

IN THE MATTER OF
EXCELSIOR LABORATORY, INC.

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

Docket 8648. Complaint, Nov. 8, 1938—Decision, Feb. 6, 1939

Where a corporation engaged in preparation, sale, and distribution of its so-called D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets with Vitamin E Added, and D. Gosewisch's Garlic Tablets with Vitamin B-G Added, to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of medicinal and other preparations designed and intended for and used in treatment of same ailments and conditions for which it recommended use of its said products, and including many who do not in any manner misrepresent their respective preparations or therapeutic properties thereof and who do not make any other false statements in connection with their sale and distribution—

- (a) Represented in false advertisements which is disseminated and caused to be disseminated through the mails and in commerce and otherwise, directly and by implication, that vitamin E is the "Vitality Vitamin," and that, of all the elements discovered by science, none is so vital as said vitamin E, and that such vitamin had been added to its said "Garlic Tablets," and that use of its preparations could be relied upon to help maintain and improve muscle function, abdominal strength, and vital resistance;
- (b) Represented, as aforesaid, that use thereof stimulated the appetite and growth and strengthened intestines and toned up nerve system and fortified the system against the onslaught of old-age ailments and normalized glandular action;
- (c) Represented, as aforesaid, that use thereof purified the blood stream and supplied body building elements for mothers and growing children and minerals needed by the body, and gave results impossible to be had from garlic in any other form; and
- (d) Represented, as aforesaid, that use of said preparations constituted effective remedies for insomnia, dizzy spells, rising blood pressure, bad memory, and general debility, and that they were antiseptics and guaranteed;

Facts being vitamin E cannot be properly designated as the "Vitality Vitamin" and is not the most vital of all the elements discovered by science, the many ailments and symptoms for which it recommended its said preparations are caused by various physical disorders unrelated to deficiencies in the various ingredients of which it claims its preparations to be composed, and use thereof cannot be relied upon to help maintain and improve muscle functions, abdominal strength, and vital resistance, or to accomplish various other results above set forth, preparations in question are not antiseptics, many others give equally great beneficial results, it does not guarantee its preparations as to effectiveness in use, but its guarantee is limited to refund of purchase price, and its said representations were grossly exaggerated and misleading and constituted false advertisements, use of which induces or is likely to induce, directly or indirectly, purchase of its said preparations; and

322

Complaint

- (e) Represented to prospective purchasers in various States and in the District of Columbia, that it would give to such purchasers a specified amount of said preparations free of charge, facts being it does not thus give any of its said products to purchasers but price of such purported free goods is included in price of those purchased;

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 preparations possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of said public, because of such erroneous and mistaken beliefs, to purchase substantial quantities of its said products, and of thereby diverting unfairly trade to it from its competitors in commerce as aforesaid, who truthfully advertise the effectiveness in use of their respective preparations; to the injury of competition in commerce:

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

Mr. William L. Pencke for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Excelsior Laboratory, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. Excelsior Laboratory, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 205 East 42nd Street, New York, N. Y. Respondent is now and has been for some years last past engaged in the business of preparing, distributing, and selling in commerce as herein set out certain preparations designated D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets with Vitamin E Added, and D. Gosewisch's Garlic Tablets with Vitamin B-G Added.

PAR. 2. Said respondent while engaged in business as aforesaid causes said products when sold to be transported from its principal place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. At all times since the organization of respondent's corporation it has maintained a course of trade in said products sold and distributed by it in commerce between

Complaint

28 F. T. C.

and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is now and has been at all times herein mentioned in substantial competition with other corporations and with firms and individuals likewise engaged in the business of preparing, distributing, and selling in commerce between and among the various States of the United States and in the District of Columbia products prepared, distributed, and sold for the same purpose and use for which respondent's products are prepared, distributed, and sold.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has disseminated and caused to be disseminated false advertisements—

1. By the United States mails and in commerce by other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations; and

2. By other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase in commerce of said preparations.

Among and typical of representations thus made by the respondent are the following:

Is your blood pressure like a jumping jack?—thousands report 50 to 75 points drop in blood pressure, nerves steadier, new strength and energy taking D. Gosewisch's Garlic Tablets—the only pleasant, effective way to take garlic for High Blood Pressure, Dizziness, Nerves, Sleeplessness.

D. Gosewisch's Garlic Tablets combat deficiency ailments by supplying vital minerals and ridding system of toxins.

Garlic builds and fortifies the system against the onslaught of old age ailments by supplying the body with rich, vital minerals and purifying the blood stream of toxins.

When exhaustion of essential minerals * * * gastric disorders * * * intestinal putrefaction * * * and other distressing symptoms bring about premature aging, garlic will have a definite happy effect.

Iodine to normalize glandular action.

First they purify the blood stream by counteracting toxins.

Third they actually supply those minerals necessary for proper bodily function.

One Box Free With Each Dozen at \$8.00.

It is the most powerful of natural antiseptics to neutralize poisons in the system.

Vitality Vitamin—

Of all the elements discovered by science none is so vital as Vitamin E now added to D. Gosewisch's Garlic Tablets—helps to maintain and improve muscle function, abdominal strength and vital resistance. Also important where Vitamin E deficiency results in abnormal functional weakness and debility.

Vitamin B-G now contained in D. Gosewisch's Garlic Tablets is another garlic vitamin combination: stimulates appetite and growth, tones up the system, sup-

Complaint

plies body building elements for expectant mothers, convalescents and growing children.

Tones up the nerve system.

Strengthens the intestines.

Standard plus "nerve Vitamin B".

All of said statements together with many other similar statements appearing in respondent's advertising purport to be descriptive of respondent's products, D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets, Vitamin E Added, and D. Gosewisch's Garlic Tablets, Vitamin B-G Added. In all of respondent's advertising matter herein set out and through other statements of like import and effect the respondent represents that vitamin E is the "Vitality Vitamin" and that of all the elements discovered by science none is so vital as vitamin E. Respondent further represents that its products can be relied upon to help maintain and improve muscle function; to help maintain and improve abdominal strength; to help maintain and improve vital resistance; to stimulate the appetite and growth; to strengthen the intestines; to tone up the nerve system; to fortify the system against the onslaught of old-age ailments; to normalize glandular action; to purify the blood stream; to supply body-building elements for expectant mothers and growing children; to supply minerals needed by the body; to give results impossible to obtain from garlic in any other form; that its products are effective remedies for insomnia, dizzy spells, rising blood pressure, bad memory and general debility, and that its products are antiseptics, and are guaranteed.

PAR. 5. The representations made by the respondent with reference to the therapeutic value of its products when used are grossly exaggerated, false, and misleading. In truth and in fact vitamin E cannot be properly designated as the "Vitality Vitamin" and is not the most vital of all the elements discovered by science. Respondent's products cannot be relied upon to help maintain and improve muscle functions, abdominal strength, and vital resistance. Neither will they stimulate growth or strengthen the intestines. Said products are not effective as nerve remedies and cannot be relied upon to tone up the nerve system. Said products will in no way ward off the onslaught of old age nor fortify the system against the loss of vitality. Said products will not remove impurities from the blood stream, neither will they correct abnormal glandular action. Said products are not effective treatments nor adequate remedies for insomnia, dizzy spells, rising blood pressure, bad memory, or general debility. Said products are not antiseptics. Many other preparations which are sold give beneficial results as great as the results

Complaint

28 F. T. C.

obtained from the use of respondent's products. Respondent does not guarantee its products as to their effectiveness, but the guarantee is limited to the refund of the purchase price.

The many ailments and symptoms hereinabove set out for the treatment of which the respondent recommends its products are caused by various physical disorders unrelated to deficiencies of the various ingredients of which respondent claims its products are composed.

PAR. 6. The use of the aforesaid false advertisements disseminated in the manner above described induces or is likely to induce, directly or indirectly, the purchase of drugs, to wit: Respondent's preparations.

PAR. 7. The respondent, for the purpose of inducing the purchase of its products represents that it will give to purchasers of its products a specified amount of its products free of charge. Such representation is false and misleading, for in truth and in fact the respondent does not give any of its products to purchasers but the price of the purported free goods is included in the price of the goods purchased.

PAR. 8. There are among respondent's competitors many who prepare, distribute, and sell preparations which are prepared, distributed, and sold for the same purpose and use for which respondent's products are prepared, distributed, and sold and who do not misrepresent the quality or therapeutic value of their respective products, or represent that any of their products are given free.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondent in designating and describing its products and the therapeutic value thereof as hereinabove set out, were and are calculated to, and have 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 the said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and misrepresentations of respondent as hereinabove detailed, a number of the purchasing public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling products prepared, intended, and sold for the same and similar purposes for which respondent prepares and sells its products. As a result thereof substantial injury has been and is now being done by respondent to competition in commerce

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

PAR. 10. The aforesaid acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 November 1938, issued, and subsequently served its complaint in this proceeding upon respondent, Excelsior Laboratory, Inc., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 30th day of November 1938, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, Excelsior Laboratory, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and formerly having had its office and principal place of business at 205 East Forty-second Street, in the city of New York, State of New York, and being now located at 70 Spring Hill Avenue, St. George, Staten Island, N. Y.

PAR. 2. The respondent is now, and has been for some years last past, engaged in the business of preparing, selling, and distributing certain preparations designated as D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets with Vitamin E Added, and D. Gosewisch's Garlic Tablets with Vitamin B-G Added. Respondent sells said preparations to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes the said preparations, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States

Findings

28 F. T. C.

of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparations among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with firms, partnerships, and individuals selling and distributing medicinal and other preparations designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of its said preparations. Among such competitors in said commerce are many who do not, in any manner, misrepresent their respective preparations 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.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has disseminated and caused to be disseminated false advertisements—

1. By the United States mails and in commerce among and between the various States of the United States and in the District of Columbia by other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations; and

2. By other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States and in the District of Columbia of said preparations.

Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Is your blood pressure like a jumping Jack?—thousands report 50 to 75 points drop in blood pressure, nerves steadier, new strength and energy taking D. Gosewisch's Garlic Tablets—the only pleasant, effective way to take garlic for High Blood Pressure, Dizziness, Nerves, Sleeplessness.

D. Gosewisch's Garlic Tablets combat deficiency ailments by supplying vital minerals and ridding system of toxins.

Garlic builds and fortifies the system against the onslaught of old age ailments by supplying the body with rich, vital minerals and purifying the blood stream of toxins.

"When exhaustion of essential minerals * * * gastric disorders * * * intestinal putrefaction * * * and other distressing symptoms bring about premature aging, garlic will have a definite happy effect.

Iodine to normalize glandular action.

First they purify the blood stream by counteracting toxins.

Third they actually supply those minerals necessary for proper bodily function.

One Box Free With Each Dozen at \$8.00.

It is the most powerful of natural antiseptics to neutralize poisons in the system.

Vitality Vitamin. Of all the elements discovered by science none is so vital as Vitamin E now added to D. Gosewisch's Garlic Tablets—helps to maintain and improve muscle function, abdominal strength and vital resistance. Also important where Vitamin E deficiency results in abnormal functional weakness and debility.

Vitamin B-G now contained in D. Gosewisch's Garlic Tablets is another garlic vitamin combination; stimulates appetite and growth, tones up the system, supplies body building elements for expectant mothers, convalescents and growing children.

Tones up the nerve system.

Strengthens the intestines.

Standard plus "nerve Vitamin B".

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 preparations and their effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that vitamin E is the "Vitality Vitamin" and that of all the elements discovered by science, none is so vital as vitamin E; that the use of such preparations can be relied upon to help maintain and improve muscle function, abdominal strength, and vital resistance; that the use of such preparations stimulates the appetite and growth, strengthens the intestines, tones up the nerve system, fortifies the system against the onslaught of old-age ailments, and normalizes glandular action; that the use of such preparations purifies the blood stream, supplies body building elements for expectant mothers and growing children, and supplies minerals needed by the body; that the use of such preparations gives results impossible to obtain from garlic in any other form; that the use of such preparations constitutes effective remedies for insomnia, dizzy spells, rising blood pressure, bad memory, and general debility; and that such preparations are antiseptics and are guaranteed.

PAR. 6. The aforesaid representations by the respondent relative to the therapeutic value of said preparations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and constitute false advertisements. In truth and in fact vitamin E cannot be properly designated as the "Vitality Vitamin" and is not the most vital of all the elements discovered by

science. The use of respondent's said preparations cannot be relied upon to help maintain and improve muscle functions, abdominal strength, and vital resistance. The use of such preparations will not stimulate growth or strengthen the intestines. The use of such preparations is not effective as nerve remedies and cannot be relied upon to tone up the nerve system. The use of such preparations will in no way ward off the onslaught of old age or fortify the system against the loss of vitality. The use of such preparations will not remove impurities from the blood stream, nor will it correct abnormal glandular function. Said preparations are not effective treatments or adequate remedies for insomnia, dizzy spells, rising blood pressure, bad memory, or general debility. Said preparations are not antiseptics. Many other preparations which are sold give beneficial results as great as the results obtained from the use of respondent's said preparations. Respondent does not guarantee its preparations as to their effectiveness in use, but the guarantee is limited to the refund of the purchase price.

The many ailments and symptoms hereinabove set out, for the treatment of which the respondent recommends its said preparations, are caused by various physical disorders unrelated to deficiencies in the various ingredients of which respondent claims its preparations are composed.

PAR. 7. The use of the aforesaid false advertisements, disseminated in the manner above described, induces, or is likely to induce, directly or indirectly, the purchase of drugs, to wit: Respondent's preparations.

PAR. 8. The respondent, for the purpose of inducing the purchase of its said preparations, represents to prospective purchasers of such preparations, situated in various States of the United States and in the District of Columbia, that it will give to such purchasers a specified amount of such preparations free of charge. Such representation is false and misleading, for, in truth and in fact, the respondent does not give any of its preparations to purchasers free of charge, but the price of the purported free goods is included in the price of the goods purchased.

PAR. 9. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparations, 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 preparations possess the properties claimed and represented, and will accom-

plish 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 preparations.

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. In consequence thereof, 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 in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the case might proceed to final hearing upon the record, 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 respondent, Excelsior Laboratory, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation in tablet form designated by the names of D. Gosewisch's garlic tablets, D. Gosewisch's garlic tablets with vitamin E added, and D. Gosewisch's garlic tablets with vitamin B-G added, or any other medicine composed of substantially similar ingredients, whether sold under those names or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, the purchase in commerce, as commerce is defined in the

Order

28 F. T. C.

Federal Trade Commission Act, of said tablets, which advertisements represent, directly or through implication, that such garlic tablets constitute a remedy or cure for high blood pressure, loss of vitality, impurities of the bloodstream, abnormal glandular functions, or will help maintain and improve muscle functions or give abdominal strength or vital resistance, or will stimulate growth or strengthen the intestines, or be an effective nerve remedy or tone up the nerve system or ward off the onslaught of old age, or that it is a remedy for insomnia, dizzy spells, rising blood pressure, bad memory, or general debility, or that such garlic tablets constitute a competent, effective treatment for any such diseases or ailments other than as an aid in soothing the nervous system, or that they are antiseptic, or that they are guaranteed unless such guarantee is limited to the refund of the purchase price; that "Vitamin E is the Vitality Vitamin" or is the most vital of all elements discovered by science.

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.

Complaint

IN THE MATTER OF

MORRIS WHITE MFG. CO., INC., AND STYLECRAFT
LEATHER GOODS 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 3052. Complaint, Feb. 8, 1937—Decision, Feb. 7, 1939*

Where a corporation and its subsidiary engaged in manufacture of leather handbags, and in sale thereof to purchasers in various States, in substantial competition with others engaged in manufacture, and in sale and distribution in interstate commerce of leather goods, including leather handbags—

- (a) Represented certain group of leather handbags or purses manufactured and marketed by them as being made from "imported French glove leather," facts being that, while kind of leather used was occasionally employed in manufacture of such articles, it was not that leather known to trade and accredited by industry as "glove leather," but lacked proper pliability usually credited to such last-named leather; and
- (b) Placed within leather handbags folder bearing words "THE FIFTH AVENUE VANITY, a Ladies' Vanity and Bag. Pat. No. 297634," facts being no patent had been applied for or issued on said product and figure given was that of a registration number owned by them;

With effect of misleading and deceiving portion of purchasing public into the erroneous beliefs that said products, as case might be, were made from same leather as gloves and were "glove leather," and that they were patented, and with result that, acting in such erroneous beliefs, said public was induced to purchase, and purchased, their said products and thereby diverted trade to them from competitors, among whom there are dealers and distributors of similar products used for similar purposes who do not in any way misrepresent the same to purchasers thereof:

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

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

Mr. Alden S. Bradley for the Commission.

Mr. Archibald Palmer, of New York City, 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 Morris White Mfg. Co., Inc., and Stylecraft Leather Goods Co., Inc., have been and are now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Com-