

IN THE MATTER OF
WACO DRUG COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3468. Complaint, June 28, 1938.—Decision, Aug. 1, 1939

Where a corporation engaged in sale and distribution of "Omodyne" medicinal preparation; in advertising the same in newspapers, circulars and other periodicals distributed among the various States and through radio continuity broadcast from stations of extrastate audience—

- (a) Represented that said preparation was a competent and effective cure or remedy for, and had substantial therapeutic value in treatment of, arthritis, neuritis, lumbago, sciatica, gout, neuralgia, and rheumatism, and that use thereof quickly relieved aches and pains caused by or associated with such ailments and conditions; and
- (b) Represented that use thereof eliminated poisons from the system, and that such preparation was prepared and compounded according to a scientific method and formula;

Facts being it was not a remedy or cure for said various ailments, would not relieve poisons as above set forth, nor aches and pains caused by or associated with rheumatic conditions, it was not compounded or prepared in accordance with any scientific method or formula. but contained various drugs which were incompatible with others included therein, and such incompatible drugs thus included dissipated any therapeutic value which might otherwise be possessed by said drugs when used separately, each of which might cause toxic symptoms in users thereof, and it was not a competent or effective treatment for aforesaid ailments, and would not relieve user thereof of pains or aches caused by or associated with any of such conditions;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of its said product, and with result that trade in commerce was diverted unfairly to it from its competitors who truthfully represent the therapeutic value and effectiveness of their respective preparations:

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

Before *Mr. Henry M. White*, trial examiner.

Mr. Reuben J. Martin, *Mr. Alden S. Bradley* and *Mr. M. C. Pearce* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Waco Drug Co.,

a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said 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. The respondent, Waco Drug Co., is a corporation existing under the laws of the State of Oregon with its principal office and place of business at 406 Stock Exchange Building, Portland, Oreg. Respondent is now, and for several years last past has been, engaged in the sale of a certain liquid mixture known as "Omodyne" which is advertised and sold as an effective remedy and cure for arthritis, neuritis, sciatica, gout, all muscular aches and pains, related diseases and ailments.

Respondent causes said preparation, when sold, to be transported from its place of business in Oregon into and through the various States of the United States and the District of Columbia and has maintained, and now maintains, a constant current of trade in commerce in said commodity in and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business respondent has been, and now is, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution in commerce among and between the States of the United States and in the District of Columbia of preparations designed to cure and remedy the diseases and conditions for which the respondent recommends its said preparation.

PAR. 3. In the course and conduct of its business respondent has advertised said preparation by radio broadcasts and in newspapers, periodicals, and other publications circulated in and among the various States of the United States and the District of Columbia. In the course and conduct of its said business and for the purpose of inducing members of the public to purchase said preparation respondent in its advertisements of the same makes the following representations:

If you suffer from rheumatic pains in the form of arthritis, neuritis, sciatica, lumbago or gout your body also needs a sprucing up. To eliminate the toxic poisons and acids accumulated * * * get a bottle of Omodyne for quick relief. Omodyne is a specific rheumatic remedy. * * * The quick results will surprise you. Don't suffer unnecessary pains another day.

The Waco Drug Co., manufacturers of Omodyne, is gratified to inform its listeners of the continued success of its product, in the relief of rheumatic afflictions. * * * Omodyne has been so thoroughly tested over a long period of years that its manufacturers have no doubt as to the efficacy of this won-

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derful remedy, and every day the proof is in the amazing relief it is giving the users of Omodyne. It is a great pleasure to the Waco Drug Co. to feel that they are doing their bit to relieve the great and constant sufferers that rheumatic ills entail and they wish they could see and talk personally with each and every one afflicted in this manner to the end that a fair trial at least would be given this tried and proven remedy.

* * * If you are suffering with arthritis, neuritis, lumbago, sciatica or any form of rheumatic aches or pains you owe it to yourself to do something about it. Give Omodyne a trial and you will be amazed at the results. Omodyne is not a prescription that can be prepared in the back room of a pharmacy in a few minutes. It is a product that takes time and scientific preparation and goes to its users efficient and pure and pleasant to take with medicinal properties that eliminate the poisons and acid that cause such untold suffering. Remember, Omodyne contains no alcohol, opiate, nor narcotic drug. Omodyne is a specific for rheumatic ills and nothing more and offers to its users the quickest and most economical home treatment available today. It is no longer necessary to suffer with disability, sleepless nights and pain, when immediate relief is at hand. No one should become reconciled to a condition that may lead to the permanent impairment of health. Omodyne acts directly upon the kidneys, dissolves and eliminates uric acid and other poisonous deposits from the body, which is the most common cause of all rheumatic ills. Omodyne further acts as an alterative, causing inflammation to subside and swelling to disappear, thus assisting nature to reestablish normal and healthy functions of the body. Omodyne quickly relieves pain without the use of any narcotic drug. Omodyne contains no alcohol or opiates.

Many other statements of like import and effect are made and used by the respondent.

PAR. 4. The preparation of respondent is not an effective remedy or cure for any of the diseases, ailments, and ills hereinbefore described, and does not have the remedial, curative, or therapeutic properties represented by the respondent. Such preparation is not manufactured or prepared by any special or scientific method, nor does the manufacture or preparation of the same require any special or scientific knowledge or equipment.

PAR. 5. Among the competitors of the respondent in said commerce, as herein set out, are many who sell and distribute preparations manufactured and prepared in a special or scientific manner which are designed to cure or remedy the diseases and ailments above described, and who do not in any way falsely represent the remedial, curative, or therapeutic properties of the same.

PAR. 6. Various members of the purchasing public have an active preference for those preparations designed to cure the diseases and ailments hereinabove described which are manufactured or prepared according to special or scientific methods.

PAR. 7. In truth and in fact the preparation Omodyne, as prepared and sold by the respondent, is not prepared according to any

special or scientific method, nor does it have the curative, remedial, or therapeutic properties claimed by the respondent.

PAR. 8. The aforesaid false and misleading statements and representations used by respondent in offering for sale, and selling, its preparation in commerce, as herein set out, have had, and now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous belief that such preparation has been manufactured or prepared according to a special or scientific method and has the remedial, curative, and therapeutic properties claimed by the respondent, and such members of the purchasing public, because of such erroneous belief, purchase a substantial volume of respondent's said preparation.

As a result thereof, trade in said commerce now is, and has been, unfairly diverted to respondent from competitors who do not, in the advertisement, sale, and distribution in said commerce of their respective products, make false claims about the manner of preparation of the same, or of the remedial, curative, or therapeutic properties thereof, to the injury of said competitors and to the injury of the public.

PAR. 9. The acts and practices of the respondent as hereinabove alleged are all to the prejudice of the public and the respondent's said 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 June 28, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Waco Drug Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, Waco Drug Co., a corporation, filed no answer to the complaint.

After the issuance of said complaint, testimony and other evidence in support of the allegations of said complaint, were introduced by Reuben J. Martin, attorney for the Commission, before Henry M. White, an examiner 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 said complaint, testimony and other evidence and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission having duly considered

the same 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, Waco Drug Co., is a corporation organized and existing under the laws of the State of Oregon and having its office and principal place of business in the Stock Exchange Building in the city of Portland, State of Oregon. Respondent for more than one year immediately prior to May 1, 1938, was engaged in the business of the sale and distribution of a medicinal preparation designated "Omodyne." Respondent caused said preparation when sold to be transported from its aforesaid place of business in the State of Oregon to purchasers thereof at their respective points of location in various States of the United States other than the State of Oregon. Respondent, at all times mentioned herein, maintained a course of trade in commerce in said preparation among and between various States of the United States.

PAR. 2. In the course and conduct of said business, respondent was, at all times mentioned herein, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of medicinal preparations designed and used for the treatment of the ailments and conditions of the human body for which respondent recommended the use of its said preparations as hereinafter described.

PAR. 3. In the course and conduct of its business, as aforesaid, and for the purpose of inducing the purchase of said preparation the respondent caused various statements and representations relative to the therapeutic value of said preparation, to be inserted in advertisements in newspapers, circulars, and other publications having a circulation among and between various States of the United States, and in radio continuity broadcast from radio stations which had power to and did convey the programs emanating therefrom to listeners thereto situated in various States of the United States. Among and typical of the statements and representations by respondent, disseminated as aforesaid, are the following:

If you suffer from rheumatic pains in the form of arthritis, neuritis, sciatica, lumbago or gout, your body also needs a sprucing up. To eliminate the toxic poisons and acids accumulated * * * get a bottle of Omodyne for quick relief. Omodyne is a specific rheumatic remedy * * * The quick results will surprise you. Don't suffer unnecessary pains another day.

The Waco Drug Co., manufacturers of Omodyne is gratified to inform its listeners of the continued success of its product, in the relief of rheumatic afflictions. * * * Omodyne has been so thoroughly tested over a long period

of years that its manufacturers have no doubt as to the efficacy of this wonderful remedy, and every day the proof is in the amazing relief it is giving the users of Omodyne. It is a great pleasure to the Waco Drug Co., to feel that they are doing their bit to relieve the great and constant sufferers that rheumatic ills entail and they wish they could see and talk personally with each and every one afflicted in this manner to the end that a fair trial at least would be given this tried and proven remedy.

* * * If you are suffering with arthritis, neuritis, lumbago, sciatica or any form of rheumatism aches or pains you owe it to yourself to do something about it. Give Omodyne a trial and you will be amazed at the results. Omodyne is not a prescription that can be prepared in the back room of a pharmacy in a few minutes. It is a product that takes time and scientific preparation and goes to its users efficient and pure and pleasant to take with medicinal properties that eliminate the poisons and acid that cause such untold suffering. Remember, Omodyne contains no alcohol, opiate, nor narcotic drug. Omodyne is a specific for rheumatic ills and nothing more and offers to its users the quickest and most economical home treatment available today. It is no longer necessary to suffer with disability, sleepless nights and pain, when immediate relief is at hand. No one should become reconciled to a condition that may lead to the permanent impairment of health. Omodyne acts directly upon the kidneys, dissolves and eliminates uric acid and other poisonous deposits from the body, which is the most common cause of all rheumatic ills. Omodyne further acts as an alterative, causing inflammation to subside and swelling to disappear, thus assisting nature to reestablish normal and healthy functions of the body. Omodyne quickly relieves pain without the use of any narcotic drug, Omodyne contains no alcohol or opiates.

OMODYNE
Quick Relief For
Rheumatism
Arthritis
Neuritis
Sciatica
Neuralgia
Lumbago
Muscular and inflammatory
rheumatism.

Omodyne is a prescription which has been used for many years with marked success, in private, industrial and hospital treatment, for the several forms of rheumatism, including neuritis, arthritis, lumbago, gout, alcoholic neuritis, sciatica, muscular and inflammatory rheumatism or muscular aches and pains. Omodyne acts directly upon the kidneys, dissolves and eliminates uric acid, which is the most common cause of rheumatic condition. * * *

Waco Drug Company,
406 Stock Exchange Bldg.,
3rd and Yamhill,
Portland, Oregon.

PAR. 4. Through the use of the aforesaid advertisement and others of similar import or meaning not herein set out, respondent represented that its preparation "Omodyne" is a competent and effective cure or

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remedy for, and has substantial therapeutic value in the treatment of arthritis, neuritis, lumbago, sciatica, gout, neuralgia, and rheumatism, and that the use of such preparation quickly relieves the aches and pains which are caused by or associated with such ailments and conditions; that the use of such preparation eliminates poisons from the human system; and that such preparation is prepared and compounded according to a scientific method and formula.

PAR. 5. The formula for each fluid ounce of the product "Omodyne" is as follows:

Strontium salicylate-----	25 grains
Formin-----	10 grains
Potassium iodide-----	6 grains
Colchicine-----	$\frac{1}{45}$ grain
Non-alcoholic, aromatic elixir, Aqua aa qs ad-----	fl. oz. 1.

PAR. 6. The aforesaid statements and representations by respondent relative to the therapeutic value of the preparation "Omodyne" are false and misleading. Said preparation is not a remedy or cure for arthritis, neuritis, lumbago, sciatica, gout, neuralgia, or rheumatism. The use of such preparation will not eliminate poisons from the human system or relieve the aches and pains which are caused by or associated with rheumatic conditions. Said preparation is not compounded or prepared in accordance with any scientific method or formula. Various drugs contained in said preparation are incompatible with other drugs contained therein. The preparation is an aqueous solution, and the drug colchicine deteriorates or decomposes in an aqueous solution. Salicylates cause the decomposition of colchicine. Potassium iodide is incompatible with colchicine, and salicylates are not generally prescribed with iodides. The compounding of said incompatible drugs in the preparation "Omodyne" dissipates any therapeutic value which may be possessed by said drugs when used separately. Each of the drugs contained in said preparation may cause toxic symptoms in the users thereof. The strontium salicylate is irritating to the mucosa of the stomach. The potassium iodide may be injurious to persons suffering from tuberculosis or goiter and colchicine is a deadly poison when taken in excessive amounts. Such preparation is not a competent or effective treatment for arthritis, neuritis, lumbago, sciatica, gout, neuralgia or rheumatism, and such preparation will not relieve the user thereof of the pains or aches which are caused by or associated with any of such conditions.

PAR. 7. The use by respondent of the aforesaid false and misleading statements and representations had the capacity and tendency to, and did, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that said

false and misleading statements and representations were true, and into the purchase of respondent's said preparation. As a direct result thereof, trade in commerce among and between various States of the United States has been diverted unfairly to respondent from its said competitors who truthfully represent the therapeutic value and 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, testimony and other evidence taken before Henry M. White, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed by counsel for the Commission (respondent not having filed brief 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 respondent, Waco Drug Co., 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 "Omodyne" or any other preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said preparation is a remedy or cure for, or an effective treatment for, arthritis, neuritis, lumbago, sciatica, gout, neuralgia, or rheumatism, or has any beneficial value in relieving the aches or pains which are due to or persist because of such conditions;

2. Representing that the use of said preparation will cause the elimination of poisons from the human system, or that said preparation is prepared in accordance with a scientific formula;

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

FRED ADELMANN, ALSO KNOWN AS FRANK ADELMANN,
TRADING AS VIT-O-NET COMPANY, VIT-O-NET COR-
PORATION AND ELECTRIC BLANKET COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3533. Complaint, Sept. 21, 1938¹—Decision, Aug. 1, 1939*

Where an individual engaged in manufacturing, advertising, selling and distributing, under name "Vit-O-Net" and other names, an electrical device in the nature of a blanket; in advertising his said device in booklets, pamphlets, circulars, labels, and folders distributed among prospective purchasers, and in newspapers and magazines thus circulated, and in advertisements thereof which he thus disseminated in commerce and which were intended and likely to induce purchase thereof—

- (a) Represented and implied that said device created and diffused so-called "electromagnetic energy" which was transmitted to the person within or under the protection thereof, leading to increased activity and revitalization of organs and cells of the body, charging the blood stream with such energy, and resulting in elimination of many times more poisons than was possible by any other method, and that resulting stimulation of the various cells of the body produced the cure of practically all the diseases which afflicted mankind, and that a large number of specified diseases, ailments and conditions, including blood pressure, rheumatism, arthritis, pneumonia, and numerous others, could be cured through use of said device, through correction of faulty elimination which he claimed to be responsible for said diseases, etc., facts being it did not create and diffuse so-called "electro-magnetic energy" which was transmitted as above set forth, or accomplish the other results claimed, use thereof did not cure said various diseases, ailments and conditions, and said device was not beneficial in treatment of any of them, except in those instances where direct application of heat over an extended area was beneficial;
- (b) Represented that said device was created and manufactured for practical application of the biological, chemical, and other scientific discoveries and theories of well-known scientists, and was the result of painstaking and long experiments and tests, and was used, endorsed, and recommended by prominent and well-known physicians, scientists and other persons, and by hospitals, schools, and various other institutions, on the basis of extensive medical and scientific research by such persons and institutions, facts being it was not created and made for practical application of such discoveries and theories, as above set forth, or result of such experiments and tests, nor used, endorsed, or recommended by physicians, etc., as above claimed, and had not been tested or endorsed by such institutions and persons after such research;

¹ Amended.