

Syllabus

IN THE MATTER OF
NATIONAL LABORATORYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2900. Complaint, Aug. 14, 1936—Decision, Oct. 30, 1937*

Where a corporation engaged in sale and distribution of its alleged "Nuga-Tone" tablet remedy for treatment of those suffering from diseases and ailments of the stomach, intestines, and other organs, and in transporting and causing its said product to be transported in commerce among the several States, direct from its place of business to consumers in other States, to and through wholesale druggists for resale, and otherwise, in competition with those engaged in offer and sale in like commerce of compounds or preparations for use in treatment of same or similar ailments and diseases; in advertising its said "Nuga-Tone" by radio and in periodicals and newspapers and by mail—

- (a) Represented that it was a combination of bitter stomachic tonics, or a valuable and effective alterative tonic, which might be taken over long periods by anyone without harmful results, and constituted an effective remedy or cure for indigestion and stomach or intestinal ailments, and would aid digestion, relieve pains or discomfort following eating, increase the appetite, and permit one to eat anything;
- (b) Represented that said "Nuga-Tone" removed the causes of aches and pains in the muscles, nerves, and bones, and gave new power and energy to the muscular and nervous system, and constituted an effective remedy or treatment for poor heart action and for loss of power and energy, which would protect the body against the most serious diseases and stimulate and invigorate the entire system, and act directly on the vital organs, and make sick people strong and healthy and cause paleness to disappear, and produce normal sleep; and
- (c) Represented, through use of word "Laboratory" in its corporate name, that it owned, operated, or controlled a laboratory, and made use of such statements on labels, cartons, etc., as "Distributed by" or "From" National Laboratory, etc.;

Facts being preparation in question contained arsenic, corrosive sublimate and strychnin, and constituted dangerous composition, by reason of presence of said fatal poisons, which should only be taken under prescription of physician and which no good doctor would thus combine for any purpose, no warning against use for children was included in connection with sale thereof nor that product should be taken under doctor's prescription, number of tablets which, as asserted thereon, could be taken at one time safely, would result, based on aggregate content of aforesaid poisons thus involved, under accepted medical authority, in dosage for child far beyond accepted standard, and in fatal dosage under maximum suggested for adult, preparation had no such value and brought about no such effects as above set forth, but constituted "shot-gun" prescription, of type carefully avoided by modern medical profession, and product which could not be taken indefinitely without harmful results, and dangerous mixture with its three aforesaid

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fatal poisons, presence of none of which was disclosed to purchaser, and it did not maintain, conduct, or operate a laboratory in connection with said preparation or have laboratory at its three-room place of business, or at any place:

With tendency and capacity to cause members of purchasing public to believe that said "Nuga-Tone" was harmless and might be taken with impunity and constituted valuable combination of bitter stomachic tonics and preparation which was remedy or cure for, or would afford relief for, stomach and intestinal troubles and other human diseases and ailments, and relieve persons suffering therefrom as above indicated, and completely restore them to health, and with result that many members of public, acting under such erroneous beliefs induced by such various misrepresentations, purchased its said "Nuga-Tone," and with effect of unfairly diverting trade to it from competitors engaged in sale in interstate commerce of drugs, preparations and remedies which are truthfully advertised and represented and recommended for use in connection with treatment of the various diseases and ailments involved herein; to the substantial 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. W. W. Sheppard*, trial examiner.

Mr. Marshall Morgan and *Mr. T. H. Kennedy* for the Commission.
Newby & Burditt, of Chicago, Ill., 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 National Laboratory, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Laboratory is a corporation organized under the laws of the State of Illinois, with its office and principal place of business located at 767 Milwaukee Avenue, Chicago, State of Illinois.

Respondent is now and for more than one year last past has been engaged in the manufacture and in the sale to wholesale druggists located in the various States of the United States other than in the State of Illinois, and in the District of Columbia, of a remedy known as "Nuga-Tone," designed by respondent for treatment of human beings suffering from diseases of the stomach, intestinal, and other organs. There is now and has been for more than one year

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last past a constant current of trade and commerce by said respondent in the aforesaid product, Nuga-Tone, between and among the various States of the United States and in the District of Columbia. In connection with the sale and distribution of its said product, "Nuga-Tone," respondent causes the same to be transported in interstate commerce from its place of business at Chicago, Ill., into and through States of the United States other than the State of Illinois to the vendees thereof at their respective points of location. In the course and conduct of its said business, respondent is and has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of remedies designed for the treatment of the stomach, digestive, and other organs of the human body.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent has been and is now soliciting the sale of and selling its aforesaid remedy "Nuga-Tone" through the medium of radio, magazines, and newspaper advertising, and by mail. Sales are made direct to wholesale druggists. These in turn sell to the retail trade and in this way respondent's product, moving through the channels of commerce, reaches the consuming public. Said consuming public is informed of respondent's product "Nuga-Tone" principally through the medium of weekly broadcasts over a large Chicago station.

PAR. 3. In offering for sale and selling in interstate commerce its product "Nuga-Tone," respondent, among others, has made the following statements and representations:

Use of term LABORATORY as part of the trade name.

A valuable Alternative Tonic.

Stimulating Tonic. A combination of Bitter Stomachic tonics, Alternative tonics, Intestinal tonics, and Stimulating Tonics, arranged in accord with Modern Medical Science.

As an Alternative Tonic—aids in re-establishing a more healthy functioning in the processes of Nutrition.

Bitter Stomachic Tonic—to increase the activity of the mucous membrane of the gastro-intestinal tract by increasing its tone—stimulating the appetite.

Stimulating and increasing the tone of the general system.

People who are weak or sickly should take NUGA-TONE * * * that makes you strong and healthy.

NUGA-TONE has given millions of men and women in all parts of the world better health and greater strength.

If you have little appetite and what you eat causes distress in your stomach, or if you have pains in your stomach after eating take NUGA-TONE just a few days and notice how much better you will feel. Your appetite will be better, food will taste better. It will digest much easier and the pain and

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distress in your stomach and intestines will disappear. There is no need to suffer from this ordinary stomach complaint if you take NUGA-TONE.

Go to your druggist and get this wonderful remedy.

When you are bothered with aches or pains, be sure to take NUGA-TONE. It removes the cause of aches and pains in the muscles, nerves and bones, and gives new power and energy to the muscular and nervous systems, and is a wonderful help to protect the body against more serious disease.

If you are discouraged with life, are weak, get tired easily; stomach does not function properly, nerves are unstrung and your previous eagerness has disappeared—then use NUGA-TONE and you will again enjoy the pleasures of good health.

NUGA-TONE acts on the whole system—not only on the stomach, nerves, blood, appetite, etc.

Almost every man or woman, particularly those past middle age, need a tonic to keep their system in full activity. NUGA-TONE stimulates and invigorates your entire system. It acts as an aid to rundown vital organs, helping them to function as they were intended, and gives you power and energy of younger days. The worries of old age disappear and life again becomes a pleasure.

Are you troubled with being unable to sleep nights, which causes you to become nervous and irritable? Then take NUGA-TONE which is a wonderful and efficient remedy for the nervous system.

It contains no opiate or habit-forming drugs, is not habit forming.

* * * After using NUGA-TONE I feel entirely well * * * I was suffering badly with indigestion, bad headache, poor appetite and could not sleep at night. I used various remedies and pills but they did not help me. After taking NUGA-TONE the condition of my health improved, stomach became regulated, headaches stopped and now I have a good appetite and can sleep nights. NOW I MUST HAVE NUGA-TONE REGULARLY AS WITHOUT IT I CANNOT LIVE.

You can keep taking it without harmful results.

Normal sleep will again be possible and you will cease to be nervous or irritable.

If you are pale or without vigor you should start taking NUGA-TONE, the great health and body builder * * * your blood is probably like water. Build it up without delay or you may contract some more serious condition.

NUGA-TONE contains a form of iron which is quickly absorbed by the system and is necessary in good red blood. Paleness will disappear, in its place will be a rosy complexion, indicating a healthy blood condition. Strength and vigor will return to the pale and weak.

If you feel that your strength does not respond to your will, that you are weak and infirm, that life has no value to you—it is best evidence that your organs do not function properly. No doubt you need a good tonic to stimulate your organs to natural activity.

A guaranteed remedy which will bring back your old time strength and health is NUGA-TONE.

This remarkable remedy acts directly upon your organs—eliminating the causes of your disability.

If your appetite is poor and what you eat causes distress in your stomach, or if you have pains in your stomach or intestines after eating, headaches, dizzy spells or a weak stomach—take NUGA-TONE just a few days and notice how

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much better you will feel. Your appetite will be much better—food will taste better. It will digest much easier and the pain and distress in your stomach and intestines will disappear. There is no need to suffer from this ordinary stomach complaint if you take NUGA-TONE.

When you are troubled with indigestion, stomach or intestinal sluggishness, poor heart action, nerves exhausted and all unstrung or lack of confidence in yourself, remember NUGA-TONE is a speedy way of remedying these ills.

It has been found that men and women suffering from general debility * * * are quickly aided by taking this unequaled remedy.

NUGA-TONE * * * gets the stomach to function as it should.

It is remarkable remedy for ridding the system of poisons which cause dizzy spells, stomach pains due to poor digestion, headaches and similar ailments.

NUGA-TONE acts directly upon your vital organs and stops the causes of your troubles.

It is a genuine red blood builder.

Almost immediately nervousness will stop. .

NUGA-TONE will give wonderful results in only a few days * * * nervous troubles will disappear * * * No more bloating after eating; foul breath or sour stomach caused by improper digestion or poor elimination.

You can eat anything that you want when you take NUGA-TONE.

One of my customers returned from the late war in very poor health. I persuaded him to try NUGA-TONE and he did. Now he has regained his health and is a strong, powerful man.

I was in a weak, rundown condition. Everything I ate hurt me. My father, having taken NUGA-TONE some years ago and being relieved of indigestion, advised me to try it. In so doing, I am completely relieved * * * W. T. Vance, Union, Miss.

Gas and bloating in the stomach quickly disappear.

NUGA-TONE contains the elements that are used by all good doctors for correcting these troubles.

It is a doctor's own prescription.

Makes you strong and healthy.

PAR. 4. In truth and in fact the foregoing representations of respondent are false, deceptive, and misleading in the following, among other, particulars:

The therapeutic claims expressed in such advertising are false almost in their entirety.

This product is not an efficient remedy or treatment for lost manhood, indigestion and stomach troubles; nor will it make one strong and healthy;

This product is not of value as an alterative tonic; nor will it remove the cause of aches and pains in the muscles, nerves and bones;

This product does not give new power and energy to the muscular and nervous system; nor will it protect the body against more serious disease;

This product will not cause the worries of old age to disappear and life to become a pleasure again;

This product is a potentially harmful character and particularly dangerous in the hands of lay users, which fact is not disclosed to the general purchasing public.

PAR. 5. Among the competitors of respondent referred to in paragraph 1 herein, there are those who sell and distribute in competition with respondent remedies designed for the treatment of stomach, intestinal, and other human ailments, and who advertise and represent their said products fairly and accurately.

The above mentioned false and misleading representations in connection with the sale of respondent's said product have induced and do induce the consuming public to purchase said product under the erroneous belief that it is a remedy or cure for stomach and intestinal troubles and other diseases and ailments of the human body, and that the use of respondent's said product would relieve or completely restore health to persons suffering from the aforesaid ailments or diseases. The marketing of respondent's said product is directly contrary to the interest of the public welfare, the consuming public has been and is being deceived and misled, trade is being and has been diverted to respondent from such competitors in interstate commerce, and thereby substantial injury is done and has been done by the respondent to competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in 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 August 14, 1936, issued and thereafter served its original complaint in this proceeding on National Laboratory, 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 the complaint were introduced by Marshall Morgan and Thomas H. Kennedy, attorneys for the Commission, before W. W. Sheppard,

an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Newby & Burditt, attorneys for the respondent, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and briefs in support of the complaint and in opposition thereto; 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. The respondent is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 767 Milwaukee Avenue, in the city of Chicago. Respondent is now and for several years last past has been engaged in the business of selling and distributing an alleged remedy known as "Nuga-Tone," in tablet form, designed by respondent for treatment of human beings suffering from diseases and ailments of the stomach, intestines, and other organs.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent, National Laboratory, in response to orders received, has offered its said product for sale and has sold and transported and caused the same to be transported in commerce among the several States of the United States direct from its aforesaid place of business in Chicago to consumers located at points in States of the United States other than the State of Illinois.

In the course and conduct of such selling, respondent has been, and now is engaged in competition with corporations, firms, partnerships, and individuals, offering for sale and selling in like commerce, compounds or preparations for use in the treatment of the same or similar ailments and diseases.

PAR. 3. Respondent, in connection with the sale and distribution of the aforementioned product "Nuga-Tone," has advertised the same by radio, and in magazines and newspapers and by mail. Respondent sells direct to wholesale druggists who in turn sell to the retail trade, thus reaching the ultimate consumer and general public. Sales are not limited to druggists or pharmacists, however, nor to licensed physicians, surgeons, dentists, or veterinarians. Respondent uses pasteboard cartons which can be employed in addressing and

mailing individual bottles of Nuga-Tone tablets. Respondent company has used the United States mail in distributing its product in interstate commerce, sending larger quantities by express or freight, or by parcel post.

Through the use of radio, magazines, newspapers, and mail, as aforesaid, respondent has advertised and represented its product Nuga-Tone as a valuable alterative tonic; a stimulating tonic; a combination of bitter stomachic tonics; as a bitter stomachic tonic increasing the activity of the mucous membrane of the gastro-intestinal tract; as an intestinal tonic; as aiding in establishing a more healthy functioning in the process of nutrition; as stimulating the appetite and the tone of the general system; as making the weak and sickly strong and healthy; as having given better health and greater strength to millions of men and women in all parts of the world; as relieving stomach distress, removing the causes of aches and pains in the muscles, nerves, and bones and giving new power and energy to the nervous system; bringing back the pleasures of good health to those who have been distressed with life, who are weak, get tired easily, whose stomach does not function properly, whose nerves are all unstrung and their "previous eagerness has disappeared"; as invigorating or acting upon the entire system, aiding run-down vital organs, helping them to function as they were intended, giving back "the power and energy of younger days"; causing the worries of old age to disappear and life to become a pleasure again; as a remedy for sleeplessness and irritability, toning the nervous system; as something one can keep on taking without harmful results; as a remedy for those who are pale or without vigor and whose "blood is probably like water"; as stimulating to natural activity the organs of those whose strength does not respond to their will, who are weak and infirm, life having no value to them; as a remedy guaranteed to "bring back your old-time strength and health"; as a remedy for those troubled with indigestion, stomach or intestinal sluggishness, poor heart action, exhausted nerves and "lack of confidence in yourself"; as a remarkable remedy, ridding the system of poisons causing dizzy spells, stomach pains due to indigestion, and headaches; as being a genuine red blood builder; as eliminating bloating after eating, foul breath or sour stomach; and as enabling the patient to eat anything he wants.

PAR. 4. Each tablet of Nuga-Tone contains three deadly poisons, namely, arsenic trioxide, mercuric chloride, otherwise known as corrosive sublimate, and strychnin sulphate.

Respondent's Nuga-Tone, the record discloses, is composed of the following ingredients:

Corrosive sublimate-----	Gr. $\frac{1}{60}$
Strychnin sulphate-----	" $\frac{1}{60}$
Arsenic Trioxide-----	" $\frac{1}{40}$
Reduced Iron-----	" $\frac{1}{2}$
Extract Gentian-----	" $\frac{1}{2}$
Extract Cascara Sagrada-----	" $\frac{3}{4}$
Extract Taraxacum-----	" $\frac{1}{4}$
Zinc Phosphide-----	" $\frac{1}{60}$

This formula has been used by respondent since about 1916.

Arsenic Trioxide is a white odorless, tasteless powder used in the manufacture of pigments, glass, shot and bullets, insecticides, rat poison, cattle dip, weed killer; as a hide preservative; and in medicine being a violent irritant. The average dose of arsenic for medicinal use is given in Volume II of the Pharmacopoeia of the United States at 1/30 grain.

Mercuric Chloride, otherwise known as corrosive sublimate, is a white crystalline powder, very poisonous, variously used in the manufacture of calomel and other mercury compounds, and in medicine as a remedy for syphilis, rheumatism, and as an antiseptic. It is also used in the manufacture of various articles of commerce.

The average dose as given by the United States Pharmacopoeia is 1/15 grain.

Strychnin sulphate is a hard white crystalline alkaloid, very bitter in taste and very poisonous. It is used in medicine as a stimulant to the nervous system. The average dose of strychnin according to the United States Pharmacopoeia is 1/30 grain.

The United States Pharmacopoeia in treating of arsenic, mercuric chloride, and strychnin carries the following identical warning as to each:

Caution * * * Extremely Poisonous

On one side of the bottle in which the product Nuga-Tone is sold and delivered in interstate commerce to the consuming public Nuga-Tone is described as a "Stomachic Alterative and General Tonic" * * * containing eight active drugs, six of which are indorsed by the United States Pharmacopoeia and each tablet contains a full adult dose. On another of the four sides of the bottle under the heading, "Directions for Taking," it is stated:

To obtain highest beneficial results, Nuga-Tone should be taken regularly for at least 30 days or longer. Take one Tablet three times daily before or after eating.

Neither the label nor the carton discloses the ingredients of Nuga-Tone. There is no indication on the label or elsewhere, that Nuga-Tone contains three deadly poisons! The preparation some years ago was sold with this wording on the bottle:

Do not give to Children under 16 Years of Age.

The directions at this time do not contain this warning nor do they suggest that Nuga-Tone should be taken under the advice of a physician. Respondent in connection with the sale of Nuga-Tone has never made any representations or given any warning to the effect that the product should be taken under the direction of a physician. On the contrary, respondent has represented that one can keep on taking Nuga-Tone without harmful results. Each tablet contains $\frac{1}{60}$ of a grain of strychnin, $\frac{1}{60}$ of a grain of mercuric chloride, and $\frac{1}{40}$ of a grain of arsenic and the person engaging in such self-medication has no way of knowing that he is taking these three poisons into his system.

PAR. 5. Bitters are only effective as such in liquid form and respondent's product is a tablet. Leading medical and pharmacological authorities treat "bitters" under the title or heading "Stomachics".

Bitter, aromatic, and sharp drugs have been used since antiquity as "tonics" and in functional dyspepsias. They were supposed to increase the appetite and improve digestion, and thus favor nutrition. These are divided into two principal classes, "simple" and "aromatic." "Bitters" are always administered shortly before meals, it being conceivable that they act as a sort of "chemical dinner bell."

Bitters are substances that are employed to give a bitter taste, the object of their administration being to improve the appetite. When the appetite is below normal, a strong stimulation of the taste buds will often restore it; and substances with a bitter taste that is not otherwise disagreeable, tend to act as stimulants to the taste buds. The bitter effect on the appetite is solely the local one on the taste buds. The effects of bitters depend on the taste. The value of a bitter, therefore, is not obtained if the bitter is hidden, as in capsules or coated pills, although this is often done.

It is useless to administer bitters in the form of pills and tablets. If a bitter is put into a pill or capsule, a patient does not taste it and it does not produce the effect that a bitter is supposed to produce. Bitters have no medicinal effect "except to the taste." Through the taste bitters stimulate; through the mouth may stimulate gastric secretion if one likes the bitters. The "taste buds" are found in the mouth and throat of human beings, the tongue, palate, tonsils, and fauces comprising important units. To affect the brush-like ends

of the nerves of taste, which ramify in the taste buds, substances must be soluble. Bitters given after the meal are useless as such.

Pharmacologists do not carry corrosive sublimate or arsenic in lists of simple, astringent or aromatic bitters, and strychnin is not so listed except when "well diluted."

PAR. 6. The various representations of the respondent in respect to the diseases, ailments and conditions for which respondent claims Nuga-Tone to be a remedy or as affording relief or accomplishing certain stated results as hereinbefore related, were carefully considered in connection with the ingredients contained in Nuga-Tone and in the light of a knowledge of medicine and the accepted methods of the treatment of such diseases, ailments and conditions. As a result of the testimony of competent medical authorities, findings are as follows:

Nuga-Tone is a dangerous composition because of the corrosive sublimate, the strychnin and the arsenic. Arsenic, corrosive sublimate, and strychnin are fatal poisons which should only be taken under the prescription of a physician and no good doctor would make this combination for any purpose.

Nuga-Tone contains one element, strychnin, that might have a stimulating action, but a dangerous stimulating action, for a specific depression. Strychnin increases the excitability and activity of the spinal cord and brain. Strychnin is ordinarily given to patients under the care and observation of physicians. Strychnin increases the excitability of the spinal cord to the point of convulsions and death if taken in excess. Strychnin is a foreign substance and any amount of strychnin is an excessive dose unless there is a prior diagnosis by a physician that this poison will help. It should only be taken at the doctor's prescription when the situation specifically calls for it. Strychnin sulphate does not stimulate the gastric reflexes nor the appetite. It can be classed as a stimulant in that it raises the excitability of the spinal cord which is not desirable in the normal individual. Strychnin sulphate does not aid digestion; it does not have any effect on the appetite. All that strychnin does is to increase the reflex excitability and a person who has excessive reflex excitability will be harmed by it. Its use as a tonic must be interpreted in such a way as to understand that it will only act as a tonic if it happens to fit the case. No Doctor would give or would be foolish enough to prescribe strychnin as a stimulant to increase the flow of the gastric and biliary juices.

Arsenic, supposed under certain conditions in small amounts to stimulate the rate of production of red cells, is a dangerous drug

and can produce chronic poisoning. The arsenic in the composition would possess for the ordinary person the danger of chronic poisoning, which if it went too far would tend to impairment. Arsenic is a remedy that is used in syphilis and related conditions. Arsenic trioxide is not used extensively now for anything. It was formerly used by some in the hope that it would stimulate the red bone marrow, increase the production of red cells, improve the hair growth and the form of the skin. These were hopes and guesses of former days. There is no known effect that arsenic would have on either growth or nutrition except in an injurious way. Arsenic is not used by any competent doctor in the treatment of blood cells or like conditions.

Corrosive sublimate is not a stimulant and Nuga-Tone as a whole is a dangerous composition because of the corrosive sublimate, the strychnin and arsenic, three fatal poisons. Nuga-Tone is liable to produce serious diseases because it contains these poisons, especially arsenic and corrosive sublimate, if used without discrimination and for a certain length of time. It is not customary for doctors in writing prescriptions to use three poisonous substances in one. To use a mixture like this is termed the worst kind of malpractice. Taken as a whole Nuga-Tone must be regarded as a dangerous combination, and it would not rightly be described as a stimulating tonic.

The cascara in Nuga-Tone might have a slight action on the bowels. Zinc is essentially an antiseptic. Zinc phosphide tends to increase the degree of dilation of blood vessels. It does not stimulate metabolism nor increase red blood cells, nor may it be used as a sedative for nerves. The iron might help an anemic condition. The only ingredient in the preparation that might affect the appetite is the gentian and it is doubtful whether it increases or has any real effect on the appetite. Extract of gentian does increase the flow of saliva but does not increase the flow of gastric juice.

The term "alterative" is not used in modern medicine at all, that is, as practiced by modern doctors in the last decade or twenty-five years. It is an old term. An alterative was supposed to modify the activity of the alimentary canal, particularly the liver. A good many of the substances which were supposed to change the action of the liver, the action of the alimentary canal, were called alteratives in the old days.

Nuga-Tone is not a valuable alterative tonic; is not a combination of bitter stomachic tonics, alterative tonics, intestinal tonics and stimulative tonics, arranged in accord with medical science; it does

not aid in reestablishing a more healthy functioning in the process of nutrition; it is not effective in increasing the activity of the mucous membrane of the gastro-intestinal tract by increasing its tone or stimulating the appetite; it does not stimulate and increase the tone of the general system; weak and sickly people should not take it to make them strong and healthy; it is not a wonderful remedy and does not remove the cause of aches and pains in the muscles, nerves and bones; it does not give new power and energy to the muscular and nervous systems; it is not a wonderful help to protect the body against more serious diseases. Nuga-Tone possesses no properties which would alleviate nervous conditions. Persons past middle age do not need a tonic of this description. Nuga-Tone does not act as an aid to run-down vital organs, helping them to function as they were intended, nor give persons past middle age the power and energy of younger days. It does not aid in producing sleep; it is not a great body builder nor health builder; it will not make food digest more readily; will not cause pain and distress in the stomach to disappear; will not aid poor heart action, will not tend to relieve general debility; is not a remarkable remedy for ridding the system of poisons; is not a genuine red blood builder; will not cause gas and bloating in the stomach to disappear; does not contain the elements that are used by all good doctors for correcting the various troubles outlined hereinbefore and will not make one strong and healthy.

"Self-medication" cannot be approved at any time because it is harmful to the patient. * * * A patient harms himself by taking a medicine that may not relieve the cause of his condition, but actually aggravates it.

PAR. 7. Respondent's product, by reason of the varied nature of its ingredients and the numerous therapeutic claims made for it, qualifies under the heading of a "shot-gun" prescription. A "shot-gun prescription" is defined as one containing many ingredients or features of which one is expected to prove efficacious. It contains ingredients having various kinds of effects. If one might fit the case another might not. Prescribing so many ingredients in one prescription is stated by medical authority to be one of the worst medical practices. Our forefathers in medicine are stated to have done that as long as they did not understand the way in which medicine acted but nowadays the medical profession very carefully avoids employing so many ingredients in one prescription.

PAR. 8. Respondent's representations as to the harmless character of "Nuga-Tone" are deceptive, false, and misleading. In its adver-

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tising matter respondent has represented that "you can keep on taking it without harmful result" and respondent in support of this representation, variously contends through the medium of a medical expert that Nuga-Tone may be taken safely two, three, or four times a day for two or three years with no harm at all resulting to a person; that it would do no harm to children in medicinal doses; would not thus hurt a child above three years of age; that a child four or five years of age could take a full pill without harm; two or three doses would not hurt such child. Medical authority prescribes the dose of corrosive sublimate for a child up to three years old as $1/100$ of a grain and $1/75$ of a grain for a child 5 years of age. A tablet of Nuga-Tone contains $1/60$ of a grain. The dosage of strychnin for a child three to five years of age is $1/100$ of a grain. A tablet of Nuga-Tone contains $1/60$ of a grain of strychnin. The dose of arsenic for a child three years of age is $1/150$ of a grain and $1/100$ of a grain for a child five years of age. Each table of Nuga-Tone contains $1/40$ grain of arsenic, nearly four times the dose prescribed for children three years of age and more than double the dose suitable for children five years of age.

The label on a bottle of Nuga-Tone contains no caution against the administering of the drug to children.

Respondent in further support of its representation that one may keep taking its Nuga-Tone without harmful results also asserts through the medium of a medical expert that ten pills may be given to an adult at one dose "with perfect safety." In taking ten tablets at one time the adult would have in his system at the same time $1/6$ grain of corrosive sublimate, $1/6$ grain of strychnin and $1/4$ grain of arsenic, in all $7/12$ grains of three deadly poisons. Accepted medical authority is to the effect that $1/12$ grain of strychnin is a fatal dose.

PAR. 9. The respondent does not operate, conduct or maintain a laboratory. The bottle or container in which Nuga-Tone is distributed in interstate commerce contains as a part of the label thereon the following language:

Distributed by
National Laboratory
Chicago, Ill. U. S. A.

The carton in which the bottle is kept contains the same wording and the so-called shipping carton contains language reading:

From National Laboratory
767 Milwaukee Ave.,
Chicago, Ill. U. S. A.

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Findings

The directions enclosed with each bottle of Nuga-Tone, printed in several languages, carry the following in English:

Distributed by
National Laboratory,
Chicago, Ill. U. S. A.

National Laboratory has been in business twenty-one years, selling the product Nuga-Tone during all that period from Chicago. The respondent's place of business is in the Security Bank Building, Milwaukee and Ogden Avenue, Chicago, occupying three rooms in such building. Respondent has no laboratory at such address; does not have a laboratory at any place. A laboratory was maintained by the late Dr. C. E. Cessna for a period of seven years prior to his death. Cessna was a doctor and compounded some prescriptions there. Some of the equipment still remains but it has not since been used.

At the time the complaint herein was issued, Nuga-Tone was being manufactured for respondent by Parke, Davis & Company, of Detroit, Mich., shipped to respondent in bulk, packaged by respondent at its place of business in Chicago, and transported from there to respondent's various customers throughout the country. The product is at present being manufactured for respondent by the Shores Company of Cedar Rapids, Iowa, and by them sent to respondent in Chicago, where it is packaged and distributed.

The formula for Nuga-Tone was originated many years ago by the late Dr. Charles E. Cessna, father of the real and present owners of the formula. Dr. Cessna died in 1929, and since that time the business has been carried on by his sons. Since Dr. Cessna's death, there has been no doctor connected with respondent company, and respondent has not had anything that might be called a laboratory for many years.

PAR. 10. The various statements and representations made by respondent, through the medium of radio, magazines, newspapers, and by mail, as set forth and enumerated in paragraph 3 herein, selling and offering for sale its product "Nuga-Tone" in the respective states of the United States, were and are, as shown in paragraphs 5 and 6 herein, false, deceptive and misleading. Nuga-Tone is not a valuable alterative tonic, nor a combination of bitter stomachic tonics, alterative tonics and stimulating tonics arranged in accord with medical science. Nuga-Tone does not provide a remedy for or prove effective in treating or relieving the diseases, ailments and conditions set forth in paragraph 3 hereof. Nuga-Tone is not a product one can keep on taking without harmful results. On the contrary, Nuga-Tone is a dangerous mixture containing three fatal poi-

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sons, the presence of none of which is disclosed by respondent to the purchaser of said product. Respondent does not maintain, conduct or operate a laboratory in connection with the preparation of Nuga-Tone for sale.

PAR. 11. There are among the competitors of respondent as referred to hereinbefore, corporations, partnerships, firms, and persons who are engaged in the sale of preparations which are recommended for use in the treatment of such diseases, ailments, or conditions as those mentioned by respondent in its advertising but who truthfully represent their products and the therapeutic value which may be attributed to them, and honestly vend the same.

PAR. 12. The use of the aforesaid false and misleading representations and practices on the part of respondent in the sale and offering for sale of its product known and designated as "Nuga-Tone" has had, and now has, the tendency and capacity to cause members of the purchasing public to form the erroneous beliefs that respondent's said product Nuga-Tone is harmless, and may be taken with impunity, is a valuable combination of Bitter Stomachic Tonics, and is a remedy or cure for or will afford relief for stomach and intestinal troubles and other diseases and ailments of the human body, and that the use of respondent's said product will relieve persons suffering from the aforesaid diseases, ailments and conditions and completely restore them to health. Acting under such erroneous beliefs, induced by the various misrepresentations of the respondent as herein detailed, many of said members of the public have purchased respondent's product "Nuga-Tone." As a result the aforesaid representations and practices on the part of respondent have and have had the capacity and tendency to unfairly divert trade to respondent from competitors engaged in selling in interstate commerce, drugs, preparations and remedies which are truthfully advertised and represented and which are recommended for use in connection with the treatment of the various diseases and ailments enumerated herein. Thereby substantial injury has been done, and is being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, National Laboratory, 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 Fed-

eral Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of respondent thereto, testimony and other evidence in support of the allegations of the said complaint and in opposition thereto, taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and briefs filed herein, 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 said respondent, National Laboratory, a corporation, its officers, servants, employees, or agents, individual or corporate, in connection with the offering for sale, sale and distribution in interstate commerce or in the District of Columbia, of a pharmaceutical preparation in tablet or other form, designated as "Nuga-Tone," or any other preparation of substantially the same ingredients sold under that name or under any other name, legend or title, do forthwith cease and desist from:

1. Representing it is a combination of Bitter Stomachic Tonics or a valuable and effective alterative tonic and may be taken over long periods by any one without harmful results;

2. Representing it is an effective remedy or cure for indigestion and stomach or intestinal ailments and will aid digestion, relieve pains or discomfort following eating, increase the appetite and permit one to eat anything;

3. Representing it removes the causes of aches and pains in the muscles, nerves and bones, and gives new power and energy to the muscular and nervous system;

4. Representing it is an effective remedy or treatment for poor heart action and for loss of power and energy;

5. Representing it will protect the body against the more serious diseases, stimulate and invigorate the entire system and act directly on the vital organs;

6. Representing it will make sick people strong and healthy, cause paleness to disappear and produce normal sleep;

7. Representing, through the use of the word "Laboratory" in its corporate name, or in any other manner, or through the use of any

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other word of similar import and meaning, or through any other means or device, that it owns, operates or controls a laboratory until and unless it actually owns and operates or directly and absolutely controls a laboratory wherein said preparation is actually manufactured by it.

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

SHEFFORD CHEESE COMPANY, INC.

COMPLAINT, MEMORANDUM OPINION, AND ORDER CLOSING CASE IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 2936. Complaint, Sept. 30, 1936—Order, Oct. 30, 1937

DISCRIMINATING IN PRICE—CLAYTON ACT. SEC. 2, SUBSEC. (A)—QUANTITY AND VOLUME DISCOUNTS AND DIFFERENTIALS—WHERE PRESUMPTION OF REASONABLENESS; COMPETITIVE INJURY NEITHER INTENDED NOR EVIDENT; TO MEET DISCOUNTS, ETC., OF COMPETITORS; AND OTHER DISCOUNT EVENTUALLY OPEN TO ALL.

Where, on complaint charging respondent, engaged in manufacturing, processing, offering, selling, and distributing cheese, cheese products, and cheese foodstuffs, with unlawful discrimination in violation of section in question, in allowing from one cent to three cents discount, as case might be, on certain quantity purchases of loaf cheese, and fifteen percent discount on weekly purchases of package cheese and cheese products (excepting such loaf cheese and cream loaf cheese subject to discounts as above indicated), exceeding \$100 in volume, it appeared that said company's pricing policies were very similar to, and its discounts on most items were identical with, those shown to have been used by Kraft-Phenix Cheese Corporation, Docket 2935, July 17, 1937, 25 F. T. C. 537, in which order of dismissal issued, all sales of package cheese during period covered by Commission's supplemental investigation were made at list prices less fifteen percent discount, and allegation that the differing discounts appearing in respondent's price schedule were made to meet those of competitors or services and facilities furnished by competitors, was not controverted by information in hands of Commission, closing of proceeding without prejudice indicated and so ordered.

Mr. Allen C. Phelps and Mr. James I. Rooney for the Commission.
Thompson, Rabb & Stevenson, of Indianapolis, Ind., and *Williams, Myers & Quiggle*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. Title 15, Section 13) and for other purposes," the Federal Trade Commission, having reason to believe that Shefford Cheese Company, a