

IN THE MATTER OF
HARRY EPSTEIN, TRADING AS RESTORIA COMPANY

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

Docket 3737. Complaint, Mar. 14, 1939—Decision, Aug. 1, 1939

Where an individual engaged in sale and distribution of "Restoria," medicinal preparation, as treatment for blood and remedy for blood disorders and related conditions; in advertisements which he disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed matter, including purported testimonial letters, and pamphlets, booklets, and advertising copy, and which advertisements were intended and calculated to induce purchase of his said product—

- (a) Represented that said "Restoria" was an effective remedy or cure for various conditions due to "bad blood," such as ulcers, eruptions, swollen glands, eczema, etc., and constituted a competent treatment for such condition and was a remedy or cure for neuritis, neurasthenia, rheumatism, skin eruptions, blood poisoning, and other related conditions, and would furnish relief therefrom;
- (b) Represented, as aforesaid, that it would control diseased blood and would restore the same, and was safe and harmless, and would produce no bad after effects, and that it was a remedy or cure for syphilis and a competent treatment therefor, and that persons suffering from said ailment would react favorably within a short time after using said "Restoria;" and
- (c) Represented that it was manufactured in modern laboratories and under expert supervision;

Facts being it was not a competent treatment nor effective remedy or cure for said various conditions, and use would not relieve the same or build up the body, sufferers from syphilis would not be favorably affected thereby, it was not manufactured in a modern laboratory or under supervision of skilled scientist, and would not control diseased blood nor restore the same, was not harmless under all conditions of use, but might have severe harmful results when used by public in treatment of conditions for which it was recommended, and use by uninformed persons under conditions prescribed, or such as are customary and usual, might, in some cases, cause users to suffer irreparable injury to health, and it was definitely harmful, by reason of certain ingredients, in early treatment of syphilis, in which iodides contained therein might disseminate and generalize the disease, and, by reason of iodine content, might aggravate certain diseases, such as pulmonary tuberculosis, hyperthyroidism and nephritis;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations and advertisements were true, and of inducing, directly or indirectly, purchase by public of such drug-containing medicinal preparation, and with likelihood so to induce:

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

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Joseph A. Padway, of Washington, D. C., 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 Harry Epstein, an individual, trading as Restoria Co., 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 Harry Epstein is an individual, doing business under the trade name of Restoria Co., with his principal office and place of business located at 805 East Mason Street, in the city of Milwaukee, State of Wisconsin. Respondent, for more than 1 year last past, has been and still is engaged in the sale and distribution of a certain medicinal preparation known as "Restoria" which is offered for sale and sold as a treatment for the blood and remedy for blood disorders and related conditions. In the course and conduct of his business respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Wisconsin, to the purchasers thereof located in other 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. 2. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce, among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as com-

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merce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Diseased Blood. Free Book tells of Control and Relief to thousands of sufferers.

Restoria is manufactured in thoroughly equipped, modern laboratories and under the supervision of trained experts. It is a stable and reliable product made of only the best ingredients, as must be the case where the battle is against an enemy as persistent and overpowering as syphilis.

You must constantly bear in mind that the earlier in the development of the disease the Restoria Treatment is begun, the more potent and beneficial is the treatment, as treatment affects very favorably syphilis cases in the first and second stages but not so favorably in the third or tertiary stage.

No Bad After-Effects. The Restoria treatment is 100 per cent safe, and its use is warranted to produce no bad after-effects.

No harm can come from the use of Restoria

* * * we know from past experience and from what thousands of users have told us that the average person should react favorably within a very short time.

In addition to the foregoing advertisements the respondent disseminates false advertisements in the same manner as set out above by means of purported testimonial letters which the respondent places in pamphlets, booklets, and in advertising copy. Among, and typical of the false statements and representations, disseminated as aforesaid by respondent by use of purported testimonial letters in its advertising, are the following:

I have used two bottles of your Restoria which have cured my rheumatism. * * *

I have seen and heard of the results of your Restoria in the case of my mother, long afflicted with Water Eczema * * * My brother works in Harrisburg, Pa., and he came in touch with Restoria there. He bought two bottles, and it cured my mother * * *

* * * I was rapidly getting worse, worse, worse, until I was on the verge of suicide. Ulcers began to appear on my body, and all sorts of unusual pains kept me in constant misery. My sleep was rarely ever natural * * * my throat was inflamed and constantly sore, and near each elbow a horrid looking sore formed * * * In less than a week after beginning Restoria, the sores on my arms began to dry, and I began to feel like a new woman. * * * After five months' treatment with your wonderful Restoria, I can truthfully say, I am well.

I had Eczema on both hands for about three years. * * * I was finally induced to try Restoria. I bought one bottle, and before taking one-half of it my Eczema began to disappear, and before the bottle was gone I was entirely cured; and now I weigh about thirty pounds more than before taking Restoria.

* * * I've suffered from stubborn Neuritis and Neurasthenia for years and spent a fortune on patent medicine, only to poison my blood still further. Restoria is a wonder, and just what I've been looking for.

I was unfortunate enough to contract a serious disorder; I consulted the family physician; he said my case was well marked, and that it was clearly a case of blood poison. A friend to whom I confided my condition told me about Restoria * * * My improvement was steady, and after taking only the fifth bottle, I was pronounced well * * * I am grateful to Restoria * * * I want to say further: Take Restoria, and get well.

* * * I did not seem to gain, and after seventeen weeks my condition was in every way worse. The local swelling and inflammation had become alarming; painful and offensive ulcers appeared in my mouth, and the glands of my throat were beginning to enlarge * * * I had been told about Restoria, * * * I began taking it * * * In less than ten days the local ulcers began to dry up and disappear, and I was generally better * * * I am now well and strong * * *

* * * Restoria is the best blood medicine I have ever heard of, and it is doing the work in my case * * *

* * * It has taken those scars off my face, and I am improving in general health.

* * * One year from the time I started with Restoria, I had my blood tested, and I am a sound and well man—thanking Restoria for my health.

PAR. 3. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly and indirectly, that his preparation "Restoria"

(a) is an effective remedy or cure for various conditions due to "bad blood", such as ulcers, eruptions, swollen glands, eczema, etc., and constitutes a competent treatment for such conditions;

(b) is a remedy or cure for neuritis, neurasthenia, rheumatism, skin eruptions, blood poisoning and other related conditions, and will furnish relief from such conditions;

(c) will control diseased blood and will restore the blood;

(d) is manufactured in modern laboratories under expert supervision;

(e) is a remedy or cure for syphilis and constitutes a competent treatment therefor, and that persons suffering from syphilis will react favorably within a short time after using Restoria;

(f) is safe and harmless and its use will produce no bad after effects.

The aforesaid representations and claims used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact, Restoria is not a competent treatment, nor effective remedy or cure for bad blood, rheumatism, syphilis, neuritis, neurasthenia, eczema, ulcers, swollen glands, skin eruptions, or blood poison, and its use will not relieve these conditions or build up the body. Syphilis sufferers will not be favorably affected by Restoria.

Said preparation is not now manufactured in a modern laboratory, nor under the supervision of skilled scientists.

Restoria will not control diseased blood, nor restore the blood.

Restoria is not harmless under all conditions of use, but in truth and in fact, its use may have severe harmful results when used by the public in the treatment of the conditions for which it is recommended by respondent.

PAR. 4. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements as aforesaid, in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said medicinal preparations by uninformed persons under the conditions prescribed or under such conditions as are customary and usual, may in some cases cause them to suffer irreparable injury to health. By reason of the existence of iodides in respondent's preparation, the use of said preparation would be definitely harmful in the early treatment of syphilis in that these iodides may disseminate and generalize the disease, and, further, that the administration of a preparation containing iodine may aggravate certain diseases such as pulmonary tuberculosis, hyperthyroidism, and nephritis.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said medicinal preparations, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements representations and advertisements are true, and induces or is likely to induce, directly or indirectly, the purchase by the public of respondent's medicinal preparation containing drugs.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 14, 1939, issued and served its complaint in this proceeding upon respondent Harry Epstein, an individual, trading as Restoria Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to with-

draw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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 Harry Epstein is an individual, doing business under the trade name of Restoria Co., with his principal office and place of business located at 805 East Mason Street, in the city of Milwaukee, State of Wisconsin. Respondent, for more than 1 year last past, has been and still is engaged in the sale and distribution of a certain medicinal preparation known as "Restoria," which is offered for sale and sold as a treatment for the blood and remedy for blood disorders and related conditions. In the course and conduct of his business respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Wisconsin, to the purchasers thereof located in other 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. 2. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in

the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Diseased Blood Free Book tells of Control and Relief to thousands of sufferers.

Restoria is manufactured in thoroughly equipped, modern laboratories and under the supervision of trained experts. It is a stable and reliable product made of only the best ingredients, as must be the case where the battle is against an enemy as persistent and overpowering as syphilis.

You must constantly bear in mind that the earlier in the development of the disease the Restoria Treatment is begun, the more potent and beneficial is the treatment, as treatment affects very favorably syphilis cases in the first and second stages but not so favorably in the third or tertiary stage.

No Bad After-Effects. The Restoria Treatment is 100 per cent safe, and its use is warranted to produce no bad after-effects.

No harm can come from the use of Restoria

* * * we know from past experience and from what thousands of users have told us that the average person should react favorably within a very short time.

In addition to the foregoing advertisements, the respondent disseminates false advertisements in the same manner as set-out above by means of purported testimonial letters which the respondent places in pamphlets, booklets, and in advertising copy. Among, and typical of the false statements and representations, disseminated as aforesaid by respondent by use of purported testimonial letters in its advertising, are the following:

I have used two bottles of your Restoria which have cured my rheumatism. * * *

I have seen and heard of the results of your Restoria in the case of my mother, long afflicted with Water Eczema * * * My brother works in Harrisburg, Pa., and he came in touch with Restoria there. He bought two bottles, and it cured my mother * * *

* * * I was rapidly getting worse, worse, worse, until I was on the verge of suicide. Ulcers began to appear on my body, and all sorts of unusual pains kept me in constant misery. My sleep was rarely ever natural * * * my throat was inflamed and constantly sore, and near each elbow a horrid looking sore formed * * * In less than a week after beginning Restoria, the sores on my arms began to dry, and I began to feel like a new woman. * * * After five months' treatment with your wonderful Restoria, I can truthfully say, I am well.

I had Eczema on both hands for about three years. * * * I was finally induced to try Restoria. I bought one bottle, and before taking one-half of it my Eczema began to disappear, and before the bottle was gone I was entirely cured; and now I weigh about thirty pounds more than before taking Restoria.

* * * I've suffered from stubborn Neuritis and Neurasthenia for years and spent a fortune on patent medicine, only to poison my blood still further. Restoria is a wonder, and just what I've been looking for.

I was unfortunate enough to contract a serious disorder; I consulted the family physician; he said my case was well marked, and that it was clearly a case of blood poison. A friend to whom I confided my condition told me about Restoria * * * My improvement was steady, and after taking only the fifth bottle, I was pronounced well * * * I am grateful to Restoria * * * I want to say further: Take Restoria, and get well.

* * * I did not seem to gain and after seventeen weeks my condition was in every way worse. The local swelling and inflammation had become alarming; painful and offensive ulcers appeared in my mouth, and the glands of my throat were beginning to enlarge * * * I had been told about Restoria, * * * I began taking it * * * In less than ten days the local ulcers began to dry up and disappear, and I was generally better * * * I am now well and strong * * *

* * * Restoria is the best blood medicine I have ever heard of, and it is doing the work in my case * * *

* * * it has taken those scars off my face, and I am improving in general health.

* * * One year from the time I started with Restoria, I had my blood tested, and I am a sound and well man—thanking Restoria for my health.

PAR. 3. Through the use of the statements hereinabove set forth, and others similar thereto not specifically set-out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly and indirectly, that his preparation "Restoria"

(a) is an effective remedy or cure for various conditions due to "bad blood", such as ulcers, eruptions, swollen glands, eczema, etc., and constitutes a competent treatment for such conditions;

(b) is a remedy or cure for neuritis, neurasthenia, rheumatism, skin eruptions, blood poisoning and other related conditions, and will furnish relief from such conditions;

(c) will control diseased blood and will restore the blood;

(d) is manufactured in modern laboratories under expert supervision;

(e) is a remedy or cure for syphilis and constitutes a competent treatment therefor, and that persons suffering from syphilis will react favorably within a short time after using "Restoria";

(f) is safe and harmless and its use will produce no bad after effects.

The aforesaid representations and claims used and disseminated by the respondent, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact, "Restoria" is not a competent treatment nor effective remedy or cure for bad blood, rheumatism, syphilis, neuritis, neurasthenia, eczema, ulcers, swollen glands, skin eruptions, or blood poisoning, and its use will not relieve these conditions or build up the body. Syphilis sufferers will not be favorably affected by "Restoria."

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Said preparation is not now manufactured in a modern laboratory, nor under the supervision of skilled scientists.

"Restoria" will not control diseased blood, nor restore the blood.

"Restoria" is not harmless under all conditions of use, but in truth and in fact its use may have severe harmful results when used by the public in the treatment of the conditions for which it is recommended by the respondent.

PAR. 4. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements as aforesaid, in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said medicinal preparation by uninformed persons under the conditions prescribed or under such conditions as are customary and usual, may in some cases cause them to suffer irreparable injury to health. By reason of the existence of iodides in respondent's preparation, the use of said preparation would be definitely harmful in the early treatment of syphilis in that these iodides may disseminate and generalize the disease, and, further, that the administration of a preparation containing iodine may aggravate certain diseases such as pulmonary tuberculosis, hyperthyroidism, and nephritis.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said medicinal 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 induces or is likely to induce, directly or indirectly, the purchase by the public of respondent's medicinal preparation containing drugs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commis-

sion having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Harry Epstein, individually and trading as Restoria Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or any other device, do forthwith cease and desist from :

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation containing drugs now designated by the name "Restoria," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said medicinal preparation "Restoria," is a cure or remedy or an effective treatment for bad blood, ulcers, swollen glands, or eczema; or that said preparation is a cure or remedy for neuritis, neurasthenia, rheumatism, blood poisoning, or skin eruptions, or is beneficial in relieving any of such conditions; or that said preparation is a cure or remedy for or is beneficial in the treatment of syphilis, or will control diseased blood or restore the blood; or that said preparation is manufactured in a modern laboratory or under the supervision of skilled scientists, unless and until such is the fact; or which advertisements fail to reveal that said preparation is not a wholly safe drug to be used by the lay public in self-medication.

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

IN THE MATTER OF

WILLIAM G. NASH, SR., WILLIAM G. NASH, JR., AND FLOR-
ENCE NASH COX, TRADING AS NASH BROTHERS DRUG
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3775. Complaint, Apr. 27, 1939—Decision, Aug. 1, 1939*

Where three individuals engaged, as partners, in compounding, selling, and distributing a medical or pharmaceutical preparation under designation "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic"; in advertisements which they disseminated through the mails, through newspapers and periodicals of general circulation, through circulars and other printed or written matter, and through continuities broadcast from radio stations of extrastate audience, and which advertisements were intended and calculated to induce purchase of their said product—

- (a) Represented, directly or through implication, that said preparation was a cure or remedy for malaria and would prevent development of malaria, and was an effective treatment for all types thereof, facts being it was not such a remedy or preventive, and would not accomplish such results and, while possessing properties capable, under certain conditions, of being beneficial in treatment of certain forms of malaria at certain stages of development, was not a remedy or cure, or safe and effective treatment for, all forms or types thereof;
- (b) Represented that 9 out of 10 persons in the southern part of the United States had malaria, and that presence of laziness, lack of energy and pep, aches, trembling, dizziness, headaches, or sallow, yellow complexion, was indicative of said ailment, and that persons having any one or more of such symptoms had malaria, facts being proportion of people indicated in the southern States did not suffer from said condition, and symptoms enumerated, while frequently such as might be and were associated with malaria, were also often associated with or due to other disorders;
- (c) Represented that said preparation would clean out the system and restore the normal function of the bowels, and add red corpuscles to the blood, and aid digestion and increase appetite, and constituted an effective tonic which would restore vigor and vitality, facts being it would not accomplish such results and was not such a remedy;
- (d) Represented that said preparation possessed remedial or curative value in treatment of constipation, biliousness, liver trouble, dyspepsia, and numerous other conditions and ailments to which the body is subject, and was both a preventive and cure for colds, facts being it was not such a preventive or cure, nor effective remedy or cure for constipation, biliousness, and various other ailments and conditions above set forth and claimed;
- (e) Represented that it was a new discovery which was in no way habit forming, and in no way harmful to users, including infants, children, adults, and elderly people, and that it was indorsed by nurses, physicians, and health officials throughout the southern part of the United States, facts being