

IN THE MATTER OF
DR. W. B. CALDWELL, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2957. Complaint, May 1, 1937¹—Decision, Mar. 8, 1939

Where a corporation engaged in manufacturing a liquid laxative medicinal preparation which it designated as "Dr. Caldwell's Syrup Pepsin," "Syrup Pepsin," and "Syrup of Pepsin," and which included as ingredients syrup and pepsin as vehicle for senna and cascara sagrada, active ingredients therein and long used singly or in combination as laxatives and long in common use as such, and in selling and distributing its said preparation to wholesale and retail dealers in the various States and in the District of Columbia for resale to purchasing public, and in distributing also to the public in various States and in said District sample bottles in substantial quantity, in response to invitations in its advertising to send for such samples, and, as aforesaid engaged, in substantial competition with others engaged in sale and distribution of medicinal and other preparations designed, intended, and used in treatment of ailments and conditions for which it recommended use of its said product—

- (a) Represented, in advertisements thereof which it caused to be disseminated in commerce through newspapers and other publications circulated throughout the United States, and in continuities broadcast from radio stations of extrastate audience, that its said preparation was a liquid laxative and that physicians and hospitals preferred such laxatives, facts being constipation is not a disease or ailment, but symptom thereof, there are numerous drugs having laxative and cathartic properties prescribed by doctors in treatment of such condition, dependent upon age and condition of patient and reaction thereof to drug or drugs used, and physicians do not prefer such laxatives because of their liquidity, but use or prescribe type of laxative depending solely on diagnosis of patient and do not use a liquid unless thus indicated;
- (b) Represented, as aforesaid, that patients returning from hospitals do so with their systems functioning properly and normally for the reason that liquid laxatives are used in such institutions, facts being patients do not always return from confinement therein with their systems thus functioning and for aforesaid reason, many patients suffering from constipation return from hospital confinement with their systems continuing to function improperly and abnormally, and successful treatment of patients suffering from such condition in hospitals is not dependent upon use of liquid laxative solely because of liquidity thereof;
- (c) Represented that liquid laxative generally used was its said product, and that it was not a habit-forming laxative but, on the contrary, would correct laxative habit caused by use of other such products, facts being its said preparation was not the liquid laxative generally used or prescribed by hospitals and physicians and used by members of the public, it was habit-forming in sense that continued use of any laxative is habit-forming, and use thereof in place of other laxatives did not correct habit of taking such products;

¹ Amended.

- (d) Represented, as aforesaid, that use of said preparation restored and maintained health by regulating the system and causing it to function properly and normally, facts being, while use thereof would produce laxative or cathartic effect, depending on amount of dosage, the system was not, because of such effect, restored to normal working order or to functioning properly, use thereof did not cure cause of constipation, but relieved such condition as symptom of the ailment, and there are many conditions of the body in which constipation, result of many factors including lack of exercise, diet, patients' habits, general condition, and resistance toward disease, and occupation, is not a factor or symptom which disturbs the normal working order of the system and for the treatment of which its said preparation has no therapeutic value;
- (e) Designated and described such preparation in its statements and representations as "Dr. W. B. Caldwell's Syrup of Pepsin" and "Syrup of Pepsin" without qualification, and caused to be placed on containers thereof, sold and distributed by it as above set forth, in large type, words "Syrup Pepsin" and, in smaller type, words "Combined With" and "Laxative Senna Compound," facts being pepsin is without therapeutic value as laxative or relief from constipation, is administered alone in abnormal cases in which there is deficiency thereof in amount of such substance secreted in the stomach, is very rarely prescribed by physicians, as having, according to consensus of medical profession, very little, if any, therapeutic value, and is not ingredient of preparation upon which such value of said preparation depends, which, by reason of the small amount thereof, has very little, if any, value as method of administering such substance to the system;

With capacity and tendency—

(1) To cause members of the purchasing public who are uninformed as to therapeutic value of pepsin to have erroneous and mistaken belief that pepsin contained in said product, which is not a syrup of pepsin, pepsin syrup, essence of pepsin, or any other type of pepsin, due to the fact that physiological effects thereof are due to senna and cascara sagrada ingredients and not other, has therapeutic value in treatment of conditions for which it recommended use of its said preparation or as laxative or cathartic and constipation treatment;

(2) To cause such members as are informed as to value and purpose of pepsin to have erroneous and mistaken belief that said substance is principal active ingredient therein and that it is a pepsin preparation designed, intended, and used for purposes for which product in which it is principal active ingredient would be used, and that use of said preparation is competent and effective method of administering pepsin to the system; and

(3) To mislead and deceive members of purchasing public as to identity of very powerful and active senna and cascara sagrada ingredients in said preparation which, by reason of presence therein, cannot be taken in volume or at frequent intervals, and to conceal presence thereof; and

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said preparation was as represented and possessed properties claimed and represented, and would accomplish results indicated, and of thereby diverting trade unfairly to it

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from its competitors in such commerce who truthfully advertise their respective preparations and their effectiveness; 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 in commerce.

Before *Mr. John L. Hornor* and *Mr. Robert S. Hall*, trial examiners.
Mr. W. L. Taggart for the Commission.

Rogers, Ramsey & Hoge, of New York City, for respondent.

AMENDED 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 Dr. W. B. Caldwell, Inc., a corporation, hereinafter designated as respondent, is now, and has been, 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 thereto would be in the public interest, hereby issues its amended complaint stating the charges in that respect as follows:

PARAGRAPH 1. Respondent is now, and at all material times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at Monticello, in said State. Up to about the year 1933, respondent was named and did business under the name of Pepsin Syrup Co., but on or about the year 1933, respondent's name was changed to Dr. W. B. Caldwell, Inc., and since said time it has done business in that name. It has been and is engaged in the manufacture and sale of a medicinal preparation, a laxative, liquid in form, called "Dr. Caldwell's Syrup Pepsin."

PAR. 2. Respondent's method of distribution of its medicinal preparation has been and is through the sale to wholesalers and retailers, pursuant to which sales, and as a part thereof, shipment has been and is made from respondent's place of business into and through the various States of the United States. From time to time it also sells and ships direct to the consuming public throughout the United States a so-called trial-sized bottle of its said product. Also in its advertising it invites the public to send for samples of its medicinal preparation, and in response to requests, ships a substantial quantity of its preparation from its place of business to such members of the public, resident in States other than the State of the origin of such shipments.

PAR. 3. In the sale and distribution of its product, and to create consumer demand therefor, and to induce wholesalers and retailers to purchase the same for resale to the public, respondent advertises said preparation in newspapers, magazines, periodicals, and other mediums, and by radio broadcast.

PAR. 4. In the course of said advertising respondent has made and makes statements and representations of and concerning its said preparation in substance as follows:

1. That Dr. Caldwell's Syrup Pepsin is a doctor's prescription. This representation is and has been made in the following words:

Syrup pepsin is not just another product on the market, it is the personal prescription of a practicing physician.

It is a doctor's prescription, now so widely known that you can get it all ready for use at any drug store, anywhere.

Be sure you take a doctor's prescription. There is a world-famous one for you at your druggists, Dr. Caldwell's Syrup Pepsin.

Why should you ever allow yourself to fall victim to the habit of taking ordinary machine-made laxatives? No doctor would think of prescribing that kind, and there is no reason why you should have to take anything except a doctor's prescription when one is ready for you always at your drug store. It's Caldwell's Syrup Pepsin.

and other similar statements and representations.

2. That it is a liquid laxative and that physicians and hospitals prefer a liquid laxative. This representation is made in the following words:

Syrup pepsin is the kind (of laxative) your own doctor would approve of—a liquid and that's the kind they use in hospitals.

Doctors use liquid laxatives, hospitals use the liquid form. If it is best for their use, it is best for home use. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

Why do people come home from a hospital with bowels working like a well-regulated watch? The answer is simple, and it's the answer to all your bowel worries if you will only realize it; many doctors and hospitals use liquid laxatives. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

Do what the doctors do to relieve this condition (constipation). Doctors use liquid laxatives, and keep reducing the dose until the bowels need no help at all. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

The reason doctors prescribe liquid laxative is that only a liquid can be measured to suit your own particular need.

It's a *liquid* so that you can take just what you need—not too much and not too little as might happen if you'd take an automatically decided amount of some other laxative.

and other similar statements and representations.

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3. That it is not a habit-forming laxative, but on the contrary will correct the laxative habit caused by taking other laxatives. This representation is made in the following words:

To keep well you've got to have a well-regulated system, one that doesn't depend on medicines constantly to keep in good order. Keep away from these habit laxatives. Take syrup Pepsin instead.

You can reduce the amount as your system gets back to work. Notice that I said "your system gets back to work." That's the best thing about Dr. Caldwell's Syrup Pepsin, it does not get you into the habit of taking medicine regularly, but instead it encourages normal bodily functions.

Of course everyone needs a good laxative occasionally, but you must be very careful to use the kind that won't trick you into becoming a slave of medicine. Take a doctor's advice, take a liquid laxative, take Dr. Caldwell's Syrup Pepsin.

Syrup Pepsin not only does not get you into the medicine taking habit, but often has rescued people from that very dangerous habit.

Don't be discouraged if you have the medicine taking habit, let Syrup Pepsin help you become independent again.

Syrup Pepsin, the mild, natural, liquid laxative has freed many people of the medicine habit.

Syrup Pepsin has helped many and many a person to get over the medicine taking habit.

No matter how much of a habit you have gotten into, Syrup Pepsin will help you to become independent of that medicine taking habit.

Get a bottle at your druggist's and know you are safe from the risk of forming a dangerous habit.

and other similar statements and representations.

4. That it restores and maintains health by regulating and putting and maintaining the system in normal working condition. This representation is made in the following words:

Its chief function is to train your system to get back to work for itself.

One that will get you well, and safely and surely.

You need Syrup Pepsin to keep your system in good normal working order, so that it will be easier for you to conquer a cold.

Any mother knows the reason when her child stops playing, eats little, is hard to manage, *Constipation*. But what a pity so few know the sensible way to set things right. * * * A liquid laxative is the answer, mothers. The answer to all your worries over constipation. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

If he's got a cold, it's mighty important that he get some Syrup Pepsin right away. If all mothers realized that, there'd be fewer cases of bad colds, it's the clean system that's the healthy one.

When you feel dopey and sluggish after too much heavy food, it's well to remember that Dr. Caldwell's Syrup Pepsin will restore normal working order in your system very quickly, easily, gently.

The usually rich food (of the holidays) and the general festivity, is liable to put even the most regular system just a little out of kilter. * * * And all it takes to put you right with the world again is just a spoonful of Syrup Pepsin.

It brings relief so naturally no one should ever need to suffer the handicap of a badly regulated system.

A danger sign you should never neglect is a condition of sluggishness in your system. To protect your good health, keep your system regular. * * * Syrup Pepsin helps you get well, it encourages your system to get back to normal working order.

Syrup Pepsin will clear away that dull, listless feeling. There's no need to go around feeling only half fit when you can so easily regain energy and good spirits.

and other similar statements and representations.

PAR. 5. The representations concerning the said preparation, as set out in preceding paragraph 4 hereof, are false and misleading in the following particulars: As to subparagraph 1, the assertion and representation that respondent's preparation is a doctor's prescription is misleading and deceptive in that, in fact and in general public understanding, a doctor's prescription is his treatment for a diagnosed condition. Constipation is not an ailment in itself but is a symptom of an ailment, and may arise from any one or more of a number of ailments. There are a number of classes of laxatives and purgatives, some of which are suitable in certain cases and would be unsuitable in other cases. In some cases some classes would be positively harmful. A physician doesn't prescribe a laxative without regard to the physical condition of the patient, his age, the ailment which gave rise to the constipation, and other considerations. Dr. W. B. Caldwell did not prescribe or administer Syrup Pepsin in all cases of constipation, under all conditions, or to patients of all ages.

In regard to subparagraph 2, the assertion and representation that doctors and hospitals prefer the liquid laxative, because of its liquidity, is false. A laxative is not chosen by a physician or hospital because it is liquid, or rejected because it is not liquid, but the considerations set out in the preceding subparagraph of this paragraph are the determining factors. The assertion and representation that persons come home from the hospital in normal working order is false in fact, and whether or not such is the case depends upon what condition or ailment gave rise to the constipation, and whether that condition or ailment was successfully treated at the hospital. Syrup Pepsin is not the liquid laxative generally used by physicians, hospitals, or members of the public.

As to subparagraph 3, the assertion and representation that respondent's said preparation will not cause the patient to form the laxative habit but will on the contrary relieve such habit, if already formed from taking other laxatives, is untrue in fact. All laxatives are habit-forming, including the ingredients contained in respondent's

medicine, in that the use of a laxative tends to cause the intestines to depend upon such stimulants and to continue to bring about action of the bowels an increasing dose is required. The change from another laxative to respondent's preparation would not and does not work a change in the dependence of the bowels upon the laxative, but will and can only continue the tendency, the bowels depending on the new laxative instead of the old.

As to subparagraph 4, it is not the function or effect of respondent's product or of any laxative to bring about a return to normal conditions or restore normal working order in the bowels or system, or relieve from the effects of overeating, or in any manner regulate the bowels or system. The function and effect of a laxative is only to give temporary relief while treatment to correct the condition that brought about the constipation is proceeding.

PAR. 6. Said product is referred to in said advertising literature and on the labels of its containers and otherwise as Dr. W. B. Caldwell's Syrup of Pepsin. The respondent directly and through implication represents by the use of the designation and name, Dr. W. B. Caldwell's Syrup of Pepsin, that said product contains pepsin in an active state as an enzyme, and that the product is either a composition of pepsin, of syrup of pepsin, pepsin syrup, or essence of pepsin, and that the product is composed of a major element of pepsin so as to have the effect of a pepsin compound.

In truth and in fact said product is composed of only 4 grains of pepsin which is merely a dusting of pepsin. The product is not and does not act as an enzyme. It is not a syrup of pepsin, pepsin syrup, essence of pepsin, or any other type of pepsin.

The product does not contain a sufficient amount of pepsin to justify the trade name "Syrup of Pepsin," and the reference to the product under this name is misleading as to the composition of the preparation.

PAR. 7. There are in the United States other persons, partnerships, and corporations who manufacture and sell and ship to the wholesale and retail drug trade and to members of the public, in interstate commerce, laxative preparations, who correctly advertise and represent and who have correctly advertised and represented their preparations and their functions and effects. With these other persons, partnerships, and corporations, respondent has been and is in direct and substantial competition. Respondent's misrepresentations of and concerning its product, as hereinabove set forth, has had and has the capacity and tendency to lead the public to erroneously believe that respondent's preparation is more than a mere laxative, that it is a regulator of the bowels and system, that it is a doctor's

prescription for the cure of constipation from whatever cause it may arise, and that it has not the effect of forming the so-called laxative habit as have other competing preparations; that it contains pepsin as an enzyme and that the product is either a composition of pepsin, syrup of pepsin, pepsin syrup, or essence of pepsin, and further, that the product is composed of a major element of pepsin so as to have the effect of a pepsin compound. Such misrepresentations and such erroneous belief has the capacity and tendency to cause the public to prefer respondent's product, and thus to divert business from respondent's said competitors to respondent, to the substantial injury of said competitors.

PAR. 8. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors, as hereinabove alleged, and 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 the 1st day of May 1937, issued and thereafter served its amended complaint in this proceeding upon respondent, Dr. W. B. Caldwell, Inc., a corporation, 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 amended complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said amended complaint were introduced by W. L. Taggart, attorney for the Commission, and in opposition to the allegations of the complaint by Rogers, Ramsey and Hoge, attorneys for respondent, before John L. Hornor and Robert S. Hall, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended complaint, the answer thereto, testimony, and other evidence, briefs in support of the amended complaint and in opposition thereto, and the oral arguments of counsel aforesaid; 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, Dr. W. B. Caldwell, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, and having its office and principal place of business at Monticello, in the State of Illinois. Respondent, prior to the year 1933, conducted its business under the name of Pepsin Syrup Co. On or about the year 1933 respondent's name was changed to Dr. W. B. Caldwell, Inc.

PAR. 2. Respondent is now and has been during all the times mentioned herein engaged in the business of manufacturing, selling, and distributing a laxative medicinal preparation, liquid in form, designated as "Dr. Caldwell's Syrup Pepsin," "Syrup Pepsin," and "Syrup of Pepsin." Respondent sells said preparation to wholesale and retail dealers situated in the various States of the United States and in the District of Columbia for resale to the purchasing public, and causes the said preparation when sold by it to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. Respondent also distributes to members of the public situated in various States of the United States and in the District of Columbia a sample bottle of its said preparation. Respondent in its advertising, disseminated as hereinafter described, invites members of the public to send for samples of its preparation and in response to such requests distributes a substantial quantity of its preparation from its aforesaid place of business in the State of Illinois to said members of the public situated in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States 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 partnerships, firms, 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 preparation.

PAR. 4. The ingredients contained in respondent's said preparation are pepsin, syrup, senna, cascara sagrada, and peppermint oil aromatics. The respondent uses the syrup and pepsin in the preparation as a vehicle for the senna and cascara sagrada, which are the active

ingredients contained in the preparation. Pepsin has no therapeutic value as a laxative. Senna and cascara sagrada, when used singly or in combination in formulas such as respondent's preparation, are laxatives and such drugs have been in common use as laxatives for many years.

Respondent's preparation is sold and distributed by the respondent in bottles of different sizes. Each bottle of such preparation is placed in a carton wrapper and pamphlets containing statements and representations relative to the preparation are wrapped around the bottle and also placed in the carton. On the front of each carton is printed and on one side of each bottle there is also pasted a label with a picture depicting a bearded man. Above such picture in large letters are printed the words, "Dr. W. B. Caldwell's" and underneath such words, also in large letters, there are the words "Syrup Pepsin," and in smaller letters the words "Combined With," and then in larger letters the words "Laxative Senna Compound." In smaller letters on such label are also the words "Alcohol 4½ Percent," and in smaller letters the words "Syrup Pepsin, Composed of Pepsin: 4 gr. Syrup: 1 oz. Senna Compound Composed of Senna, Cascara Sagrada, Peppermint Oil Aromatics, No Mercurials or Narcotics." There are also printed on such labels the words "A Laxative For Constipation." There are also printed on the side of such packages the words "*Dr. Caldwell's Syrup Pepsin Combined With Laxative Senna Compound.*"

PAR. 5. In the course and conduct of its said business and for the purpose of inducing the purchase of its said preparation, respondent has caused advertisements containing representations and claims with respect to said preparation, the therapeutic properties thereof, and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce among and between the various States of the United States and in the District of Columbia. The respondent has caused such advertisements to be inserted in newspapers and other publications having a circulation throughout the various States of the United States and in the District of Columbia and in continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto situated in various States of the United States and in the District of Colombia, and has caused such advertisements to be published and circulated by other means among and between the various States of the United States and in the District of Columbia. Among and typical of the representations contained in said advertisements, so used and disseminated, are the following:

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Syrup Pepsin is the kind (of laxative) your own doctor would approve of—a liquid and that's the kind they use in hospitals.

Doctors use liquid laxatives, hospitals use the liquid form. If it is best for their use, it is best for home use. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

Why do people come home from a hospital with bowels working like a well-regulated watch? The answer is simple, and it's the answer to all your bowel worries if you will only realize it; many doctors and hospitals use liquid laxatives. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

Do what the doctors do to relieve this condition (constipation). Doctors use liquid laxatives, and keep reducing the dose until the bowels need no help at all. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

The reason doctors prescribe liquid laxative is that only a liquid can be measured to suit your own particular need.

It's a *liquid* so that you can take just what you need—not too much and not too little as might happen if you'd take an automatically decided amount of some other laxative.

To keep well you've got to have a well-regulated system, one that doesn't depend on medicines constantly to keep in good order. Keep away from these habit laxatives. Take Syrup Pepsin instead.

You can reduce the amount as your system gets back to work. Notice that I said "your system gets back to work." That's the best thing about Dr. Caldwell's Syrup Pepsin, it does not get you into the habit of taking medicine regularly but instead it encourages normal bodily functions.

Of course everyone needs a good laxative occasionally but you must be very careful to use the kind that won't trick you into becoming a slave of medicine. Take a doctor's advice, take a liquid laxative, take Dr. Caldwell's Syrup Pepsin.

Syrup Pepsin not only does not get you into the medicine taking habit, but often has rescued people from that very dangerous habit.

Don't be discouraged if you have the medicine taking habit, let Syrup Pepsin help you become independent again.

Syrup Pepsin, the mild, natural, liquid laxative has freed many people of the medicine habit.

Syrup Pepsin has helped many and many a person to get over the medicine taking habit.

No matter how much of a habit you have gotten into, Syrup Pepsin will help you to become independent of that medicine taking habit.

Get a bottle at your druggist's and know you are safe from the risk of forming a dangerous habit.

Its chief function is to train your system to get back to work for itself.

One that will get you well, and safely and surely.

You need Syrup Pepsin to keep your system in good normal working order, so that it will be easier for you to conquer a cold.

Any mother knows the reason when her child stops playing, eats little, is hard to manage, *Constipation*. But what a pity so few know the sensible way to set things right. * * * a liquid laxative is the answer, mothers. The answer to all your worries over constipation. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

If he's got a cold, it's mighty important that he get some Syrup Pepsin right away. If all mothers realized that, there'd be fewer cases of bad colds, it's the clean system that's the healthy one.

When you feel dopey and sluggish after too much heavy food, it's well to remember that Dr. Caldwell's Syrup Pepsin will restore normal working order in your system very quickly, easily, gently.

The usually rich food (of the holidays) and the general festivity, is liable to put even the most regular system just a little out of kilter. * * * And all it takes to put you right with the world again is just a spoonful of Syrup Pepsin.

It brings relief so naturally no one should ever need to suffer the handicap of a badly regulated system.

A danger sign you should never neglect is a condition of sluggishness in your system. To protect your good health, keep your system regular * * * Syrup Pepsin helps you get well, it encourages your system to get back to normal working order.

Syrup Pepsin will clear away that dull, listless feeling. There's no need to go around feeling only half fit when you can so easily regain energy and good spirits.

PAR. 6. Through the use of the statements and representations hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of the 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 such preparation is a liquid laxative and that physicians and hospitals prefer a liquid laxative; that patients returning from hospitals do so with their systems functioning properly and normally for the reason that liquid laxatives are used in hospitals; that the liquid laxative generally used is Dr. Caldwell's Syrup Pepsin; that such preparation is not a habit-forming laxative but on the contrary will correct the laxative habit caused by the use of other laxatives; and that the use of such preparation restores and maintains health by regulating the system and causing the system to function properly and normally.

PAR. 7. The aforesaid representations by the respondent, used and disseminated in the manner above described, are grossly exaggerated, misleading, deceptive, and untrue, and constitute false advertisements.

The respondent represents to the purchasing public situated in various States of the United States and in the District of Columbia by means of the advertisements disseminated as aforesaid, that such preparation is a competent and effective laxative and cathartic and is a competent and effective treatment for constipation. Constipation is not a disease or an ailment in itself but is the symptom of a disease or ailment. There are numerous drugs having laxative and

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cathartic properties which are prescribed by medical doctors in the treatment of constipation. The particular drug or drugs which are prescribed by medical doctors in the course of such treatment depend upon the age and condition of the patient and the reaction of the patient to the drug or drugs used. The respondent's preparation is merely a formula containing the ingredients, senna and cascara sagrada, which have laxative properties.

PAR. 8. In truth and in fact physicians and hospitals do not prefer liquid laxatives because of their liquidity. The type of laxative used or prescribed by hospitals and physicians depends solely on their diagnosis of the patient. A liquid laxative is not used or prescribed by hospitals and physicians unless a diagnosis of the patient indicates a liquid laxative should be used.

PAR. 9. In truth and in fact patients do not always return from confinement in hospitals with their systems functioning properly and normally for the reason that a liquid laxative was used by the patient in the hospital. Many patients suffering from constipation return from confinement in hospitals with their systems continuing to function improperly and abnormally. The successful treatment of patients suffering from constipation in hospitals is not dependent upon the use of a liquid laxative solely because of its liquidity.

In truth and in fact respondent's said preparation is not the liquid laxative generally used or prescribed by hospitals and physicians and used by members of the public.

PAR. 10. The aforesaid statement and representation by the respondent that the use of such preparation is not habit-forming but on the contrary will correct the laxative habit caused by the use of other laxatives, is false and misleading. In truth and in fact the use of such preparation is habit-forming in the sense that the continued use of any laxative is habit-forming. The use of respondent's preparation in place of the use of other laxatives does not correct the habit of taking laxatives.

PAR. 11. The aforesaid statement and representation by the respondent that the use of such preparation will restore and maintain health by regulating and maintaining the human system and causing the system to function properly and normally is false and misleading. The use of such preparation will produce a laxative or cathartic effect depending on the amount of the dosage, but the human system is not, because of such laxative or cathartic effect, restored to normal working order or to functioning properly. The use of such preparation does not cure the cause of the constipation but it relieves the symptom of the ailment which is the constipation. Constipation is the result of many factors, including lack of exercise, diet, the habits

of the patient, his general condition, and resistance toward disease, and his occupation. There are many conditions of the human body, in which constipation is not a factor or a symptom, which disturb the normal working order of the system, and for the treatment of which respondent's preparation has no therapeutic value.

PAR. 12. Respondent in the aforesaid statements and representations, disseminated as aforesaid, designates and describes such preparation as "Dr. W. B. Caldwell's Syrup of Pepsin" and "Syrup Pepsin," without qualification. Respondent also causes to be placed on the containers of such preparation, sold and distributed as aforesaid, labels bearing the legend "Syrup Pepsin," in large type, and in smaller type the words "Combined with Laxative Senna Compound."

The designation by the respondent of such preparation as "Syrup of Pepsin" and "Syrup Pepsin" is deceptive and misleading. Pepsin has no therapeutic value as a laxative or as a relief from constipation. Pepsin is secreted normally in the stomach for the digestion of proteins and is commonly used as a vehicle in medicinal preparations for other drugs. The use by the respondent of the pepsin and syrup in said preparation is as a purported vehicle for the senna and cascara sagrada contained in said preparation. In abnormal cases in which there is a deficiency in the amount of pepsin secreted in the stomach, a treatment for such condition is to administer pepsin alone and not in a preparation with other drugs, especially with laxatives, as in respondent's preparation. Physicians very rarely prescribe pepsin, however, for it is the consensus of the medical profession that pepsin has very little, if any, therapeutic value.

Respondent sells and distributes its preparation as a laxative and a cathartic and for the treatment of constipation. Pepsin is not one of the ingredients of the preparation upon which the therapeutic value of the preparation depends. Neither the Pharmacopoeia nor the National Formulary recognizes the title "Syrup of Pepsin" or the title "Syrup Pepsin" or the title "Syrup of Pepsin Combined with Laxative Senna Compound" as descriptive of any preparation. Such preparation is not a syrup of pepsin, pepsin syrup, essence of pepsin, or any other type of pepsin for the reason that the physiological effects of the preparation are not due to its content of pepsin but to the ingredients senna and cascara sagrada.

The use by the respondent of the words "Syrup Pepsin" and "Syrup of Pepsin" to describe and designate such preparation in which the active ingredients are senna and cascara sagrada is a misleading and deceptive designation and description of such preparation and has the capacity and tendency to cause members of the

purchasing public who are uninformed as to the therapeutic value of pepsin to have the erroneous and mistaken belief that the pepsin contained in such preparation has therapeutic value in the treatment of the conditions for which respondent recommends the use of such preparation, to wit: as a laxative or cathartic and for the treatment of constipation.

The use by the respondent of the aforesaid terms to describe and designate such preparation has the capacity and tendency to cause members of the purchasing public who are informed as to the value and purpose of the use of pepsin to have the erroneous and mistaken belief that pepsin is the principal active ingredient in such preparation—that such preparation is a pepsin preparation—that such preparation is designed, intended, and used for the purposes for which a preparation in which pepsin is the principal active ingredient would be used, and that the use of such preparation is a competent and effective method of administering pepsin to the human system. In truth and in fact the use of such preparation has very little, if any, value as a method of administering pepsin to the human system. The maximum dosage of such preparation recommended by the respondent is two tablespoonfuls. The average dose of pepsin recommended by the Pharmacopoeia of the United States is 8 grains. Respondent's preparation contains from $2\frac{1}{4}$ to 4 grains of pepsin per ounce of fluid. The maximum amount of pepsin contained in the maximum dosage of such preparation is 4 grains of pepsin, which is one-half of the pepsin contained in the average dosage of pepsin recommended by the United States Pharmacopoeia. Such preparation cannot be taken in volume or at frequent intervals because of the cathartic properties, senna and cascara sagrada, contained in such preparation.

Senna and cascara sagrada are very powerful drugs and the use of respondent's said preparation in a sufficient dosage will produce a cathartic effect. The use of the aforesaid terms to describe a preparation in which the pepsin serves as a purported vehicle for the senna and cascara sagrada is misleading and deceptive as to the composition of such preparation and the use of such term or terms, in the manner aforesaid, has the capacity and tendency to mislead and deceive members of the purchasing public as to the identity of the active ingredients contained in such preparation and to conceal the presence of the powerful drugs contained in such preparation, to wit: senna and cascara sagrada.

PAR. 13. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation has had,

and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's said preparation is as represented and possesses the properties claimed and represented and will accomplish the results indicated. As a result trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully advertise their respective preparations and 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 the 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 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 answer of respondent, testimony, and other evidence taken before John L. Hornor and Robert S. Hall, examiners of the Commission theretofore duly designated by it, in support of the allegations of said amended complaint and in opposition thereto, briefs filed herein, and oral arguments by W. L. Taggart, counsel for the Commission, and by Edward S. Rogers of Rogers, Ramsey & Hoge, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Dr. W. B. Caldwell, Inc., its officers, representatives, agents, and employees, directly or through any other corporate device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of a liquid laxative medicinal preparation now designated as "Syrup Pepsin," "Dr. Caldwell's Syrup Pepsin," and "Syrup of Pepsin," or any other preparation containing substantially similar ingredients or possessing similar therapeutic properties, whether sold under those names or any other names, do forthwith cease and desist from:

Order

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1. Representing that doctors and hospitals prefer liquid laxatives unless such representation is qualified by an equally conspicuous statement that any such preference is limited to those cases where diagnosis of the disorder and the patient's reaction to various types of laxatives indicate that the use of a liquid laxative is preferable.

2. Representing that the use of liquid laxative causes systems to function properly and normally unless such representation is qualified by an equally conspicuous statement that any such result obtained will be limited to those cases where the individual user's reaction to laxatives indicates that the use of a liquid laxative is preferable.

3. Representing that the use of said preparation restores or maintains health or regulates the system or causes the system to function properly and normally other than to the extent which such results may be accomplished by a laxative or cathartic temporarily relieving constipation.

4. Representing through the use of the word "pepsin" alone or in association with any other word or words in the designation or description of such preparation or in any other manner or through any other means or device, that said preparation owes its laxative and cathartic properties to its pepsin content.

5. Using the word "pepsin" alone or in association with any other word or words to designate, describe, or refer to any preparation which does not contain a sufficient quantity of pepsin, as an active ingredient, to possess substantial therapeutic value by reason of such pepsin content.

6. Using any term or name to describe, designate, or refer to such preparation containing senna and cascara sagrada as its active ingredients, which name or term conceals or deceptively minimizes the presence of such ingredients.

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

W. J. BUSH & 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 3339. Complaint, Feb. 18, 1938—Decision, Mar. 8, 1939*

Where a corporation engaged in manufacture and sale of two lines of perfumes, colognes, and other toilet preparations—

- (a) Affixed tags on the straw-covered bottles containing its "Mitcham Lavender," on which was printed trade name "Potter & Moore's Mitcham Lavender, London," and, in less conspicuous type, words "Printed in England," and attached to straw at bottom of bottle container thereof metal tag bearing label "Made in England," and set forth words, on stopper of bottle, "Potter & Moore, England," and made similar representations with reference to place of manufacture in connection with sale of its "Potter & Moore's Lavender Smelling Salts"; and
- (b) Set forth words, on paper labels on outside cardboard containers of its "Grenoville" perfume, "Extrait Oelliet Fane, Petit Model," followed by words "Grenoville, Paris, Made in France," and caused words "Oelliet Fane, Grenoville, Paris" to appear on side of smaller carton enclosed within large cardboard container, on which said matter first above referred to was set forth, and displayed same words on label affixed to glass container within said last-mentioned carton, and impressed on the glass at the bottom of the bottle the words "Grenoville, Made in France";

Notwithstanding fact said domestic preparations or products were respectively neither made by London firm of Potter & Moore, or Paris firm of Grenoville, long possessed of enviable reputations for excellence of their respective products, and were not made in England or France and imported into the United States, for which more costly products particularly, as for imported goods, wares, and merchandise, there is preference on part of substantial portion of members of buying public;

With effect of misleading customers and prospective customers into erroneous belief that its said perfumes and products, as aforesaid, were made by Potter & Moore of London and Grenoville of Paris, and with result that trade was unfairly diverted to it from its competitors who actually import into the United States from foreign countries perfumes and similar compounds there made, or who make, in this country, perfumes and similar products for sale to buying public and truthfully represent and advertise place of manufacture and quality thereof:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade