

IN THE MATTER OF

WILLIAM G. NASH, SR., WILLIAM G. NASH, JR., AND FLOR-
ENCE NASH COX, TRADING AS NASH BROTHERS DRUG
COMPANY

COMPLAINT, 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

continued use thereof rendered it habit forming as laxative or cathartic, it was not a new discovery nor wholly safe or harmless for use in self-medication of infants, children, adults, and elderly people, due to inclusion of certain ingredients which had powerful effect on heart and other organs or parts of the body, and which might cause injury to health of users having cardiac or systemic weaknesses, and it had not been indorsed by nurses, etc., as above claimed;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations and advertisements were true, and into purchase of their said drug-containing preparation:

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

Mr. DeWitt T. Puckett 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 William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually and as copartners trading as Nash Brothers Drug Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox are individuals and copartners trading as Nash Brothers Drug Co., and their principal office and place of business is in Jonesboro, Ark.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic." Respondents sell said preparation to members of the purchasing public situated in various States of the United States and in the District of Columbia, and cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of Arkansas to the purchasers thereof at their respective points of location in the various States of the United States, other than the State of Arkansas, and in the District of Columbia. Respondents maintain and at all times mentioned herein have 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.

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PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by United States mails, by insertions 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 continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State in which such broadcasts originate, 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 their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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:

1. Check these Symptoms Yourself—on yourself—and on your family! See How Many of These Symptoms You Have

Are you always tired, or completely run down and worn out? Do you feel lazy?

Do you wake up in the morning as tired as when you went to bed?

Are you restless at night. Can't sleep?

Then have bad dreams and nightmares?

Do you lack energy and pep? Do you lack ambition?

Do you ache in every bone of your body?

Do you have chills and occasional fever—hot and cold flashes?

Are you bilious? Constipated?

Are you nervous and irritable?

Are you blue and depressed? Do you have foolish fears and dreads?

Are you unduly superstitious?

Is your breath bad? Tongue coated? Bad taste in the mouth?

Is your complexion sallow, yellow, or broken out with pimples, boils or unsightly blotches?

Do you have occasional or habitual dull or sick headaches?

Do you have backaches?

Are there floating specks before your eyes?

Are you dizzy?

Are you losing weight?

Do you suffer from indigestion or loss of appetite?

Is your liver out of order?

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Do you have gas on the stomach? Sour stomach?

Stomach constantly upset?

Have you a cold you can't get rid of?

Are your kidneys functioning improperly or abnormally?

Do your knees and hands shake?

Do you tremble all over?

Are your children unruly, irritable, restless and sluggish?

IF you have any of these symptoms no doubt you are suffering from the first—or maybe the more serious stages of malaria.

2. NASH'S TONIC will clean out your system, allowing the bowels to have satisfactory action—will add red corpuscles to the blood, aid digestion, increase the appetite, tone up the system, and give you plenty of Pep, viz, vim, and vigor.

3. Satisfaction Guaranteed and again, Remember This is a Guaranteed Remedy. You can take one dose or the entire bottle, and if you are not satisfied, take the empty bottle to your Druggist and he will refund your money without question or quibble. So you have nothing to lose and everything to gain.

4. For Malaria, Biliousness, Constipation Nash's Tonic is a guaranteed remedy unsurpassed for chills and malaria and its kindred or resulting ailments—biliousness, constipation, stomach trouble, liver trouble, dyspepsia, backache, headache, nervousness and other complaints and diseases. It will kill the chill before the ill, and stop that fever that may be brewing. It will eliminate those poisons which may be forming and which are causing those physical and mental pains and perhaps unhappiness. It is a purgative as well as a preventive and will brace up your body with the finest tonic ever had. Kills malaria germs!

If you have malaria, get rid of it; if you haven't it, keep from having it with "Nash's."

5. Chills and Malaria will be but a rare thing, when more people recognize this New Discovery.

6. Even if you don't think you have Malaria, it can do you no harm—and will do you much good to take Nash's Tonic regularly.

7. The All Year Round Tonic, Remedy, Purgative, Preventive! Nash's Tonic is great for those lazy, languid Spring days, excellent during the sluggish Summer, a great Tonic for Fall and a fine cold preventive for Winter. It is therefore an all-year-round remedy—particularly for malaria and biliousness, chills, fever, ague, third day chills, swamp chills, constipation, stomach troubles, etc. It is also a preventive for it will tend to prevent you from having malaria as well as numerous other ailments, etc. As a purgative it banishes constipation and its serious afflictions, and as a tonic, good for children as well as all others, it will put the body in excellent trim, add red corpuscles to the blood and red color to the cheeks.

8. For Baby—For Grandma And All Ages in Between Nash's Tonic is for one and all—the baby—the child—the young man and woman—Mother and Father—Grandma and Grandpa! It will give the child a healthy body, and a chance to grow and develop without germs or disease hindering—it will give the young folks pep, vigor, vitality, and help them "keep going" in this day of never-ceasing Going—it will make Mother and Father feel "that they're still young folks"—that they have much to live for and look forward to—that they can take a new lease on life—and it will add years to the old folks.

9. School Teachers—Health Officials and Others Endorse Nash's Tonic.

10. This new Discovery is endorsed by physicians because they appreciate the formula, which is known.

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11. Yes, indeed—you can take Nash's Tonic with every confidence in the world, and your Physician will pass on the above ingredients. Nash's Tonic is in no way harmful, and is not unpleasant to take. Not a habit-forming medicine.

12. * * * thousands and thousands of Southerners (9 out of 10 have malaria * * *)

PAR. 4. Through the use of the statements and representations hereinbefore set forth and others similar in meaning thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the causes of such ailments and conditions, respondents have represented, directly and by implication, among other things, that each and all of the symptoms enumerated herein in paragraph 3 (1) are caused by or associated with malaria and that persons having any one or more of such symptoms have malaria; that said preparation is a proper, guaranteed, unsurpassed, and effective preventative and remedy or cure for all types of malaria in the human body; that the use of said preparation will clean out the system and restore the normal function of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that said preparation is an effective tonic which will restore vigor and vitality; that said preparation possesses remedial or curative value in the treatment of constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and diseases to which the human body is subject; that the use of said preparation both prevents and cures colds; that said preparation is a new discovery which is in no way habit-forming and which is in no way harmful to the users thereof, including infants, children, adults, and elderly people; that said preparation is endorsed by nurses, physicians, and health officials throughout the southern part of the United States; and that 9 out of 10 of the people residing in the southern part of the United States have malaria.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue and constitute false advertisements.

In truth and in fact only two of the symptoms enumerated herein in paragraph 3 (1), namely, chills and occasional fevers, are symptoms of malaria. Said preparation is not a proper, effective, or unsurpassed remedy or cure for all types of malaria, and its use will not prevent the development of malaria in the human body. The use of said preparation will not restore the normal functioning of the bowels, nor will it add red corpuscles to the blood, aid digestion, or

increase the appetite. Said preparation is not an effective tonic which will restore vigor or vitality. Said preparation is not an effective remedy or cure for constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach troubles, chills, fever, ague, third-day chills, swamp chills, or for any other of the various diseases and conditions to which the human body is subject. It is habit forming in the sense that the continued use of a laxative or cathartic medicine is habit forming. Said preparation will not prevent nor will it cure colds. Said preparation is not a new discovery, and it is not a safe and harmless medicine for use in all cases by infants, children, adults, and elderly people, as represented and advertised by the respondents. Said preparation has not been endorsed by nurses, physicians, and health officials throughout the southern part of the United States, nor do 9 out of 10 people in the southern part of the United States have malaria. In fact, only a small percentage of persons residing in the southern part of the United States have malaria.

Respondents' statements and claims as to the therapeutic value and efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceeded any claims to the therapeutic value and efficacy of such preparation which might truthfully be made. Although said preparation may possess properties capable under certain conditions of use of having a beneficial effect in the treatment of certain forms of malaria at certain stages of development, said preparation is not a remedy or cure or safe and effective treatment for all forms or types of malaria.

Furthermore, said statements and representations are misleading and constitute false advertisements in that they fail to reveal the fact that the drugs "quinidine" or "quinidine alkaloids" and "cinchonine alkaloids," as used in said preparation, have a powerful effect upon the heart and upon other organs or parts of the body which may cause injury to the health of the user if taken in accord with the statements and recommendations contained in said advertisements, or under such conditions as are customary or usual.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of respondents' said preparation which contains drugs.

PAR. 7. The aforesaid acts and practices of respondents, 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 April 27, 1939, issued and served its complaint in this proceeding upon the respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually and as copartners trading as Nash Brothers Drug Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, the respondents having filed no answer, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted, and filed, 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. Respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox are individuals and copartners trading as Nash Brothers Drug Co. and their principal office and place of business is at Jonesboro, Ark.

PAR. 2. The respondents are now and have been for more than 1 year last past engaged in the business of compounding, selling, and distributing a medical or pharmaceutical preparation designated "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic." Respondents sell said preparation to members of the purchasing public situated in various States of the United States and in the District

of Columbia, and cause said preparation, when sold by them, to be transported from their aforesaid place of business, in the State of Arkansas to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Arkansas and in the District of Columbia. Respondents maintain and at all times mentioned herein have 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. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by United States mails, by insertions 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 continuities broadcast from radio stations which have sufficient power to, and do, convey the program emanating therefrom to listeners located in various States of the United States other than the State in which such broadcasts originate, 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 their said product; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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:

1. Check these Symptoms Yourself—on yourself—and on your family! See How Many of These Symptoms You Have

Are you always tired, or completely run down and worn out? Do you feel lazy?

Do you wake up in the morning as tired as when you went to bed?

Are you restless at night. Can't sleep?

Then have bad dreams and nightmares?

Do you lack energy and pep? Do you lack ambition?

Do you ache in every bone of your body?

Do you have chills and occasional fever—hot and cold flashes?

Are you bilious? Constipated?

Are you nervous and irritable?

Are you blue and depressed? Do you have foolish fears and dreads?

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Are you unduly superstitious?

Is your breath bad? Tongue coated? Bad taste in your mouth?

Is your complexion sallow, yellow, or broken out with pimples, boils or unsightly splotches?

Do you have occasional or habitual dull or sick headaches?

Do you have backaches?

Are there floating specks before your eyes?

Are you dizzy?

Are you losing weight?

Do you suffer from indigestion or loss of appetite?

Is your liver out of order?

Do you have gas on the stomach?

Sour stomach?

Stomach constantly upset?

Have you a cold you can't get rid of?

Are your kidneys functioning improperly or abnormally?

Do your knees and hands shake?

Do you tremble all over?

Are your children unruly, irritable, restless and sluggish?

If you have any of these symptoms no doubt you are suffering from the first—or maybe the more serious stages of malaria.

2. Nash's Tonic will clean out your system, allowing the bowels to have satisfactory action—will add red corpuscles to the blood, aid digestion, increase the appetite, tone up the system, and give you plenty of PEP, viz, vim and vigor.

3. Satisfaction Guaranteed and again, Remember This Is a Guaranteed Remedy. You can take one dose or the entire bottle, and if you are not satisfied, take the empty bottle to your Druggist and he will refund your money without question or quibble. So you have nothing to lose and everything to gain!

4. For Malaria, Biliousness, Constipation Nash's Tonic is a guaranteed remedy, unsurpassed for chills and malaria and its kindred or resulting ailments—biliousness, constipation, stomach trouble, liver trouble, dyspepsia, backache, headache, nervousness and other complaints and diseases. It will kill the chill before the ill, and stop that fever that may be brewing. It will eliminate those poisons which may be forming and which are causing those physical and mental pains and perhaps unhappiness. It is a purgative as well as a preventive and will brace up your body with the finest tonic ever had. Kills malaria germs!

If you have malaria, get rid of it; if you haven't it, keep from having it with NASH'S.

5. Chills and Malaria will be but a rare thing, when more people recognize this New Discovery.

6. Even if you don't think you have Malaria, it can do you no harm—and will do you much good to take Nash's Tonic regularly.

7. The all year round tonic, remedy, purgative, preventive! Nash's Tonic is great for those lazy, languid Spring days, excellent during the sluggish Summer, a great Tonic for Fall and a fine cold preventive for Winter. It is therefore an all-year-round remedy—particularly for malaria and biliousness, chills, fever, ague, third day chills, swamp chills, constipation, stomach troubles, etc. Is also a preventive for it will tend to prevent you from having malaria as well as

numerous other ailments, etc. As a purgative it banishes constipation and its serious afflictions, and as a tonic, good for children as well as all others, it will put the body in excellent trim, add red corpuscles to the blood and red color to the cheeks.

8. For Baby—For Grandma And All Ages in Between Nash's Tonic is for one and all—the baby—the child—the young man and woman—Mother and Father—Grandma and Grandpa! It will give the child a healthy body, and a chance to grow and develop without germs or disease hindering—it will give the young folks pep, vigor, vitality, and help them “keep going” in this day of never-ceasing GOING—it will make Mother and Father feel “that they're still young folks”—that they have much to live for and look forward to—that they can take a new lease on life—and it will add years to the old folks.

9. School Teachers—Health officials and Others Endorse Nash's Tonic.

10. This new Discovery is endorsed by physicians because they appreciate the formula, which is known.

11. Yes, indeed—you can take Nash's Tonic with every confidence in the world, and your Physician will pass on the above ingredients. Nash's Tonic is in no way harmful, and is not unpleasant to take. Not a habit-forming medicine.

12. * * * thousands and thousands of Southerners (9 out of 10) have malaria * * *

PAR. 4. Through the use of the statements and representations hereinbefore set forth and others similar in meaning thereto but not herein set-out, all of which purport to be descriptive of respondents' preparation and its effectiveness in the treatment of ailments and conditions of the human body and the causes of such ailments and conditions, respondents have represented, directly and by implication, among other things, that each and all of the symptoms enumerated herein in paragraph 3 (1) are caused by or associated with malaria and that persons having any one or more of such symptoms have malaria; that said preparation is a proper, guaranteed, unsurpassed, and effective preventive and remedy or cure of all types of malaria in the human body; that the use of said preparation will clean-out the system and restore the normal function of the bowels, add red corpuscles to the blood, aid digestion, and increase the appetite; that said preparation is an effective tonic which will restore vigor and vitality; that said preparation possesses remedial or curative value in the treatment of constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach trouble, chills, fever, ague, third-day chills, swamp chills, and various other conditions and diseases to which the human body is subject; that the use of said preparation both prevents and cures colds; that said preparation is a new discovery which is in no way habit forming and which is in no way harmful to the users thereof, including infants, children, adults, and elderly people; that said preparation is endorsed by nurses, physicians, and health officials throughout the southern part of the United States; and

that 9 out of 10 of the people residing in the southern part of the United States have malaria.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue and constitute false advertisements.

In truth and in fact only two of the symptoms enumerated herein in paragraph 3 (1), namely, chills and occasional fevers, are classical symptoms of malaria. Laziness, lack of energy and pep, aches, sallow, yellow complexion, trembling, dizziness, and headaches may be and frequently are associated with malaria, but are also often associated with or due to other disorders. Said preparation is not a proper or effective remedy and preventive or cure for all types of malaria, and its use will not prevent the development of malaria in the human body. The use of said preparation will not restore the normal functioning of the bowels, nor will it add red corpuscles to the blood, aid digestion, or increase the appetite. Said preparation is not an effective tonic which will restore vigor or vitality. Said preparation is not an effective remedy or cure for constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach troubles, chills, fever, ague, third-day chills, swamp chills, or for any other of the various diseases and conditions to which the human body is subject. It is habit forming in the sense that the continued use of a laxative or cathartic medicine is habit forming. Said preparation will not prevent nor will it cure colds. Said preparation is not a new discovery. Said preparation is not a wholly safe or harmless medicine for use in self-medication of infants, children, adults, and elderly people as represented by respondent, as it contains a substantial quantity of quinidine and cinchonine alkaloids which have a powerful effect on the heart and other organs or parts of the human body and which may cause injury to the health of users having cardiac or systemic weaknesses. Said preparation has not been endorsed by nurses, physicians, and health officials throughout the southern part of the United States, nor do 9 out of 10 people in the southern part of the United States have malaria. In fact, only a small percentage of persons residing in the southern part of the United States have malaria.

Respondents' statements and claims as to the therapeutic value and efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceeded any claims to the therapeutic value and efficacy of such preparation which might truthfully be made. Although said preparation may possess properties capable under certain conditions of use of having a beneficial effect on the treatment of certain forms of malaria at certain stages of development, said prepara-

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tion is not a remedy or cure or safe and effective treatment for all forms or types of malaria.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of respondents' said preparation which contains drugs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

The proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, William G. Nash, Sr., William G. Nash, Jr., and Florence Nash Cox, individually and as copartners trading as Nash Brothers Drug Co., or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation containing drugs now designated as "Nash Chill and Liver Tonic" and "Nash's C. & L. Tonic," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic qualities whether sold under the same names or under any other name or names, or disseminating or causing to be disseminated any

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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 by the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said medicinal preparation is a cure or remedy for malaria or will prevent the development of malaria in the human body or is an effective treatment for all types of malaria; or that said preparation will restore the normal functioning of the bowels, add red corpuscles to the blood, aid digestion, increase the appetite, restore vigor or vitality; or that said preparation is an effective remedy or cure for constipation, biliousness, liver trouble, dyspepsia, backache, headache, nervousness, stomach troubles, chills, fever, ague, third-day chills, or swamp chills; or that said preparation will prevent or cure colds; or that said preparation is a safe or harmless medicine for use in unsupervised medication of infants, children, adults, or elderly people; or that said preparation has been endorsed by nurses, physicians or health officials throughout the southern part of the United States or which represent that 9 out of 10 people in the southern part of the United States have malaria or that any appreciable percentage of persons residing in the southern part of the United States have malaria; or which represent that the presence of any or all of the following symptoms—laziness, lack of energy and pep, aches, trembling, dizziness, headaches, or sallow, yellow complexion—is necessarily indicative of malaria or that the presence of said symptoms is anything more than an indication that malaria may be present; 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 respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing stating whether or not they intend to comply with this order, and if so, setting forth in detail the manner and form in which they intend to comply; and that within 60 days after service upon them of this order, said respondents shall file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

UNITED CORPORATION, TRADING AS VIRGINIA PRODUCTS COMPANY, AND GEORGE M. CRUMP, INDIVIDUALLY AND AS PRESIDENT OF UNITED CORPORATION

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

Docket 3093. Complaint, Mar. 31, 1937—Decision, Aug. 2, 1939

Where the word "Virginia," when used in connection with sale and distribution of meats or meat food products, or to describe such products, and particularly ham, had long since come to signify to and be understood by purchasing public as meaning ham or other meat and meat food products obtained from animals grown in said State and that ham thus designated had been cured and processed in a manner which had been well-known for more than a century as the Virginia method of curing hams, and which imparted distinctive flavor thereto and to ham products and meat and meat food products, and substantial portion of purchasing public had preference for ham obtained from hogs or cattle raised in said State and processed by method above referred to, and for meat and other meat food products obtained from animals raised therein; and,

Thereafter corporation and an individual, president thereof and in control of its business operations, policies, and trade practices, with sales offices in New York City, and engaged in sale and distribution, in commerce among the various States, of (1) deviled ham, some of which, packed for it by Chicago company, was not made from ham or hogs grown in State of Virginia, and some of which, packed for it by Maryland concern, was made for it from Virginia hams purchased from Virginia packers, and (2) corned beef hash, purchased from Chicago company above referred to, and of which corned beef used in manufacture did not come from cattle or beeves raised or purchased in Virginia, and in (3) invoicing, as thus engaged, their aforesaid products, shipped directly to the purchasers thereof from the plants of the Chicago or Maryland packers, from office in Richmond, Va.—

- (a) Caused to be placed on the containers in which was contained said deviled ham, including both that packed and shipped by said Chicago company and that packed and shipped by said Maryland concern, labels reading "SOUTHERN STYLE DEVILED HAM With Vegetable Fat Net Weight 2 Lbs. OLD VIRGINIA BRAND U. S. Inspected and Passed by Department of Agriculture, Estab. No. 545. VIRGINIA PRODUCTS COMPANY, RICHMOND, VA., Distributors," and supplied customer drug stores and cafes with stickers or slips to be attached to the menu cards used by said customers and displaying, among other words of like import and effect, "Special Today OLD VIRGINIA Southern Style Deviled Ham Sandwich 15¢";
- (b) Caused to be placed on the containers of said corned beef hash, packed as aforesaid by said Chicago company, labels reading "Contents 1 Lb. 4 Oz. OLD VIRGINIA BRAND CORNED BEEF HASH Ready to Brown. U. S. Inspected and Passed by Department of Agriculture. Packed for VIRGINIA PRODUCTS COMPANY Richmond, Va.," and supplied to various