. Joseph aspirin with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling aspirin who truthfully advertise and represent their products and the effectiveness of said products in use. As a result thereof, injury has been, and is now being, done by

respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 May 21, 1936, issued and served its complaint in this proceeding upon respondent Plough, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Leo Goodman, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Plough, Inc., is a corporation, organized and doing business under and by virtue of the laws of Delaware. Its principal office and place of business is located in the city of Memphis, State of Tennessee. It has been, and is now, engaged in the business of distributing and selling, in commerce among and between the various States of the United States, a certain acetyl salicylic acid product designated by it as "St. Joseph Aspirin."

PAR. 2. When orders are received for said aspirin, the respondent causes said product to be shipped from its place of business in the

State of Tennessee to the purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondent has at all times maintained a constant current of trade in the aspirin distributed and sold by it, in commerce among and between the various States of the United States.

PAR. 3. In the sale of said St. Joseph aspirin, Plough, Inc., is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling acetyl salicylic acid products, such as aspirin, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. For the purpose of inducing the purchase of St. Joseph aspirin, respondent has caused various advertisements to be inserted in newspapers and periodicals of general circulation throughout the United States. In all of said advertisements, it has caused the name of said product, to wit: St. Joseph Aspirin, to be prominently and conspicuously displayed, together with the following and many similar statements:

- (1) Brings quicker relief.

Fully effective for pains and colds.

Challenges the world in prompt pain relief.

Stops pain promptly.

It always brings prompt relief from pain and colds.

- (2) Even exceeds in purity the rigid standards of the United States Government.

So pure and accurate that it exceeds the rigid standards of the United States Government.

- (3) Purity further protected by moisture proof cellophane wrapping.

And to guard this purity further, each package is wrapped and sealed in moisture proof cellophane.

All of said statements, together with many similar statements, appearing in respondent's advertisements, purport to be descriptive of its product. In all of its advertising literature, the respondent represents, through the statements and representations herein set out and other statements of similar import and effect, that (1) St. Joseph aspirin gives quicker relief than, and is superior to, other aspirin; (2) that St. Joseph aspirin is fully effective for pains and colds and its use always brings prompt relief to those suffering from pain and colds; (3) that St. Joseph aspirin exceeds in purity and accuracy of ingredients rigid standards set by the United States Government; (4) that wrapping of containers for St. Joseph aspirin in cellophane wrappings protects the purity of, and is materially beneficial to, said aspirin; and (5) that aspirin requires wrapping in cellophane, under usual and normal conditions of sale, to protect it

from deterioration caused by moisture and that failure to so wrap aspirin products decreases their value or potency.

PAR. 5. The aforesaid representations made by respondent with respect to the nature and effect of its aspirin product are exaggerated, misleading and untrue. In addition, said representations and statements serve to, directly or by inference, unfairly disparage aspirin products of respondent's competitors. St. Joseph aspirin does not give quicker relief than other aspirin of standard quality that meets the requirements of the United States Pharmacopoeia. It is not fully effective for the treatment of pains and colds and has no effect on the causative factors of either pains or colds, but does possess analgesic properties. Its use does not always bring prompt relief to those suffering from the conditions named. The United States Government has no stipulated standards for aspirin. Such specifications for aspirin as are set out in the United States Pharmacopoeia are minimum specifications and there is no upper limit thereof. The requirements of the United States Pharmacopoeia are as follows:

Acetyl salicylic acid when dried to constant weight over sulphuric acid contains not less than 99.5 per cent of acetyl salicylic acid. (Page 14, Pharmacopoeia of the United States, 11 Decennial Revision.)

St. Joseph aspirin does exceed the requirements of the United States Pharmacopoeia in that it contains more than 99.5% of acetyl salicylic acid. Aspirin does not dissolve or deteriorate under usual and customary methods of merchandising the product and the wrapping of the container of said product in a moisture proof cellophane wrapping does not add to or protect the purity of the product and is not materially beneficial to said product. The failure of the manufacturer or distributor of aspirin products to wrap said products in cellophane wrapping does not decrease the value or potency of said products.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell aspirin who in no way misrepresent the quality or character of their respective aspirin or its effectiveness in use for the treatment of various conditions of the human body and who do not falsely disparage the aspirin products of their respective competitors.

PAR. 7. The various statements and representations made by the respondent in describing its product, St. Joseph aspirin, and the effectiveness of said product in use, have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs (1) that St. Joseph aspirin gives quicker relief than other aspirin; (2) that St. Joseph aspirin

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is fully effective for pains and colds and its use always brings prompt relief to those suffering from pains and colds; (3) that St. Joseph aspirin exceeds in purity and accuracy of ingredients the rigid standards set by the United States Government; (4) that the wrapping of containers of St. Joseph aspirin in cellophane wrappers protects the purity of and is materially beneficial to said aspirin; and (5) that aspirin requires wrapping in cellophane under usual and normal conditions of sale to protect it from deterioration caused by moisture and that failure to so wrap aspirin products decreases their value or potency. Said representations and statements have also had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that aspirin products of its competitors are inferior to and less effective than St. Joseph aspirin for the reason that said products are not enclosed in cellophane wrappings and for other reasons.

As a direct consequence of these mistakes and erroneous beliefs, a substantial number of the consuming public have purchased a substantial volume of St. Joseph aspirin with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling aspirin who truthfully advertise and represent their products and the effectiveness of said products in use. As a result of the acts and practices, herein set out, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Plough, Inc., are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in 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."

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, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provi-

sions 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 the respondent, Plough, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a certain acetyl salicylic acid product known as "St. Joseph Aspirin," in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing either directly or by inference, through advertisements inserted in newspapers, magazines, and periodicals of general circulation, radio announcements, booklets, pamphlets, or other advertising literature, or through any other means:

1. that St. Joseph aspirin gives quicker relief than other aspirin;
2. that St. Joseph aspirin is fully effective for pains and colds, and is the best thing in the world to stop pain, and its use always brings prompt relief to those suffering from pains and colds;
3. that St. Joseph aspirin exceeds in purity and accuracy of ingredients, rigid standards set by the United States Government;
4. that wrapping of containers for St. Joseph aspirin in transparent cellulose film, commonly designated as cellophane, preserves or adds to the purity or the freshness of aspirin, or is materially beneficial to said aspirin;
5. that aspirin requires wrapping in transparent cellulose film, commonly designated as cellophane, under usual and normal conditions of sale, to protect it from deterioration caused by moisture;
6. that failure to wrap aspirin products in moisture-proof transparent cellulose film, commonly designated as cellophane, decreases the value or potency of said aspirin.

It is further ordered, That the respondent shall, within 60 days after service upon it 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 this order.

IN THE MATTER OF
**JEAN VIVADOU AND HENRY G. LUBIN, DOING BUSINESS
AS JEAN VIVADOU COMPANY**

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

Docket 2820. Complaint, May 26, 1936—Decision, Dec. 8, 1936.

Where two partners engaged in the manufacture and sale of toilet sundries, and with principal and only office or place of business in New York City—

- (a) Represented, through use of the word "Paris" in their letterheads, circulars, containers, and advertising matter, that they maintained offices in said city, notwithstanding fact they had no office, factory, or branch in said city, or in any other city or town so named, with result that a substantial portion of purchasing public was led to believe that their said products were made in or imported from France, for the toilet articles of which there is a well-known and marked preference on the part of many members of said public;
- (b) Described a certain toilet article, in invoices, literature, advertising and correspondence, as "Lagoona" and "Sea Sponge," and in circulars accompanying the same and in its advertising describing the same as therapeutic, ultra-violet ray treated, and a great health discovery, etc., referred thereto as a "sponge," "Sea Sponge," "Wonder Sponge," "natural sea growth," "spawned in the romantic far away depths of the South Pacific waters, plucked by adventurous men," and subjected to the "alchemy of the waters of the Pacific Ocean," facts being said article was a vegetable which resembled an elongated gourd, grown on bushes or shrubs on land and known and described as a "loofa," and aforesaid various statements were false; and
- (c) Described a certain toilet article, in its invoices, correspondence, circulars and advertising, as a "Swansdown Puff," facts being said article was not made from that especially grown and treated goose down or swansdown, as known to trade and consuming public and as long thus designated and known, but was made from loose feathers or Marabou and was a decidedly cheap and inferior imitation of the article known and designated by trade as "Swansdown;"

With effect of misleading and deceiving a substantial portion of purchasing and consuming public into erroneous belief that all said representations were true, and into purchase of their said products in reliance thereon, and of unfairly diverting trade to them from competitors engaged in the sale in commerce of similar toilet sundries, who truthfully represent the nature and facts of their respective businesses, and character and quality of their respective products, to the substantial injury of the purchasing public and of other dealers and manufacturers of such sundries in competition with them, and with effect of placing in the hands of wholesalers, jobbers, and retailers the means of making such false and misleading representations to the purchasing public, and of thereby increasing their own sales of such dishonestly advertised or represented articles, and lessening market