

IN THE MATTER OF
ALPHA LABORATORY, INC.

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

Docket 2968. Complaint, June 29, 1937¹—Decision, Feb. 25, 1938

Where a corporation engaged in sale and distribution of certain so-called hygienic products for women, including its so-called "Va-Jel" and similar products, and certain device for use of former, in substantial competition with others engaged in offer and sale, in commerce among the various States, of so-called hygienic and other products used and useful for purposes for which it recommended its said products, and including many who sell and distribute, or manufacture and distribute, so-called feminine hygiene products in commerce without in any way misrepresenting effectiveness or efficacy thereof for such purposes, and including those offering medicines or preparations for use by women for hygienic, antiseptic, germicidal, and similar purposes without stating expressly or implying that their said products are invariably or uniformly effective for the purposes for which recommended, and those engaged in offer and sale in interstate commerce of medicines or other preparations, for use by women, and truthfully represented to public; in advertising its said product through printed pamphlets, leaflets, booklets, and other printed matter distributed among purchasers and prospective purchasers and through such matter placed in carton or container in which product was marketed, and through large window displays made use of by its agents in calling upon druggists and others interested in purchase of said product—

- (a) Represented that said "Va-Jel," sold with said device, as aforesaid, was effective as a contraceptive, and that it constituted a scientific prophylactic for feminine hygiene purposes and a protection against venereal diseases and acted both mechanically and as a germicide in preventing feminine hygienic troubles, facts being it was not effective as aforesaid claimed, did not constitute a scientific preparation, had no beneficial therapeutic use in so-called feminine hygiene, and had no therapeutic value whatever in treatment of ailments, ills, and diseases peculiar to women, and would not act as a preventive of diseases specified in either sex;
- (b) Represented that said preparation was prescribed by thousands of physicians and that it had the approval of the American Medical Association, American Birth Control League, and physicians generally, and that it was connected with aforesaid League, facts being product in question had never been approved for use by said Association, was not used or recommended for use by large number of well-known clinics, nor recommended by medical profession generally, and it was not connected with and did not cooperate in any manner with such League;

¹ Amended.

- (c) Represented that preparation in question was not a patent or proprietary medicine, but an open formula, and that it and appliance or device in question might be used with safety and without deleterious effects by all women, facts being use of product and device was not harmless, as indiscriminate use thereof in many cases was capable of causing injuries and having deleterious effect upon user; and
- (d) Made use of and displayed its corporate name, containing word "Laboratory," in its advertisements and advertising matter, and represented that it owned and operated a laboratory, facts being it did not own, control, or operate any laboratory or place devoted to application of scientific principles in the making or preparation of its said products, and of which it was not the manufacturer;

With effect of misleading and deceiving purchasing public into erroneous belief that said representations were true and that purchasing public, as a consequence of mistaken and erroneous beliefs induced by such false and misleading statements and representations, bought substantial volume of its said products and trade was unfairly diverted to it from competitors engaged in sale and distribution of feminine hygiene products in commerce as aforesaid, or in manufacture, sale, and distribution thereof, and who truthfully represent the efficacy of their said products; 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. Robert S. Hall*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. L. Louis Karton, of Chicago, Ill., for respondent.

AMENDED COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Alpha Laboratory, Inc., a corporation, hereinafter designated as respondent, is now and has been 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 thereto would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Alpha Laboratory, Inc., is now, and has been for several years last past, a corporation organized, existing, and doing business, under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 5908 North Clark Street in the city of Chicago and the State aforesaid.

Respondent has been engaged in the sale and distribution of certain so-called hygienic and other products for use by women, in com-

merce between the State of Illinois and the various other States of the United States and in the District of Columbia. It causes these products, when sold, to be transported from its aforesaid place of business to purchasers thereof in the various States of the United States other than the State of Illinois and in the District of Columbia.

In the course and conduct of said business, respondent has been and is in substantial competition with other individuals, partnerships, and corporations similarly engaged in offering for sale and selling in commerce among and between the various States of the United States so-called hygienic and other products intended and designed for use by women exclusively.

PAR. 2. In the course and conduct of its business, it has been and is the practice of respondent to offer for sale and sell for such use a product known and described as Va-Jel and similar products. Such products are sold principally to wholesale druggists, although when an order is received by respondent from any individual unit of the purchasing or consuming public, it is filled by respondent.

In the carton or container in which the said product is marketed, there is enclosed certain advertising literature in which the product is represented and described. Such advertising matter is also distributed by respondent among purchasers and prospective purchasers who inquire about the said product. It also employs and uses agents for the introduction of said product and promotion of its sale. They call upon druggists and install advertising window display and distribute other advertising matter including circulars, a booklet entitled "A Confidential Talk to Women" and matches, the latter of which contain on their cover certain legends. Such legends are "Let Va-Jel Scientific Prophylactic Open the Way for a Better, Happier Life for all Women. Doctors advise use of Va-Jel." On the inside of such cover of the matches appears the following: (sic) "Strike for Freedom. Va-Jel solves the Woman's Problem. Send this folder with self-addressed stamped envelope to Alpha Laboratory, Inc., Chicago, Illinois, for Free booklet 'A Confidential Talk to Women.' Va-Jel has no substitute."

As inducements to the purchase of Va-Jel, respondent represents that use of such product will prevent conception; that it is a protection against venereal diseases. As a further inducement for the purchase of its product Va-Jel, respondent has represented its cooperation with the American Birth Control League using such language as signifies and implies the close connection between respondent and such League. It also represents that it has received approval of the product Va-Jel by the American Medical Association and by physicians generally, and that it is generally dispensed and pre-

scribed by thousands of physicians. It further represents that respondent is well known to the medical profession for its high class pharmaceutical products. Respondent further represents that the product Va-Jel is not a patent or proprietary medicine but rather an open formula which is given to physicians whenever they request it.

In truth and in fact the use of respondent's said product neither uniformly nor invariably prevents conception, nor the contraction of venereal diseases. It is neither a scientific prophylactic which opens the way to a better and happier life for all women, nor does it solve the woman's problem. The product Va-Jel has not received the approval of The American Medical Association, nor of any officer, medium, or agency thereof. It has not been dispensed and prescribed by thousands of physicians, and respondent is not known in the medical profession for the high class of its pharmaceutical products. There is no connection, direct or indirect, between the respondent and The American Birth Control League. The product of respondent is a patent or proprietary medicine. It is not an open formula as the words are generally understood since ingredients of the product are not declared or disclosed.

PAR. 3. Respondent represents in its corporate name and in the sale of its products that it owns and operates a laboratory and uses and displays such name containing the word "laboratory" in its advertisements and advertising matter. In truth and in fact respondent does not own, control, or operate any laboratory and does not own, operate, or control any place devoted to the application of scientific principles in the making or preparation of said products. Respondent is not the manufacturer of the products it sells but purchases said products from others.

PAR. 4. There are now and for several years last past have been individuals, partnerships, and corporations who have been offering for sale and selling in interstate commerce medicines or preparations of various kinds for use by women in so-called feminine hygiene, antiseptic, germicidal and for similar uses without stating expressly or implying or importing in their representations that their products or any of them are invariably or uniformly effectual. There are now and for several years last past have been individuals, partnerships, and corporations offering for sale and selling in interstate commerce medicines or other preparations which they truthfully represent will prevent the contraction of venereal diseases by women when used in accordance with directions.

PAR. 5. The aforesaid practices of respondent have had and have the capacity and tendency to mislead and deceive wholesale dealers, retail dealers and their customers, the consuming or purchasing public,

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into the erroneous beliefs that Va-Jel is invariably and uniformly effective in preventing conception and is likewise a preventive of venereal diseases, and that all other representations of the respondent hereinbefore stated in paragraph 2 are true, and into the purchase of such product in reliance upon such erroneous beliefs or one or more of them.

The aforesaid practices have also had and have the capacity and tendency to divert trade to respondent from the competitors mentioned in paragraph 4 hereof, as a result of which respondent has been doing and is doing substantial injury to such competitors in the course of such competition.

PAR. 6. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices 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 June 29, 1937, issued and, on July 1, 1937, served its amended complaint in this proceeding upon respondent Alpha 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 amended complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Taggart, attorney for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it. Thereafter, on October 21, 1937, the respondent, submitted an amended answer to the complaint, in which answer respondent admitted all of the material allegations of the amended complaint to be true and stated that it waived hearings on the charges set forth in said amended complaint and that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the amended complaint. The Commission, by order entered herein, substituted said amended answer dated October 21, 1937, in lieu of the original answer to the amended complaint filed on July 19, 1937. Thereafter

the proceeding regularly came on for final hearing before the Commission on said amended complaint, amended answer dated October 21, 1937, and testimony and other evidence; and the Commission having duly considered the matter, 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, Alpha Laboratory, Inc., a corporation organized, existing, and doing business, under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 325 West Huron Street, in the city of Chicago and the State aforesaid.

Respondent is now, and for the past several years has been, engaged in the sale and distribution of certain so-called hygienic products for use by women. It causes these products, when sold, to be transported from its aforesaid place of business to purchasers thereof located at points in the various States of the United States other than the State of Illinois and in the District of Columbia.

In the course and conduct of said business, respondent has been and is in substantial competition with other corporations and with individuals, partnerships, and corporations similarly engaged in offering for sale and selling in commerce among and between the various States of the United States so-called hygienic and other products used and useful for the purpose for which respondent recommends that its said product be used.

The respondent advertises the product to the public through printed pamphlets, leaflets, booklets, and other printed matter which it distributes among purchasers and prospective purchasers. The advertising matter in addition to being distributed generally is placed in the carton or container in which the said product is marketed. Respondent as an advertising medium also employs agents who call upon druggists and others interested in the purchase of the product and make representations in addition to those in the printed matter and install large window displays.

In one of said booklets, called "A Confidential Talk to Women," and on the cover of pocket matches the following statements appear:

Let Va-Jel scientific prophylactic open the way for a better happier life for all women.

Doctors advise use of Va-Jel.

Va-Jel solves the womens problem.

Send this folder with self-addressed stamped envelope to Alpha Laboratory, Inc., Chicago, Ill., for free booklet.

As further inducements to the purchasing public, respondent represents in its advertising and otherwise, directly and by implication, that the use of Va-Jel will prevent pregnancy; and that it is a protection against venereal diseases; that respondent works in cooperation with the American Birth Control League, using such language as signifies and implies a close connection between respondent and such League. It also represents that it has received approval of the product Va-Jel by the American Medical Association and by physicians generally, and that it is generally dispensed and prescribed by thousands of physicians. It further represents that respondent is well known to the medical profession for its high-class pharmaceutical products.

PAR. 2. It has been and is the practice of respondent, to offer for sale and sell to the purchasing public for such use as is herein set out a product known as Va-Jel and similar products. Va-Jel is a jelly consisting of glycerine, gum tragacanth, lactic acid, phenol, and some scent. It is applied through a pipe, tube, or applicator, inserted by hand in the vagina and the tube squeezed to force the jelly up into the vagina.

The use of the product as directed will not prevent conception. A contraceptive jelly such as that sold by the respondent is only effective when used to function with an occlusive device placed in the vagina at the opening of the cervix. The secretions that flow from the cervix and in the vagina during intercourse prevent the jelly alone from acting as an occlusive. No occlusive device is supplied with respondent's product. A contraceptive jelly is further rendered ineffective because the vaginal secretion has an acidity or alkalinity which not only varies between different women but also varies in the same person from week to week and from month to month which may or may not render such a jelly ineffective depending upon the degree of acidity or alkalinity which may be present at a given time. The respondent's product has not sufficient germ destroying power to isolate and destroy the male sperm.

The product is not a scientific prophylactic and has no beneficial use therapeutically in so-called feminine hygiene. The preparation has no therapeutic value whatever in the treatment of ailments, ills, and diseases peculiar to women and will not act as a preventative of venereal disease in either sex.

The use of the product with the applicator is not harmless as in many cases the indiscriminate use of the product and the applicator is capable of causing injuries and might have a deleterious effect upon the female using it.

The product has never been approved for use by the American Medical Association and is not used or recommended for use by a

large number of well known clinics and is not recommended by the medical profession generally. The respondent is not connected with and does not cooperate in any manner with the American Birth Control League.

PAR. 3. Respondent represents in its corporate name and in the sale of its products that it owns and operates a laboratory, and it uses and displays such name containing the word "laboratory" in its advertisements and advertising matter. In truth and in fact respondent does not own, control or operate any laboratory and does not own or control any place devoted to the application of scientific principles in the making or preparation of said products. Respondent is not the manufacturer of the products it sells but purchases said products from others.

Many of the respondent's competitors who sell and distribute, or manufacture, sell, and distribute so-called feminine hygiene products in commerce, do not in any way misrepresent the effectiveness of their products or their efficacy for feminine hygienic purposes.

PAR. 4. The use by respondent of the representations set forth above has had and now has the capacity and tendency to and does mislead and deceive the purchasing public into the erroneous belief that said representations are true. As a consequence of the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the purchasing public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from its competitors engaged in the business of selling and distributing feminine hygiene products in said commerce, or in the manufacture, and in the sale and distribution of feminine hygiene products in said commerce, who truthfully represent the efficacy of their products. As a result thereof, substantial injury has been and is now being done by respondent to competition, in commerce, among and between the various States of the United States and the District of Columbia.

PAR. 5. There are now and for several years last past have been individuals, partnerships, and corporations who have been offering for sale and selling in interstate commerce medicines or preparations of various kinds for use by women for hygienic, antiseptic, germicidal and for similar purposes without stating expressly or implying or importing in their representations that their products are invariably or uniformly effective for the purposes for which they are recommended. There are now and for several years last past have been individuals, partnerships, and corporations offering for sale and selling in interstate commerce medicines or other preparations for use by women which are truthfully represented to the public.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and the amended answer of respondent, dated October 21, 1937, in which answer respondent admits all the material allegations of the complaint to be true and states that the Commission may, without the taking of further testimony or any other intervening procedure, enter and issue its findings as to the facts an order to cease and desist; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Alpha Laboratory, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of Va-Jel and similar products sold under the name of Feminine Hygiene Products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the use of said preparation alone or in conjunction with an appliance will prevent conception;
2. Representing that said preparation is a scientific prophylactic for feminine hygienic purposes, and is a protection against venereal disease;
3. Representing that said preparation acts two ways in preventing feminine hygienic troubles, mechanically and as a germicide;
4. Representing that the preparation is prescribed by thousands of physicians and that it has the approval of the American Medical Association, American Birth Control League, and physicians generally, that the respondent is connected with the American Birth Control League;

5. Representing that the preparation is not a patent or proprietary medicine, but an open formula;

6. Representing that the said preparation and appliance may be used with safety and without deleterious effects by all women;

7. Representing that respondent owns or operates a laboratory in which the product is manufactured or that it owns or operates any establishment devoted to the application of scientific principles in the making or preparation of said product;

8. Representing that respondent is noted on account of the manufacture and sale of high-class pharmaceutical products;

9. Making other representations of similar import and of like character to those made as above set forth.

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

IN THE MATTER OF
GOLF BALL MANUFACTURERS' ASSOCIATION, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUBSECS. 2 (a), 2 (d), AND 2 (f) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3161. Complaint, Aug. 18, 1937¹—Decision, Feb. 25, 1938

Where (1) an unincorporated trade association, membership of which consisted of manufacturers and wholesalers of golf balls, in competition with one another and with nonmembers likewise thus competitively engaged, but for the matters and things below set forth, (2) the officers of said association, and (3) member manufacturers thereof, who owned and controlled practically all of the factories engaged in the production of golf balls in the United States and produced most of the golf balls sold and distributed in this country; and (1) an unincorporated association, members of which consisted of approximately 1,500, out of some estimated 2,500, professional golfers engaged in retail sale of golf balls and golf equipment throughout the country and, as thus engaged, in competition with one another and with nonmember retailers likewise thus competitively engaged, but for the matters and things hereinbelow set forth, (2) the officers thereof, and (3) the members thereof, constituting a group so large and influential in the trade as to be able, by themselves and in cooperation with aforesaid members of said manufacturers' association, to control and influence the flow of trade and channels of distribution in golf balls throughout the country, as well as the prices at which, and the terms and conditions under which, nonmember retailers of such articles buy and resell the same;

In pursuance, concertedly, of a common course of action and undertaking, in which they had combined and united and which was directed to enforcing, fixing and maintaining, throughout the United States, certain monopolistic prices, policies, sales methods, and trade practices, and, generally, a policy and practice designed to and tending to monopolize the sale and distribution of golf balls in themselves, and in the accomplishment of which, to the substantial or potential injury of some of such manufacturers, wholesalers, and retail dealers and of ultimate purchasers and consumers of such products, they held official and unofficial meetings of their associations and members, discussed policies and practices as aforesaid, adopted, agreed upon, and issued bulletins, circulars, letters, price lists, etc., announcing such policies, etc., and the imposition thereof upon all affected thereby, obtained promises and assurances of cooperation from one another, exchanged information, and acted concertedly to control resale markets and to require, coercively, recalcitrant manufacturers, wholesalers, and retailers to conform to practices and methods in question—

- (a) Entered into and carried out contracts and agreements directed to the maintenance of uniform wholesale prices to be exacted by manufacturers of golf balls, as between members of said professional association and other nonmember dealer purchasers, with respect to balls of equal grade and

¹ Amended and supplemental.