

IN THE MATTER OF

WAIN'S 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 3009. Complaint, Dec. 4, 1936—Decision, June 30, 1938*

Where a corporation engaged in offering for sale and selling a medicinal compound for the treatment of asthma and related bronchial ailments—

- (a) Represented in testimonials and advertisements inserted in newspapers, periodicals, circulars, and pamphlets distributed to various purchasers at various points throughout the United States, that said product was free from all dangerous drugs, opiates, and heart depressants, through such statements as “* * * absolutely guaranteed to contain no habit-forming drugs, narcotics, opiates, or heart depressants whatsoever,” facts being principal ingredient thereof was potassium iodide, indiscriminate distribution thereof without medical supervision was very dangerous, as was constant use of product unsupervised by a physician, and product, while possibly useful in small doses, properly supervised, in relieving bronchitis, was capable of harm and should not be taken by those having tuberculous lesions or tendencies, and should carry warning to such effect, and potassium base thereof was a depressant poison and indiscriminate consumption of product might cause chronic iodine cachexia;
- (b) Represented that said product had overcome asthma and hay fever for thousands of sufferers over a period of years and that it was an effective remedy for such afflictions and related bronchial ailments, through such statements as “Thousands of stubborn cases have responded to Wain's Compound where other remedies were used without obtaining relief,” “* * * has promptly relieved suffering caused by attacks of Bronchial Asthma or Bronchial Coughs for thousands of sufferers all over the United States,” “* * * a proven effective home treatment has brought prompt, blessed relief to thousands suffering from torturing attacks of Bronchial Asthma and Bronchial Coughs,” “* * * was the only medicine that ever gave me real relief and enabled me to sleep soundly * * *,” “For I know it saved my life when everything else I had tried failed.” etc.; facts being it was not a competent treatment nor effective remedy for such ailments and might not properly be represented as remedy for asthma, hay fever, bronchial paroxysms, or coughs, relief of which is contingent on other influences, and it was only a palliative with no curative effect on the underlying cause of disease; and
- (c) Represented that it was “a new and startling remedy”; facts being it was not a new or startling discovery and active ingredient thereof, potassium iodide, had been used for generations under medical supervision;

With capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said representations were true, and cause them, because of such belief, to buy its said products, and with result of thereby diverting unfairly substantial trade in commerce to it from competitors who do not misrepresent the character and quality of their products:

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

Before *Mr. Charles P. Vicini* and *Mr. Robert S. Hall*, trial examiners.

Mr. John Darsey, *Mr. Reuben J. Martin*, and *Mr. Allen C. Phelps* for the Commission.

Horowitz & McCloskey, of Los Angeles, Calif., 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 Wain's Laboratory, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said 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, Wain's Laboratory, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business at 1500 North Vermont Avenue, Los Angeles, Calif. It is now and has been engaged in offering for sale and selling a medicinal compound for the treatment of asthma and hay fever, formerly designated as Ama-Gon and now offered for sale and sold under the trade name Wain's compound.

To a substantial extent sales of said product have been made by respondent to persons, partnerships, and corporations located in states other than the State of California, pursuant to which sales, and as a part thereof, shipment is and has been made by it from the State of California, through and into other States of the Union to said purchasers.

PAR. 2. In the course and conduct of its business, respondent is now, and has been for many years, in substantial competition with other corporations and with firms and individuals likewise engaged in the offering for sale and selling medicinal compounds designed for the treatment of asthma, hay fever, and bronchial ailments, in commerce among and between the various States of the United States.

PAR. 3. In connection with the offering for sale and selling said product, in commerce among and between the various States of the United States, and as an inducement for the purchase of said prod-

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uct, respondent has made use of advertisements inserted in newspapers and periodicals and of circulars and pamphlets, all distributed in States of the United States other than the State of California. The following statements appearing in said advertising matter are illustrative of the statements made by the respondent:

Wain's Compound is absolutely guaranteed to contain no habit-forming drugs, narcotics, opiates, or heart depressants whatsoever.

Thousands of stubborn cases have responded to Wain's Compound where other remedies were used without obtaining relief.

Wain's Compound has brought welcome relief and comfort to thousands and has aided in rebuilding their strength and health.

Wain's Compound has promptly relieved suffering caused by attacks of Bronchial Asthma or Bronchial Coughs for thousands of sufferers all over the United States.

Asthma, bronchial suffering relieved for thousands; Wain's Compound, a proven, effective home treatment has brought prompt, blessed relief to thousands suffering from torturing attacks of Bronchial Asthma and Bronchial Coughs.

Before taking Wain's Compound I could not walk through weeds or grass and had to avoid dust; now I am relieved of that embarrassment.

Question: Will the results be effective?

Answer: Hundreds and hundreds of users report their attacks stopped after taking Wain's Compound.

It gave me absolutely immediate relief.

Wain's Compound was the only medicine that ever gave me real relief and enabled me to sleep soundly. I give it all the credit for getting me back on my feet after years of terrible suffering.

For I know it saved my life when everything else I had tried failed.

I have no more fear of those hard attacks of Bronchial Asthma. I haven't had but one attack since I have been taking it. I haven't had a bad spell now in a year.

It is a new and startling remedy.

Said statements, as hereinabove set out, together with other statements of similar import and effect purport to be descriptive of respondent's product and its efficacy in use and serve as representations that said product is free from all dangerous drugs, opiates, and heart depressants; that it has overcome asthma and hay fever for thousands of sufferers over a period of years and that the preparation is a compound which is a reliable and competent treatment or an effective remedy for asthma, hay fever, and bronchial ailments, or that it is a new and startling remedy.

PAR. 4. In truth and in fact, the active ingredient of this preparation is potassium iodide which exerts some beneficial influence in certain types of asthma by tending to relieve the paroxysms. It is not the treatment of choice by the medical profession in the acute paroxysms of this condition, as other drugs are more accurate and quicker in action. It is not an accepted or effective remedy for hay

fever although it is to some degree a competent treatment of minor bronchial irritations. The product is capable of harm and should not be taken by those having tuberculous lesions or tendencies, and should carry some warning to this effect. It has a tendency to retard and disturb the curative efforts of the body to wall in tuberculous lesions. Its potassium base is a depressant poison, and the product might cause chronic iodine cachexia. The mixture is an old, commonly known one and a statement to the effect that it is a new and startling remedy is erroneous.

PAR. 5. In advertising its said product as set out in paragraph 3, supra, respondent has used and is using letters, commonly known as testimonials, of and concerning its product written by users thereof, containing statements of actual effects from the use of such product, without any investigation or knowledge on the part of respondent as to whether the statements in said letters contained are in fact true, or as to whether the writers of the letters were sufficiently informed as to be able to properly and accurately diagnose their symptoms and determine the extent of the benefit of use of said product, or to truthfully make such statements.

PAR. 6. There are and were at all times hereinabove mentioned, persons, partnerships, and corporations, engaged in the business of producing and selling remedies and medicines for the treatment of asthma, hay fever, and bronchial ailments, and pursuant to such sales shipping the same in commerce among the States, who truthfully advertise and represent the therapeutic qualities of their products.

PAR. 7. Respondent's false and misleading representations of and concerning its said product, as hereinabove set forth, have the capacity and tendency to mislead and deceive, and have misled and deceived, and do mislead and deceive, purchasers and prospective purchasers into the belief that such representations are true and to purchase respondent's product in such erroneous belief. Thereby the aforesaid false and misleading representations have unfairly diverted business from its competitors, referred to in paragraph 6, to itself, to the substantial injury of competition in commerce among and between the various States of the United States.

PAR. 8. The aforementioned methods, acts, and practices of respondent 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 the Federal Trade Commission Act, the Federal Trade Commission, on December 4, 1936, issued and served its complaint in this proceeding upon respondent, Wain's Laboratory, 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John Darsey, Reuben J. Martin, and Allen C. Phelps, attorneys for the Commission, before Charles P. Vicini and Robert S. Hall, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Fred Horowitz, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in defense 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. Wain's Laboratory, Inc., is a California corporation, having an office and principal place of business at 4687 Hollywood Boulevard, Hollywood, Calif. It is now, and has been for a number of years, engaged in offering for sale and selling a medicinal compound for the treatment of asthma and related bronchial ailments. The said product is offered for sale and sold under the trade name "Wain's Compound."

To a substantial extent sales of said product have been made by respondent to persons, partnerships, and corporations located in States other than the State of California, pursuant to which sales, and as a part thereof, shipment is, and has been made by it from the State of California, through and into other States of the United States to the said purchasers thereof.

PAR. 2. There are other corporations, individuals, and partnerships likewise engaged in offering for sale, and selling medicinal compounds designed for the treatment of asthma and related bronchial ailments which cause their products, when sold, to be transported from their respective places of business to the purchasers thereof located in

various States of the United States other than the State of the origin of such shipments. Respondent has been, and is, in substantial competition in said commerce with such corporations, individuals, and partnerships.

PAR. 3. In connection with the promotion of the sale, and in the sale of its said product, the respondent made use of testimonials and advertisements inserted in newspapers, periodicals, circulars, and pamphlets, all of which are distributed among prospective purchasers located at various points throughout the United States. In such testimonials and advertisements, respondent has caused many representations and statements to appear to the effect that its said product is free from all dangerous drugs, opiates and heart depressants; that it has overcome asthma and hay fever for thousands of sufferers over a period of years, and that the preparation is a new, startling, and competent treatment or an effective remedy, for asthma, hay fever, and related bronchial ailments. Typical and illustrative of the statements so made by the respondent of, and concerning, its said product are the following:

Wain's Compound is absolutely guaranteed to contain no habit-forming drugs, narcotics, opiates, or heart depressants whatsoever.

Thousands of stubborn cases have responded to Wain's Compound where other remedies were used without obtaining relief.

Wain's Compound has brought welcome relief and comfort to thousands and has aided in rebuilding their strength and health.

Wain's Compound has promptly relieved suffering caused by attacks of Bronchial Asthma or Bronchial Coughs for thousands of sufferers all over the United States.

Asthma, bronchial suffering relieved for thousands. Wain's Compound, a proven effective home treatment has brought prompt, blessed relief to thousands suffering from torturing attacks of Bronchial Asthma and Bronchial Coughs.

Before taking Wain's Compound I could not walk through weeds or grass and had to avoid dust; now I am relieved of that embarrassment.

Question: Will the results be effective? Answer: Hundreds and hundreds of users report their attacks stopped after taking Wain's Compound.

It gave me absolutely immediate relief.

Wain's Compound was the only medicine that ever gave me real relief and enabled me to sleep soundly. I give it all the credit for getting me back on my feet after years of terrible suffering.

For I know it saved my life when everything else I had tried failed.

I have no more fear of those hard attacks of Bronchial Asthma. I haven't had but one attack since I have been taking it. I haven't had a bad spell now in a year.

It is a new and startling remedy.

PAR. 4.—The foregoing representations and statements as set forth in paragraph 3 hereof are false and untrue. The principal ingredient of said product is potassium iodide and the indiscriminate dis-

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tribution thereof without medical supervision is very dangerous. The product is not a new or startling discovery for the active ingredient, potassium iodide, has been used for generations under medical supervision. The product is not a competent treatment nor an effective remedy for asthma, hay fever and related bronchial ailments and may not be properly represented as a remedy for asthma, hay fever, bronchial paroxysms, or coughs, for relief of such ailments is contingent on other influences. It is only a palliative and has no curative effect on the underlying cause of disease. The constant use of the product, unsupervised by a physician, is very dangerous. It might be useful in small doses, if properly supervised, in relieving bronchitis. The product is capable of harm and should not be taken by those having tuberculous lesions or tendencies, and should carry some warning to this effect. It has a tendency to retard and disturb the curative efforts of the body to wall in tuberculous lesions. Its potassium base is a depressant poison, and indiscriminate consumption of the product might cause chronic iodine cachexia.

PAR. 5. The acts and practices of the respondent, in making and using the representations hereinabove set out in connection with the offering for sale, sale, and distribution of said product in interstate commerce, have the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said representations are true; and cause them, because of said erroneous and mistaken belief, to purchase respondent's said product. Thereby, substantial trade in said commerce is diverted unfairly to the respondent from its competitors who do not misrepresent the character and quality of their products.

CONCLUSION

The aforesaid acts and practices of the respondent, Wain's Laboratory, Inc., a corporation, are to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and answer of respondent, testimony and other evidence taken before Charles P. Vicini and Robert S. Hall, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein by John Darsey,

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counsel for the Commission, and by Fred Horowitz, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Wain's Laboratory, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the product now known as, and sold under the name, "Wain's Compound," or any product composed of substantially the same ingredients, or possessing similar properties, under whatever name sold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or indirectly:

1. That said product is an effective remedy or treatment for asthma, hay fever, or related bronchial ailments;

2. That said product is a harmless product containing no habit-forming or heart depressant drugs;

3. That said product is a new and startling discovery.

It is further ordered, That the respondent shall, within 30 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
THE ETA COMPANY, INC. AND WILLIS G. SHEEMAN
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3243. Complaint, Oct. 13, 1937—Decision, June 30, 1938¹

Where a corporation and an individual, president thereof and stockholder therein and director of its activities and practices and responsible for its policies, engaged in (1) sale and distribution of a line of so-called dehydrated or concentrated foods for human consumption, identified by the words "Eta Food" and the name of the particular product, i. e., "Eta Food Sodium," "Eta Food Potassium," and a number of other similarly named "Eta Foods," to wit, the magnesium, iron, chlorin, phosphorous, silicon, fluorin, sulphur, calcium, iodine, and manganese, and also including "Etalax," "Eta Food No. 26," "Eta Food No. 2," "Eta Food No. 3," "Etagland Food Male," and "Etagland Food Female," and (2) sale and distribution of books, pamphlets, and other printed matter purportedly relating to health, hygiene, and physical and mental improvement of human beings—

- (a) Represented and implied, in form letters, pamphlets, leaflets, and dodgers, that each of said dehydrated or concentrated food products was compounded for the purpose of remedying, correcting, and treating ailments affecting human beings, and that absence of the mineral or other matter purportedly contained in such specific preparations thus offered would cause certain human ailments, i. e., that their "Eta Food Sodium" would improve digestion, increase will power, "alkalinize nerves and clear the brain," while lack of "Food Sodium" would cause acidity, rheumatic ailments, formation of acid in the nerves and brain, etc., with a great variety of other representations as to benefits accomplished through supplying assertedly needed elements to the body and thereby correcting the various ailments and malfunctioning ascribed to the lack of such elements, and represented in their book or pamphlet, sold and distributed under the name of "Mastery of Success," that "Eta Food #2," "Eta Food #3," and "Etagland Food Male" and "Etagland Food Female" would give food elements to the cell structures and give strength to the functions of generation, and that the said preparations would benefit cases of sexual debility;

Facts being said various representations were false, grossly exaggerated, misleading, and deceptive, usual diet for the vast majority of the people of the United States contains a sufficiency of minerals for the needs of the body, mineral deficiency in the diet, found in rare cases, can be determined only by examination and experimentation by one technically trained and skilled in medicine and kindred sciences, consumption of any minerals in excess of the needs of the body is of no benefit, and, in cases of certain minerals, highly dangerous, conditions attributed, as above indicated, to lack or absence of minerals in the diet would require absolute absence therefrom of such substances for an extended period of time and could occur only under unusual circumstances and in rare instances, and afore-

¹ Order published, as modified, as of November 5, 1938.