

Complaint

IN THE MATTER OF

UDGA, INCORPORATED, AND WILLIAM FRASER AND
MARY FRASER

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

Docket 2830. Complaint, June 2, 1936—Decision, May 17, 1937

Where a corporation and an individual, principal, if not sole, stockholder thereof and director and in control of its business practices and sales policies, engaged in the offer and sale of a stomach tablet designated "Udga Treatment," for use in treating stomach ulcers and other stomach ailments and diseases caused, or reputedly caused, by hyperacidity, in advertising their said product in various newspapers, trade magazines and other periodicals of interstate circulation, and in letters and copies of purported testimonials, and other matter forwarded to prospective customers throughout the various States and in the District of Columbia—

Represented, as aforesaid, that their said treatment would cure such ulcers, gastritis, indigestion, dyspepsia, and various other stomach ailments and diseases, including those caused, or reputedly caused, as above set forth, through such statements as "*Stomach Ulcers*—Thousands of sufferers, many cases of years' standing, after using the Udga Treatment report amazing recovery. * * * highly recommended for ulcers, severe, chronic gastritis, acidosis, dyspepsia, indigestion * * *," etc., and through numerous other statements of like tenor and effect, facts being that said tablets could not cure the various ailments and diseases represented by them, and majority of persons who gave testimonials were not capable of diagnosis and were not registered physicians and could not affirmatively state that aforesaid treatment effected cures of diseases from which they suffered;

With result of misleading and deceiving members of the purchasing public into the false belief that such representations were true, and of inducing such members to buy substantial quantities of its product, and, as a result thereof, of unfairly diverting trade to them from competitors who do not falsely advertise or represent the capacity of the pills or other medicines vended by them to cure ailments and diseases hereinbefore indicated; 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. William C. Reeves*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Sanborn, Graves, Appel, Andre & Morton, and *Mr. John C. DeCoursey*, of St. Paul, Minn., for respondents.

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

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Trade Commission, having reason to believe that Udga Incorporated, and William Fraser and Mary Fraser, individuals, hereinafter referred to as respondents, have been and now are 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, Udga Incorporated, is a corporation, existing under and by virtue of the laws of the State of Minnesota, having its principal office and place of business in St. Paul, Minn. Respondents, William Fraser and Mary Fraser, respectively, are individuals having their offices and principal places of business in St. Paul, Minn.

PAR. 2. Respondent, Udga Incorporated, is the direct successor to William Fraser and Mary Fraser, formerly copartners doing business under the firm name and styled Udga Medicine Company, Udga Laboratories, and other names similar thereto. Said respondents, William Fraser and Mary Fraser, owned and now own virtually all, if not all, of the capital stock of respondent corporation, and have so owned such stock since the procurement of the charter thereof, and have at all times herein related directed and dominated the practices and policies of the respondent corporation.

PAR. 3. Respondents, as individuals and as a corporate entity, as aforesaid, for a period in excess of six years have been engaged in selling and in offering for sale, a stomach tablet designated "Udga Treatment," intended by the respondents and directed by them to be used in the treatment of stomach ulcers, gastritis, indigestion, dyspepsia, and various other stomach disturbances, including those caused or reputed to be caused by hyperacidity, and in the course and conduct of the business of respondents as aforesaid, they have sold and transported, and caused to be sold and transported, such stomach tablet into and through the various States of the United States and the District of Columbia, and have in the manner aforesaid maintained a constant current of trade and commerce in interstate commerce of such commodity.

PAR. 4. In the course and conduct of their said business, respondents are now and have been in competition with other corporations, firms and individuals likewise engaged in the business of selling, distributing and transporting throughout the various States of the United States, and the District of Columbia, pills and medicines for the treatment of the ailments above set forth.

PAR. 5. The respondents in the course and conduct of their business advertise and cause to be advertised in various daily newspapers, trade

magazines and other periodicals having interstate circulation, and have forwarded to prospective or potential customers of respondents throughout the various States of the United States and the District of Columbia, circulars, letters, and copies of purported testimonials seemingly illustrative of the efficacy of the "Udga Treatment," which said statements were and are in part as follows:

Stomach Ulcers

Thousands of sufferers, many cases of years' standing, after using the Udga Treatment report amazing recovery. Rids you of pain, vomiting and other discomforts at once. *No diet.* Improvement steady and rapid. The Udga Treatment is highly recommended for ulcers, severe, chronic gastritis, acidosis, dyspepsia, indigestion. Guaranteed satisfaction on no pay trial. **\$1,000 Reward Offers.** Write for *Free Book on Stomach Sicknesses* and letters of praise from former sufferers. Udga Laboratories, 1947 Dakota Building, St. Paul, Minn.

Read our Affidavit of Truth and \$1,000 Reward Offer. You know the old saying "The proof of the pudding is in the eating." Here is proof from men and women who have sent us these testimonial letters giving you their own true experiences.

Stomach Ulcer, gas pains, indigestion victims, why suffer? For quick relief. Get a free sample of Udga, a doctor's prescription, at your local druggists.

Respondents have issued numerous other statements of like tenor and effect, each and all of which have the tendency and capacity to and do, and are by respondents intended to, create in the minds of the purchasing public, and in the minds of potential customers, the belief that the treatment referred to has a curative value for each and all of the afflictions and ailments above set forth.

PAR. 6. The testimonials used by the respondents above referred to consist of purported copies of numerous letters, claimed by respondents to have been received from persons who had taken the "Udga Treatment" for various and sundry ailments, and who represent in such testimonials that such treatment effected cure of the ailments complained of.

The majority of the persons purporting to have attested the efficacy of this remedy are not capable of diagnosis, are not registered physicians, and cannot affirmatively state the therapeutic or curative value of such treatment.

PAR. 7. In truth and in fact the stomach tablet known and designated as "Udga Treatment" has no therapeutic or curative value and cannot remedy or cure the various ailments or diseases claimed, as herein stated.

PAR. 8. There are among competitors of the respondents, persons, individuals, firms, copartnerships, and corporations, who sell, offer for sale and transport in interstate commerce, pills and other medicines for the treatment of the ailments hereinabove set forth, who do

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not falsely represent or exaggerate the therapeutic or curative value of the same.

PAR. 9. Each and all of the above acts and practices of the respondents have a capacity to and do in fact mislead a substantial number of the members of the purchasing public into the false belief that the use of this treatment will effect a cure of the various diseases herein enumerated and referred to, and who, relying upon such belief have purchased substantial quantities of such stomach pill. Such acts and practices likewise cause a substantial diversion of trade to the respondents from competitors of respondents as herein described who do not falsely represent the therapeutic or curative value of the pill or other medicines vended by them, thereby causing injury to competition in interstate commerce.

PAR. 10. The above acts and practices of the respondents are all to the injury and prejudice of the public, and to competitors of the respondents in interstate commerce, and constitute unfair methods of competition in interstate commerce, 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 June 2, 1936, issued and served its complaint in this proceeding upon the respondent Udga, Incorporated, a corporation, and William Fraser and Mary Fraser, individuals, charging them 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 respondents' answer thereto a stipulation as to the facts was entered into by Alden S. Bradley, attorney for the Commission, and John C. DeCoursey, attorney for the respondents, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said stipulation was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly coming on for consideration before the Commission on said complaint, the answer thereto, said stipulation as to the facts and brief in support of the complaint; 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, Udga, Incorporated, is a corporation existing and doing business under the laws of the state of Minnesota having its principal office and place of business in St. Paul, Minn. Respondent, William Fraser, is an individual having his principal office and place of business in St. Paul, Minn. Respondent, Mary Fraser, died on November 22, 1936.

PAR. 2. Udga, Incorporated, is the direct successor of the copartnership of William Fraser and Mary Fraser doing business under the firm name and style of Udga Medicine Company, Udga Laboratories, and similar names.

Virtually all, if not all, of the capital stock of the respondent corporation is owned by William Fraser and the estate of Mary Fraser. William Fraser directs and dominates the business practices and sales policies of the respondent corporation.

PAR. 3. For a period of more than six years the respondents have been engaged in selling and offering for sale a stomach tablet designated "Udga Treatment" intended and directed by them to be used in the treatment of stomach ulcers, gastritis, indigestion, dyspepsia and various other stomach ailments and diseases, including those caused or reputed to be caused by hyperacidity. They have, in the conduct of their business, sold and transported and caused to be sold and transported such stomach tablets from their place of business in the State of Minnesota into and through various other States of the United States and the District of Columbia to purchasers thereof and have maintained a constant current of trade and commerce in such commodity in such commerce.

PAR. 4. In the course and conduct of their said business respondents are now and have been in competition with other corporations, firms and individuals likewise engaged in the business of selling, distributing and transporting throughout the various States of the United States and the District of Columbia pills and medicines for the treatment of ailments and diseases similar to those for the treatment of which respondents' product is sold and distributed.

PAR. 5. The respondents in the course and conduct of their business advertise and cause to be advertised in various daily newspapers, trade magazines and other periodicals having interstate circulation and have forwarded to prospective customers throughout the various States of the United States and the District of Columbia circulars, letters and copies of purported testimonials and other matter in which said advertising matter such statements as the following were and are made:

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Stomach Ulcers

Thousands of sufferers, many cases of years' standing, after using the Udga Treatment report amazing recovery. Rids you of pain, vomiting and other discomforts at once. *No diet.* Improvement steady and rapid. The Udga Treatment is highly recommended for ulcers, severe, chronic gastritis, acidosis, dyspepsia, indigestion. Guaranteed satisfaction on no pay trial. *\$1,000 Reward Offers.* Write for *Free Book on Stomach Sicknesses* and letters of praise from former sufferers. Udga Laboratories, 1947 Dakota Building, St. Paul, Minn.

Read our affidavit of Truth and \$1000 Reward Offer. You know the old saying "The proof of the pudding is in the eating." Here is proof from men and women who have sent us these testimonial letters giving you their own true experiences.

Stomach Ulcer, gas pains, indigestion victims, why suffer? For quick relief, get a free sample of Udga, a doctor's prescription, at your local Druggists.

Respondents have issued numerous other statements of like tenor and effect, each and all of which have the tendency and capacity to, and do, and are by respondents intended to, create in the minds of the purchasing public, and in the minds of potential customers, the belief that said product referred to will cure each and all of the ailments and diseases above set forth in paragraph 3.

PAR. 6. The testimonials used by the respondents above referred to consist of purported copies of numerous letters, claimed by respondents to have been received from persons who had taken the "Udga Treatment" for various and sundry ailments and diseases and who represent in such testimonials that such treatment effected cures of the ailments and diseases from which they suffered.

The majority of persons who gave such testimonials are not capable of diagnosis, are not registered physicians and cannot affirmatively state that such treatment effected cures of the ailments and diseases from which they suffered.

PAR. 7. The stomach tablet known and designated as "Udga Treatment" cannot cure the various ailments and diseases as represented by the respondents.

PAR. 8. Among the competitors of respondents are individuals, firms and corporations who sell and transport in interstate commerce pills and other medicines for the treatment of the ailments and diseases described in paragraph 3 hereof and do not misrepresent or exaggerate the capacity of such pills and other medicines to cure such ailments and diseases.

PAR. 9. The use by the respondents of the statements and representations described in paragraphs 5 and 6 hereof and other statements similar thereto in offering for sale and selling such products in commerce as herein set out has had and now has the tendency and

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capacity to and do mislead and deceive members of the purchasing public into the false belief that the representations so made are true and has induced such members to purchase substantial quantities of respondent's products. As a result thereof trade has been unfairly diverted to the respondents from competitors referred to in paragraph 8 hereof who do not falsely advertise or represent the capacity of the pills or other medicines vended by them to cure the ailments and diseases described in paragraph 3 hereof. In consequence thereof injury has been done by the respondents to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, Udga, Incorporated, a corporation, and William Fraser, an individual, are to the prejudice of the public and of respondents' 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 the respondents and the record herein including a stipulation as to the facts entered into before William C. Reeves, an examiner of the Commission theretofore duly designated by it, brief on behalf of the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents, Udga, Incorporated, a corporation, its officers, and William Fraser and their respective representatives, agents, and employees in connection with the sale and distribution in interstate commerce and in the District of Columbia of any medicinal tablets now known as "Udga Treatment" or of any other medicinal product having substantially the same ingredients or the same effect sold under that name or under any other name forthwith cease and desist from:

Representing, directly or indirectly, through advertisements, circulars or testimonials or through any other means or device or in

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any manner that said medicinal product will cure stomach ulcers, gastritis, indigestion, dyspepsia and various other stomach ailments and diseases, including those caused or reputed to be caused by hyperacidity.

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

Syllabus

IN THE MATTER OF

THE WATER WORKS VALVE AND HYDRANT GROUP OF
THE VALVE AND FITTINGS INSTITUTE ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2958. Complaint, Nov. 16, 1936¹—Decision, May 18, 1937*

Where a trade organization or group, the members of which were engaged at their respective places of business in the manufacture of water-gate valves, hydrants, fittings and similar products, and in the sale thereof chiefly to towns, cities, and other municipalities, to State Governments and divisions thereof, to the Federal Government and divisions thereof, and to State and Federal institutions, and which members constituted substantially all manufacturers in the United States of such products for water supply systems and were originally and still would have been, but for the matters and things hereinafter set forth, in price competition with one another; certain individuals constituting the governing committee of said organization or group; an individual, as president commissioner of the institute of group in question and as administrative officer of the Code Authority of the Code of Fair Competition for Industry in question; second individual, as assistant secretary of said institute and also as administrative officer of said authority; and the aforesaid members—

- (a) Entered into and carried out an agreement, combination, understanding and conspiracy to fix and maintain, and did fix and maintain thereby, enhanced uniform delivered prices to be exacted by said members from their purchasers of water-gate valves, hydrants, fittings, and similar products, in commerce between and among the various States and in the District of Columbia; and in pursuance of their said understanding and conspiracy—
- (1) Agreed to and did fix and maintain enhanced uniform delivered prices for products in question sold by said members;
- (2) Agreed to and did divide the United States into zones and fixed and maintained therein enhanced delivered prices to be exacted by the members, as above set forth, from the purchasers of their said products;
- (3) Agreed to and did fix uniform discounts allowed by the members in the sale of their said products to jobbers and distributors; and
- (4) Agreed to and did fix and establish uniform delivered prices at which jobbers and distributors purchasing their said products from them should resell same, and refused to continue selling to such jobbers and distributors as refused to or did not resell at enhanced uniform delivered prices as fixed; and

Where the aforesaid officer individuals, to wit, said Institute's president commissioner and code authority's administrative officers, acting for and in behalf of the others hereinbefore referred to, and for the purpose of accomplishing the aforesaid combination, agreement, etc.—

¹ Amended.