

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

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being testimonials in question, reported to have been made, were paid for, and did not represent effect of a general use of product in question, and persons purportedly writing the same were not sufficiently skilled in diagnosis of human maladies, ills, and conditions accurately to state nature or extent of any effect obtained from use of said product;

With effect of misleading purchasing public into erroneous belief that aforesaid various representations were true, and with result that such public, as a consequence of mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of their products and trade was unfairly diverted to them from competitors engaged in sale and distribution, or in manufacture, sale, and distribution, of such products in commerce and who truthfully represent the efficacy thereof:

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. Arthur F. Thomas*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Frank P. Doherty and *Mr. William R. Gallagher*, of Los Angeles, Calif., for respondents.

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 G. H. Mosby, an individual, and Van-Tage Medicine Co., Inc., a corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents G. H. Mosby and Van-Tage Medicine Co. are now and have been engaged in business under the laws of the State of California. The said Van-Tage Medicine Co. is a corporation organized, existing, and doing business under the laws of the State of California. The principal offices are at 1265 North Vermont Avenue, Los Angeles, Calif. G. H. Mosby is its president and directs and controls the sales policies and business operations of the corporation.

PAR. 2. The respondents have been, and are now, engaged in the business of manufacturing, advertising, distributing, and selling certain medical preparations to drug wholesalers, drug stores, and the public. The respondents cause their products, when sold, to be transported from their aforesaid place of business to the purchasers thereof located in various States other than the State of California,

and they maintain a constant course of trade in commerce in said product so distributed and sold by them.

PAR. 3. In the course and conduct of their said business, respondents have been, and are, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and sale of similar products, and other products intended and designated for similar use, in commerce among and between the various States of the United States.

PAR. 4. The principal product marketed by the respondents is known and described as "Van-Tage." In the operation of their business and for the purpose of inducing the purchase of said product on the part of members of the purchasing public, the respondents have made use of certain advertisements and literature such as booklets, pamphlets, circulars, show-window displays, newspaper advertisements, and radio broadcasts, which represent as follows:

WHAT IT IS! Van-Tage is a new, advanced medical compound of 30 of the Finest Medicinal Herbs, and not one a habit-forming drug. It is taken after meals and mixes with the food in one's stomach, thus throwing off the poisons that foster stomach troubles and permitting the kidneys and liver to function properly. It acts within 10 minutes to stop gas and pains, soreness, bloat and belching. It will not gripe, or nauseate you like ordinary liver medicines. It will work the bile from the liver as black as ink. At the same time Van-Tage drives the poisons from the kidneys and relieves backaches, bladder irritation and weakness. Often relieves children from bed-wetting in a few days. Strengthens the nerves by natural means.

Now, whether Van-Tage will help you as it has thousands of others—whether it will end your suffering in a day or a week—remains to be seen. But in light of what it has done for others, it is surely a mistake not to try it for 25 cents, only a fraction of its worth. This introductory offer is good Friday and Saturday only, so read the rest of this announcement and act at once. Do this in fairness to yourself, your family.

WHAT IT WILL DO! Van-Tage will cleanse your bowels (gradually—not drastic or severe) as they were **NEVER CLEANSED BEFORE**.

It will bring out awful gases and impurities (frequently from the first dose) which may have been inside of you a long time causing you many days of misery with headaches, dizzy spells, skin eruptions and lazy, drowsy, tired feeling.

Van-Tage will relieve acid conditions and make the digestive organs sweet and clean and give complete relief from indigestion, bloating, sour stomach, shortness of breath and dyspepsia.

It will give you the greatest appetite you **EVER HAD IN YOUR LIFE**.

Van-Tage will act as a diuretic to sluggish kidneys and flush out qualities of impurities that may have become damned up inside, causing **BACKACHE, SHARP PAINS and RISING at NIGHT**.

It will make your liver more active; will clear away old bile deposits, thus relieving spells of biliousness and sick headache.

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Rheumatism is often caused by acid arising from stomach hyperacidity. Neuritis is also many times traceable to an acid stomach which poisons the nerves.

It WILL clean up skin eruptions that are caused by the impurities in the organs, will overcome the sallowness or "muddiness" that is due to a sluggish liver and will put the ROSY GLOW of HEALTH into your cheeks. Van-Tage will act on your stomach, liver, kidneys, and bowels, build up in general and make you LOOK, ACT and FEEL like a DIFFERENT MAN or WOMAN, years younger than your real age.

In truth and in fact the use of respondents' product Van-Tage will not throw off the poisons that foster stomach troubles and permit the kidneys and liver to function properly. It will not act within 10 minutes to stop gas and pains, sourness, bloat, and will not work the bile from the liver as black as ink, drive the poisons from the kidneys, relieve backaches, bladder irritation, and weakness. It will not strengthen the nerves by natural means and is not considered as having any value in the treatment of enuresis. It will not bring out awful gases and impurities, which may have been inside of a person a long time, causing him many days of misery with headaches, dizzy spells, skin eruptions, and lazy, drowsy, tired feeling. It will not relieve acid conditions and make the digestive organs sweet and clean and give complete relief from indigestion, bloating, sour stomach, shortness of breath and dyspepsia. It will not flush out quantities of impurity (from the kidneys) that may have become dammed up inside, causing backache, sharp pains, and rising at night. It will not make a person's liver more active, clear away old bile deposits, thus relieving spells of biliousness and sick headache. It will not relieve the causative factors of rheumatism and neuritis. It will not clear up skin eruptions that are caused by the impurities in the organs, and will not overcome the sallowness or muddiness that is due to sluggish liver or put the rosy glow of health into your cheeks. It will not act on a person's stomach, liver, kidneys, and bowels, build him up in general and make him look, act, and feel like a different man or woman, years younger than his real age. It is not a satisfactory or competent remedy, cure, or treatment for any of the conditions set forth herein.

PAR. 5. Likewise, in the course and conduct of their said business, respondents, in marketing their product, use in connection with the above statements pictures of persons who, it is claimed, have secured benefit from the use of the respondents' product.

The advertising literature herein referred to is distributed to members of the public through the means hereinbefore set forth. The respondents in marketing their product use in connection with the above statements pictures of persons with testimonials in connection with said pictures such as:

Mrs. G. A. Ferebee, of Eugene, Oregon, who says of Van-Tage: "Here is one medicine that really helps a person. I gladly endorse it to all poor sufferers."

"I would choke and strangle in my bed at night with stomach gas. But now Van-Tage has relieved me. It's wonderful."—Mrs. H. Dreher, 1025 Florida St., Los Angeles.

Mrs. L. E. Guild, widely-known lady of Hume Court, Portland, who says: "I feel like a new person since I took Van-Tage. I simply can't praise this great medicine enough."

Mr. N. E. Denney, of 16th Ave., Portland, who says: "Van-Tage is the only medicine that ever helped my rheumatic pains and swelling. It was a blessing to me."

In truth and in fact the said statements reported to have been made by individuals, who have secured benefit from the use of the respondent's product, are paid testimonials and do not represent the effect of a general use of said product, and the persons purportedly writing said testimonial letters are not sufficiently skilled in the diagnosis of human maladies, ills, and conditions to accurately state the nature or extent of any effect obtained from a use of said products.

PAR. 6. The aforesaid false and misleading statements and representations as used by the respondents in offering for sale, and selling their product as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true and into the purchase of substantial quantities of respondents' product on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted from competitors of respondents who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being done by respondents to competitors in commerce among and between the various states of the United States.

PAR. 7. The methods, acts, and practices of respondents herein set forth are all to the prejudice of the public and respondents' 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 February 10, 1937, issued, and on February 25, 1937, served its complaint in this proceeding upon the

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respondent, G. H. Mosby, individually and as president of the Van-Tage Medicine Co., Inc., a corporation, charging them 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 respondents' 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 Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it. Thereafter, on August 23, 1938, the respondents submitted an answer to the complaint, in which answer respondents admitted all of the material allegations of fact set forth in said complaint to be true and stated that it waived all intervening procedure and further hearing of said facts set forth in said complaint, and that without further evidence or other intervening procedure the Commission might issue and serve upon them findings as to the facts and conclusion, and an order to cease and desist from the violations of law charged in the complaint. The Commission, by order entered herein, substituted said answer dated August 23, 1938, in lieu of the original answer to the complaint filed on March 17, 1937. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, answer dated August 23, 1938, and testimony and other evidence, and the Commission having duly considered the matter, and being 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, G. H. Mosby, is an individual and has been engaged in business as such, and as president of the Van-Tage Medicine Co. His present office is located at 1265 North Vermont Avenue, Los Angeles, Calif.

The Van-Tage Medicine Co., Inc., is a corporation, organized, existing, and doing business under the laws of the state of California, with its principal office at 1265 North Vermont Avenue, Los Angeles, Calif. G. H. Mosby has been its president and has directed and controlled the sales policies and business operations of the corporation.

The respondents are, and for the past several years have been, engaged in the manufacture, sale and distribution of a product known as Van-Tage, which consists of the following ingredients:

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<i>Ingredient</i>	<i>Pounds per batch</i>	<i>Grains per bottle</i>
Mandrake Root.....	2½	7
Cascara-Sagrada.....	10	28
Gentian.....	6	16.8
Galangal.....	4	11.2
Senna.....	6	16.8
Poplar Bark.....	8	22.4
Angelica Root.....	4	11.2
Sarsaparilla.....	8	22.4
Wild Ginger.....	2	5.6
Senega.....	4	11.2
Pink Root.....	3	8.4
Yellow Dock.....	5	14
Black Cohosh.....	4	11.2
Blue Cohosh.....	7	19.6
Queen Meadow Root.....	8	22.8
Spikenard.....	8	22.8
Burdock.....	6	16.8
Lady Slipper.....	4	11.2
Boneset "L & T".....	4	11.2
Aletris.....	2	5.6
Pipsissewa.....	4	11.2
Golden Seal.....	¾	2.1
Aloes.....	2	5.6
Sodium Benzoate.....	3½	8.4
Salicylic Acid.....	3½	8.4
Potassium Iodide.....	2½	7
Spongy Granular Pepsin.....	2	5.6
Glycerine C. P.....	10 gal.	4.096FZ
Carmel.....	2 gal.	49.152M
Oil Peppermint.....	2 oz.	.384M

Respondents cause the product when sold to be transported from their aforesaid places of business to purchasers thereof located at points in the various States of the United States other than the State of California and in the District of Columbia. In the course and conduct of said business, respondents have been and are 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, products, which consist of some and all of the ingredients of respondents' product set out herein, some of which are used for the purposes for which respondents recommend that their product be used.

Respondents advertise said product to the public through printed pamphlets, leaflets, booklets, and other printed matter which they distribute among purchasers and prospective purchasers, and through

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radio broadcasts. The advertising matter, in addition to being distributed generally, is placed in a carton or container in which said product is marketed. Respondents, as an advertising medium, also employ 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 by other verbal representations.

A newspaper advertisement which appeared in the *Oklahoman*, a daily newspaper, issue of January 1, 1937, is typical of advertisements which have appeared at different times in newspapers circulated between and among the various States of the United States and the District of Columbia. Under a picture of G. H. Mosby appears the following statement:

WHAT IT IS! Van-Tage is a new, advanced medical compound of 30 of the Finest Medicinal Herbs, and not one a habit-forming drug. It is taken after meals and mixes with the food in one's stomach, thus throwing off the poisons that foster stomach troubles and permitting the kidneys and liver to function properly. It acts within 10 minutes to stop gas and pains, sourness, bloat and belching. It will not gripe or nauseate you like ordinary liver medicines. It will work the bile from the liver as black as ink. At the same time Van-Tage drives the poisons from the kidneys and relieves backaches, bladder irritation and weakness. Often relieves children from bed-wetting in a few days. Strengthens the nerves by natural means.

Now, whether Van-Tage will help you as it has thousands of others—whether it will end your suffering in a day or a week—remains to be seen. But in light of what it has done for others, it is surely a mistake not to try it for 25 cents, only a fraction of its worth. This introductory offer is good Friday and Saturday only, so read the rest of this announcement and act at once. Do this in fairness to yourself, your family.

WHAT IT WILL DO! Van-Tage will cleanse your bowels (gradually—not drastic or severe) as they were **NEVER CLEANSED BEFORE**.

It will bring out awful gases and impurities (frequently from the first dose) which may have been inside of you a long time causing you many days of misery with headaches, dizzy spells, skin eruptions and lazy, drowsy, tired feeling.

Van-Tage will relieve acid conditions and make the digestive organs sweet and clean and give complete relief from indigestion, bloating, sour stomach, shortness of breath and dyspepsia.

It will give you the greatest appetite you **EVER HAD IN YOUR LIFE**.

Van-Tage will act as a diuretic to sluggish kidneys and flush out quantities of impurities that may have become dammed up inside, causing **BACKACHE, SHARP PAINS and RISING at NIGHT**.

It will make your liver more active; will clear away old bile deposits, thus relieving spells of biliousness and sick headache.

Rheumatism is often caused by acid arising from stomach hyperacidity. Neuritis is also many times traceable to an acid stomach which poisons the nerves.

It will clean up skin eruptions that are caused by the impurities in the organs, will overcome the sallowness or "muddiness" that is due to sluggish liver and will put the **ROSY GLOW of HEALTH** into your cheeks. Van-Tage

will act on your stomach, liver, kidneys, and bowels, build you up in general and make you LOOK, ACT, and FEEL like a DIFFERENT MAN or WOMAN, years younger than your real age.

As further inducements to the purchasing public, respondents publish testimonials throughout the press of the country with pictures of persons who are supposed to have made the statements contained therein. Typical of these testimonials is one appearing in the San Antonio Evening News, August 10, 1937:

"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!" Says Mrs. Elizabeth Eckardt, of 4314 W. Travis St., San Antonio. Van-Tage is the Amazing New Compound of Natural Herbs and Other Medicinal Agents now being introduced to the local public at the Walgreen Drug Store, 300 E. Houston St. Mrs. Eckardt's complete testimonial, in which she describes the amazing relief Van-Tage gave her, is published below. Read what she says about this New Medicine. Find out how Van-Tage may HELP YOU!

Finds relief from years of misery

* * * * *

It helps to clear away poisonous wastes

PAR. 2. The use of the product as set forth in the different means of advertising, according to the record in this case, will not throw off the poisons that foster stomach troubles and permit the kidneys and liver to function properly. It will not act within 10 minutes, or any other fixed period of time, to stop gas and pains, sourness, bloat, and will not work the bile from the liver as black as ink, drive the poisons from the kidneys, relieve backaches, bladder irritation, and weakness. It will not strengthen the nerves by natural means and is not considered as having any value in the treatment of enuresis. It will not bring out awful gases and impurities, which may have been inside of a person a long time, causing him many days of misery with headaches, dizzy spells, skin eruptions, and lazy, drowsy, tired feeling. It will not relieve acid conditions and make the digestive organs sweet and clean and give complete relief from indigestion, bloating, sour stomach, shortness of breath, and dyspepsia. It will not flush out quantities of impurity (from the kidneys) that may have become dammed up inside, causing backache, sharp pains, and rising at night. It will not make a person's liver more active, clear away old bile deposits, thus relieving spells of biliousness and sick headache. It will not relieve the causative factors of rheumatism and neuritis. It will not clear up skin eruptions that are caused by the impurities of the organs, and will not overcome the sallowness or muddiness that is due to sluggish liver or put the rosy glow of health into your cheeks. It will not act on a person's stomach, liver, kidneys, and bowels, build him up in general and make him look,

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act, and feel like a different person, years younger than his real age. It is not a satisfactory or competent remedy, cure or treatment for any of the conditions set forth herein.

The testimonials reported to have been made by individuals who have secured benefit from the use of the respondents' product are paid testimonials and do not represent the effect of a general use of said product, and the persons purportedly writing said testimonial letters are not sufficiently skilled in the diagnosis of human maladies, ills, and conditions to accurately state the nature or extent of any effect obtained from a use of said product.

PAR. 3. Many of respondents' competitors who sell and distribute, or manufacture, sell, and distribute similar products or the ingredients thereof in commerce do not in any way misrepresent the effectiveness of their products or the ingredients thereof or their efficacy for human ills.

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 and preparations of various kinds for similar purposes as that of respondents' without stating expressly or implying or representing that their products are invariably or uniformly effective for the purposes for which they are represented. There are now and for several years last past have been individuals, partnerships, and corporations offering for sale and selling in interstate commerce medicines and other preparations for similar use by individuals which are truthfully represented to the public.

The use by respondents of the representations set forth above have had and now have a capacity and tendency to and do mislead 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 respondents' products, with the result that trade has been unfairly diverted to respondents from competitors engaged in the business of selling and distributing such products in said commerce, or in the manufacture and sale and distribution of such products in said commerce, who truthfully represent the efficacy of their products.

CONCLUSION

The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of com-

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petition 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, testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and the substituted answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint to be true, and state that the Commission may, without taking further testimony or any other intervening procedure, enter and issue its findings as to the facts and conclusion and order to cease and desist, and the Commission, having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered. That the respondents, G. H. Mosby, individually, and as President of the Van-Tage Medicine Co., Inc., and the Van-Tage Medicine Co., Inc., a corporation, their representatives, salesmen, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of Van-Tage, a medical product or preparation, or any other product of similar design and for substantially the same uses and purposes, whether sold under said name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the use of the product will throw off poisons that foster stomach trouble and permit the kidneys and liver to function properly; that it will act within 10 minutes, or any other fixed period of time, to stop gas and pains, sourness, or bloat, and will work the bile from the liver as black as ink, drive the poison from the kidneys, relieve headaches, bladder irritation, and weakness, or is a remedy for any of these troubles in man or woman.

2. Representing that it will strengthen the nerves by natural means and is considered as having value in the treatment of enuresis, that it will bring out gases and impurities, which cause many days of misery with headaches, dizzy spells, skin eruptions, lazy, drowsy, tired feeling, or is a remedy for any of these troubles in man or woman.

3. Representing that it will relieve acid conditions, and make the digestive organs sweet and clean, and give complete relief from indigestion, bloating, sour stomach, shortness of breath, and dyspepsia.

4. Representing that it will flush out quantities of impurities from the kidneys that may have become dammed up inside a person, causing backache, sharp pains, and rising at night, that it will make a person's liver more active, clear away old bile deposits, thus relieving spells of biliousness and sick headache.

5. Representing that it will relieve rheumatism and neuritis; that it will clear up skin eruptions that are caused by impurities in the organs, and will overcome the sallowness or muddiness that is due to sluggish liver, and put the rosy glow of health into the cheeks; that it will act on a person's stomach, liver, kidneys, and bowels, build a person up in general and make him (or her) look, act, and feel like a different man (or woman), years younger than his (or her) real age.

6. Representing that it is a satisfactory or competent remedy, cure, or treatment for any of the conditions set forth herein.

7. Representing, through paid testimonials, the effect of a general use of said product upon persons not sufficiently skilled in the diagnosis of human maladies, ills, and conditions, to accurately state the nature or extent of any effect obtained from a use of said product.

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

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IN THE MATTER OF
THE WEBB CRAWFORD COMPANY ET AL.

COMPLAINT, FINDINGS, CONCLUSION, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF PARAGRAPH (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3214. Complaint, Aug. 26, 1937—Decision, Oct. 20, 1938

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BUYER "BROKERAGE" PAYMENTS—BUYER CONTROLLED BROKERS

The payment of brokerage to, and the receipt thereof by, a broker upon the purchases of a buyer possessing the power of control over such broker, or in whose behalf such broker acts, is a practice which Congress deemed to be an inherently unfair trade practice and specifically and unconditionally proscribed by said paragraph of said Act.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BUYER "BROKERAGE" PAYMENTS—WHERE CORPORATE OWNERS BUYER "BROKERAGE" RECIPIENTS ON CORPORATE PURCHASES—CORPORATE ENTITY FICTION—AVAILABILITY AS SAVING

The payment of brokerage to, and the receipt thereof by, buyers on their own purchases, whether the same is paid directly to the buyers or transmitted to them through intermediaries, is a practice which Congress deemed to be an inherently unfair trade practice and specifically and unconditionally proscribed by said paragraph of said act, and while a corporate buyer, *de facto* owners of which receive so-called brokerage payments on its purchases, may for some purposes be considered a legal entity distinct from the members who compose it, that distinction is a fiction of the law which is disregarded when it is urged to an intent and purpose which is not consonant with the reason and policy of the law.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BUYER "BROKERAGE" PAYMENTS—"SERVICES RENDERED" CLAUSE—APPLICABILITY

The "services rendered" clause of said paragraph of said Act does not set up conditions upon which brokerage may be paid by sellers either to buyers or to their intermediaries, agents, or representatives, upon the buyers' own purchases, and in such a case no selling services whatsoever could, in law, be rendered to sellers in connection with the purchases of the buyer, by either the broker controlled and owned by and acting in its behalf, or by the buyer directly, or by any agent, representative or employee of either such broker or buyer, within the meaning of said paragraph of such act.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BUYER "BROKERAGE" PAYMENTS—COMPETITIVE EFFECT—WHETHER ADVERSE PREREQUISITE

While it may appear that payment of so-called brokerage fees or commissions by sellers to, or receipt thereof by, buyer-owned and controlled broker upon buyer's purchases has injured competition between such sellers and between such broker and buyer and their respective competitors, such fact need not be considered by Commission in arriving at conclusion of violation of para-