

Syllabus

IN THE MATTER OF
RALADAM COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2406. Complaint, July 15, 1935¹—Decision, Jan. 21, 1937*

Where corporation engaged in offer and sale of weight reducing preparation "Marmola," in substantial competition with others engaged in sale and distribution of medicines, preparations, systems, methods, books of instruction, and other commodities, articles, and means, designed, intended, and used for aforesaid purpose; in promoting sale of said product, active reducing ingredient of which was desiccated thyroid, through advertisements in newspapers and periodicals of general circulation, radio broadcasts, booklets and printed matter and other means—

- (a) Represented that thyroid deficiency was a common cause or the usual cause of obesity or excess fat, and that if a person was overweight it was an indication of such deficiency, and that thyroid should be taken for reducing purposes, facts being most cases of obesity or excess fat are caused by incorrect habits of eating, and only a very small percentage of the total number of cases of obesity are endogenous obesity, in which are included cases resulting from thyroid deficiency, only one qualified by training and experience can determine with any degree of certainty whether case of obesity is result of aforesaid deficiency, and, if so, whether physiological condition of patient is such as to make advisable use of desiccated thyroid, and dosage, and patient taking such substance should be observed and examined at regular intervals by one trained and experienced in such work to determine effects of such procedure, and whether symptoms are apparent indicating possible harmful results or if treatment should be continued further;
- (b) Represented that all modern physicians use such reducing ingredient in its said preparation for treatment of obesity, and that if a prospective purchaser of said preparation were to consult a specialist in obesity he would probably prescribe said ingredient, and that such medication in treating obesity generally is supported by opinions of physicians and scientists the world over, and that physician of prospective purchaser would probably employ same medication, facts being that while, generally speaking, desiccated thyroid is indicated in treatment of obesity occasioned by thyroid deficiency, it is usually only one feature of treatment in such cases, and, while used by many physicians in treatment of such cases, it is not used in others by reason of various pathological conditions which may inhibit administration of such preparation;
- (c) Represented and indicated that its said preparation, or desiccated thyroid, active ingredient thereof, was remedy indicated in and best suited for treatment of obesity or reduction of excess fat in great multitude of such cases, and in average case, and for all persons who are overweight or who wish to reduce, and that such preparation or active ingredient thereof feeds and

¹ Amended.

stimulates the thyroid gland, taken internally, and restores it to normal condition and thus removes cause of obesity or excess fat, facts being that desiccated thyroid is suitable to be taken for reducing purposes only in small proportion of cases and only then under conditions and limitations, not explained and set forth by it, as hereinbefore noted, and said substance does not, as thus represented, feed thyroid gland, etc., but merely acts as a supplement to secretion supplied thereby;

- (d) Represented and implied that certain tables of weights of persons of heights and ages therein indicated, and which it published and circulated, indicated for prospective purchaser of its said preparation his or her correct weight, which should be attained by taking its said preparation, and that any weight in excess thereof was due to abnormal excess fat, and that such table should be used as guide, facts being said tables were not of correct or normal weights, but merely of average weights, and could not be depended upon by average lay person as safe and accurate guide as to his or her weight at a given height and age, many persons whose weights are correct and normal for them vary in weight from such aforesaid figures, many who are overweight by such comparison do not have surplus or excess fat in their physical makeup, and preparation in such cases should not and could not be used without danger of injury to health; and
- (e) Represented and implied that it made a complete and true disclosure of all material facts respecting said preparation and its properties and effects, as well as those of the ingredients thereof, notwithstanding fact it failed to disclose that desiccated thyroid constitutes a powerful and dangerous drug or product, used internally for reducing, and one which attacks and oxidizes or burns not only fatty, but all, body tissues, small proportion of cases of obesity are caused by thyroid deficiency, many people are so constituted that they may not use such preparation safely for physical health, and numerous other facts hereinbefore indicated with respect to true nature and functioning of said preparation and very limited need thereof and necessity for its use and administration under competent medical supervision and observation;

With tendency and capacity to mislead and deceive public and prospective purchasers of said preparation and purchasers and users thereof into erroneous beliefs that such statements and representations were true, facts hereinbefore referred to as not disclosed by it were not true or nonexistent, all cases of obesity were caused by thyroid deficiency, and "Marmola" was indicated as treatment in all such cases and might be used therein without fear of harm, and that it, or desiccated thyroid, its effective reducing medium, was prescribed and used by all modern physicians, etc., in such cases regardless of cause or origin, etc., and that its said preparation was superior to all other remedies, systems, etc., offered and sold for effecting reduction of weight, and to confuse, mislead, and deceive members of public in aforesaid respects, and induce them to purchase and use its said preparation or medicine for reducing purposes because of such erroneous beliefs thus engendered, in preference to and to the exclusion of the products of competitors, and to divert trade to it from competitors engaged in sale in interstate commerce of medicines, preparations, systems, etc., for reducing, and including among their number those who do not make same or similar misleading representations in regard to their products, or otherwise misrepre-

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sent the same, and with effect of diverting business to it from its said competitors; to their substantial injury and prejudice:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. E. J. Hornibrook and *Mr. Harry D. Michael* for the Commission.

Butzel, Eaman, Long, Gust & Bills, of Detroit, Mich., for respondent.

AMENDED 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 the Raladam Company, a corporation, hereinafter referred to as respondent, 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Raladam Company, is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business in the city of Detroit, in the State of Michigan.

PAR. 2. Respondent is engaged in offering for sale and selling a certain medical preparation, which it offers for sale and sells under the name and designation of "Marmola." Marmola is put up in tablet form and is to be sold to, and taken orally by, human beings who are afflicted with obesity, or whose bodies carry abnormal excessive fat, or whose bodies are, or are believed by them to be, over-weight as compared with their correct, natural, or normal weight, or who for any reason desire to reduce the weight of their bodies and to rid their bodies of some portion of the bodily tissues and weight which such bodies have or carry.

Respondent sells Marmola to wholesalers and jobbers of drugs located in the several States of the United States, who sell the same to retail druggists, who in turn sell the same to the consuming public which is made up of members of the laity. Respondent, when Marmola is so sold by it, causes the same to be transported from said city of Detroit, in the State of Michigan, into and through the several States of the United States and the District of Columbia to said purchasers thereof at their respective places of business located in said several States and in the District of Columbia.

PAR. 3. There have been and are other persons, partnerships, associations, and corporations who have been and are engaged in offering for sale and selling in said commerce between and among the several States of the United States and the District of Columbia the same, or like or otherwise competitive products, to wit: preparations, systems, methods, or other means of treatment for obesity, abnormal excessive fat, body weight in excess of that which is correct, natural or normal, or of ridding human bodies of some portion of the fat, other bodily tissues and weight which such bodies have or carry. Said other persons, partnerships, associations, and corporations have been and are engaged in so offering for sale and selling their said products in said commerce in competition with respondent's said Marmola. Respondent has been and is in substantial competition with them all in so offering for sale and selling Marmola in said commerce as above alleged.

PAR. 4. Since April 17, 1929, respondent, in aid of so offering for sale and selling Marmola in said commerce between and among the several States of the United States and the District of Columbia, has advertised the same in newspapers, magazines, and periodicals of general circulation, by means of radio broadcasts and in pamphlets, printed testimonials, and other printed matter, and by and through the use of photographs and other pictures, and on labels attached to and in circulars enclosed in the boxes in which said Marmola is packed when so offered for sale and sold, and by other means. In, by and through each and all of the advertising media above enumerated, respondent has expressly or by implication made, and makes, each and all of the statements and representations hereinafter set forth and alleged.

PAR. 5. Marmola is a product made up of several ingredients, the formula thereof being printed by respondent in circulars, booklets, and other advertising media above enumerated. The active principle incorporated in said product and the ingredient thereof that is powerful and is effective in ridding human bodies of portions of the fat, other bodily tissues and weight which they have, or carry, is dessicated thyroid. The reducing effect produced by the use of Marmola as a treatment to be taken orally is substantially the effect of, and that produced by, dessicated thyroid, which is hereinafter referred to as thyroid.

Dessicated thyroid is made from the thyroid glands of animals such as the sheep, cow, pig, and goat. It is a powerful and dangerous drug. When given to a patient, it increases the burning within the body of the fat, other tissues, and the food. By speeding up the

oxidizing and burning processes of the body, dessicated thyroid, when taken, tends to cause a loss of fat. The thyroid gland in the human body controls the combustion of food in the body. It turns portions of food into fuel and energy. Dessicated thyroid taken into the body performs the like function and increases such combustion, turning food into fuel and energy. The use of thyroid taken as an internal remedy always increases within the body the burning up or consumption of food and bodily tissues, excessive fat burning more easily than other tissues of the body. Other bodily tissues are burned and consumed by the use of such thyroid, especially when excessive fat has been consumed, or in a body in which there is no abnormal, excessive fat.

PAR. 6. Some persons have deficient thyroid glands, to wit: thyroid glands which are sub-normally active and which perform their normal functions imperfectly and partially only, turning less than the normal proportion of food into fuel and energy, and permitting more than the normal proportion of food to be deposited in, or added to, the body in the form of fatty or other tissues.

This is the cause of excessive fatty or other tissues in the body of a person whose thyroid gland is deficient as above indicated. Thyroid taken by such a person does not feed or stimulate his thyroid gland, or increase its activity; nor does it tend to restore his thyroid gland to normality and thereby to remove the cause of abnormal excessive fatty or other tissues, or of overweight, in his body. Thyroid taken by such person performs the function ordinarily performed by a normal thyroid gland, duplicates or supplements any such function as is being performed by such deficient thyroid gland, or performs a substitute function, whereby the normal proportion of his food is turned to fuel and energy and the fatty or other tissues, and the weight, of his body tend to be reduced to normality.

PAR. 7. There are persons whose bodies in their natural and normal state are so constituted that such persons may not take or use thyroid without harmful results to their bodies. As to any person the only way in which it may be ascertained whether or not such person may take or use thyroid, without harmful results to his body, is by an examination made by a competent physician, or by experimental use of thyroid by such person under competent medical advice and supervision, or by both such methods combined. Only by the same means may it be ascertained as to any person in how large quantities thyroid may be taken or used by such person without harmful results.

PAR. 8. There are certain conditions of the human body which make it harmful for such persons to take or use thyroid. Among these

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is pregnancy. Other such conditions are defects or abnormalities of the heart or kidneys. Any defect or abnormality of body is liable to make the taking or use of thyroid harmful to the user.

Only by an examination made by a competent physician may it be ascertained of any person whether or not the body of such person has any such condition, defect or abnormality by which it is made harmful for such person to take or use thyroid.

PAR. 9. Obesity, abnormal excess fat, may be the result of more than one cause. One of the causes is a deficient or abnormally inactive thyroid gland. Deficiency of thyroid glands causes obesity or abnormal excess fat in only the rare and exceptional cases, to wit: in a small minority of the total number of such cases. In a large majority of the total number of such cases the persons affected do not have deficient thyroid glands, and such obesity or abnormal excess fat is the result of a cause or of causes other than deficient thyroid glands.

In the case of any person it can be ascertained whether or not his thyroid gland is deficient, and whether or not obesity or abnormal excess fat is the result of thyroid deficiency, only by an examination made by a competent physician.

PAR. 10. In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that modern medical science has discovered that thyroid deficiency is a common cause of obesity or abnormal, excessive fat, that if a prospective purchaser or other person is abnormal in weight that person's thyroid gland is abnormal, that people who are over-fat generally have an under-active thyroid gland, and that the cause of obesity or abnormal excess fat usually lies in an under-active thyroid gland.

In truth and in fact, as hereinabove alleged, deficiency of the thyroid gland exists only in rare and exceptional cases and is the cause of obesity or abnormal excessive fat in only a small minority of the total number of cases.

PAR. 11. In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that all modern physicians use thyroid in the treatment of obesity, that, if a prospective purchaser of Marmola were to consult a specialist in obesity, he would probably prescribe about the factors the prospective purchaser is getting in Marmola, that such is the opinion of physicians the world over, and that the prospective purchaser's own physician would probably employ the Marmola factors, now recognized by science the world over.

In truth and in fact, competent physicians prescribe and use thyroid only in the rare and exceptional cases in which obesity, or abnormal

excess fat, is caused by deficiency of the thyroid gland, and do not prescribe it in any case unless and until they have ascertained by examination of the patient, that his obesity or abnormal excess fat has been caused by deficiency of the thyroid gland, and also that no bodily conditions, defects or abnormalities exist in his case which are likely to make the taking or using of thyroid harmful to the patient. Competent physicians, after such examination and precautions, prescribe the use of thyroid only under medical advice and observation. In fact and in truth, respondent's preparation, to wit: Marmola, is one which cannot be used generally with safety to physical health, except under medical direction and advice.

PAR. 12. In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that the use of Marmola as indicated in certain directions printed by respondent upon said labels, pamphlets, and advertising media is best suited to the needs of the multitude, or of the average person, of the normal person, in the average case and in the normal case.

In truth and in fact, Marmola is suited to the needs of only such persons as have obesity or abnormal excess fat caused by deficiency of the thyroid gland. Such persons are rare and exceptional, as above alleged. They are not the multitude or average persons or normal persons nor are theirs average cases, or normal cases within the intent and meaning of said representation.

PAR. 13. In, by and through its advertising media as above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that the object of the use of Marmola is to feed and stimulate the patient's thyroid gland, to restore such gland to normality and thus and thereby to remove the cause of the patient's obesity or abnormal excess fat.

In truth and in fact, as hereinabove alleged, the use of thyroid does not feed or stimulate the patient's thyroid gland, nor does it tend to restore such gland to normality, and thus remove the cause of the patient's obesity or abnormal excess fat.

PAR. 14. In, by and through its advertising media as above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that a certain table of weights of persons respectively of the heights and ages severally indicated in said table indicates for each such prospective purchaser his correct or normal weight, that any weight in excess thereof is abnormal excess fat, and that such prospective purchaser ought to take and use Marmola until his weight has been reduced to said so-called correct or normal weight.

In truth and in fact, said table is not a table of correct or normal weights, but is a table of average weights. By reason of racial or family or individual characteristics or tendencies, the bodies of many persons who have no abnormal or excessive fatty or other tissues weigh substantially more than said so-called correct or normal weight, no part of which may safely be removed from their bodies by the use of Marmola.

PAR. 15. There are many persons in and throughout the several States of the United States and the District of Columbia who are seeking some safe and dependable means whereby they may quickly, easily, certainly, and permanently remove from their bodies obesity, or abnormal excess fat, or overweight of flesh, or some portion of the bodily tissues or weight which such bodies have or carry.

Such persons are unskilled in medical science and depend for their information as to what treatment or remedy or preparation or method or system they may safely purchase, take and use, largely upon statements and representations made by the makers and sellers thereof.

PAR. 16. In, by and through its advertising media as above alleged, respondent prints for the information of the public and prospective purchasers, a statement of its purpose in the printing and distributing its said advertisements, in these words: "We feel a responsibility to those who buy Marmola and wish them to know all the facts at our command," then and thereby giving to the public and to prospective purchasers of Marmola the assurance that in its said advertising media it has published to the public and to all prospective purchasers of Marmola a complete and true disclosure of all material facts relative to Marmola, its properties and therapeutic effects.

In its said advertising media respondent does not disclose any or all of the following facts hereinabove alleged.

1. That dessicated thyroid is a powerful and dangerous drug.
2. That the one effect of such thyroid is to increase the burning within the human body of food and tissues.
3. That by speeding up the oxidizing and burning processes of the body, dessicated thyroid, when taken, tends to cause a loss of fat.
4. That cases in which obesity or abnormal excess fat is caused by deficiency of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.
5. That medical science and physicians justify the use of thyroid as a treatment for obesity or abnormal excess fat only in cases in which obesity or abnormal excess fat is caused by deficiency of the thyroid gland; and that competent physicians prescribe its use only in such cases.
6. That in cases of obesity or abnormal excess fat not caused by deficiency of the thyroid gland the use of thyroid is not by medical

science indicated as proper treatment; and its use therein is harmful to the health of the user.

7. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the health of the user. That in respect of any person it can be ascertained whether or not such person may safely take or use Marmola only by an examination by a competent physician, sometimes to be supplemented by experimental use thereof under medical advice and observation; and that physicians prescribe the use of thyroid only after such examination and other precautionary safeguards.

8. That respondent's preparation, to wit: Marmola, is one which cannot be used generally with safety to physical health, except under medical direction and advice.

9. That the use of thyroid by a patient who has a deficient thyroid gland does not feed or stimulate such deficient gland, does not increase its activity, does not tend to restore such deficient gland to normality, and does not thereby tend to remove the cause of his obesity or abnormal excess fat.

PAR. 17. Said statements and representations so made by respondent, and respondent's said failure to disclose any or all of the facts set forth and referred to in paragraph 16 of this complaint, have the tendency and capacity to mislead and deceive the public and prospective purchasers into the erroneous belief:

1. That all said statements and representations so made by respondent are true.

2. That the facts which respondent is alleged in paragraph 16 of this complaint to have failed to disclose, do not exist.

3. That all cases of obesity or abnormal excess fat are caused by deficiency of thyroid glands.

4. That Marmola is a scientific and safe remedy for all such cases.

5. That Marmola is prescribed and used by all modern physicians in all such cases.

6. That Marmola is superior to all other remedies being offered for sale or sold to the public for use in all such cases.

Said statements and representations so made by respondent have the tendency and capacity to induce the public and prospective purchasers, in and because of such erroneous belief, to purchase Marmola in preference to and to the exclusion of, any and all identical or like or otherwise competitive products, to wit; preparations, systems, methods, or other means of treatment so being offered for sale in said commerce by said competitors of respondent as hereinabove alleged;

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thereby diverting trade to respondent from its said competitors, to the injury of such competitors, and to the deception and injury of the public.

PAR. 18. The above alleged acts and practices are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an 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.

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 July 15, 1935, issued and served its amended complaint in this proceeding upon respondent, Raladam Company, 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 Edward J. Hornibrook and Harry D. Michael, attorneys for the Commission before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Rockwell T. Gust, 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 amended complaint, the answer thereto, testimony and other evidence, and brief in support of complaint, counsel for respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice thereof; 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, Raladam Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located in the city of Detroit in said State.

PAR. 2. Respondent is now and has been engaged for more than five years last past in offering for sale and selling a certain medical preparation designated and described as "Marmola," which respondent has sold, during the time aforesaid, and now sells to various purchasers thereof located in the several States of the United States. In the course and conduct of said business, respondent causes its said preparation to be shipped from its place of business in the State of Michigan, or from the place of business of the company that compounds the same, to the purchasers thereof located in several States of the United States other than Michigan as well as in the District of Columbia. Respondent's usual course of business is to sell its said preparation to wholesale druggists and jobbers who in turn sell it to retail druggists through whom it is sold to the consuming public. Said preparation, "Marmola," is sold by respondent and is bought and used by the consuming public for the purpose of effecting reduction in weight.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of medicines, preparations, systems, methods, books of instruction and other commodities, articles, and means designed, intended and used for the purpose of effecting weight reduction. Such other individuals, firms, and corporations have caused and do now cause their said medicines, preparations, systems, methods, books of instruction, and other articles and means when sold by them to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Respondent has been, during the aforesaid time in substantial competition, in the sale of Marmola, with such other individuals, firms, and corporations. Some of such competing products are sold direct to the consuming public while others are sold to wholesale and retail dealers through whom they are in turn sold to members of the public for their use.

Respondent's preparation is in competition with all medical preparations sold and used for reducing purposes regardless of whether such preparations are of the so-called "patent medicine" type or are pharmaceutical preparations which may be bought by members of the consuming public on their own initiative or on the prescription of a physician. Competing products include also, the following: medical preparations which are used as adjuvants in the treatment of obesity, such as laxative salts; preparations sold and used for the purpose of effecting the lessening of the consumption of fat producing foods; and books of instruction on the subjects of diet or exercise, or both, intended and used for the purpose of effecting reduction by one

or both of these means; in general all those preparations, products and articles sold to and used by the consuming public for effecting weight reduction. Among such preparations, products and articles so sold and used are the following:

"Diet and Health with Key to the Calories" by Dr. Lulu Hunt Peters, a book on diet published by Reilly and Lee Co., Chicago, Ill.

"Weight Control" by Dr. William Howard Hay, a book on diet published by The Hay System, Inc., New York City.

"New Health Era" by Dr. William Howard Hay, a book on diet published by The Hay System, Inc., New York City.

"No More Alibis" by Madame Sylvia of Hollywood (Madame Sylvia Leitner), a book on reducing by means of exercise and diet published by McFadden Publishing Co., New York City.

"The Secret of Keeping Fit" by Artie McGovern, a book containing instructions for reducing by diet and exercise, published by Simon & Schuster, New York City.

"Jad Salts" manufactured and sold by Wyeth Chemical Co., Detroit, Mich.

"Welch's Grape Juice," sold and used for reducing purposes by reason of its effect on the consumption of fat-producing foods, prepared and sold by Welch Grape Juice Co., Westfield, N. Y.

"Desiccated Thyroid", a pharmaceutical preparation, prepared and sold by Armour and Company, Chicago, Ill.

"Tabloid Thyroid Gland," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (U. S. A.) Inc., New York City.

"Thyrovarium," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (U. S. A.) Inc., New York City.

"Tabloid Mixed Glands Number 1," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (U. S. A.), Inc., New York City.

"Tabloid Mixed Glands Number 2" a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (U. S. A.) Inc., New York City.

"Thyroxin", a pharmaceutical preparation made and sold by E. R. Squibb and Sons, New York City.

"U. S. P. Thyroid," a pharmaceutical preparation made and sold by G. W. Carnrick and Company, Newark, N. J.

"Kellogg Rational Treatment for Obesity," a preparation sold by F. J. Kellogg Company, Battle Creek, Mich.

"C. C. N. T." a preparation sold by F. J. Kellogg Company, Battle Creek, Mich.

"Dr. McCasky's R. X. Tablets," sold by Dispensary Supply Company, New York City.

"Reducoids," sold by Scientific Laboratories of America, Inc., San Francisco, Calif.

"Slendrets," sold by Scientific Medical Product Co., Inc., San Francisco, Calif.

"Van Nay Tablets" sold by Bio-Medico, Inc., New York City.

"Germania Herb Tea Number 14", sold by the Drug Trade Products, Inc., Chicago, Ill.

"Stardom's Hollywood Dietade Number 1," sold by The Hollywood Diet Corporation, Chicago, Ill.

"Eskay's Dextrets," sold by Smith, Klein and French Company, Philadelphia, Pa.

"Dietene," sold by The Dietene Company, Minneapolis, Minn.

"Retardo", sold by The American Clinical Laboratories, Inc., Flushing, Long Island, N. Y.

"Eliphat", sold by Eliphat Laboratories, Detroit, Mich.

Respondent in its advertising matter, recognizes that competing products are not confined to those preparations or products of the same general character as Marmola by specifically advising and urging the use of Marmola for reducing, instead of the use of diet, exercise, purgatives, cathartics, salts, laxatives, and other methods used for effecting reduction.

PAR. 4. Marmola is put up in tablet form and is taken orally. The qualitative and quantitative formula per tablet is as follows:

1 gr.	—Extract Bladderwrack.
½ gr.	—Extract Phytolacca.
¼ gr.	—Extract Cascara Sagrada—RX 87 Spec.
½ gr.	—Desiccated Thyroid.
10/1000 min.	—Oleoresin Ginger.
	Po. Saccharum Special.
3 gr.	—Calcium Carbonate Precipitated.
½ min.	—Methyl Salicylate.
½ min.	—Oil Anise.
½ min.	—Oil Sassafras.
	Talc Brown.
	Ivory Black.
	Aqua for Extracts.
	Po. Burnt Umber.
	Red Oxide of Iron.
	Syrupus Simplex.
	Lubricating Solution.
	Aqua for Granulating.
	Liquid Petroleum—Colorless.

Directions for taking said preparation, as given by respondent for the purpose of effecting reduction are as follows:

Take one tablet after each meal and at bedtime with enough water to swallow easily.

It is further directed by respondent that the taking of the tablets as above stated be continued until the desired reduction is attained, or until "weight comes down to normal," or for "60 to 90 days—unless your weight has approached normal before that time."

The active ingredient in said preparation which effects reduction is desiccated thyroid. Certain other ingredients produce a laxative effect while others have little or no therapeutic effect. Desiccated thyroid is made from the thyroid glands of certain food animals. When taken orally, its effect is the same as that produced by an increase of the secretion of the patient's thyroid gland. This effect is to increase the processes of metabolism or, in other words, the

oxidation or burning of the tissues. Dessicated thyroid, when taken internally, acts upon the body tissues generally. Its action is not confined to fatty tissue. When this oxidation or burning up of the tissues exceeds that furnished and restored by the food that is eaten and assimilated, loss of weight results.

The taking of desiccated thyroid does not result in stimulating the patient's thyroid gland so that its secretion is increased. It merely supplements such secretion. It does not restore an inactive or under-active thyroid gland.

PAR. 5. Most cases of obesity or excess fat are caused by incorrect eating habits, such as over-eating, poor selection of foods and improper combinations of fat-producing foods. In some instances, excess fat and obesity result from thyroid deficiency. There are also other indocrine types of obesity as well as other cases due to pathological conditions. All such cases are described as endogenous obesity. However, such cases of endogenous obesity are only a very small percentage of the total number of cases of obesity. Authoritative medical opinion fixes this percentage at less than five percent. It is impossible for the ordinary layman suffering from obesity to determine whether such condition is caused by thyroid deficiency. Generally speaking, desiccated thyroid is indicated in the treatment of obesity occasioned by thyroid deficiency, but it is usually only one feature of the treatment in such cases. Many physicians use desiccated thyroid in the treatment of some such cases, but in other cases of the kind they may not do so and do not do so on account of various pathological conditions that may exist which inhibit the administration of such a preparation. Only one qualified by training and experience can determine with any degree of certainty whether a case of obesity is the result of thyroid deficiency, and if so, whether the physiological condition of the patient is such as to make it advisable for desiccated thyroid to be administered. Likewise, only such a trained person can determine the dosage to be given. A patient taking desiccated thyroid in any case should be observed and examined at regular intervals by one trained and experienced in such work to determine its effects and whether symptoms are apparent indicating possible harmful results or that the treatment should not be continued further. The ordinary layman treating himself or herself is not competent to judge when resulting symptoms indicate harm or to determine whether they indicate that the treatment should cease. Among the bodily conditions where desiccated thyroid is inhibited, are various heart defects as well as kidney diseases, pregnancy and various abnormal and diseased conditions of the the organs of the body.

PAR. 6. Respondent in its published advertising matter circulated to and among the purchasing public in the various States of the United States, makes many statements which represent or imply that thyroid deficiency is a common cause or the usual cause of obesity or excess fat and that if a person is overweight, it is an indication of thyroid deficiency and that thyroid should be taken for reduction purposes. Examples of such statements are the following:

* * * Science has found that a great cause of obesity lies in a defective gland. That gland's secretion has much to do with nutrition. Its main purpose seems to be to change food into fuel and energy.

When that gland is weak, the secretion small, too much food goes to fat. Then the right way of reduction—the doctor's way—is to supply that substance from a sheep gland * * *.

* * * Fat people, it was found, generally suffered from an under-active thyroid * * *.

* * * A common cause of excess fat is an under-active gland * * *.

* * * A great cause of excess fat has been found in a weakened gland * * * Now Doctors, the world over, feed that lacking factor * * *.

* * * Modern medical science has discovered a great cause of excess fat. It lies in a scanty gland secretion * * *.

* * * Many years ago medical science discovered that obesity—when an abnormal condition—is caused by the lack of an important element which the body normally supplies * * *.

* * * excess fat in many cases is caused by a little gland that does not work well * * *.

* * * If you are over-fat, you probably have an under-active thyroid * * *.

Such representations and implications as contained in the above quoted statements are inaccurate and not true statements of the facts as hereinbefore shown.

PAR. 7. Respondent, in its advertising matter, circulated as afore-said, also makes statements which represent or imply that all modern physicians use thyroid in the treatment of obesity; that, if a prospective purchaser of Marmola were to consult a specialist in obesity, he would probably prescribe the reducing ingredient contained in Marmola; that such medication in treating obesity generally is supported by the opinion of physicians and science the world over; and that the prospective purchaser's own physician would probably employ the same medication. Examples of such statements are the following (all referring to use of thyroid medication):

The modern method of reduction, now used by doctors the world over * * *.

* * * All modern doctors employ it * * *.

* * * this method has been employed by doctors the world over, in a very extensive way * * *.

* * * Now that method has come into world-wide use. Physicians everywhere employ it in obesity * * *.

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* * * doctors the world over have been feeding that gland factor in obesity * * *.

* * * Combat the cause, as all modern doctors do * * *.

Modern doctors, the world over now bring reduction in a new way * * *.

* * * What your doctor prescribes does reduce fat * * *.

* * * a world-famous corrective for abnormal obesity. A corrective prescribed by physicians everywhere.

* * * Physicians know about this element and prescribe it for patients who easily take on fat from their food * * *.

* * * The very element that physicians everywhere prescribe for fat-reducing is the principal element of Marmola * * *.

* * * But he (your doctor) will probably employ the Marmola factors now recognized by science the world over * * *.

As hereinbefore shown, such representations are misleading and inaccurate or only true in part and are not correct statements of the facts.

PAR. 8. Respondent in and by its advertising and printed matter, circulated to the purchasing public, makes many statements which represent or imply that Marmola or desiccated thyroid, the active ingredient of Marmola is the remedy indicated in and best suited for the treatment of obesity or the reduction of excess fat in the great multitude of such cases or in the average case, or for all persons who are over-weight or who wish to reduce. Among such statements are the following:

The Right Way to Reduce

* * * The Marmola prescription made for the multitudes considers the average person simply seeking to reduce * * *

Marmola is for the average case.

The modern method of reduction. * * *

Marmola Prescription Tablets—The Right Way to Reduce.

If you want a slender, lovely figure, try Marmola.

* * * Why be fat when it's so easy to get rid of excess weight by means of a tried and true corrective, * * *

* * * Go try Marmola if you over-weight. * * *

* * * why should anyone wishing to reduce fail to try this famous remedy * * *

* * * If you are overweight you owe it to yourself to regain your youthful slenderness. * * * All you do is to try four tablets (of Marmola) each day * * *

Go try Marmola if you suffer excess fat, * * *

as well as many other representations of the same import as contained in respondent's advertisements when taken as a whole.

In truth and in fact, as heretofore stated, desiccated thyroid is suitable to be taken for reducing purposes only in a small proportion of cases and only then under the conditions and limitations previously set forth. Respondent fails to explain and set forth those limitations and conditions.

PAR. 9. Respondent, in and by its advertising matter, circulated to the purchasing public, makes many statements which represent or imply that Marmola or desiccated thyroid, the active ingredient in Marmola, feeds and stimulates the thyroid gland when taken internally and restores such gland to a normal condition and thus removes the cause of obesity or excess fat. Examples of such representations are the following:

* * * Doctors correct this condition (thyroid deficiency) by feeding this little gland the substance it lacks—and Marmola Prescription Tablets are based on this same method. * * *

Science Fights Fat Through an Important Gland.

* * * A common cause of excess fat is an under-active gland, which largely controls nutrition. Scientists * * * found that when they corrected that cause (by administering thyroid) fat dropped away. * * *

The chief purpose of Marmola is to feed and stimulate the thyroid gland. * * *

In truth and in fact as heretofore stated, said representations are scientifically inaccurate and not correct statements of the facts involved since neither Marmola nor desiccated thyroid, the ingredient thereof on which such statements are based, feeds the thyroid gland or stimulates or restores it to normal action and condition. Desiccated thyroid merely acts as a supplement to the secretion supplied by the thyroid gland.

PAR. 10. Respondent in and by its advertising matter, circulated to the purchasing public, through the publication of certain tables of weights of persons, respectively, of the heights and ages severally indicated therein, and by various statements in its advertising matter in connection with such tables or referring thereto, represents and implies that such tables indicate for the prospective purchaser of Marmola his or her correct or normal weight, which should be attained by taking Marmola, that any weight in excess thereof is due to abnormal excess fat and that said tables should be used as guides. Some of respondent's statements containing such representations and implications are the following:

Stop Marmola when your weight comes down to normal. A table in this booklet tells you what a person of your height and age should weigh. If, later you start to gain again, take more Marmola tablets until conditions are corrected.

Correct Weight Based on Age and Height.

* * * Simply take four tablets of Marmola daily until weight comes down to normal. * * *

If you overweight, go try Marmola. * * *

* * * Use it (Marmola) as a treatment—week by week—until you have approached your normal weight. * * *

If you are over-weight, you owe it to yourself to regain your youthful slenderness. * * * A book that you will find in every package gives full details.

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The right rule is to take Marmola until you reach normality. A table in this pamphlet tells your proper weight. * * *

In truth and in fact, the tables of weights given by respondent in its printed literature are not tables of correct or normal weights, but of average weights. Such tables cannot be depended upon by the average lay person as a safe and accurate guide to his or her normal weight at a given height and age. Many persons, whose weights are correct and normal for them, vary in weight from such average figures. Many persons are over-weight when compared with the weights given in such tables, and at the same time do not have surplus or excess fat in their physical makeup. In such cases, Marmola should not be used and cannot be used without danger of injury to health. Such persons are normal as to weight so far as they themselves are concerned, although they are not the average. Such condition may be due to racial, family or individual characteristics or tendencies.

PAR. 11. Respondent in and by its advertising matter circulated to the purchasing public, makes various statements which represent or imply that it makes a complete and true disclosure of all material and relevant facts in regard to Marmola, its properties and effects, as well as those of the ingredients thereof. The prospective purchaser and user of said preparation is thus induced to believe that respondent has set forth and imparted to him or her all the information that one need know before deciding upon the use of the same and before taking the same as a medication for reducing purposes. Examples of such statements are the following:

We feel a responsibility to those who buy Marmola and we wish them to know all the facts at our command. Here we present them, and we urge every user to read them. You should know what to expect, and why to expect it. You should know what you are taking and why. This little booklet will tell you in the best way we know. Please read it.

Here we tell you what to expect.

Herein we try to present a consensus of the best opinion as to why Marmola acts and how. You should read it carefully to learn how to accomplish the best results. Then hand it to some friend who is over-weight—as a favor.

In the 24 years of Marmola many wrong conceptions have developed. That is why we are publishing the facts and the formula. * * *

* * * This will answer all the questions asked about it (Marmola)—all the silly gossip about harmful ingredients and factors to beware of.

No Secrecy.

* * * Ask your druggist for Marmola. Read the book in the box to learn what to expect, and why. * * *

If you over-weigh, go try Marmola. All druggists supply it, and a book in each box tells you all about it. * * *

* * * The book in the Marmola package explains the details of this extraordinary treatment. * * *

No secrets about Marmola. * * *

* * * A booklet in every package gives full details. * * *

In truth and in fact, respondent does not make a complete and true disclosure of all material and relevant facts in regard to Marmola, its properties and therapeutic effects, or those of its ingredients in any or all of its printed matter. Many pertinent facts are not told. Among such facts that respondent does not and has not disclosed to buyers of Marmola and prospective buyers thereof, are the following:

1. That desiccated thyroid is a powerful and dangerous drug or product when used internally for reducing purposes.

2. That desiccated thyroid attacks and oxidizes or burns not only fatty tissue but all bodily tissues.

3. That cases in which obesity or abnormal excess fat is caused by deficiency of the secretion of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.

4. That medical science and physicians, generally speaking, justify, recommend and prescribe the use of thyroid as a treatment for obesity or abnormal excess fat only in cases in which such condition is caused by a deficiency of the secretion of the thyroid gland.

5. That in cases of obesity or abnormal excess fat not caused by a deficiency of the secretion of the thyroid gland, thyroid is not indicated as a proper treatment and is not the usual treatment used by physicians in such cases, and that its use in such cases is apt to be, and frequently is, harmful to the health of the user.

6. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the user. That, in respect to any person, it can be ascertained whether or not such person may safely take or use Marmola (desiccated thyroid) only by an examination by a competent physician, often to be supplemented by experimental use of such product under medical advice and observation. Also that, generally speaking, physicians prescribe and administer thyroid only after such examinations and precautionary safeguards and that such administration is usually followed by regular observation and examination of the patient.

7. That Marmola (desiccated thyroid) cannot be used generally for reducing purposes by self-medication without the possibility of harmful results.

8. That Marmola (desiccated thyroid) when used by a patient who has a deficiency of the secretion of the thyroid gland, does not feed or stimulate such gland or materially increase its activity or tend to restore it to a normal condition, or, thereby tend to remove the cause of the obesity or abnormal excess fat.

All of the things above enumerated, which respondent fails to make known to users and prospective users of Marmola, are true facts according to the consensus of medical opinion and according to the great weight of the expert testimony presented herein.

PAR. 12. Respondent has made representations such as those alleged and set out herein since April 17, 1929, in promotion of the sale of Marmola throughout the United States, and in urging the use thereof for reducing purposes by members of the public. Such representations have been made either by means of advertisements inserted in newspapers, magazines, and periodicals of general circulation throughout the United States, by radio broadcasts, by booklets and printed matter or by other means, or by one or more of such means. There are and have been among the general consuming public, and especially among those who have seen and read or otherwise have become informed of respondent's representations, as herein set forth, many persons who are seeking or who are by respondent's representations caused to seek some safe and dependable means whereby they may safely, quickly, easily, certainly and permanently remove from their bodies superfluous flesh or excess fat. Many other persons having very little excess fat or superfluous flesh, or being only slightly over average weight or their own normal weights, or even below these, also seek to reduce. These persons, or a great many of them, see and read and are influenced by respondent's representations as herein set out. Such members of the general purchasing public are uninformed and unskilled in medical science, and depend upon the statements and representations, or silence of, or lack of warning by the makers and sellers thereof for information concerning taking or using remedies, preparations, methods or systems to be used in treating bodily conditions, ailments and abnormalities, and for their effects therein and as to their other bodily effects or lack thereof, and as to whether they may safely use the same. The general public including the purchasers and users of Marmola have so depended upon the respondent herein, as to Marmola, and respondent's representations have encouraged and justified such dependence.

Such statements and representations made by respondent, as herein set out and referred to, and respondent's said failure to disclose the facts previously set forth and referred to herein as not having been disclosed, have the tendency and capacity to mislead and deceive the public, prospective purchasers of Marmola, and purchasers and users thereof, into the erroneous beliefs:

1. That all said statements and representations so made by respondent are true.

2. That the facts previously referred to herein as not having been disclosed by respondent, are not true or do not exist.

3. That all cases of obesity or excess fat are caused by thyroid deficiency.

4. That Marmola is indicated as a treatment in all such cases, is the proper and scientific treatment therein, and that it may be used in all such cases without fear of harmful results and with safety to bodily health and physical well being.

5. That Marmola or desiccated thyroid, the effective reducing medium therein, is prescribed and used by all modern physicians in all cases of obesity or excess fat or for reducing purposes in all cases regardless of cause or origin of such condition or of the physical condition of the person concerned.

6. That Marmola is superior to all other remedies, systems, methods or means of effecting reduction that are offered for sale or sold to the purchasing public for use in such cases.

PAR. 13. The representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars aforesaid and to induce them to purchase and use respondent's said preparation or medicine for reducing purposes because of such erroneous beliefs engendered as above set forth, in preference to and to the exclusion of the products of competitors, as herein specified and indicated, and to divert trade to respondent from such competitors engaged in the sale in interstate commerce of medicines, preparations, systems, methods, books of instruction, and other articles and means designed, intended and used for the purpose of reducing weight.

PAR. 14. There are among the said competitors of respondent those who do not make the same or similar misleading representations as those made by respondent, as herein set out, in regard to the products sold by them, or who do not otherwise misrepresent them, and respondent's said acts and practices have tended to, and have in fact, diverted business to respondent from its said competitors to the substantial injury and prejudice of such competitors.

PAR. 15. In arriving at the findings and conclusions herein stated, the Commission has carefully considered and weighed the testimony and evidence as presented in support of the complaint and as offered in behalf of respondent. Such testimony and evidence, so considered and weighed, include a considerable volume of expert testimony upon medical and scientific subjects included in the issues and subject matter here involved. Testifying in support of the complaint, were five outstanding medical witnesses, who were called as experts and who qualified as such, and in addition, a famous and distinguished phar-

macologist of international reputation. Further, there were four other physicians called to testify primarily as to certain facts involved, who also qualified as experts and who gave testimony of the same general character in support of the complaint as that given by the experts previously referred to.

For respondent, four physicians were called and gave expert medical testimony. Generally speaking, their testimony conflicts with that of the witnesses who testified in support of the complaint.

It is the opinion of the Commission, and it is so found, that the medical and scientific testimony offered in support of the complaint far out-weighs that offered in behalf of respondent, both in respect to the number of such witnesses and as to the character and convincingness of the testimony given. Without intending to detract from respondent's expert witnesses, it is found that the medical and scientific opinions and conclusions of the expert witnesses who appeared in support of the allegations of the complaint are entitled to more weight and are more authoritative than the medical and scientific opinions and conclusions given by respondent's expert witnesses. The expert witnesses who testified in behalf of the complaint, taken as a group, are more outstanding professionally and their opinions entitled to more credit than those who appeared for respondent, taken as a group.

PAR. 16. The answers of respondent to the amended complaint herein pleads *res adjudicata* of the issues here involved. Evidence was introduced in support of this plea and in opposition thereto. The question is thus raised as a matter of fact and the Commission therefore, makes findings in that regard, and passes upon it herein. The plea of *res adjudicata* is based on a previous proceeding by the Commission against said respondent and involving the same medicine as here involved. The Commission issued an order to cease and desist in said case on April 13, 1929, and the order was served on respondent on April 17, 1929. Said order was subsequently set aside by the United States Circuit Court of Appeals, Sixth Circuit. This action was later affirmed by the United States Supreme Court, but on the ground of lack of evidence as to competitors and competition. The Supreme Court's opinion sustained the findings of the Commission on the merits in certain other particulars.

The two cases are different. Respondent's representations upon which the two cases are based are entirely different, as are the general issues arising therefrom. The first case was based upon two general classes of direct and specific representations, first, that Marmola is safe for use by the general public for reducing

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purposes, and second, that said medicine and the method of reducing thereby is scientific. No such direct and specific representations are involved in the present case. The various types of representations upon which the present complaint is based, are those previously set forth herein. They raise distinguishable issues from those involved in the first case. They constitute types of representations used after the service of the order to cease and desist issued in the first case against respondent.

CONCLUSION

The aforesaid acts and practices of the respondent, Raladam Company, 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 amended complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of complaint, counsel for respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice of the same, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Raladam Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of Marmola, or of a preparation or medicine of the same or substantially the same formula, or of a preparation or medicine containing dessicated thyroid or other form of thyroid, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That thyroid deficiency is a common cause or the usual cause of obesity or excess fat or that, if a person is over-weight, it is necessarily an indication of thyroid deficiency and that thyroid should be taken for reducing purposes.

2. That all modern physicians use the reducing ingredient in Marmola or thyroid in the treatment of obesity, or that they use thyroid in all classes of such cases, and that such method of treatment in all such cases is supported by the opinion of physicians and science the world over, or that if a prospective purchaser of Marmola, one seeking to reduce, would consult a specialist or his or her own physician, such medication would probably be used.

3. That Marmola or thyroid, the reducing ingredient therein, is the remedy indicated in and best suited for the treatment of obesity or the reduction of excess fat in the great multitude of such cases or in the average case, or for all persons who are over-weight or who wish to reduce or for all persons whose weights are above the average for persons of their ages and heights.

4. That Marmola or thyroid, the reducing ingredient therein, feeds the thyroid gland, when taken internally, or stimulates or restores it to normal action or that it removes the cause of obesity or excess fat.

5. That a table of average weights for given ages and heights indicates a person's normal or correct weight at a given age and a given height or that any weight in excess of the average weight so given is due to excess fat and that such person should reduce and should effect the reduction by taking Marmola.

6. That respondent makes a full and complete disclosure of the properties and effects of Marmola or of the ingredients thereof, whether such representation be made directly or indirectly, or by implication, unless and until it does in fact make such disclosure, including the following:

a. That desiccated thyroid is a powerful and dangerous drug or product when used internally for reducing purposes.

b. That desiccated thyroid attacks and oxidizes or burns not only fatty tissues, but all bodily tissues.

c. That cases in which obesity or abnormal excess fat is caused by deficiency of the secretion of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.

d. That medical science and physicians generally speaking, justify, recommend and prescribe the use of thyroid as a treatment for obesity or abnormal excess fat only in cases in which such condition is caused by a deficiency of the secretion of the thyroid gland.

e. That in cases of obesity or abnormal excess fat not caused by a deficiency of the secretion of the thyroid gland, thyroid is not indicated as a proper treatment or the usual treatment used

by physicians, and that its use in such cases is apt to be and frequently is harmful to the health of the user.

f. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the user. That in respect to any person, it can be ascertained whether or not such person may safely take or use Marmola or desiccated thyroid only by an examination by a competent physician, often to be supplemented by experimental use of such product under medical advice and observation. Also that, generally speaking, physicians prescribe and administer thyroid only after such examinations and precautionary safeguards and that such administration is usually followed by regular observation and examination of the patient.

g. That Marmola or desiccated thyroid cannot be used generally for reducing purposes by self-medication without the possibility of harmful results.

h. That Marmola or desiccated thyroid when used by a patient who has a deficiency of the secretion of the thyroid gland, does not feed or stimulate such gland or materially increase its activity or tend to restore it to a normal condition or thereby tend to remove the cause of the obesity or abnormal excess fat.

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
CONSOLIDATED DISTILLERS CORPORATION

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

Docket 2488. Complaint, July 3, 1935—Decision, Jan. 22, 1937

Where a corporation engaged as rectifier and wholesaler of distilled spirits in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in selling same in trade and commerce among the various States and in the District of Columbia, in competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale and distribution thereof in interstate commerce, and with other rectifiers and wholesalers—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products, together with words "Bottled by" or "Blended by," as case might be, to its customers and furnished some with means of representing to their vendees, both retailers and ultimate consuming public, that the said whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it did not distill said whiskies or other spirituous liquors thus bottled, sold, and transported by it, and did not prepare its said distilled spirits from mash, wort, or wash through continuous closed pipes and vessels until manufacture was complete, and was not, in sense ordinarily understood by the industry, an actual distiller, for the purchase of the bottled liquors of which, as from original distiller or manufacturer thereof, there is a substantial preference by both trade and public;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into the belief that in buying its said spirituous liquors, thus sold, they were purchasing product bottled out of distillery by original distillers thereof, and with effect thereby of unfairly diverting trade to it from its competitors, including those who, engaged in manufacturing spirituous liquors by process of original and continuous distillation from mash, wort, or wash, truthfully designate themselves as distilling company, and also those who, like itself, engaged in that branch of the industry known as the distilled spirits rectifying industry, and as rectifiers, do not untruthfully designate themselves as "distillers" or "distilling" company:

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. P. Gad B. Morehouse* for the Commission.

Mr. O. Bowie Duckett, Jr., of Hargest, Leviness, Duckett & McGlannan, of Baltimore, Md., for respondent.