

Complaint

IN THE MATTER OF
SUMLAK COMPANY

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

Docket 3828. Complaint, June 21, 1939—Decision, Aug. 24, 1939

Where a corporation engaged in sale and distribution of medicinal preparation known as "Sumlakia" for use, as recommended by it, by those suffering from epilepsy; in advertisements which it disseminated and caused to be disseminated through the mails, through newspapers and periodicals of general circulation and through circulars and other printed or written matter distributed in commerce among the various States, and through other means, and which were intended and calculated to induce, directly or indirectly, purchase of said preparation—

- (a) Represented that said "Sumlakia" was a cure or remedy for epilepsy, and a competent treatment therefor, and harmless and safe for use, facts being it was not such a cure, remedy, or treatment, nor harmless nor safe for use by those suffering from epilepsy, by reason of the various bromides contained therein, and long continued or excessive use of such bromides might cause injury to health, such as mental dullness and deterioration, psychoses, skin eruptions, digestive disturbances, or loss of sexual power; and
- (b) Failed, in its said advertisements disseminated as above set forth, to reveal to purchasers and prospective purchasers that use of said preparation by uninformed persons under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might in some cases cause them to suffer serious injury to health;

With effect of engendering in the minds of substantial portion of purchasing public erroneous and mistaken belief that said statements and representations were true and that said preparation might be used under conditions prescribed in said advertisements, or under customary or usual conditions, without danger to user, and to induce portion of said public, because of such belief, to purchase its said drug-containing medicinal preparation;

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

Mr. R. W. Branch for the Commission.

Nash & Donnelly, 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 Sumlak Co., a corporation, hereinafter referred to as respondent, has 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:

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PARAGRAPH 1. The Sumlak Co. is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at 226-228 East Sixth Street, in the city of Cincinnati, State of Ohio. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a certain medicinal preparation known as Sumlakia, recommended for use by those suffering from epilepsy. In the course and conduct of its business respondent causes said medicinal preparation when sold to be transported from its place of business in the State of Ohio to purchasers thereof located in other States of the United States and in the District of Columbia. At all times mentioned herein respondent has maintained a course of trade in said medicinal preparation sold and distributed by it in commerce between and among the various States in the United States and in the District of Columbia.

PAR. 2. In the course of its aforesaid business the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination, of false advertisements concerning its said medicinal preparation 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 its said medicinal preparation; and has disseminated and is now disseminating, and has caused and is now causing the dissemination, of various advertisements concerning its said medicinal preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said medicinal preparation 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:

Sumlakia for Epilepsy. The first bottle of Sumlakia means checking the spells. Must fully satisfy—or costs you nothing—we sell it with manufacturer's money back guarantee.

Sumlakia's functional goal is to aid nature in soothing the affected organs so that the shock of the oncoming attack can be cushioned and averted.

Equally important as its therapeutic qualities is the comforting assurance that Sumlakia is made out of non-narcotic ingredients. It is safe. If it does not help, it should, at least, not harm, not even an aged person or an infant.

We are glad to tell you of one case of a person afflicted with epilepsy to whom we recommended Sumlakia, the wife of the sufferer, reporting later, said: That he had not had any ailments since taking the medicine and is happy with results.

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 products, respondent has represented and does now represent, directly and indirectly, that its preparation, Sumlakia, is a cure or remedy for epilepsy and a competent treatment therefor, and that said preparation is harmless and safe for use.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as herein above described are grossly exaggerated, misleading, and untrue. In truth and in fact respondent's preparation, Sumlakia, is not a cure or remedy for epilepsy, nor is it a competent treatment therefor. Furthermore, said preparation is not harmless and safe for use by those suffering from epilepsy, because of the fact the said preparation is composed of the following bromides: Potassium, strontium, sodium, and ammonium, and the long continued or excessive use of such bromides may cause injury to health such as mental dullness and deterioration, psychosis, skin eruptions, digestive disturbances, and loss of sexual power.

PAR. 5. 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 in said advertisements or under such conditions as are customary or usual may in some cases cause them to suffer serious injury to health.

PAR. 6. 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 induce a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's medicinal preparation containing drugs.

The aforesaid acts and practices of the respondent 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 June 21, 1939, issued and served

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its complaint in this proceeding upon said respondent, Sumlak Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 17, 1939, the Commission entered its order extending the time for the filing of the answer to said complaint from July 12, 1939, to August 11, 1939. Prior to August 11, 1939, respondent entered into a stipulation whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and Richard P. Whiteley, Acting 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 (including inferences which it may draw from the said stipulated 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 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 Sumlak Co. is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at 226-228 East Sixth Street, in the city of Cincinnati, State of Ohio. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation known as Sumlakia, which it recommends for use by those suffering from epilepsy. In the course and conduct of its business respondent causes said medicinal preparation, when sold, to be transported from its place of business in the State of Ohio to 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 said medicinal preparation sold and distributed by it, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Each teaspoonful of Sumlakia contains, among other things:

6 grains of potassium bromide
3 grains of strontium bromide
3 grains of sodium bromide
3 grains of ammonium bromide

PAR. 3. In the course of its aforesaid business respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning its said medicinal preparation 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 its said medicinal preparation; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, various advertisements concerning its said medicinal preparation, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said medicinal preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

Sumlakia for Epilepsy. The first bottle of Sumlakia means checking the spells. Must fully satisfy—or costs you nothing—we sell it with manufacturer's money-back guarantee.

Sumlakia's functional goal is to aid nature in soothing the affected organs so that the shock of the oncoming attack can be cushioned and averted.

Equally as important as its therapeutic qualities is the comforting assurance that Sumlakia is made of non-narcotic ingredients. It is safe. If it does not help, it should, at least, not harm, not even an aged person or an infant.

We are glad to tell you of one case of a person afflicted with epilepsy to whom we recommended Sumlakia, the wife of the sufferer reporting later said: That he had not had any ailments since taking the medicine and is happy with results.

PAR. 5. 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 product, respondent has represented and does now represent, directly and indirectly, that its preparation,

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Sumlakia, is a cure or remedy for epilepsy and a competent treatment therefor, and that said preparation is harmless and safe for use.

PAR. 6. The representations made by respondent, directly and by implication, and used and disseminated by respondent in the manner described with respect to its said preparation, are exaggerated, misleading, and untrue and constitute false advertising. In truth and in fact, respondent's preparation, Sumlakia, is not a cure or remedy or competent treatment for epilepsy. It is not harmless and safe for use by those suffering from epilepsy because of the fact that it contains the various bromides set forth in paragraph 2 hereof, and the long continued or excessive use of such bromides may cause injury to health, such as mental dullness and deterioration, psychoses, skin eruptions, digestive disturbances or loss of sexual power.

The said advertisements are further false in that in them respondent fails and has failed to reveal to purchasers and prospective purchasers that the use of said preparation by uninformed persons under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may in some cases cause them to suffer serious injury to health.

PAR. 7. The use by respondent of the foregoing exaggerated, misleading, and untrue statements, representations and advertisements disseminated as aforesaid, with respect to the said medicinal preparation and respondent's failure to reveal the consequences which may result from its use, as aforesaid, have had and now have the capacity and tendency to and do engender in the minds of a substantial portion of the purchasing public the erroneous and mistaken belief that the said statements and representations are true and that said preparation may be used under conditions prescribed in said advertisements, or under customary or usual conditions, without danger to the user and to induce a portion of the purchasing public, because of such belief, to purchase respondent's medicinal preparation containing drugs.

CONCLUSION

The aforesaid acts and practices of the respondent, Sumlak Co., a corporation, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce, in violation of the provisions of said 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 Richard P.

Whiteley, Acting 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, Sumlak Co., a corporation, its officers, 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 certain medicinal preparation now designated by the name "Sumlakia," or any other preparations or preparations composed of substantially similar ingredients, or possessing substantially similar therapeutic qualities, whether sold under said 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 preparation, which advertisements represent, directly or through implication that said preparation is a cure or remedy, or a competent treatment, for epilepsy; or that said preparation is harmless or safe for use; or which advertisements fail to reveal that the long continued or excessive use of said preparation may cause serious injury to the health of the user.

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
**SAKS & COMPANY, DOING BUSINESS AS SAKS AT 34TH
STREET**

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

Docket 3298. Complaint, Jan. 12, 1938—Decision, Aug. 25, 1939

Where a corporation engaged in operating retail department stores in New York City, and in there dealing in numerous articles of merchandise, including perfumes and toilet waters, both at its said store in regular course of retail trade, and on mail order from customers in other States; in advertising perfumes in newspapers of general circulation in New York and adjacent States—

- (a) Described as "Renaud's Perfume, Famous in France" product there offered, notwithstanding fact perfume advertised by it had been purchased from dealers in said city and had been there made from concentrates imported from France, and to which alcohol and water had been added in city and State aforesaid, and which concentrates, preceding such processes and addition, were not finished products and marketable as perfumes, and product thus described was not famous in France nor even there generally well known;

With tendency and capacity to cause members of purchasing public to have erroneous and mistaken belief that perfume thus designated was imported from France and to purchase same because of such belief; and

- (b) Represented its said "Renaud's Perfume, Famous in France" as priced at \$3.95, and at about one-fifth of its value, listed at \$22.50, and perfume offered in 1-ounce flacons, priced at \$1 each, as "Perfume by Riviere, regularly \$5.00," facts being its former \$3.95 product had never been listed or sold by it in its store at \$22.50, and other product had never been listed or sold therein at \$5;

With capacity and tendency to confuse, mislead, and deceive members of public and induce them to purchase perfumes offered and sold by it in the belief that such products were being sold at prices much below their true values and list prices, and had been imported from France, and with result that trade in commerce was diverted unfairly to it from its competitors who do not misrepresent the values or list prices of perfumes offered and sold by them and do not offer perfumes of domestic manufacture as and for those imported from France:

Held, That such claims and representations, as above set forth, were all to the injury of the public and constituted unfair methods of competition in commerce.

Before *Mr. William C. Reeves*, trial examiner.

Mr. William L. Pencke for the Commission.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for respondent.