

Syllabus

IN THE MATTER OF

VOSS CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3490. Complaint, July 13, 1938—Decision, Mar. 16, 1939*

Where a corporation engaged in sale and distribution of pharmaceutical tablets, composed of acetyl salicylic acid or aspirin, and magnesium oxide, to purchasers including, principally, wholesale druggists, in the various States and in District of Columbia, in substantial competition with others engaged in sale and distribution of similar pharmaceutical products or other products designed and intended for similar usage, and including those who do not misrepresent the therapeutic qualities of their products or otherwise misrepresent the same; in advertising its said product in various newspapers and magazines of interstate circulation, and in various other ways—

(a) Represented that said preparation was a new product or new discovery, which was superior to and would give more effective and quicker relief than ordinary aspirin, and counteracted toxic effects and would stop all pain, and that it was unqualifiedly safe for use;

Facts being it had been on the market since 1929, was not superior to and more effective than ordinary aspirin and would not give quicker relief, though it would perform substantially the same analgesic functions as said substance, would not counteract toxic effects or stop all pain, and was not one which could be indiscriminately used with safety by reason of aspirin ingredient of product, and fact that there are many people who are allergic to such substance and for whom said preparation would not be safe, and others cannot safely take such product into their systems beyond prescribed or usual dosage; and

(b) Represented, as aforesaid, that said product was a remedy, cure, or effective treatment for acid condition of the stomach, which would have beneficial alkalizing effect, and that it was also such a cure or remedy for headaches, neuralgia, neuritis, muscular and rheumatic pains, sleeplessness, period pains, nervousness and colds, and possessed therapeutic properties in excess of or different from ordinary aspirin;

Facts being it was not an effective cure or remedy for headaches and various other ailments and conditions above set forth, many of which are caused by systemic or organic disturbances in which its said product would not be a proper or effective treatment, and some of which are, in many cases, symptoms of organic disturbance, in treatment of which its said product would not be indicated or effective, and it would not be a cure or remedy for colds;

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 said preparation possessed the properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase substantial quantities

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of said product, and of thereby diverting unfairly trade to it from competitors who truthfully advertise the effectiveness of their respective preparations:

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

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

Mr. DeWitt T. Puckett for the Commission.

Jonas & Neuberger, of New York City, 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 Voss Co., 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. Respondent, Voss Co., Inc., is a corporation doing business under the laws of the State of New Jersey. Its principal office and place of business are at 505 Court Street, Brooklyn, N. Y. It is engaged in the sale and distribution of a pharmaceutical product, in tablet form, marketed under the name "Magnespirin." Each $6\frac{2}{3}$ -grain tablet consists of $3\frac{1}{3}$ grains of aspirin and $3\frac{1}{3}$ grains of magnesium oxide.

Respondent now causes, and for approximately 1 year last past has caused, its said product, when sold by it, to be shipped from its said place of business in Brooklyn, N. Y., to the purchasers thereof, principally wholesale druggists, located in the various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said pharmaceutical product so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, and for approximately 1 year last past has been, in substantial competition with other corporations, and with individuals and partnerships, engaged in the sale and distribution of similar pharmaceutical products, or other products designed and intended for similar usage, 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 business as aforesaid, respondent has advertised and now advertises its said product in various newspapers and magazines having an interstate circulation, and in

various other ways. Representative of the respondent's advertising claims with respect to its said product are the following:

Magnespirin is a new, different kind of aspirin.

Aspirin improved 100%.

Acts twice as fast as ordinary aspirin.

It is more effective than ordinary aspirin.

It is safe.

In fact it actually tones * * * the stomach.

Sweetens the breath.

Stops all pains.

Doctors advise it.

Millions praise it.

Counteracts toxic effects.

Magnespirin is aspirin plus magnesium which alkalizes like milk of magnesia—neutralizes the acid.

Fastest relief ever known for headaches, neuralgia, neuritis, muscular and rheumatic pains, colds, sleeplessness, period pains, nervousness.

The aforesaid advertising claims for magnespirin serve as representations on the part of respondent that said product is a new discovery and is an adequate remedy or cure for the various ailments, disorders, and diseases mentioned in said advertising matter; that said product is superior to ordinary aspirin in that it is safer, more effective, gives quicker relief, and that it will stop all pains; that its use is advised by doctors, and that millions use it; that it counteracts toxic effects, and that its alkalizing qualities neutralize acidic conditions of the stomach.

PAR. 3. In truth and in fact, magnespirin is not a new discovery, but has been on the market for several years. It is not superior to ordinary aspirin. It is no more effective and does not relieve pain any quicker than ordinary aspirin. It will not stop all pains. Its use is not advised by doctors, nor is it praised by millions of users. It will not counteract toxic effects and has no appreciable systemic alkalizing effect. Its unsupervised use by persons generally is not safe. There are persons who are allergic to aspirin, consequently, it is not safe for such persons to take said tablets at all. There is also another class of persons who may not safely take into the system amounts of aspirin in excess of the prescribed or usual dose. There are many persons to whom the use of such tablets in excessive amounts is highly dangerous and may prove fatal.

Respondent's said product is not an adequate remedy or cure for the various ailments and disorders mentioned in respondent's said advertising matter. Some of the disorders and ailments listed in said advertising matter arise from many causes, and there is no specific remedy or treatment that is effective in all cases and under all conditions. Such ailments and disorders are, in many instances, caused

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by or associated with a systemic or organic derangement and, in order to treat such cases effectively, it is necessary to ascertain the cause or causes thereof. Nervousness and sleeplessness are, in many instances, merely symptoms or an organic disturbance which may necessitate expert medical treatment. Likewise, there is a wide variety of causes of menstrual pains, some of which may be serious and may require a surgical operation. The common cold and so-called rheumatic aches and pains are conditions for which respondent's product is in no sense adequate. In all disorders and ailments of the human body arising from or associated with systemic or organic disturbance or derangement a thorough diagnosis by an expert is necessary in order to ascertain the cause or causes of the disorder and the proper treatment therefor.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and corporations, engaged in the sale and distribution of pharmaceutical products advertised and sold as remedies for various ailments and disorders of the human body, that do not misrepresent the therapeutic qualities or otherwise misrepresent their products which they offer for sale and sell.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's Magnespirin tablets as a result of such erroneous belief. By the representations aforesaid trade is diverted unfairly to respondent from its aforesaid competitors and as a result thereof injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 13, 1938, issued and served its complaint in this proceeding upon the respondent, Voss Co., Inc., a corporation, charging it with the use of unfair methods of com-

petition in commerce in violation of the provisions of said act. On August 23, 1938, the respondent filed its answer in this proceeding. Thereafter, at a regularly scheduled hearing the facts were stipulated on the record and it was agreed that said stipulation of facts may be taken as the facts in this proceeding. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, stipulation as to the facts, and brief in support of the allegations of the complaint (respondent not having filed brief and oral argument not having been requested); 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, Voss Co., Inc., is a corporation doing business under the laws of the State of Delaware. Its principal office and place of business are at 505 Court Street, Brooklyn, N. Y. It is engaged in the sale and distribution of a pharmaceutical product, in tablet form, marketed under the name "Magnespirin." Each 6 $\frac{2}{3}$ -grain tablet consists of 3 $\frac{1}{3}$ grains of aspirin and 3 $\frac{1}{3}$ grains of magnesium oxide.

Respondent now causes, and for approximately 1 year last past has caused, its said product, when sold by it, to be shipped from its said place of business in Brooklyn, N. Y., to the purchasers thereof, principally wholesale druggists, located in the various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said pharmaceutical product so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, and for approximately 1 year last past has been, in substantial competition with other corporations, and with individuals and partnerships, engaged in the sale and distribution of similar pharmaceutical products, or other products designed and intended for similar usage, 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 business as aforesaid, respondent has advertised and now advertises its said product in various newspapers and magazines having an interstate circulation, and in various other ways. Representative of the respondent's advertising claims with respect to its said product are the following:

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Magnespirin is a new, different kind of aspirin.

Aspirin improved 100%.

Acts twice as fast as ordinary aspirin.

It is more effective than ordinary aspirin.

It is safe.

In fact it actually tones * * * the stomach.

Sweetens the breath.

Stops all pains.

Doctors advise it.

Millions praise it.

Counteracts Toxic effects.

Magnespirin is aspirin plus magnesium which alkalizes like milk of magnesia—neutralizes the acid.

Fastest relief ever known for headaches, neuralgia, neuritis, muscular and rheumatic pains, colds, sleeplessness, period pains, nervousness.

Through the use of the statements hereinabove set forth, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's product, respondent has represented, and does now represent, that its preparation "Magnespirin" is a new discovery, the use of which is advised and prescribed by doctors, and which is superior to, and will give more effective and quicker relief than, ordinary aspirin; that it is a safe remedy which will stop all pain and counteract toxic effects. Respondent by this means further represents that said preparation is an adequate or effective cure or remedy for headaches, neuralgia, neuritis, muscular and rheumatic pains, colds, sleeplessness, period pains, and nervousness; that it neutralizes acidic conditions of the stomach by reason of its alkalizing qualities.

PAR. 3. In fact magnespirin is a product which consists of the combination of acetyl salicylic acid or aspirin and magnesium oxide. It is not a new discovery as it has been on the market since 1929. This preparation is not superior to ordinary aspirin and is not more effective, and will not give quicker relief than aspirin, though it will perform substantially the same analgesic functions as aspirin. It will not stop all pain, and its use is not generally advised or prescribed by doctors. This preparation will not counteract toxic effects and has no appreciable effect in neutralizing acid conditions of the stomach. This preparation is not one which can be indiscriminately used with safety by reason of the existence of aspirin as an ingredient of this product. There are many persons who are allergic to aspirin and it would not be safe for such persons to take respondent's preparation. There are other persons who cannot safely take aspirin into their systems beyond the prescribed or usual dosage with safety.

Respondent's preparation, magnespirin, is not an adequate or effective cure or remedy for headaches, sleeplessness, period pains, and nervousness. Many of these disorders or ailments are caused by systemic or organic disturbances in which respondent's preparation would not be a proper or effective treatment. Furthermore, nervousness and sleeplessness are in many cases symptoms of an organic disturbance, in the treatment of which respondent's product would not be indicated or effective. Menstrual pains, likewise, have a variety of causes, some of which might be serious and require surgical operation. Respondent's preparation would not be a cure or remedy for any diseases of which the above-mentioned conditions or ailments might be symptomatic. This preparation would not be a cure or remedy for colds.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and corporations, engaged in the sale and distribution in commerce among and between the various States of the United States of pharmaceutical products advertised and sold as remedies for various ailments and disorders of the human body, who do not misrepresent the therapeutic qualities or otherwise misrepresent their products which they offer for sale and sell.

PAR. 5. The use by the respondent of the foregoing false 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 possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation. 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.

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 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, the answer of respondent, a stipulation as to the facts entered upon the record, and a brief in support of the allegations of the complaint (no brief having been filed by respondent and oral argument not having been requested); 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, Voss Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a medicinal preparation now designated "Magnespirin," or of any other medicinal preparation containing substantially the same ingredients or possessing the same properties whether sold under that name or any other name, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That said preparation is a new product or a new discovery.
2. That said preparation is superior to or will give more effective or quicker relief than ordinary aspirin.
3. That said preparation is unqualifiedly safe for use.
4. That said preparation counteracts toxic effects or that it will stop all pain.
5. That said preparation is a remedy, cure, or effective treatment for acid conditions of the stomach, or that it will have any beneficial alkalizing effect.
6. That said preparation is a cure or remedy for headaches, neuralgia, neuritis, muscular and rheumatic pains, sleeplessness, period pains, nervousness, or colds, or that it possess therapeutic properties in excess of, or different from, ordinary aspirin.

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.

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IN THE MATTER OF

SEYMOUR BURN, ARTHUR POLLAK AND FRANZ BEER,
TRADING AS BURN, POLLAK & BEER

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

Docket 3696. Complaint, Jan. 26, 1939—Decision, Mar. 18, 1939

Where partners engaged in soliciting orders for line of fabrics known as "Loden Cloth," for principals without United States, and in importing said cloth into United States and transporting same from warehouses to purchasers in various States and in the District of Columbia, in active and substantial competition with others engaged in sale and distribution of such cloth in commerce and in said District, and including some who sell and distribute such cloth loomed in the Tyrol in that territory formerly part of Austria, and others who sell and distribute such cloth loomed in other Central European localities and countries; with intent that tailoring concerns would use and disseminate such statements and representations in connection with sale and distribution of commodities made by said concerns from such loden cloth—

- (a) Represented, through statements which they disseminated or caused to be disseminated throughout the United States to such concerns purchasing such cloth, that term Tyrolean woven loden cloth can be truthfully applied only to product of one famous Austrian mill, and that genuine Tyrolean loden cloth can be procured in United States only through themselves; and
- (b) Represented, as aforesaid, that the water of the mountain streams of the Tyrol, with its peculiar chemical content, used in finishing Tyrolean loden cloth, gives it magnificent finish and stamp of authenticity which defies imitation elsewhere, and that such cloth is loomed only from the wool of sheep grown in the Tyrol;

Facts being such cloth is made in many countries other than in the Alps in Tyrol in that territory formerly part of Austria, genuine Tyrolean loden cloth is produced by many mills in the Tyrol, and, during times involved, was not offered in the United States exclusively by or through them, waters in Tyrol do not give to such cloth any peculiar or distinctive qualities which cannot be obtained in such cloth produced elsewhere, and loden cloth fabric sold and distributed by them in the United States contained some wool from sheep grown in localities other than in Tyrol;

With effect of causing members of purchasing public situated in the various States and in said District to have an erroneous and mistaken belief that such false and misleading statements and representations were true, and to purchase substantial quantities of such cloth because of such erroneous and mistaken belief, and of thereby unfairly diverting trade to themselves from their said competitors:

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

Mr. Charles S. Cox for the Commission.