

IN THE MATTER OF
WILLARD TABLET COMPANY, INC.

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

Docket 3100. Complaint, Apr. 8, 1937—Decision, Oct. 15, 1938

Where a corporation engaged in sale and distribution of certain medicinal tablets, together with printed matter containing advice of a dietary and hygienic nature, together referred to as the "Willard Treatment," and sold to retail druggists and, to a relatively small extent, by mail direct to ultimate purchasers at price of \$5 a bottle, along with which was included, as aforesaid, such printed matter with directions for diet, rest, and other hygienic measures, in competition with others engaged in sale and distribution of medicinal and other preparations and products designed and intended for use in treatment of same ailments and conditions as those for which it recommended its aforesaid tablets and treatment, and including many who do not in any manner misrepresent their said preparations and products or therapeutic properties thereof or make any false statements in connection with sale and distribution of such preparations and products; in advertising its said preparation and treatment in newspapers and other publications circulated between and among the various States and in bulletins distributed from its place of business to prospective purchasers in other States and in broadcasts from radio stations which conveyed programs emanating therefrom to listeners in various States—

- (a) Represented, through statements there made and reproductions therein of purported testimonials, that its said tablets and aforesaid printed material sold together therewith, or treatment, constituted a competent and adequate cure or remedy for, and had substantial therapeutic value in the treatment of, stomach and duodenal ulcers due to hyperacidity, poor digestion, acid dyspepsia, sour or upset stomach, gaseousness, bloating, heartburn, constipation, bad breath, sleeplessness, headaches, and jaded appetite, when such conditions were due to or persisted because of excess acid, through such statements as "has brought definite relief to hundreds of such stomach sufferers everywhere," "for stomach distress, such as heartburn, poor digestion, acid dyspepsia, and stomach ulcers, due to excessive acid. * * * has brought amazing relief to such stomach sufferers everywhere," and "reports sent to us by those who have been seeking desperately to find relief from ulcers, and who finally found that prayed-for help in the Willard Treatment should prove an inspiration to every person so afflicted," and through such purported testimonial statements, among others, as "I took about four bottles of the Willard Treatment, and I can eat anything now and work hard every day * * * had ulcers of the stomach for fourteen years," and "It is with great pleasure that I write you and thank you for what your wonderful treatment has done for me. I have suffered with ulcers of the stomach for the past eighteen years. I have taken many different kinds of medicine," facts being said tablets and instructions or treatment were not a competent and effective remedy or cure for

stomach or duodenal ulcers, due to hyperacidity or to any other causes, and did not give definite relief from the disease as represented in statements and representations, and value thereof was limited to relief from the symptoms of distress; and

- (b) Represented that its said tablets were compounded pursuant to an unique formula, and that said treatment was a remarkable or marvelous one for aforesaid ailments and conditions, and was more dependable than any other for correcting the same, through such statements as "This *unique* formula has brought definite relief to hundreds," etc., "This *marvelous* treatment has brought amazing relief to such stomach sufferers everywhere," "There is probably no treatment more dependable for correcting those conditions At Once than the Willard Treatment," facts being said tablets were not compounded from an unique formula, drugs employed therein were commonplace in medical literature and had been used for many years, singly and in combination, and said treatment was neither remarkable nor marvelous nor the most dependable one for correcting aforesaid ailments and conditions at once, or during any period of time, ailments, and conditions involved might be caused by reasons other than excess acid condition, which ordinary purchaser of its said preparation was incapable of determining with respect to existence or persistence of his own particular ailment or condition, and most dependable treatment for such conditions and ailments required that drugs and diet be varied from day to day in accordance with reaction of patient, and it was not equipped for and did not give such advice to purchasers of its said preparation;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said preparation and treatment possessed properties claimed and represented and would accomplish results indicated, and of causing substantial portion of such public, by reason of such erroneous and mistaken belief, to purchase substantial quantities of its said preparations, and of thereby diverting trade unfairly to it from its said competitors in commerce who truthfully advertise the effectiveness and use of their respective preparations and products:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. T. H. Kennedy and *Mr. John N. Wheelock* for the Commission.
Nash & Donnelly, 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 the Willard Tablet Co., Inc., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Com-

Complaint

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mission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The Willard Tablet Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its principal place of business and legal address is 215 West Randolph Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of a medicinal preparation designated as "Willard Tablets" which is recommended for various and sundry diseases and ailments as will be more fully set out hereinafter. Respondent causes said product, when sold, to be shipped and transported in interstate commerce from its place of business, located in Chicago, Ill., to purchasers thereof located in various States of the United States other than the State of Illinois. It now maintains, and has at all times mentioned herein maintained a constant current of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, is now, and at all times herein referred to has been, in active substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution in commerce among and between the various States of the United States of other preparations prepared, manufactured, advertised, recommended, and sold for substantially the same purpose and use for which respondent's product is advertised and sold.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, and for the purpose of inducing individuals to purchase said preparation, Willard Tablets, has advertised through radio broadcasts and has caused advertisements to be inserted in newspapers and other periodicals of general circulation throughout the United States, and has printed and circulated throughout the several States of the United States by United States mail and otherwise, to customers and prospective customers, certain advertising, folders and literature and other advertising matter, in all of which the respondent has caused its corporate name and the name of said product to be prominently and conspicuously displayed, and in which the following statements are made:

This unique formula has brought definite relief to hundreds of such stomach sufferers everywhere.

It explains the remarkable Willard Treatment for stomach distress, such as heartburn, poor digestion, acid dyspepsia, and stomach ulcers, due to excessive

acid. This marvelous treatment has brought amazing relief to such stomach sufferers everywhere.

The Willard Treatment is intended for the relief of stomach and duodenal ulcers due to hyperacidity—poor digestion, acid dyspepsia—sour or upset stomach—gasiness—bloating—heartburn—constipation—bad breath—sleeplessness—headaches—jaded appetite, when these conditions are due to or persist because of excess acid

The reports sent to us by those who have been seeking desperately to find relief from ulcers, and who finally found that prayed-for help in the Willard Treatment should prove an inspiration to every person so afflicted.

There is probably no treatment more dependable for correcting these conditions At Once than the Willard Treatment.

By way of quoting purported testimonials, the respondent states:

I have started on my second treatment of Willard's, and highly recommend it for stomach ulcers. I have been bothered with my stomach for about six years.

I took about four bottles of the Willard Treatment, and I can eat anything now and work hard every day. I was in an awfully bad condition, but I believe I am entirely relieved. I had ulcers of the stomach for fourteen years.

It is with great pleasure that I write you and thank you for what your wonderful Treatment has done for me. I have suffered with ulcers of the stomach for the past eighteen years. I have taken many different kinds of medicine.

Before taking your Treatment, I suffered for five years with ulcers and gas. In fact, I suffered so much that I did not care to live any longer.

PAR. 5. All of the above statements, together with many other similar statements appearing in respondent's advertising and literature, purport to be descriptive of respondent's product, Willard Tablets. In all of the respondent's advertising matter and literature, the respondent represents, through the statements as above set out and through other statements of like import and effect, that said product is a competent treatment and an effective remedy for stomach and duodenal ulcers; that said preparation is a competent treatment for all stomach disorders; that said preparation is a competent treatment for hyperacidity; and that said preparation will correct an abnormal acid condition at once.

PAR. 6. The claims and representations made by the respondent with respect to the efficacy and therapeutic value of the preparation, Willard Tablets, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product, Willard Tablets, is not a competent treatment for stomach and duodenal ulcers. Neither will it relieve the discomforts caused therefrom. Said preparation is not a competent treatment for stomach troubles or stomach disorders. Said preparation will not correct an abnormal acid condition at once or in any stipulated length of time. Said preparation is not a treatment for the physical ailments above mentioned, nor is it a competent treatment for any physical ailment. Said prepara-

tion is no more than a remedy, and its value as a remedy is limited to cases of simple gastric hyperacidity.

PAR. 7. There are among respondent's competitors many who manufacture and prepare medicines for stomach troubles, stomach disorders, stomach and duodenal ulcers, hyperacidity, hypoacidity, and abnormal acid conditions, and sell and distribute said preparations to the purchasing public in commerce among and between the various States of the United States, and who in no way misrepresent the quality, efficacy, or therapeutic value of their product.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent in designating and describing its product, Willard Tablets, and the effectiveness thereof as hereinabove set out, in offering for sale and selling said products, were and are calculated to, and had and now have the tendency and capacity to mislead and deceive and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by respondent's acts and representations as hereinabove set out, members of the purchasing public have purchased respondent's product and thereby trade has been unfairly diverted to the respondent from those competitors referred to in paragraph 7 hereof. As a result of the aforesaid false and misleading representations, 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. 9. The above and foregoing acts, practices, and representations of the respondent have been and are all to the injury and prejudice of the public and respondent's competitors, and have been and are unfair methods of commerce within the meaning and intent 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 8th day of April 1937, issued and served its complaint in this proceeding upon respondent, Willard Tablet Co., Inc., 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 Thomas H. Kennedy, attorney for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of John N. Wheelock, attorney for the Commission, and John A. Nash, attorney for respondent; 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 Willard Tablet Co. is a corporation organized, existing, and doing business under the laws of the State of Delaware, and having its office and principal place of business at 215 West Randolph Street, in the city of Chicago, State of Illinois. Respondent was incorporated in 1932. Respondent has been engaged for 3 years last past in the sale and distribution of a medicinal preparation designated as "Willard Tablets." Respondent also distributes to the purchasers of such tablets certain literature containing advice of a dietary and hygienic nature. Respondent refers to the said preparation and such literature as the "Willard Treatment." Respondent sells said preparation to members of the purchasing public situated in various States of the United States, and causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Illinois. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between the various States of the United States, with other corporations and with partnerships, firms, and individuals selling and distributing medicinal and other preparations and products designed and intended for use in the treatment of the same ailments and conditions of the human body for which respondent

recommends the use of its said preparation. Among such competitors in said commerce are many who do not, in any manner, misrepresent their said preparations and products or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their respective preparations and products.

PAR. 3. The said preparation "Willard Tablets" contains the following ingredients:

Sodium Bicarbonate.....	10 Grs.
Magnesium Oxide.....	10 "
Bismuth Subnitrate.....	10 "
Pancreatin.....	1 "

To the above ingredients, respondent adds flavoring of peppermint and saccharin and a sweetening or filler of starch and talc which are without therapeutic value. The average dose recommended by the respondent is one tablet immediately after each meal three times a day. The tablet is a 37-grain tablet. The "Willard Tablets" are not manufactured by the respondent, but are compounded for the respondent by a laboratory pursuant to respondent's special formula. Respondent bottles, packs, and distributes the said preparation. Approximately seven-eighths of respondent's aforesaid business is with retail drug stores, and approximately one-eighth of such business is done by mail direct to the ultimate purchaser. For the past 3 years the gross dollar value of respondent's business has been approximately \$400,000 per annum. The said preparation is packed 100 tablets to the bottle, and sells for \$5 per bottle. Respondent distributes to every purchaser of such tablets the aforesaid literature containing directions for diet, rest, and other hygienic measures.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said preparation, the respondent has caused advertisements containing representations and claims with respect to the properties of said preparation and treatment, and the results that may be expected to be obtained from the use thereof, to be disseminated in newspapers and other publications having a circulation between and among the various States of the United States, in bulletins distributed from respondent's aforesaid place of business to prospective purchasers of said preparation located in other States, and in continuities broadcast from radio stations which convey the programs emanating therefrom to the listeners thereto located in various States of the United States. The following statements and representations are typical of those made in the aforesaid advertisements:

This *unique* formula has brought definite relief to hundreds of such stomach sufferers everywhere.

It explains the remarkable Willard Treatment for stomach distress, such as heart-burn, poor digestion, acid dyspepsia, and stomach ulcers, due to excessive acid. This marvelous treatment has brought amazing relief to such stomach sufferers everywhere.

The reports sent to us by those who have been seeking desperately to find relief from ulcers, and who finally found that prayed-for help in the Willard Treatment should prove an inspiration to every person so afflicted.

There is probably no treatment more dependable for correcting those conditions **AT ONCE** than the Willard Treatment.

By way of quoting purported testimonials, the responded represented :

I have started on my second treatment of Willard's, and highly recommend it for stomach ulcers. I have been bothered with my stomach for about six years.

I took about four bottles of the Willard Treatment, and I can eat anything now and work hard every day. I was in an awfully bad condition, but I believe I am entirely relieved. I had ulcers of the stomach for fourteen years.

It is with great pleasure that I write you and thank you for what your wonderful Treatment has done for me. I have suffered with ulcers of the stomach for the past eighteen years. I have taken many different kinds of medicine.

Before taking your treatment, I suffered for five years with ulcers and gas. In fact, I suffered so much that I did not care to live any longer.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and treatment and its effectiveness in the treatment of various ailments and conditions of the human body and the causes thereof, the respondent has represented, directly and by implication, that the Willard Tablets and the aforesaid literature containing certain dietary and hygienic advice, which is referred to by the respondent, jointly, with such tablets as the "Willard Treatment," are a competent and adequate cure or remedy for, and have substantial therapeutic value in the treatment of stomach and duodenal ulcers due to hyperacidity, poor digestion, acid dyspepsia, sour or upset stomach, gaseousness, bloating, heartburn, constipation, bad breath, sleeplessness, headaches, and jaded appetite, when such conditions are due to or persist because of excess acid; that the Willard Treatment is a remarkable or marvelous treatment for the aforesaid ailments and conditions of the human body; that the Willard Tablets are compounded pursuant to an unique formula; that the Willard Treatment has brought definite relief to hundreds of persons suffering from the aforesaid ailments and conditions of the human body; that there is

no treatment more dependable for correcting the aforesaid ailments and conditions at once than the Willard Treatment.

PAR. 6. In truth and in fact, the Willard Tablets and the aforesaid literature of respondent jointly referred to by respondent as the Willard Treatment are not a competent and effective remedy or cure for stomach or duodenal ulcers due to hyperacidity or to any other causes.

PAR. 7. In truth and in fact, the Willard Tablets or Treatment do not give definite relief in the sense that it gives relief from the disease, as is represented by the respondent in the aforesaid statements and representations, but the value of such preparation is limited to a relief from the symptoms of distress.

PAR. 8. The Willard Treatment is not a remarkable or marvelous treatment. The Willard Tablets are not compounded from an unique formula. The drugs employed in the Willard Tablets are commonplace in medical literature and have been used for many years singly and in combination.

PAR. 9. The Willard Treatment is not the most dependable treatment for correcting the aforesaid ailments and conditions of the human body at once or during any period of time. The most dependable treatment for such ailments and conditions requires that the drugs and diet be varied from day to day in accordance with the reaction of the patient. The respondent is not equipped for and does not give such advice to the purchasers of its preparation. Such ailments and conditions may be caused by reasons other than an excess acid condition and the ordinary purchaser of respondent's preparation is incapable of determining whether or not his particular ailment or condition is due to or persists because of excess acid.

PAR. 10. The use by the respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to the Willard Tablets and Treatment, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's said preparation and treatment possess the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury 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, the answer of respondent, testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by John N. Wheelock, counsel for the Commission, and by John A. Nash, 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, Willard Tablet Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation designated as "Willard Tablets," and literature containing certain dietary and hygienic advice referred to jointly with such preparation as the "Willard Treatment," or any other preparation or treatment of substantially the same composition and ingredients, sold under the above mentioned names or any other names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

(a) That such preparation or treatment is a competent and adequate cure or remedy for stomach and duodenal ulcers;

(b) That such preparation or treatment will do more than produce a soothing effect on the irritations in the stomach caused by an excess acid condition or provide a temporary relief from the symptoms of distress caused by such condition;

(c) That such preparation or treatment will bring "definite relief," unless such statement is qualified by the phrase, "relief from symp-

toms of distress," equally conspicuous terms in direct connection with such representation;

(d) That such preparation or treatment is "remarkable" or "marvelous";

(e) That such preparation is compounded from an "unique" formula;

(f) That such treatment is more dependable than any other treatment for correcting the aforesaid ailments and conditions of the human body.

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.

Syllabus

IN THE MATTER OF

G. H. MOSBY, INDIVIDUALLY, AND AS PRESIDENT OF
THE VAN-TAGE MEDICINE COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3055. Complaint, Feb. 10, 1937—Decision, Oct. 19, 1938*

Where an individual, president of a corporation engaged in manufacture, sale and distribution of a product known as Van-Tage, offered for similar purposes as medicines and preparations of concerns who do not expressly state, imply, or represent that their said products are invariably or uniformly effective for the purposes for which represented and who truthfully represent the same to the public; and said corporation, in advertising their said product to the public through printed pamphlets, leaflets, booklets, and other matter distributed among purchasers and prospective purchasers, and through enclosure thereof in cartons or containers of said product, and through radio broadcasts, and through agents who solicited druggists and others interested in purchase thereof and made representations in respect thereto—

- (a) Represented that said preparation would, through action and effect thereof in the body in promoting and aiding the functioning of the stomach and digestive processes and of the liver, kidneys, bladder, and bowels, and through effect on said various organs as specified in varying detail, and elimination of impurities from the system, etc., bring relief from headaches, skin eruptions, drowsy tired feeling, rheumatism, backache, and a variety of ailments and conditions attributed to, or associated with, the functioning of said various organs, and strengthen the nerves naturally, relieve neuritis, etc., and promote vigorous health and improve appearance, and "make you LOOK, ACT and FEEL like a DIFFERENT MAN or WOMAN, years younger than your real age," facts being it would not act as represented and claimed by them in aforesaid various and numerous ways, nor accomplish said various and numerous beneficial results set forth, including putting the rosy glow of health into one's cheeks or making one look, act, and feel like a different person and years younger than his real age, and did not constitute a satisfactory or competent remedy, cure, or treatment for any of the conditions set forth; and
- (b) Published, as further inducements to purchasing public, testimonials throughout the press of the country, depicting persons supposed to have made statements therein and attesting, or purportedly attesting, to the great benefits secured by them from preparation in question, through such typical statements as "I feel like a different person since I took VAN-TAGE, and I think everyone who suffers like I did should know about this Great Medicine!," and invited reader, in connection with reproduction of such testimonial, or purported testimonial, to "Read what she says about this New Medicine," and "Find out how Van-Tage may HELP YOU!," and "FINDS RELIEF FROM YEARS OF MISERY," etc., facts