

IN THE MATTER OF
SWAMP AND DIXIE 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 3680. Complaint, Dec. 29, 1938—Decision, Feb. 27, 1939

Where a corporation engaged in sale of "Swamp Chill and Fever Tonic" and "Dixie Fever and Pain Powder" to retail druggists and others in various States and in the District of Columbia; in false advertisements which it disseminated through the mails and through insertion in newspapers and periodicals of general circulation, and through circulars and other printed matter distributed in commerce and in said District—

- (a) Represented, directly and by implication, that said "Swamp Chill and Fever Tonic" medicinal preparation was a doctor's prescription which constituted a safe, certain, and permanent cure for malaria and every kind of fever and ague, and that it would break up malaria in 3 days and was a general tonic, and a remedy or competent and effective treatment for colds, chills, poor appetite, and run-down condition, and that it regulated the bowels and purified the system, facts being said representations were grossly exaggerated, misleading, and untrue, said preparation was not a safe, certain, and permanent cure for malaria, etc., as above set forth, or general tonic, nor remedy for colds, etc., and would not accomplish other results above claimed, and while each of certain ingredients therein contained might be beneficial at some stage in treatment of malaria, it might be unnecessary and perhaps definitely counter-indicated in other stages, and in other cases, and preparation was not a wholly safe drug for use by lay public in self-medication; and
- (b) Represented that its "Dixie Fever and Pain Powder" was a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, grippe, or influenza, cold in the head, catarrh, and all kinds of fever, facts being such representations were grossly exaggerated, misleading, and untrue, said preparation was not such a remedy or treatment for sleeplessness and for other ailments and conditions above set out, and was not a wholly safe drug for use by lay public in self-medication;

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 into purchase of its said medicinal preparations as a result of such statements, representations, and advertisements:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Gerard A. Rault for the Commission.

Warner & Warner, of Fort Smith, Ark., for respondent.

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 Swamp and Dixie Laboratories, Inc., a corporation hereinafter referred to as respondent, has violated the provisions of 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, Swamp and Dixie Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 301-311 Rogers Avenue, Fort Smith, Ark. The respondent is now, and for more than 2 years last past has been engaged in the business of selling and distributing two medicinal preparations known as "Swamp Chill and Fever Tonic" and "Dixie Fever and Pain Powder." Respondent sells these medicinal preparations to retail druggists and others located in various States of the United States and in the District of Columbia and causes said preparations when sold by it to be transported from its aforesaid place of business in the State of Arkansas to the purchasers thereof located in various States of the United States other than the State of Arkansas and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said drugs in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated, and is now disseminating, and has caused and does now cause to be disseminated, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of respondent's said medicinal preparations. Said false advertisements were and are disseminated by use of the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia. Various means have been and are used by respondent to disseminate, or cause the dissemination of, said false advertisements for the purpose of inducing or 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 respondent's said medicinal preparations. Among and typical of the statements and representations contained in said false advertisement so used and disseminated as aforesaid are the following:

Swamp Chill and Fever Tonic.

For malarial fever and ague.

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A safe, certain and permanent cure for every form of fever. The remedy that cures.

A doctor's prescription which will break up malaria in 3 days if taken according to directions.

* * * If you have trouble with malaria chills and fever, poor appetite, lost energy or a run-down condition, then * * * Swamp Chill and Fever Tonic will prove your best friend * * * It is a good general tonic, an ideal treatment for colds * * * Swamp Chill and Fever Tonic regulates the bowels, enriches the blood, improves the appetite, purifies the system, quickly and completely freeing you from the dreaded malaria germs which make you inefficient and life miserable.

Dixie Fever and Pain Powder.

For the relief of simple headache and neuralgia, muscular aches and pains. Indicated also for head colds. Useful in reducing fever.

Dependable for 40 years.

A sovereign remedy for all aches and pains. For the relief of headache, neuralgia, rheumatism, la grippe, cold in the head, sleeplessness and all nervous conditions.

For the relief of fevers, such as intermittent, remittent, hay fever, chill fever, etc.

Through the use of the statements and representations hereinabove set forth and others similar thereto not set forth herein, respondent has represented directly and by implication that the medicinal preparation "Swamp Chill and Fever Tonic" is a doctor's prescription, that it is a safe, certain, and permanent cure for malaria and every kind of fever and ague, that it will "break up" malaria in 3 days, that it is a general tonic, that it is a remedy or competent or effective treatment for colds, chills, poor appetite, and run-down condition, and that it regulates the bowels and purifies the system; that the medicinal preparation "Dixie Fever and Pain Powder" is a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and all other kinds of fever.

PAR. 3. The said representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue. The medicinal preparation "Swamp Chill and Fever Tonic" is not a safe, certain, and permanent cure for malaria and for all kinds of fever and ague, nor will it "break up" malaria in 3 days. It is not a general tonic. It is not a remedy for colds, chill, poor appetite and run-down condition. It neither regulates the bowels nor purifies the system. The preparation "Dixie Fever and Pain Powder" is not a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and for all kinds of fever.

The true facts are the preparation "Swamp Chill and Fever Tonic" contains quinoidine, acetanilid, iron, nux vomica, formaldehyde, and

syrup senna. Each of these ingredients may be beneficial at some stage in the treatment of malaria though unnecessary and perhaps definitely counter-indicated at other stages and in other cases. The preparation "Dixie Fever and Pain Powder" contains acetanilid, sodium bicarb, caffeine concentrated, and Po. charcoal. Neither of these two preparations is a wholly safe drug to be used by the lay public in self-medication.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations and advertisements disseminated as aforesaid 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 into the purchase of respondent's medicinal preparations as a result of such statements, representations, and advertisements.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute 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 December 29, 1938, issued and served its complaint upon respondent, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 3, 1939, respondent filed its answer in which it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings 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, Swamp and Dixie Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 301-311 Rogers Avenue, Fort Smith, Ark. The respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing two medicinal preparations known as

"Swamp Chill and Fever Tonic" and "Dixie Fever and Pain Powder." Respondent sells these medicinal preparations to retail druggists and others located in various States of the United States and in the District of Columbia and it causes said preparations when sold by it to be transported from its aforesaid place of business in the State of Arkansas to the purchasers thereof located in various States of the United States other than the State of Arkansas and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated, and is now disseminating, and has caused and does now cause to be disseminated, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of respondent's said medicinal preparations. Said false advertisements were and are disseminated by use of the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia. Various means have been and are used by respondent to disseminate, or cause the dissemination of, said false advertisements for the purpose of inducing or 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 respondent's said medicinal preparations. Among and typical of the statements and representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Swamp Chill and Fever Tonic.

For malarial fever and ague.

A safe, certain and permanent cure for every form of fever. The remedy that cures.

A doctor's prescription which will break up malaria in 3 days, if taken according to directions.

* * * If you have trouble with malaria chills and fever, poor appetite, lost energy or a run-down condition, then * * * Swamp Chill and Fever Tonic will prove your best friend * * * It is a good general tonic, an ideal treatment for colds. * * * Swamp Chill and Fever Tonic regulates the bowels, enriches the blood, improves the appetite, purifies the system, quickly and completely freeing you from the dreaded malaria germs which make you inefficient and life miserable.

Dixie Fever and Pain Powder.

For the relief of simple headache and neuralgia, muscular aches and pains. Indicated also for head colds. Useful in reducing fever.

Dependable for 40 years.

A sovereign remedy for all aches and pains. For the relief of headache, neuralgia, rheumatism, la grippe, cold in the head, sleeplessness, and all nervous conditions.

For the relief of fevers, such as intermittent, remittent, hay fever, chill fever, etc.

The Commission finds that through the use of the statements and representations hereinabove set forth and others similar thereto not herein set forth, respondent has represented directly and by implication that the medicinal preparation "Swamp Chill and Fever Tonic" is a doctor's prescription, that it is a safe, certain, and permanent cure for malaria and every kind of fever and ague, that it will "break up" malaria in 3 days, that it is a general tonic, that it is a remedy or competent or effective treatment for colds, chills, poor appetite, and run-down condition, and that it regulates the bowels and purifies the system; that the medicinal preparation "Dixie Fever and Pain Powder" is a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and all kinds of fever.

PAR. 3. The Commission finds that the said representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue. The medicinal preparation "Swamp Chill and Fever Tonic" is not a safe, certain, and permanent cure for malaria and for all kinds of fever and ague, nor will it "break up" malaria in 3 days. It is not a general tonic. It is not a remedy for colds, chill, poor appetite, and run-down condition. It neither regulates the bowels nor purifies the system. The preparation "Dixie Fever and Pain Powder" is not a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and for all kinds of fever.

The true facts are that the preparation "Swamp Chill and Fever Tonic" contains quinoidine, acetanilid, iron, nux vomica, formaldehyde, and syrup senna. Each of these ingredients may be beneficial at some stage in the treatment of malaria though unnecessary and perhaps definitely counter-indicated at other stages and in other cases. The preparation "Dixie Fever and Pain Powder" contains acetanilid, sodium bicarb, caffeine concentrated, and Po. charcoal. Neither of these two preparations is a wholly safe drug to be used by the lay public in self-medication.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the

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purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of respondent's medicinal preparations as a result of such statements, representations, and advertisements.

CONCLUSION

The above acts and practices of the respondent as herein found are all to the prejudice of the public and constitute 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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearings as to said facts, 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, Swamp and Dixie Laboratories, Inc., its officers, agents, representatives, 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 medicinal preparations containing drugs now designated by the name of "Swamp Chill and Fever Tonic" and "Dixie Fever and Pain Powder," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names or under any other name or names, or disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparations, which advertisements represent directly or through implication that said medicinal preparation "Swamp Chill and Fever Tonic" is a safe, certain, and permanent cure for malaria or for every kind of fever and ague, that it will break up or cure malaria, that it is a general

tonic, that it is a remedy or competent or effective treatment for colds, chills, poor appetite, and run-down condition, that it regulates the bowels and purifies the system, or that said preparation "Dixie Fever and Pain Powder" is a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and all kinds of fever, and which advertisements fail to reveal that these preparations are not wholly safe drugs to be used by the lay public in self-medication.

It is further ordered, That the respondent shall within 10 days after service upon it of this order, file with the Commission an interim report in writing stating whether it intends to comply with this order, and if so, setting forth in detail the manner and form in which it intends to comply; and that within 60 days after the service upon it of this order, said respondent shall 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
JOHN MILTON BREGSTONE, INDIVIDUALLY, AND TRADING AS J. M. BREGSTONE & COMPANY

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

Docket 3326. Complaint, Feb. 8, 1938—Decision, Feb. 28, 1939

Where an individual engaged in sale and distribution of radios, clocks, cock-tail sets, and other articles of merchandise to dealers and to members of the public; in soliciting sale of his said products—

Distributed to members of the public through the mails advertising literature depicting his said merchandise and push cards and instructions, and sold and distributed to purchasers such merchandise and cards for use in distribution thereof under a plan by which amount paid for chance or receipt of free chance were dependent upon particular number pushed by chance, and purchaser received or failed to receive article of merchandise being thus disposed of, or anything other than push or chance, in accordance with success or failure in selecting from feminine name that corresponding with name concealed under card's master seal; and

Supplied thereby to and placed in the hands of others, means of conducting lotteries in the sale and distribution of his said merchandise in accordance with such plan above described, involving distribution thereof to public wholly by lot or chance and determination wholly by lot or chance of amount paid for chance or securing of such chance without cost, and game of chance or sale of a chance to procure merchandise at prices much less than normal retail prices thereof or without cost, contrary to an established public policy of the United States Government and in competition with those engaged in sale and distribution of like or similar articles who do not sell and distribute their merchandise by use of lotteries or games of chance;

With result that he thereby sold and distributed substantial quantities of his said articles to members of the general public, and many purchasers of his said products were attracted by element of chance involved in his said sales plan or method and thereby induced to purchase his said products in preference to like and similar merchandise of his competitors who do not use same or equivalent methods, and public purchased substantial volume, by reason of such preference, of his said products, and trade was unfairly diverted to him from competitors aforesaid:

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. William C. Reeves*, trial examiner.

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

Nash & Donnelly, of Chicago, Ill., for respondent.