

IN THE MATTER OF
THE GROVE LABORATORIES, INC.

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

Docket 2771. Complaint, Apr. 17, 1936¹—Decision, Dec. 7, 1938

Where a corporation engaged in manufacture, distribution, and sale of its "Laxative Bromo Quinine" tablets; in advertising its said preparation through display signs and in magazines and newspapers circulating among the various States, and through radio broadcasts—

Represented that said tablets constituted a cold remedy and a "complete" treatment for colds which would "kill" or fix or expel the same, or give the final touch in so doing, or would drive out or clean out poisonous infection, or eliminate, destroy, or break up cold infection, or fortify the system, and that said preparation had a germicidal effect and would stop a cold in its tracks, or on the first day, or in 24 hours, or in the fastest time on record, and would afford "thorough" and "complete" relief from colds;

Facts being cold virus cannot with certainty be combatted, attacked, "killed," "stopped," "fixed," or "destroyed" by any presently known germicide, remedy, cure, treatment, or mixture of drugs or other agents, no commercial remedies of so-called secret composition, such as tablets concerned, are recognized by medical authorities as remedies or cures for colds, or as being capable of stopping same, individuals react differently to different medicinal preparations, and no known formula or composition of drugs will, in all cases, serve as competent and effective treatment for such ailments, product in question, at most, was an aid or adjunct in treatment of common cold and in securing relief therefrom, and representations made by it with respect to nature and action of its product, its therapeutic value and effectiveness, were misleading and untrue;

With tendency and capacity to mislead and deceive purchasers of such product into mistaken and erroneous beliefs that said tablets furnished curative and remedial benefits in the treatment of colds to the extent represented, and with result that persons suffering from or threatened therewith, and reading its aforesaid advertisements in various periodicals and newspapers of interstate circulation, purchased substantial quantities of said tablets in reliance on the truthfulness of such representations as to the nature and effectiveness thereof, and took the same in accordance with its directions and without obtaining curative or remedial benefit or relief anticipated; and

With effect, as true consequence of mistaken and erroneous beliefs induced by acts, advertisements, and representations aforesaid, that substantial number of consuming public bought its said product in substantial volume, and trade was diverted unfairly to it from those likewise engaged in distribution and

¹ Complaint published as amended by motion granted July 21, 1937.

sale of other preparations intended and used as treatment for relief of colds and who truthfully advertise their respective products:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Wm. T. Chantland and *Mr. James L. Fort* for the Commission.

Small & Small, of St. Louis, Mo., and *Mr. Simon Michelet* and *Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., 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 Grove Laboratories, Inc. (formerly Paris Medicine Co.), 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 the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Grove Laboratories, Inc. (formerly Paris Medicine Co.), is a Delaware corporation, which has its principal office and place of business at 2630 Pine Street, in the city of St. Louis, State of Missouri. Respondent is now, and has been for some time, engaged in the business of distributing and selling, in commerce as herein set out, certain tablets known as "Grove's Laxative Bromo Quinine Tablets."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said tablets, when sold, to be transported from its office and place of business in the State of Missouri to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent now maintains a constant current of trade in commerce in said tablets, distributed and sold by it, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling bromo quinine and kindred preparations for use in connection with treatment for common colds, in

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commerce, among and between the various States of the United States and in the District of Columbia.

In the course and operation of said business, and for the purpose of inducing the purchase of said tablets as a remedy for persons suffering from common colds or threatened with them, respondent, in its advertising, has recently prepared and distributed through its salesmen to retail druggists throughout the United States 20,000 crystalline signs and counter placards for display in the retail drug stores of the country. Those signs boldly advertise "Grove's Laxative Bromo Quinine Tablets" in a manner as outlined below:

Kill Colds GROVE'S LAXATIVE BROMO QUININE Tablets.

Other advertising by respondent for the purpose as above set forth which has appeared in newspapers having an interstate circulation contained, among others, the following representations:

Stop that cold in its tracks.

Treat a cold promptly and treat it for what it is—an internal infection. Take a remedy that is internal and one that is expressly for colds and nothing else! Grove's Laxative Bromo Quinine is what you want for a cold. It is expressly a cold tablet. It does four important things: (a) * * *; (b) it combats the cold germs in the system; (c) it relieves the headache and fever; (d) it tones the system and helps fortify against further attack.

Bid that cold be gone. Oust it promptly with this four-fold treatment.

Stop a cold the first day. Drive it out of your system. Grove's Laxative Bromo Quinine is definite treatment for a cold * * *.

Kill colds dead—don't merely temporize with them.

Kill a cold as you would an octopus. Strike at the cold itself—not merely at the symptoms.

Knock out colds in the first round.

Kill that cold. Give it no chance to survive through the use of half-way measures.

Kill that cold as if you mean it * * *.

Broadcast over the radio, the following claims were made:

Grove's Bromo Quinine ends colds in the fastest time on record because each tablet contains one ingredient to clean the poison out of your system; one to break up cold infection; one to stop aches and clear up head and nose; one to tone up the system so the moment you take Bromo Quinine Tablets you can forget your cold.

PAR. 4. The representations made by the respondent, as above set out, with respect to the effect, when used, of its said product, are grossly exaggerated, false, misleading, and untrue. Said product neither kills colds dead, nor stops a cold in its tracks, or on the first day, nor has it any germicidal effect, nor does it tone the system or fortify against further attack.

Said advertising is also misleading as to the implied unrestricted safety for use of respondent's product, because it induces added per-

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spiration which is dangerous to the patients, in the absence of prescribed care.

At most, the product is merely an adjunct, and not in itself a treatment or cure, and is in no sense a complete and permanent remedy for colds.

PAR. 5. There are among respondent's competitors many who distribute and sell similar preparations, designed, intended, and sold as aids or adjuncts in the treatment of the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent as to the effectiveness of its said product in treating common colds, as hereinabove set out, in its advertising, in the course of distributing its product, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondent will be obtained by the purchasers thereof upon the use of said products in the treatment of colds. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondent, as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondent's tablets with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling products intended for use in connection with the treatment of colds, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondent to substantial competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition 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 April 17, 1936, issued and served

its complaint, in this proceeding upon respondent, The Grove Laboratories, 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 amended answer thereto, a stipulation as to the facts in lieu of testimony and documentary evidence was entered into, which was approved by the Commission. Thereafter, the Commission so ordered the complaint amended, and that, as so amended, it should stand as though said amendment was incorporated in the original complaint.

Thereafter, the proceeding regularly came on for final hearing, before the Commission on the said amended complaint, the amended answer thereto, and the stipulation in lieu of testimony and documentary evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel for the Commission and 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, The Grove Laboratories, Inc. (formerly Paris Medicine Co.), is a Delaware corporation, which has its principal office and place of business at 2630 Pine Street, in the city of St. Louis, State of Missouri. Respondent is now, and with its predecessor, has been, for more than 40 years, engaged in the business of manufacturing, distributing, and selling in commerce certain medicinal tablets known as "laxative bromo quinine" tablets, and also referred to as "Grove's Laxative Bromo Quinine," and "bromo quinine."

PAR. 2. Respondent, being engaged in business as aforesaid, causes said tablets, when sold to be transported from its office and place of business in the State of Missouri to purchasers thereof located at various points in States of the United States other than the State of Missouri and in the District of Columbia. Respondent now maintains, and has maintained, a course of trade in said tablets, distributed and sold by it, in commerce, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other firms and corporations likewise engaged in the business of distributing and selling preparations intended and used as treatments for the relief of common colds, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent signed and tendered a stipulation to the Commission, which was received and approved by the Commission on May 23, 1935. By the terms of said stipulation respondent "agreed that if the provisions of this stipulation are substantially violated by the respondent or any of its agents, this stipulation as to the facts may be used in evidence by the Commission in the trial of the complaint which it may issue."

Said stipulation and agreement was attached to and made a part (exhibit A) of the stipulation as to the facts entered into between respondent and the Chief Counsel of the Commission in lieu of testimony, which stipulation was approved by the Commission June 10, 1937. In the stipulation and agreement referred to and which was approved by the Commission May 23, 1935, the respondent admitted the use by it of the following advertising:

It goes right to the seat of the trouble.

Is expressly a cold *remedy* because it is direct and internal—and *complete*!

It fortifies the entire system.

World's Standard.

It is direct and does the four things necessary. Anything less than that is inviting trouble.

Kills a cold "dead"—does this amazing 4-way treatment.

Tones the *entire* system.

Anything less than (the 4 things "necessary") is not a *complete* treatment.

For more than forty years it has been the *standard* cold and *grippe* tablet of the world.

It does the four things necessary to *kill* a cold.

It drives the cold germs in the system, *drives out* the poisonous infection.

The final touch in expelling a cold.

Grove's Laxative Bromo Quinine is *thorough* relief—*complete relief*.

Take Grove's Laxative Bromo Quinine at the first symptoms and you will quickly *kill* the cold.

Get that cold out—roots and all!

Many popular preparations taken for a cold often actually make a cold worse or more difficult to relieve because they are constipating and also make the system acid.

Bromo Quinine quickly *destroys* and *eliminates* the cold infection from the system—and when the cause is removed, all the discomforts disappear with it.

The effectiveness of Bromo Quinine has made it the *standard remedy* for colds in every civilized country in the world.

In the aforesaid stipulation and agreement executed by the respondent and approved by the Commission on May 23, 1935, the respondent agreed, in soliciting the sale of its commodity in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That Bromo Quinine "*goes right to the seat of the trouble.*"

(b) That Bromo Quinine is a cold "remedy."

(c) That Bromo Quinine is "complete" in its action.

(d) That Bromo Quinine fortifies the "entire" system.

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(e) That the use of "Anything less" than Bromo Quinine "is inviting trouble."

(f) That Bromo Quinine "kills a cold dead."

(g) That Bromo Quinine tones the "entire" system.

(h) That, with respect to the four-fold action of Bromo Quinine, anything less is not a "complete" treatment.

(i) That Bromo Quinine has been, for any length of time, the "standard" cold and "grippe" tablet of the world.

(j) That Bromo Quinine does the four things necessary to "kill" a cold.

(k) That Bromo Quinine "kills" cold germs in the system and "drives out the poisonous infection."

(l) That Bromo Quinine is the final touch in *expelling* a cold.

(m) That Bromo Quinine affords "thorough" relief or "complete" relief.

(n) *That other cold preparations actually make a cold more difficult to relieve, because they are constipating and also make the system acid.*

(o) That Bromo Quinine "destroys" and "eliminates" the cold infection from the system, and when the *"cause is removed all the discomforts disappear with it."*

(p) That Bromo Quinine is the "*standard remedy*" for colds.

and from making any other claims or assertions of like import.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said tablets by persons suffering from common colds or threatened with them, respondent had distributed through its salesmen to retail druggists throughout the United States crystalline signs, for display purposes in said stores, on which appear the following advertisements:

KILL
COLDS
GROVE LAXATIVE
BROMO QUININE
TABLETS

PAR. 5. In the course and operation of said business, and for the purpose of inducing the purchase of said tablets by persons suffering from common colds or threatened with them, respondent, in its advertising appearing in magazines, and newspapers circulating within and between the various states of the United States, has recently made, among others, the following representations, to wit:

1. Stop that cold in its tracks.

2. Treat a cold promptly and treat it for what it is—an internal infection. Take a remedy that is internal and one that is expressly for colds and nothing else. Grove's Laxative Bromo Quinine is what you want for a cold. It is expressly a cold tablet. It does four important things: (a) * * *; (b) it combats the cold germs in the system; (c) it relieves the headache and fever; (d) it tones the system and helps fortify against further attack.

3. Kill a cold as you would an octopus. Strike at the cold itself, not merely at the symptoms.

4. Kill that cold.

5. Stop a cold the first day. Drive it out of your system. Grove's Laxative Bromo Quinine is definite treatment for a cold * * *.

6. Kill colds—don't merely temporize with them.

PAR. 6. In broadcasts over the radio, the respondent has made the following claims:

Grove's Bromo Quinine ends colds in the fastest time on record because each tablet contains one ingredient to clean the poison out of your system; one to break up cold infection; one to stop aches and clear up head and nose; one to tone up the system so the moment you take Bromo Quinine Tablets you can forget your cold.

PAR. 7. The active ingredient formula used in the preparation of respondent's said tablet is as follows:

Each tablet contains:	Grain
Powdered Extract Belladonna----- (half strength) --	$\frac{1}{50}$
Resin Podophyllin----- (half strength) --	$\frac{1}{24}$
Powdered Extract Henbane-----	$\frac{1}{16}$
Oleresin Capsicum-----	$\frac{1}{65}$
Caffeine Alkaloid-----	$\frac{3}{65}$
Quinine Hydrobromide-----	$\frac{3}{4}$
Acetanilid-----	1
Powdered Extract Colocynth----- (half strength) --	$\frac{1}{50}$
Powdered Extract Aloes----- (half strength) --	$\frac{1}{16}$

PAR. 8. At present there is no way in which colds can be "killed," nor is there any treatment or medication with which colds can, with certainty be "stopped" or "stopped the first day." No commercial remedies of so-called secret composition, such as the formula hereinabove set out, are recognized by medical authorities as remedies or cures for colds or as being capable of stopping colds. There is no known formula or composition of drugs that will, in all cases, serve as a competent and effective treatment of colds. It is a known fact that individuals react differently to different medicinal preparations and consequently no broad claims for any preparation made of the ingredients composing respondent's product are warranted.

PAR. 9. That the active agent or cause of colds, grippe, or influenza, is not definitely known but is probably a filterable virus whose nature cannot be exactly and positively defined. This virus cannot with certainty be combated, attacked, "killed," "stopped," "fixed," or destroyed by any presently known germicide remedy, cure, treatment or mixture of drugs or other agents.

PAR. 10. The representations made by respondent, as above set out, with respect to the nature and action of its product, its therapeutic value and effectiveness, are misleading and untrue. It does not and cannot with certainty "kill" colds, or "stop a cold in its tracks,"

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or "stop a cold the first day," or "kill colds dead," or "in the fastest time on record." There is as yet no known cold remedy or cure, and no recognized "standard" cold tablet or "standard" remedy or cure for colds. At most, respondent's product is an aid or adjunct in the treatment of the common cold and in securing relief therefrom.

PAR. 11. The use by respondent, of the statements and representations hereinabove set forth with respect to the effectiveness, of its tablets, was calculated to and has had and now has the tendency and capacity to mislead and deceive purchasers of such tablets into the mistaken and erroneous beliefs that said tablets will furnish curative and remedial benefits in the treatment of colds to the extent represented. Persons suffering from or threatened with colds have seen and read respondent's advertisements with respect to "bromo quinine" tablets in various magazines and newspapers having an interstate circulation, including those containing the representations hereinabove set out, and, acting on their belief in the truthfulness of respondent's representations as to the nature and effectiveness of its tablets, such persons have purchased substantial quantities of respondent's "bromo quinine tablets," and have taken them according to respondent's directions without obtaining the curative or remedial benefit or relief anticipated. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and representations of respondent's hereinabove set out, a substantial number of the consuming public has purchased a substantial volume of respondent's product with the result that trade has been diverted unfairly to the respondent from individuals, firms and corporations likewise engaged in the business of distributing and selling other preparations intended and used as treatments for the relief of colds, who truthfully advertise their respective preparations.

CONCLUSION

The above and foregoing acts, practices and representations of the respondent, The Grove Laboratories, Inc., are 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 amended complaint of the Commission, the amended answer of respondent, stipulation as to the facts in lieu of testimony and documentary evidence, briefs filed herein, and oral argument

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by William T Chantland, counsel for the Commission, and by W. Keane Small, counsel for 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, The Grove Laboratories, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution in interstate commerce or in the District of Columbia of a preparation now designated variously as "Laxative Bromo Quinine," "Groves Laxative Bromo Quinine," and "Bromo Quinine," or any other preparation containing the same or similar ingredients or possessing the same or similar properties, whether sold under those names or under any other names, do forthwith cease and desist, directly or indirectly, or through any corporate or other device:

1. From representing:

That said preparation is a cold remedy; that it is a "complete" treatment for colds; that it will kill, fix, or expel colds, or give the final touch in expelling colds; that it will drive out or clean out poisonous infection or eliminate, destroy, or break up cold infection, or fortify the system; that it has a germicidal effect; that it will stop a cold in its tracks, on the first day, or in 24 hours, or in the fastest time on record; or that it will afford "thorough" and "complete" relief from colds.

2. From making any representations of a like or similar import to those above set out.

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
SWEETS COMPANY OF AMERICA, INC.

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

Docket 2959. Complaint, Oct. 30, 1936—Decision, Dec. 7, 1938

Where a corporation engaged in manufacture and sale of assortments of candy, so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, or so-called "break and take," "draw," or "deal" assortments, purchasers and consumers of which type comprise children to substantial extent, and purchase of which type is preferred by consumers because of gambling feature connected with sale thereof, and appearance of which in the markets of manufacturers of "straight" merchandise, many of whom do not make and sell such "break and take," "draw," or "deal" assortments, but sell their "straight" merchandise in commerce in competition with the other, has been followed, as noted by them, by marked decrease in sales of their "straight" goods—

Sold to dealers such lottery assortments composed of (a) separately packed, large number of individually wrapped penny pieces of uniform size and shape, small number of which, in same box but divided from others by partition, had enclosed concealed centers of different color from others, and (b), separately containered small number of larger pieces corresponding in number to quantity of said uniform pieces, color of which differed as aforesaid, and were to be given as prizes to purchasers securing such differently colored uniform pieces, to dealer purchasers, of whom many bought from it equal numbers of boxes of said uniform pieces and of said larger pieces and removed partition separating said different colored uniform penny pieces from the others contained therein and mixed together such various uniform pieces, and sold same with larger pieces as prizes, in accordance with arrangement aforesaid, and thereby supplied to and placed in the hands of retailers means of violating the laws of the several States, contrary to public policy, and in competition with those who refused to sell candy so packed or assembled that it may be resold to public by lot or chance;

With result that such competitors were put to a competitive disadvantage and purchasing public was denied benefit of free competition in sale of such product, and retailers, finding more salable such "break and take," "draw," or "deal" sold candy, purchased from it and others employing same or similar methods, and trade was thereby unfairly diverted from such competitors to it and such others; to the injury of such trade or industry, through sale and distribution as aforesaid and by other similar methods by lot or chance and through such lottery, gambling, or gift enterprise:

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. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Louis H. Solomon, of New York City, for respondent.