

IN THE MATTER OF
GLENN LABORATORIES, INC.

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

Docket 3061. Complaint, Feb. 16, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture, sale and distribution of "Dr. Thomas' $\frac{1}{2}$ 157" obesity treatment, composed of several ingredients, including, undisclosed, as only one effective in ridding body of fat, powerful and dangerous drug desiccated thyroid, which (1) is indicated only in relatively rare cases of obesity due to deficiency of thyroid gland, (2) is dangerous to use, in quantities contained in said preparation and in dosage suggested, in all other cases without examination and advice and direction of a competent physician, (3) may not be taken by some people in their natural and normal state without harmful results, (4) is harmful to take, present certain conditions or defects or abnormalities, and (5) possibility of use of which, in a given case, without harmful results, is contingent upon thorough examination by competent physician, or experimental use by person in question under medical supervision, or both—

Represented, in advertising aforesaid preparation and treatment in newspapers and periodicals of general circulation, and by radio broadcasts, and in pamphlets and by other methods, directly or by implication, that aforesaid product was new and constituted a simple new method, use of which converted food into fuel and energy, and that it could be taken safely by members of the laity without direction from a physician, and that it was safe, harmless and efficacious in all types or classes of obesity, without disclosing presence, as hereinbefore set forth, of said desiccated thyroid and implications of such presence in quantity and dosage involved in preparation in question, and notwithstanding fact that such thyroid has been used by physicians in type of obesity due to defective thyroid glands for many years, use thereof does not always convert food into fuel and energy, or either of them, inability of the laity, unskilled in medical science and necessarily dependent, in many cases, when seeking a remedy for excess weight, for their information as to what treatment, remedy, method or system they may safely purchase, take or use, upon statements and representations, largely, of makers and sellers thereof, to tell whether or not their obesity is due to deficient thyroid gland, which may only be ascertained by examination of competent physician, and notwithstanding facts implicit in aforesaid nondisclosure;

With tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that such representations were true, and that said product was a safe, harmless and competent remedy or treatment for all classes and types of obesity, and to induce them to purchase said preparation in preference to, and to the exclusion of, preparations, systems, methods or other means of treatment offered for sale in commerce by competitors thus engaged, and with result of unfairly diverting thereby trade to it from its said competitors; 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.

Mr. E. J. Hornibrook for the Commission.

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 Glenn Laboratories, Inc., a corporation, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Glenn Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 287 W. 127th Street, New York City, in said State.

Respondent corporation is now and for several years last past has been engaged, among other things, in the manufacture, sale, and distribution of a proprietary remedy or medicine which it calls "Dr. Thomas' B 157" for use in the treatment of obesity. Respondent ships, or causes to be shipped or transported, its said product, when sold, from its place of business in the State of New York to purchasers thereof located at points in various States of the United States other than the State of New York. Respondent sells its said product to wholesale and retail druggists. Said wholesale druggists sell and ship the same to retail druggists. Retail druggists in various States of the United States sell the same to their customers, who are generally members of the laity. There is now, and has been during all the times herein mentioned, a constant current of trade in such product so sold by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent corporation is now and has been during all the times herein mentioned, engaged in substantial competition with various other corporations, copartners, firms, and individuals, selling and offering for sale obesity remedies or like or otherwise competitive products, to wit: preparations, systems, methods, or other means of treatment for obesity or reduction of weight of the human body.

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PAR. 3. Respondent in aid of so offering for sale and selling said "Dr. Thomas' $\text{\textregistered}$ 157," as aforesaid, has advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts and in pamphlets, and in, by and through other advertising media. In, by and through each and all of the advertising media above enumerated, respondent represents, expressly or by implication:

- A. That said product is new;
- B. That its use constitutes a simple new method;
- C. That the use of said product converts food into fuel and energy;
- D. That said product can be safely taken by members of the laity without the advice and direction of a physician;
- E. That said product is safe, harmless, and efficacious in all types of classes of obesity.

Typical of its said advertisements are the following which are caused to be published by respondent in newspapers in cities and towns in various States of the United States where said product is handled by druggists:

NO MORE UGLY FAT

Pounds of ugly fat melt away as if by magic! No starvation diet or strenuous exercise! Eat as much as you want—everything you like within reason! Away goes that hideous flesh! New Beauty—new health—for you! $\text{\textregistered}$ 157 is a Doctor's prescription! Simply take one capsule after each meal. Get a bottle of Dr. Thomas' $\text{\textregistered}$ 157 at your drug store and begin taking it TODAY. Two sizes \$1 and \$2.50. Guaranteed not to contain dinitrophenol. REMEMBER; RESULTS GUARANTEED OR MONEY REFUNDED! Sold at Grant Drug Co., Morgan Drug Co., Tarrant Drug Co., L. T. Wright Drug Co., and all other good drug stores.

If everything you eat seems to turn to fat, the chances are your system is lacking in natural glandular substance which nature provides to control the fat making process. Instead of fat turning into energy, it remains unused. However, through a New York Doctor's prescription, you can provide this natural regulating substance.

PAR. 4. Dr. Thomas' $\text{\textregistered}$ 157 is a product made of several ingredients. Its only ingredient which is effectual in ridding human bodies of portions of fat or other body tissue or weight is desiccated thyroid. The reducing effect produced by the use of "Dr. Thomas' $\text{\textregistered}$ 157" is the same as the effect produced by taking an equal amount of desiccated thyroid. "Dr. Thomas' $\text{\textregistered}$ 157" contains $\frac{1}{2}$ grain of desiccated thyroid. It is put up in capsules and is to be taken three times daily orally—amounting to $1\frac{1}{2}$ grains of desiccated thyroid per day.

Desiccated thyroid is made from the thyroid glands of domestic animals. It is a powerful and dangerous drug.

There are persons whose bodies in their natural and normal state are so constituted that they 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 result to the body, is through examination by a competent physician or by experimental use by such person under medical supervision, or by both such methods combined. Only by the same means may it be ascertained in how large a quantity thyroid may be taken or used by such person without harmful results.

There are conditions of the human body which make it harmful to take or use thyroid. Among these is pregnancy. Other such conditions are defects, or abnormalities of the heart or kidneys. Any defect or abnormality of the body is apt to make the taking or use of thyroid harmful to the user.

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

Obesity is generally caused from over-eating but it may be the result of more than one cause. One of the causes is a deficient or abnormally active thyroid gland. Deficiency of thyroid glands causes obesity or abnormal excess fat in only the rare and exceptional 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 weight is the result of a cause or causes other than deficient thyroid glands. Only in cases of obesity due to deficiency of thyroid glands is the use of desiccated thyroid indicated. In all other cases it is dangerous for a person to use thyroid in the quantities contained in "Dr. Thomas' *R* 157" without an examination and the advice and direction of a competent physician. The laity cannot tell whether or not obesity is due to a deficient thyroid gland. This can only be ascertained by the examination of a competent physician.

PAR. 5. 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 weight or other weight or flesh.

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

PAR. 6. Respondent's said advertising described in paragraph 3 above is false, misleading, and deceptive in that:

1. Desiccated thyroid has been used by physicians in the type of obesity due to defective thyroid gland for many years and is not new;

2. The use of desiccated thyroid does not always convert food into fuel and energy or either of them;

3. In that respondent fails to disclose that:

(a) Dr. Thomas' R 157 contains desiccated thyroid in quantities such as to make it a powerful and dangerous medicine;

(b) That it is only suitable as a medicine for obesity in the cases of deficiency of the thyroid gland and that these cases are rare and exceptional and can only be diagnosed as such by a competent physician;

(c) That medical science and physicians justify the use of thyroid as a treatment for obesity or excess weight only in cases where obesity or excess abnormal fat is caused by deficiency of thyroid gland and that competent physicians prescribe its use only in such cases;

(d) That in cases of obesity or abnormal fat not caused by deficiency of thyroid gland the use of thyroid is not indicated and its use therein may be and is likely to be harmful to the health of the user;

(e) That many persons are so constituted that they may not use Dr. Thomas' R 157 with safety to physical health;

(f) That respondent's preparation, Dr. Thomas' R 157, is one which can not be used with safety to physical health except under medical prescription and advice.

PAR. 7. Said statements and representations so made by respondent and said failures to disclose have the tendency and capacity to induce the members of the public and prospective purchasers to form the mistaken and erroneous belief that said representations as set out in paragraph 3 are true and that said product is a safe, harmless and competent remedy or treatment for all classes and types of obesity and into the purchase of Dr. Thomas' R 157 in preference to and to the exclusion of preparations, systems,, methods or other means of treatment being offered for sale in said commerce by said competitors of respondent as hereinabove alleged. Thereby trade is unfairly diverted to respondent from its said competitors to the injury of competition in commerce among and between the various States of the United States and to the injury of the public.

PAR. 8. 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 the 16th day of February 1937, issued, and on February 18, 1937, served its complaint in this proceeding upon respondent, Glenn Laboratories, Inc., a corporation, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now duly 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, Glenn Laboratories, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 287 West 127th Street, New York City, in said State.

Respondent corporation is now and, for several years last past, has been engaged, among other things, in the manufacture, sale, and distribution of a proprietary remedy or medicine which it designates and calls "Dr. Thomas' B 157" and is for use in the treatment of obesity. Respondent ships, or causes to be shipped or transported, its said product, when so sold, from its place of business in the State of New York to purchasers thereof located at points in various States of the United States other than in the State of New York.

Respondent sells its said product to wholesale and retail druggists. Said wholesale druggists sell and ship the same to retail druggists.

Such retail druggists in various States of the United States sell the same to their customers, who are usually members of the laity. There is now and has been during all the times herein mentioned, a constant current of trade in such product so sold by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent corporation is now and during all of the times herein mentioned engaged in substantial competition with various other corporations, copartnerships, firms, and individuals, selling and offering for sale, obesity remedies of like or otherwise competitive products, to wit: preparations, systems, methods, or other means of treatment for obesity or reduction of weight from the human body.

PAR. 3. Respondent in aid of so offering and selling "Dr. Thomas' B 157" as aforesaid, advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts, in pamphlets and in and by other methods of advertising media. In, by and through each of the advertising media above-enumerated, respondent represents expressly, or by implication, (a) that said product is new; (b) that its use constitutes a simple new method; (c) that the use of said product converts food into fuel and energy; (d) that said product can be safely taken by members of the laity without direction from a physician; (e) that said product is safe, harmless and efficacious in all types or classes of obesity.

Typical of its said advertisements are the following, which are caused to be published by respondent in newspapers, in cities and towns in various States of the United States where said product is handled by druggists:

NO MORE UGLY FAT

Pounds of ugly fat melt away as if by magic! No starvation diet or strenuous exercise! Eat as much as you want—everything you like within reason! Away goes that hideous flesh! New Beauty—new health—for you! B 157 is a Doctor's prescription! Simply take one capsule after each meal. Get a bottle of Dr. Thomas' B 157 at your drug store and begin taking it TODAY Two sizes—\$1 and \$2.50. Guaranteed not to contain dinitrophenol. REMEMBER: RESULTS GUARANTEED OR MONEY REFUNDED! Sold at Grant Drug Co., Morgan Drug Co., Tarrant Drug Co., L. T. Wright Drug Co., and all other good drug stores.

If everything you eat seems to turn to fat, the chances are your system is lacking in natural glandular substance which nature provides to control the fat-making process. Instead of fat turning into energy, it remains unused. However, through a New York Doctor's prescription, you can provide this natural regulating substance.

PAR. 4. Dr. Thomas' $\mathcal{B}$ 157 is a product made of several ingredients. Its only ingredient which is effectual in ridding human bodies of portions of fat or other body tissue or weight, is desiccated thyroid. The reducing effect produced by the use of Dr. Thomas' $\mathcal{B}$ 157 is the same as the effect produced by taking an equal amount of desiccated thyroid. Dr. Thomas' $\mathcal{B}$ 157 contains one-half grain of desiccated thyroid. It is put up in capsules and is to be taken three times daily orally, i. e. one and one-half grains of desiccated thyroid per day.

Desiccated thyroid is made from the thyroid gland of domestic animals. It is a powerful and dangerous drug.

There are persons whose bodies in their natural and normal state are so constituted that they 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 the body, is through examination by a competent physician or by experimental use by such person under medical supervision, or by both such methods combined. Only by the same means may it be ascertained in how large a quantity thyroid may be taken or used by such a person without harmful results.

There are conditions of the human body which make it harmful to take or use thyroid. Among these is pregnancy. Other such conditions are defects, or abnormalities of the heart or kidneys. Any defect or abnormality of the body is apt to make the taking or the use of thyroid harmful to the user.

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

Obesity is generally caused from overeating, but it may be the result of more than one cause. One of the causes is a deficient or abnormally inactive thyroid gland. Deficiency or abnormal inactivity of thyroid glands causes obesity or abnormal excess fat in only rare and exceptional cases. In a large majority of the total number of cases of obesity the persons affected do not have deficient thyroid glands and such obesity or abnormal excess weight is the result of a cause or causes other than deficient thyroid glands. Only in cases of obesity due to deficiency of thyroid glands is the use of desiccated thyroid indicated. In all other cases it is dangerous for a person to use thyroid in the quantities contained in Dr. Thomas' $\mathcal{B}$ 157 and in the dosage suggested by respondent without an examination and

the advice and direction of a competent physician. The laity cannot tell whether or not obesity is due to a deficient thyroid gland. This can only be ascertained by the examination of a competent physician.

PAR. 5. 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 weight or other weight or flesh.

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

PAR. 6. Respondent's said advertising described in paragraph 3 above is false, misleading, and deceptive in that:

1. Desiccated thyroid has been used by physicians in the type of obesity due to defective thyroid gland for many years and is not new;

2. The use of desiccated thyroid does not always convert food into fuel and energy or either of them;

3. In that respondent fails to disclose:

- (a) Dr. Thomas' B 157 contains desiccated thyroid in quantities such as to make it a powerful and dangerous medicine;

- (b) That it is only suitable as a medicine for obesity in the cases of deficiency of the thyroid gland and that these cases are rare and exceptional and can only be diagnosed by a competent physician;

- (c) That medical science and physicians justify the use of thyroid as a treatment for obesity or excess weight only in cases where obesity or excess abnormal fat is caused by deficiency of the thyroid gland, that competent physicians prescribe its use only in such cases;

- (d) That in cases of obesity or abnormal fat not caused by deficiency of thyroid gland the use of thyroid is not indicated and its use therein may be and is likely to be harmful to the user;

- (e) That many persons are so constituted that they may not use Dr. Thomas' B 157 with safety to physical health;

- (f) That respondent's preparation, Dr. Thomas' B 157, is one which cannot be used with safety to physical health except under medical prescription and advice.

PAR. 7. Said statements and representations so made by respondent and said failures to disclose as set forth in paragraph 6 hereof have the tendency and capacity to induce the members of the public and prospective purchasers to form the mistaken and erroneous belief that such representations as set forth in paragraph 3 are true and

that said product is a safe, harmless and competent remedy or treatment for all classes and types of obesity and to induce them to purchase "Dr. Thomas' B 157" in preference to and to the exclusion of preparations, systems, methods, or other means of treatment being offered for sale in said commerce by said competitors of respondent as hereinabove alleged; thereby trade is unfairly diverted to respondent from its said competitors to the injury of competition in commerce among the various States of the United States and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Glenn Laboratories, Inc., a corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer filed herein on the 29th day of March 1937, by respondent, admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that the 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 respondent, Glenn Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of "Dr. Thomas' B 157" in interstate commerce or in the District of Columbia, so long as said product contains desiccated thyroid or other form of thyroid, do forthwith cease and desist from representing, expressly or by implication, in newspapers, magazines, periodicals, in radio broadcasts, in pamphlets, on cartons containing said product, and in, by and through other advertising media:

1. That said product is new;
2. That its use constitutes a simple new method of treating obesity;
3. That the use of said product converts food into fuel and energy;
4. That said product can be safely taken by members of the laity

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without a physical examination by a competent physician and without the advice and direction of a competent physician during the taking thereof;

5. That said product is safe, harmless, and efficacious, or either of them, in all types or classes of obesity;

6. Or any other statement or representation of like import, including failure to affirmatively disclose by, in and through each and all of the said media that said product contains a dangerous and powerful ingredient and cannot be safely taken by members of the laity without a physical examination by a competent physician and without the advice and direction of a competent physician during the taking thereof.

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.

Complaint

IN THE MATTER OF
EUCATHOL COMPANY, INC.¹

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3069. Complaint, Mar. 4, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture and sale of "Eucathol" compound or medicine for use in treatment of coughs, colds, scalds and other afflictions, and also for use as after-shaving cream, through rubbing or massaging same on skin or through inhalation of vapors thereof, in substantial competition with those engaged in sale or offer to general public of compounds, medicines, salves, and ointments used for purposes for which its said preparation was offered—

Falsely represented, in advertising its said product in newspapers and periodicals of general circulation, and through radio broadcasts, and in pamphlets and printed testimonials, and other printed matter, as set forth, through use of photographs, pictures, and legends, on cartons containing same, and in circulars enclosed therewith, and in other advertising media, that use of such "Eucathol" would prevent and cure, or was beneficial in treatment of "insect bites, sunburn, piles and hemorrhoids, asthma and hay-fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia";

With tendency and capacity to induce members of the public and prospective purchasers to form mistaken and erroneous beliefs that said statements and representations were true, and with result that such purchasing public, acting in such erroneous belief, was induced to buy and bought its said product, and thereby unfairly diverted trade to it from its competitors; to the injury of competition in commerce, and to that of the public:

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

Mr. E. J. Hornibrook for the Commission.

Stanard, Carey & Stanard, of Shawnee, Okla., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that The Eucathol Company, Inc., a corporation, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

¹ See modified findings and order, as of Nov. 3, 1937, in this case, *infra*, at page 1290.