

IN THE MATTER OF
OSTREX COMPANY, INC.

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

Docket 3354. Complaint, Mar. 11, 1938—Decision, Aug. 8, 1939

Where a corporation engaged in sale and distribution of its "Ostrex" medicinal preparation to wholesale and retail druggists in various States for resale to members of purchasing public, in substantial competition with others engaged in sale and distribution of medicinal and other preparations and products designed and used for the same general purposes for which it represented its said "Ostrex" as effective, as below set forth, and including many who do not in any manner misrepresent their preparations or products or therapeutic properties thereof and who do not make any other false statements in connection with their sale and distribution; in advertisements which it disseminated through newspapers, publications, and bulletins circulating among the various States and in the District of Columbia—

- (a) Represented, directly and by implication, that use of said "Ostrex" would build up or regenerate the blood, and that it constituted a competent and effective gland stimulant and invigorator, and that quickest blood-building iron was contained in raw oysters, through such statements, among numerous others, as "Get rid of the weak, exhausted, pepleless condition that makes you feel half a man. Get rich red blood * * *," "Get package Ostrex Tablets today. They make you red-blooded, * * * make you feel peppy, younger," "Men get vigor at once * * * One dose peps up organs, glands," and "The quickest blood-building iron, copper, manganese and calcium are obtained from raw oysters. New discovery, Ostrex, contains these especially quick blood builders and weight builders * * * in highly concentrated form";

Facts being it had no therapeutic value for building up or regenerating blood of persons who were normal as regards blood count, it was not a competent or effective gland stimulant or invigorator for the various glands of the body, except insofar as iodine and calcium contained therein might beneficially affect thyroid or parathyroid glands, was not a competent or effective stimulant or invigorator of any other endocrine glands of the body, and quickest blood-building iron is not found in organic iron contained in raw oysters, but iron in inorganic compounds is better utilized by body to build up and improve blood than is iron contained in organic compounds;

- (b) Represented that use of said product would carry new life and power to every nerve cell and enliven and revitalize weak organs, and afforded a competent, effective, and reliable method for gaining substantial amount of weight, and was beneficial to the nerves and in treatment of anemia;

Facts being it would not carry new life or power to nerve cells or invigorate or revitalize weak organs as aforesaid, had no value as a method for gaining weight, except insofar as nux vomica therein contained might cause increase in intake of food through stimulating the appetite, and calcium, phosphorus, and iron content might tend to counteract deficiencies in such minerals, and would not beneficially affect nerves of users in those cases of nervous dis-

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orders which were caused by or persisted because of conditions other than deficiencies of calcium or phosphorus; and

(c) Represented that said preparation was made from Government-inspected raw oysters;

Facts being it was not made from raw oysters inspected by agents or representatives of the United States Government;

With effect of causing substantial portion of purchasing public to have erroneous and mistaken belief that such statements and representations were true, and that its said preparation possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of said public, because of such belief, to purchase substantial quantities thereof, and with result that, as direct consequence thereof, trade in commerce as aforesaid was diverted unfairly to it from its competitors aforesaid, who truthfully represent the therapeutic value of their respective preparations:

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

Mr. John N. Wheelock for the Commission.

COMPLAINT

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Ostrex Co., Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in 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, Ostrex Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business in the city of New York, State of New York.

PAR. 2. The respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing a medicinal or pharmaceutical preparation designated as "Ostrex." Respondent sells said preparation to wholesale and retail druggists situated in various States of the United States for ultimate resale to members of the purchasing public, and respondent causes the said preparation, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has main-

tained, a course of trade in said preparation so sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. During all the times mentioned herein, other individuals, firms, and corporations in various States of the United States have been and are engaged in the business of selling and distributing various preparations designed and used for the same general purposes for which respondent represents the product "Ostrex" to be effective as herein set forth. Such other individuals, firms, and corporations have caused and do cause their said preparations, when sold by them, to be transported from various States of the United States, to, into and through States other than the State of origin of the shipment thereof to the respective purchasers thereof. In the course and conduct of its business of selling and distributing the preparation "Ostrex" in commerce, as herein described, the respondent has been, during all the times mentioned herein, and is now, in competition with such other individuals, firms, and corporations.

PAR. 4. In the course and conduct of its business of selling the preparation "Ostrex" in commerce, as herein described, and in furtherance of the sale thereof, the respondent, during the times mentioned herein, caused statements and representations to appear in newspapers, publications, and bulletins, having an interstate circulation, purporting to be descriptive of said preparation and of its effectiveness in use. In furtherance of the sale of such preparation and to create a public demand therefor, the respondent, during the times mentioned herein, made or caused to be made, the following statements and representations in advertisements inserted in various publications, newspapers, and bulletins having an interstate circulation:

Eating oysters restores the mineral substances, regenerates blood, renews pep, but Ostrex, new tablet tonic, invigorates still more. Made from Government inspected raw oysters, with extra tonic elements added.

Fill out hollow neck and cheeks; get curves; lovely limbs. Gain 5 to 15 pounds in few weeks. Take Ostrex.

I gained 12 pounds in four weeks. Now have fine figure. . . . Thousands can write like above after taking the new discovery, Ostrex Tonic. Contains weight-building iron, calcium, phosphorus and nux vomica advised by doctors. Also contains an amazing invigorator, attained from raw oysters, which stimulates digestive glands to turn more of your food into flesh. Because of this added stimulant, Ostrex builds weight faster. It also puts flesh on people who never could gain before because of weak digestive glands.

Get rid of the weak, exhausted, pepleless condition that makes you feel half a man. Get rich red blood. It carries new life and power to every nerve cell and organ. You will feel peppier, younger. Red blood makes you feel new all over.

Ostrex—increase nerve force, enliven weak organs, invigorate glands, brace you up all over.

Don't be old at 40. Take new discovery, Ostrex.

Get package Ostrex Tablets today. They make you red-blooded, give you nerve force, revitalize weak organs and glands, and make you feel peppy, younger.

The quickest blood-building iron, copper, manganese and calcium are obtained from raw oysters. New discovery, Ostrex, contains these especially quick blood builders and weight builders with added digestive tonics, in highly concentrated form.

Doctors say physical weakness, exhaustion, anemia and other conditions that make you feel old at middle age are due to weak blood. Get rich, red blood—new vigor starts right away. They once advised raw oysters. Now a new discovery, Ostrex, is advised.

Men get vigor at once! New Ostrex Tonic Tablets contain raw oyster invigorators and other stimulants. One dose peeps up organs, glands.

The aforesaid statements, together with many others similar thereto not set out herein but of the same tenor and meaning, serve as representations on the part of the respondent to members of the purchasing public (1) that the use of said preparation restores and supplies mineral substances such as iron, copper, manganese, calcium, and phosphorus to the human body; (2) that the use of said preparation builds up and regenerates blood, stimulates digestive glands, benefits nerves, and carries new life and power to every nerve cell and enlivens and revitalizes weak organs; (3) that the use of said preparation is a competent, effective, and reliable method for gaining a substantial amount of weight; (4) that said preparation is a competent and effective gland stimulant, invigorator, and aphrodisiac; (5) that the use of said preparation will cure and is beneficial in the treatment of anemia and physical weakness and exhaustion due to weak blood; (6) that said preparation has substantial therapeutic value as a remedy or cure for, or a treatment for, many of the ailments, maladies, diseases, and conditions to which mankind is subject; and (7) that said preparation is made from Government-inspected raw oysters.

PAR. 5. In truth and in fact, the use of the preparation "Ostrex" will not restore or supply mineral substances such as iron, copper, calcium, manganese, and phosphorus to the human body in an amount or amounts sufficient to be of any beneficial value to the user of such preparation. The use of the said preparation will not build up or regenerate the blood; neither will it stimulate digestive glands, benefit nerves, carry new life and power to every nerve cell; nor will it enliven or revitalize weak organs. The use of the said preparation is not a competent, effective, or reliable method for gaining any substantial amount of weight. The said preparation is not a competent or effective

tive gland stimulant, invigorator, or aphrodisiac. The use of said preparation will not cure anemia, nor does it have any substantial therapeutic value in the treatment of anemia, physical weakness, and exhaustion due to weak blood. The iron contained in the said preparation when taken over a reasonable period of time is not in a quantity sufficient to materially influence the coloring matter of the blood. The quickest blood-building iron is not found in the organic iron contained in raw oysters. The iron contained in the inorganic compounds is better utilized by the body to build up and improve the blood than is the iron contained in the organic compounds.

The said preparation is not made from raw oysters, inspected by agents or representatives of the United States Government.

In truth and in fact, the said preparation has no substantial therapeutic value as a remedy or cure for, or as a treatment for, the ailments, maladies, diseases, and conditions to which mankind is subject as is claimed by the respondent through the representations described in paragraph 4 hereof. All of the statements and representations relative to the therapeutic value of the preparation "Ostrex" as set forth in paragraph 4 hereof are grossly inaccurate, incorrect, exaggerated, and are not true statements of the therapeutic value of the preparation "Ostrex."

PAR. 6. The statements and representations of respondent, as set out in paragraph 4 hereof, relative to the efficacy of the preparation "Ostrex" have a tendency and capacity to and do confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken beliefs that the preparation "Ostrex" is a remedy or a competent and adequate treatment for the ailments of the human body for which the said preparation is recommended and advertised as aforesaid and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Trade is thereby unfairly diverted to respondent from its said competitors who are engaged in the sale and distribution of preparations designed for similar usage in treating the ailments of the human body for which the respondent recommends its said preparation and who truthfully advertise the extent of the value of their respective preparations. In consequence thereof injury has been done, and is being done, by respondent to competition in commerce among and between the various States of the United States.

PAR. 7. The aforesaid methods, acts, and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its

powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 11th day of March 1938, issued and thereafter served its complaint in this proceeding upon said respondent, Ostrex Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the president of the respondent corporation, 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 argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ostrex Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business in the city of New York, State of New York.

PAR. 2. The respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a medicinal or pharmaceutical preparation designated as "Ostrex." Respondent sells said preparation to wholesale and retail druggists situated in various States of the United States for ultimate resale to members of the purchasing public. Respondent causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondent maintains, and

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at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations, and with partnerships, firms, and individuals selling and distributing medicinal and other preparations and products designed and used for the same general purposes for which the respondent represents the product Ostrex to be effective as herein set forth. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products or the therapeutic properties thereof and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said preparation, respondent has caused advertisements, containing representations and claims with respect to the properties of said preparation and the results that may be expected to be obtained from the use thereof, to be disseminated in newspapers, publications, and bulletins having a circulation among and between the various States of the United States and in the District of Columbia. Among and typical of the representations contained in said advertisements so used and disseminated as aforesaid are the following:

Eating oysters restores the mineral substances, regenerates blood, renews pep, but Ostrex, new tablet tonic, invigorates still more. Made from Government inspected raw oysters, with extra tonic elements added.

Fill out hollow neck and cheeks; get curves; lovely limbs. Gain 5 to 15 pounds in few weeks. Take Ostrex.

I gained 12 pounds in four weeks. Now have fine figure. Thousands can write like above after taking the new discovery, Ostrex Tonic. Contains weight-building iron, calcium, phosphorus and nux vomica advised by doctors. Also contains an amazing invigorator, attained from raw oysters, which stimulates digestive glands to turn more of your food into flesh. Because of this added stimulant, Ostrex builds weight faster. It also puts flesh on people who never could gain before because of weak digestive glands.

Get rid of the weak, exhausted, pepleless condition that makes you feel half a man. Get rich red blood. It carries new life and power to every nerve cell and organ. You will feel peppier, younger. Red blood makes you feel new all over.

Ostrex—Increase nerve force, enliven weak organs, invigorate glands, brace you up all over.

Don't be old at 40. Take new discovery, Ostrex.

Get package Ostrex Tablets today. They make you red-blooded, give you nerve force, revitalize weak organs and glands, and make you feel peppy, younger.

The quickest blood-building iron, copper, manganese and calcium are obtained from raw oysters. New discovery, Ostrex, contains these especially quick blood builders and weight builders with added digestive tonics, in highly concentrated form.

Doctors say physical weakness, exhaustion, anemia and other conditions that make you feel old at middle age are due to weak blood. Get rich, red blood—new vigor starts right away. They once advised raw oysters. Now a new discovery, Ostrex, is advised.

Men get vigor at once! New Ostrex Tonic Tablets contain raw oyster invigorators and other stimulants. One dose peps up organs, glands.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto, not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of ailments and conditions of the human body, respondent has represented directly and by implication, among other things: that the use of such preparation will build up or regenerate the blood; that the use of such preparation is a competent and effective gland stimulant and invigorator; that the use of such preparation will carry new life and power to every nerve cell and enliven and revitalize weak organs; that the use of such preparation is a competent, effective and reliable method for gaining a substantial amount of weight; that the use of such preparation will benefit the nerves; that the use of such preparation is beneficial in the treatment of anemia; that the quickest blood-building iron is contained in raw oysters; and that such preparation is made from Government-inspected raw oysters.

PAR. 6. In truth and in fact the preparation Ostrex has no therapeutic value for building up or regenerating the blood of persons who are normal as regards blood count or hemoglobin percentage or of persons suffering from types of anemia which cannot be benefited by the administration of iron. Such preparation is not a competent or effective gland stimulant or invigorator for the various glands of the human body except insofar as the iodine and calcium contained in such preparation may beneficially affect the thyroid or parathyroid glands. Such preparation is not a competent or effective stimulant or invigorator of any other endocrine glands of the body. Such preparation will not carry new life and power to nerve cells of the body. The use of such preparation will not invigorate or revitalize weak organs. The use of such preparation has no value as a method for gaining weight except insofar as the nux vomica contained therein may cause an increase in the intake of food by stimulating the appetite and the calcium, phosphorus, and iron contained therein may tend to counteract deficiencies in such minerals.

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The use of such preparation will not beneficially affect the nerves of the users thereof in those cases of nervous disorders which are caused by or persist because of conditions other than deficiencies of calcium or phosphorus. The quickest blood-building iron is not found in the organic iron contained in raw oysters. The iron contained in inorganic compounds is better utilized by the body to build up and improve the blood than is the iron contained in the organic compounds. Such preparation is not made from raw oysters inspected by agents or representatives of the United States Government.

PAR. 7. The use by respondent of the foregoing statements and representations, disseminated as aforesaid with respect to said preparation, has had, and now has, the capacity and tendency to, and does, cause a substantial portion of the purchasing public to have the erroneous and mistaken belief that such statements and representations are true and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said belief, to purchase substantial quantities of respondent's said preparation. As a direct result thereof trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who truthfully represent the therapeutic value of their respective preparations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into between the respondent 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 respondent 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ostrex Co., Inc., 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 "Ostrex" or any other preparation possessing substantially similar therapeutic properties or composed of substantially similar ingredients, whether sold under the same name or any other name or names in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of said preparation has any beneficial effect on the blood unless such representation is limited to those cases of persons having an abnormal blood count and hemoglobin percentage and having a type of anemia which may be beneficially affected by the administration of iron.

2. Representing that the use of said preparation is beneficial in stimulating or invigorating any glands of the human body unless such representation is limited to the effectiveness of the iodine and calcium contained in said preparation on the thyroid or parathyroid glands.

3. Representing that said preparation will carry new life and power to nerve cells or will invigorate or revitalize weak organs of the human body.

4. Representing that the use of said preparation is beneficial in increasing weight unless such representation is limited to statements to the effect that said preparation may stimulate the appetite and may counteract deficiencies in calcium, phosphorus, and iron.

5. Representing that the use of said preparation will beneficially affect the nerves unless such representation is limited to those cases of nervous disorders caused by a deficiency of calcium or phosphorus.

6. Representing that the iron contained in raw oysters is more beneficial in building up the blood than iron contained in other forms of organic or inorganic compounds.

7. Representing that said preparation is made from Government-inspected oysters unless and until said preparation is made from oysters which have been inspected and approved by accredited representatives of the United States Government.

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
JAMES HEDDON'S SONS

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

Docket 3792. Complaint, May 16, 1939—Decision, Aug. 8, 1939

Where a corporation engaged in manufacture, distribution, and sale of fishing tackle, including fishing rods, reels, lines, and lures, and in selling its said products to purchasers in other States and in the District of Columbia in substantial competition with others engaged in distribution and sale of similar products of fishing tackle; in advertising its "Pal" hollow seamless steel fishing rod in periodicals of general circulation through various statements and depictions relative to thickness of the walls of its said "Pal" rods as compared to walls of competitive products, and the effectiveness and desirability of its own said product—

- (a) Represented that all other steel rods had a "THICK WALL at the TIP END" and a "THIN WALL at the BUTT END," whereas its said "Pal" rod had a "THIN WALL at the TIP END" and a "THICK WALL at the BUTT END";
- (b) Made use of depictions, in connection with assertions aforesaid, which purported to show thickness of other rod at butt and tip as $\frac{1}{32}$ and $\frac{2}{32}$ inch, respectively, and which showed, for its "Pal" rod, wall thickness of approximately $\frac{1}{8}$ inch at butt and $\frac{1}{32}$ inch at tip, and accompanied such depictions with such comment as "The two sectional drawings (at left and right) show the difference in wall thickness between Steel Rods produced by the old practice and the new Heddon construction," and "The left hand sketch shows how the old practice produced an unnecessarily thick wall at tip end where flexibility—not strength—is needed"; and
- (c) Set forth, on basis of breakage or durability, asserted results of comparative tests of its said "Pal" rod with other rods tested in connection with aforesaid assertions and depictions, and alleged advantages of its said "Pal" rod, to the very great advantage of the latter, and under statement reading "Which Steel Rod did the Casting-Testers say was 'Best-by-Test?' Four (4) Tubular Steel Casting Rods went to the Casting-testers—look what their tests proved. Note: These Testers are expert casters— * * *," and represented thereby that tests had been made by persons expert in matters involved and who were independent of it, and on the basis of such tests had pronounced its said "Pal" rod as "Best-by-Test";

Facts being other hollow steel casting rods are sold and distributed in commerce which have walls whose thickness tapers from butt to tip, or whose walls are uniform in such thickness, and while some hollow steel casting rods have walls thicker at tip than butt, thickness at former is not ordinarily twice that at latter, thickness of said "Pal" rod at butt was not ordinarily four times that at tip, both depictions were in exaggerated and distorted proportion and had capacity and tendency to engender mistaken and erroneous belief that walls of all such rods other than said "Pal" were disproportionately thick at the tip in comparison to the butt, and that