

## Syllabus

IN THE MATTER OF  
UNITED DISTRIBUTORS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3708. Complaint, Feb. 13, 1939—Decision, Sept. 7, 1939*

Where a corporation engaged in manufacture of its "Wittone" preparation for treatment of various diseases, and in sale and distribution thereof to members of purchasing public in the various States, in substantial competition in commerce with others engaged in sale and distribution of other preparations designed and intended for and used in treatment of the conditions for which it recommended its said "Wittone"; in advertisements which it disseminated through circulars, folders, calendars, match books, and other printed and written matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of its said product—

- (a) Represented that constipation caused a swelling of the digestive organs, and that generation of poisons was usual consequence of constipation, and that distention of such organs was caused by poison and that such distention brought about pressure on the nerves, resulting in bilious spells, dizziness, headaches, dull tired feelings, and various other asserted symptoms there set forth, and that use of its said "Wittone" would, by relieving pressure on the nerves, eliminate such various conditions, and that professional medical opinion was to the effect that 87 percent of all ailments were traceable to constipation as fundamental cause, and that said "Wittone" would cleanse the bowels as they had never been "cleansed before and tone them into better daily action," and that use thereof would strengthen the nerves and assure and impart physical beauty to the user;
- (b) Represented that such use would lift mental depression, regardless of its cause, rendering the mind active and alert and affording relief from all stomach disorders, and that its action was gentle and would assure, in all cases, good health, well-being and healthy condition of the blood stream, and that it contained seven carminatives and was beneficial in stimulating the appetite and digestive processes, etc.; and
- (c) Represented that it relieved the liver and kidneys of a part of their work and was a remedy and adequate treatment for all deranged stomachic conditions, inactive livers, weak kidneys, and other disorders, and was of value in connection with the functioning of the kidneys, driving out poison, and beneficial to women passing through change of life, and would relieve nervous indigestion, pains in legs or sides, sick headaches, high blood pressure, heart trouble, and various other ailments and conditions, and would avert the cold and restore to normal all abnormal functioning of the nervous system, blood stream, liver or stomach;

Facts being representations, as aforesaid, as to cause and effect of constipation were untrue or misleading, as were those as to cause and effect of distention of the digestive organs, various symptoms enumerated were not due to nerve pressure in region of digestive organs caused by their distention, but to other causes, it possessed laxative and cathartic properties

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and was primarily a laxative, but would not tone up nor improve the normal action of the bowels, and action thereof was not gentle, it would not result in lifting of mental depression regardless of cause, did not contain ingredients such as to afford any immediate significant relief for all stomach disorders, and representations made, as above, with respect to percentage of ailments traceable to constipation as fundamental cause, and with respect to effects and functioning of said preparation, were exaggerated, misleading, and untrue, and constituted false advertising;

With capacity and tendency to engender in minds of purchasing public erroneous and mistaken belief that said statements, representations and claims were true, and that said "Wittone" possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of such public, because of such belief, to purchase substantial quantities of its said product, and of thereby, as direct result, diverting unfairly trade in commerce to it from its competitors aforesaid who do not misrepresent their respective preparations or therapeutic properties thereof:

*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 in commerce and unfair and deceptive acts and practices therein.

*Mr. R. W. Branch* for the Commission.

*Mr. J. P. Ruddick and Sanders, Gravelle, Whitlock & Howrey*, 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 United Distributors, Inc., 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, United Distributors, Inc., is a corporation organized under the laws of the State of Kentucky, and having its offices and principal place of business at 113 South Third Street, Louisville, Ky.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the business of manufacturing, selling and distributing a certain preparation known as "Wittone," which is intended for use in the mitigation or treatment of diseases in man. Respondent sells such preparation to the members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the State of

Kentucky and from its manufacturing plant located in the city of Utica in the State of Indiana, to the purchasers thereof at their respective points of location in various States of the United States other than the States of Kentucky and Indiana 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. 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 individuals, firms and partnerships selling and distributing preparations and products designed and intended for and used in the treatment, relief, and remedy of the conditions of the human body for which respondent recommends the use of its said preparation. 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 false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct 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 product by circulars, folders, calendars, match books, and other printed or written matter 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 product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its 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:

Modern doctors say that poisons from constipation swell up digestive organs causing pressure on nerves in this region. This nerve pressure causes frequent bilious spells, dizziness, headaches, sour stomach, dull tired-out feeling, sleepless nights, coated tongue, bad taste, and loss of appetite.

Don't fool with laxatives that give slow action \* \* \*. What you want is Quick results. Get That Pressure Off The Nerves. Flush the intestinal

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system. When offending wastes are gone, the bowels return to normal size and nerve pressure stops.

Almost at once you feel marvelously refreshed, blues vanish and life looks bright again.

That is why so many doctors are now insisting on gentle but Quick Action. That is why you should insist on Wittone.

This efficient intestinal evacuant contains Seven carminative Ingredients.

It acts in relieving stomach distress at once, \* \* \*.

Clean stomach, liver and bowels mean an active mind.

The only road to complete health and vitality and the best assurance of continued well being is a clean alimentary tract.

How to have rich, strong blood: There are two vital things to do: First, eat plenty of good food and digest it thoroughly. Second, keep the blood free from impurities and poisons. Thousands of people have been able to do both these things with the help of Wittone. It stimulates your appetite and helps digest your food properly, thus enabling the blood to get the proper nourishment from it. Wittone also cleanses the intestinal tract from impurities, thus preventing their absorption into the blood stream. This takes a heavy load off the liver and kidneys enabling them to work better.

Wonderful Diuretic for Weak Kidneys and Stimulant to Sluggish Liver.

A notable discovery has been made that is bringing happiness and relief to men and women who are suffering the common afflictions caused by deranged stomach, inactive liver, weak kidneys and similar disorders.

It contains nature's finest health building ingredients.

Its ingredients mix with the food in your stomach, improving your digestion which overcomes constipation in a natural way.

Wittone will cleanse your bowels as they were never cleansed before and tone them into better daily action.

You get amazing relief as soon as these poisons leave the kidneys; relief from backache, bladder irritation, weakness. At any age, children are relieved from bed-wetting within a few days. (Nerves are strengthened naturally.)

\* \* \* a beautiful woman is self made \* \* \* she has guarded herself with \* \* \* proper habits against the ravages of time. Constipation is a "great American curse" \* \* \*.

According to Professional Opinion 87% of All sickness is traceable to putrefaction of decayed waste products and toxins formed in the colon.

This medicine is not a "patent medicine" or "cure all" \* \* \*.

I find myself almost entirely free of rheumatic aches \* \* \*.

I was weak, run down and nervous. No doubt this is called "change of life" \* \* \*." After taking Wittone I feel like a different woman.

I suffered from profuse menstruation and awful cramping spells and had to go to bed every month. Since taking Wittone I have been able to do my housework.

Wittone is constantly leading people back to normalcy in the functions of the: Nervous system, Blood stream, Kidneys, Stomach, Liver.

Nervous indigestion \* \* \* Wittone \* \* \* was relieved.

I suffered from sick headache spells \* \* \* have not had a sick spell since.

I have suffered from \* \* \* high blood pressure \* \* \* and heart trouble. One bottle of your tonic has made me feel fifty per cent better and I feel that another bottle will restore my health completely.

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If taken at the beginning of a cold it will entirely avert a cold.

I took one bottle of Wittone and feel like a new woman. I suffered from bladder trouble, extreme nervousness and insomnia.

Prostate and kidney trouble \* \* \* I have been feeling fine.

My legs had hurt me since 1905, my side and stomach had hurt me since 1918 \* \* \* after the fifth dose I had complete relief.

\* \* \* an incurable case of ulcerated stomach. \* \* \* I feel better than I have in years and can eat anything I want without the least discomfort.

Several local doctors had treated me for gall bladder trouble \* \* \*. It has helped me wonderfully.

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 the causes of the ailments and conditions of the human body for which respondent recommends its preparation, the preparation itself and its effectiveness in the treatment of the said ailments and conditions, respondent directly and by implication, among other things, has represented that frequent bilious spells, dizziness, headache, sour stomach, dull tired-out feeling, sleepless nights, coated tongue, bad taste, and loss of appetite are the results of pressure on the nerves in the region of the digestive organs due to poisons from constipation swelling those organs; that the use of "Wittone" will result in a quick flushing of the intestinal system and removal of pressure on the nerves in that locality with relief from the symptoms set forth above, and an almost immediate feeling by the user of refreshment, relief from mental depression, optimism, and cheer; that the laxative action of "Wittone" is gentle but quick; that it contains seven carminatives; that it will immediately relieve all distresses located in the stomach; that the user will have a clean stomach, liver, and bowels and an active mind; that the sole requisite for complete health, vitality, and well-being is a clean alimentary tract; that "Wittone" will enable the user to eat and digest sufficient food and keep the blood free from impurities, assuring him of rich strong blood; that "Wittone" will stimulate the appetite, assure proper digestion, cleanse the intestinal tract from impurities, and relieve the liver and kidneys of a part of their work; that it is a diuretic of great merit, and stimulates the action of the liver; that it is a notable discovery and is a competent remedy and adequate treatment for all deranged conditions of the stomach and for inactive liver, weak kidneys, and similar disorders, regardless of their cause; that it is a tonic; that it will relieve constipation by improving the digestion; that it is a superlative bowel cleanser and that it will improve the natural action of the bowels; that it will drive poisons out of the kidneys, relieve backache, bladder irritations, weakness, bed-wetting in children, and will strengthen the nerves naturally;

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that beauty may be obtained by keeping the bowels open; that according to reliable professional opinion 87 percent of all ailments is due to the putrefaction of decayed waste products and poisons in the colon, due to constipation; that "Wittone" is not in the class of the generally so-called "patent medicine" or "cure all"; that it will cure rheumatic pains; that it is beneficial to women experiencing the change of life; that it will relieve the pains and other distresses incident to menstruation; that it will relieve nervous indigestion, pains in legs and sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate, kidney, and gall bladder trouble and ulcers of the stomach; that it will, if seasonably taken, avert the common cold and will restore to normal any abnormal functioning of the nervous system, blood stream, liver, and stomach.

PAR. 6. The aforesaid representations used and disseminated by respondent in the manner above described, are grossly exaggerated, misleading and untrue and constitute false advertising. In truth and in fact, constipation does not cause the digestive organs to swell. Distentions of the digestive organs are ordinarily due to gases caused by fermentation or other conditions which may or may not be an accompaniment of poisons and are not caused by poisons. Constipation, although it may result in fermentation in the digestive tract, does not in all or in many cases result in the generation of poisons therein by fermentation or otherwise. The presence of a distention of the digestive organs will not cause any significant pressure on the nerves in their locality and the symptoms of bilious spells, dizziness, headaches, sour stomach, dull tired feeling, sleepless nights, coated tongue, bad taste and loss of appetite, are not due to nerve pressure in the region of the digestive organs caused by their distention, but to other causes. "Wittone" possesses laxative and cathartic properties and the recommended dosage would ordinarily be sufficient to cause defecation, but will not, by relieving pressure on the nerves, eliminate the symptoms set forth above.

The use of "Wittone" will not result in the lifting of mental depression, regardless of its cause. The action of "Wittone" is neither quick nor gentle. "Wittone" does not contain seven carminatives, but only two, and the amount of these in the recommended dosage is relatively insignificant. The ingredients of "Wittone" are not such as to afford any immediate significant relief for all stomach disorders.

To any cleanliness which "Wittone" may impart to the stomach, liver, or bowels, an active and alert mind is not a necessary concomitant. These organs are never "clean" in any generally accepted sense of the word. Health, vitality and well-being are not solely dependent upon a clean alimentary tract, but upon other factors as well.

Adequate amounts of good food, a good digestion and an absence of impurities and poisons are important, but not the only factors in a healthy condition of the blood stream. The only stimulations to the appetite and to the digestive processes which "Wittone" will give are such as may arise from its laxative or cathartic action. It does not relieve the liver of any portion of its normal functions. In the recommended dosage it is only slightly diuretic and does not stimulate the action of the liver. "Wittone" is not a notable discovery. It is primarily a laxative and is not a competent remedy nor an adequate treatment for all deranged stomachic conditions or for inactive liver, weak kidneys, or similar disorders, regardless of their cause. "Wittone" has no tonic qualities. "Wittone" is not an aid to digestion except as stated herein, and so far as it may affect constipation, it does so only by inducing an artificial movement of the bowels and not a natural movement. Its action is not that of a cleanser; its use will not tone up nor improve, but will rather tend to impair the natural action of the bowels. "Wittone" in the recommended dosage does not contain diuretics in a therapeutically significant quantity and will not strengthen the nerves. An open bowel is not an assurance of physical beauty; reliable professional opinion does not regard 87 percent of all ailments as traceable to constipation as the fundamental cause. "Wittone" is a preparation of the type generally described as "patent medicine" and the claims made for its therapeutic properties are such as to characterize it as what is generally known as a "cure all." It is not a competent treatment or remedy for rheumatic aches and pains and is of no value to women passing through the period of change of life. It has no significant analgesic properties. It will not relieve nervous indigestion, pains in the legs and sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate, kidney and gall bladder trouble or ulcers of the stomach; it will not, though seasonably taken, avert the common cold and it will not restore to normal all abnormal functioning of the nervous system, blood stream, liver, and stomach.

PAR. 7. The use by respondent of the foregoing false, deceptive and misleading statements, representations and claims, disseminated as aforesaid, with respect to said 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 claims are true; that respondent's preparation possesses the properties claimed and represented, and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous

and mistaken belief, to purchase substantial quantities of respondent's preparation.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products, as described in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and 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 February 13, 1939, issued and thereafter served its complaint in this proceeding upon said respondent, United Distributors, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 10, 1939, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and Richard P. Whiteley, assistant 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, subject to the right of the respondent or of counsel for the Commission to file briefs and make application for oral argument as provided by the rules of the Commission, and also subject to the right of the respondent to file a petition for review of the Commission's order as provided by the Federal Trade Commission Act. 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 respondent and counsel for the Commission having elected not to file briefs or make application for oral argument, 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, United Distributors, Inc., is a corporation organized under the laws of the State of Kentucky and having its office and principal place of business in the city of Louisville, Ky. Respondent is now, and has been for more than one year last past, engaged in the business of manufacturing, selling and distributing a certain preparation known as "Wittone" which is intended for use in the treatment of various diseases in man. In the course and conduct of its business, respondent sells this preparation to members of the purchasing public situated in the various States of the United States and causes said preparation when sold by it to be transported from its aforesaid place of business in Kentucky and from its manufacturing plant in the city of Utica, Ind., to purchasers thereof located in various States of the United States other than the States of Kentucky and Indiana and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Each 12-ounce bottle of "Wittone" contains the following:

|                               |                        |
|-------------------------------|------------------------|
| 1. Iron-Ammonium Citrate----- | 40 grs.                |
| 2. Sodium Salicylate-----     | 27 grs.                |
| 3. Oil of Cloves-----         | $\frac{1}{10}$ minim.  |
| 4. Magnesium Sulphate-----    | 3.3 ozs.               |
| 5. Oil of Cassia-----         | $2\frac{1}{10}$ minim. |
| 6. Sodium Phosphate-----      | 40 grs.                |
| 7. Saccharine-----            | $3\frac{3}{10}$ grs.   |
| 8. Sodium Bicarbonate-----    | 27 grs.                |
| 9. Water-----                 | 8.5 ozs.               |

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now, and has been for more than 1 year last past, engaged in substantial competition in commerce among and between the various States of the United States with other corporations and with individuals, firms and partnerships engaged in the sale and distribution of other preparations designed and intended for, and used in the treatment of, the conditions of the human body for which respondent recommends the use of its aforesaid preparation. Among such competitors in said commerce are many who do not misrepresent their said preparations or the therapeutic properties thereof.

PAR. 4. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused,

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and is now causing, the dissemination of advertisements concerning its said product by circulars, folders, calendars, match books, and other printed or written matter 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 product; and has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of advertisements concerning its product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

Modern doctors say that poisons from constipation swell up digestive organs causing pressure on nerves in this region. This nerve pressure causes frequent bilious spells, dizziness, headaches, sour stomach, dull tired-out feeling, sleepless nights, coated tongue, bad taste, and loss of appetite.

Don't fool with laxatives that give slow action \* \* \*. What you want is Quick results. Get That Pressure Off The Nerves. Flush the intestinal system. When offending wastes are gone, the bowels return to normal size and nerve pressure stops.

Almost at once you feel marvelously refreshed, blues vanish and life looks bright again.

That is why so many doctors are now insisting on gentle but Quick Action. That is why you should insist on Wittone.

This efficient intestinal evacuant contains Seven carminative ingredients.

It acts in relieving stomach distress at once, \* \* \*.

Clean stomach, liver and bowels mean an active mind.

The only road to complete health and vitality and the best assurance of continued well being is a clean alimentary tract.

How to have rich, strong blood: There are two vital things to do: First, eat plenty of good food and digest it thoroughly. Second, keep the blood free from impurities and poisons. Thousands of people have been able to do both these things with the help of Wittone. It stimulates your appetite and helps digest your food properly, thus enabling the blood to get the proper nourishment from it. Wittone also cleanses the intestinal tract from impurities, thus preventing their absorption into the blood stream. This takes a heavy load off the liver and kidneys enabling them to work better.

A notable discovery has been made that is bringing happiness and relief to men and women who are suffering the common afflictions caused by deranged stomach, inactive liver, weak kidneys and similar disorders.

Its ingredients mix with the food in your stomach, improving your digestion which overcomes constipation in a natural way.

Wittone will cleanse your bowels as they were never cleansed before and tone them into better daily action.

You get amazing relief as soon as these poisons leave the kidneys; relief from backache, bladder irritation, weakness. At any age, children are relieved from bed-wetting within a few days. (nerves are strengthened naturally.)

\* \* \* a beautiful woman is self made \* \* \* she has guarded herself with \* \* \* proper habits against the ravages of time. Constipation is a "great American curse" \* \* \*.

According to Professional Opinion 87% of All sickness is traceable to putrefaction of decayed waste products and toxins formed in the colon.

I find myself almost entirely free of rheumatic aches \* \* \*.

I was weak, run down and nervous. No doubt that is called "change of life" \* \* \*." After taking Wittone I feel like a different woman.

I suffered from profuse menstruation and awful cramping spells and had to go to bed every month. Since taking Wittone I have been able to do my housework.

Wittone is constantly leading people back to normalcy in the functions of the: Nervous system, blood stream, kidneys, Stomach, Liver.

Nervous indigestion \* \* \* Wittone \* \* \* was relieved.

I suffered from sick headache spells \* \* \* have not had a sick spell since.

I have suffered from \* \* \* high blood pressure \* \* \* and heart trouble. One bottle of your tonic has made me feel fifty per cent better and I feel that another bottle will restore my health completely.

If taken at the beginning of a cold it will entirely avert a cold.

I took one bottle of Wittone and feel like a new woman. I suffered from bladder trouble, extreme nervousness and insomnia.

Prostate and kidney trouble \* \* \* I have been feeling fine.

My legs had hurt me since 1905, my side and stomach had hurt me since 1918 \* \* \* after the fifth dose I had complete relief.

\* \* \* an incurable case of ulcerated stomach. \* \* \* I feel better than I have in years and can eat anything I want without the least discomfort.

Several local doctors had treated me for gall bladder trouble \* \* \*. It has helped me wonderfully.

**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 the causes of the ailments and conditions of the human body for which respondent recommends its preparation, or of the preparation itself and its effectiveness in the treatment of the said ailments and conditions, respondent, directly and by implication, has represented that frequent bilious spells, dizziness, headaches, sour stomach, dull tired-out feeling, sleepless nights, coated tongue, bad taste, and loss of appetite are the results of pressure on the nerves in the region of the digestive organs due to poisons from constipation swelling those organs, that the use of "Wittone" will cause a quick flushing of the intestinal system and removal of pressure on the nerves in that locality with relief from the aforesaid symptoms and an almost immediate feeling by the user of refreshment, relief from mental depression, optimism and cheer; that the laxative action of "Wittone" is gentle but quick;

that said preparation contains seven carminatives; that it will immediately relieve all distresses located in the stomach; that the user of "Wittone" will have a clean stomach, liver, and bowels and an active mind; that the sole requisite for complete health, vitality, and well-being is a clean alimentary tract; that "Wittone" will enable the user to eat and digest sufficient food and keep the blood free from impurities, assuring him of rich strong blood; that "Wittone" will stimulate the appetite, assure proper digestion, cleanse the intestinal tract from impurities, and relieve the liver and kidneys of a part of their work; that it is a notable discovery and is a competent remedy and adequate treatment for all deranged conditions of the stomach and for inactive liver, weak kidneys, and similar disorders, regardless of their cause; that it will relieve constipation by improving the digestion; that it is a superlative bowel cleanser and that it will improve the natural action of the bowels; that it will drive poisons out of the kidneys, relieve backache, bladder irritations, weakness, bed-wetting in children, and will strengthen the nerves naturally; that beauty may be obtained by keeping the bowels open; that according to reliable professional opinion 87 percent of all ailments is due to the putrefaction of decayed waste products and poisons in the colon, due to constipation; that it will cure rheumatic pains; that it is beneficial to women experiencing the change of life; that it will relieve the pains and other distresses incident to menstruation; that it will relieve nervous indigestion, pains in the legs and sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate, kidney, and gall bladder trouble and ulcers of the stomach; that it will, if seasonably taken, avert the common cold and will restore to normal any abnormal functioning of the nervous system, blood stream, liver and stomach.

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, constipation does not cause the digestive organs to swell. Distentions of the digestive organs are ordinarily due to gases caused by fermentation or other conditions which may or may not be an accompaniment of poisons and are not caused by poisons. Constipation, although it may result in fermentation in the digestive tract, does not in all or in many cases result in the generation of poisons therein by fermentation or otherwise. The presence of a distension of the digestive organs will not cause any significant pressure on the nerves in their locality and the symptoms of bilious spells, dizziness, headaches, sour stomach, dull tired feeling, sleepless nights, coated

tongue, bad taste, and loss of appetite, are not due to nerve pressure in the region of the digestive organs caused by their distension, but to other causes. "Wittone" possesses laxative and cathartic properties and the recommended dosage would ordinarily be sufficient to cause defecation, but will not, by relieving pressure on the nerves, eliminate the symptoms set forth above.

The use of "Wittone" will not result in the lifting of mental depression, regardless of its cause. The action of "Wittone" is not gentle. "Wittone" does not contain seven carminatives, but only two. The ingredients of "Wittone" are not such as to afford any immediate significant relief for all stomach disorders.

To any cleanliness which "Wittone" may impart to the stomach, liver, or bowels, an active and alert mind is not a necessary concomitant. Health, vitality, and well-being are not solely dependent upon a clean alimentary tract, but upon other factors as well. Adequate amounts of good food, a good digestion and an absence of impurities and poisons are important, but not the only factors in a healthy condition of the blood stream. The only stimulations to the appetite and to the digestive processes and to the nourishment of the blood which "Wittone" will give are such as may arise from its tonic, laxative, or cathartic action. It does not relieve the liver of any portion of its normal functions. "Wittone" is not a notable discovery. It is primarily a laxative and is not a competent remedy nor an adequate treatment for all deranged stomachic conditions or for inactive liver, weak kidneys, or similar disorders, regardless of their cause. "Wittone" is not an aid to digestion except as stated herein, and so far as it may affect constipation, it does so only by inducing an artificial movement of the bowels and not a natural movement. Its use will not tone up nor improve the natural action of the bowels. "Wittone" will not strengthen the nerves. An open bowel is not an assurance of physical beauty; reliable professional opinion does not regard 87 percent of all ailments as traceable to constipation as the fundamental cause. It is not a competent treatment or remedy for rheumatic aches and pains and is of no value to women passing through the period of change of life. It has no significant analgesic properties. Its value in the treatment of kidney troubles is limited to those for which a mild diuretic is indicated. It will not relieve nervous indigestion, pains in the legs and sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate, and gall bladder trouble or ulcers of the stomach; it will not, though seasonably taken, avert the common cold and it will not restore to normal all abnormal functioning of the nervous system, blood stream, liver and stomach.

Order

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PAR. 7. The use of the aforesaid statements and claims disseminated in the manner above described, induces, or is likely to induce, directly or indirectly, the purchase of a drug, and has had, and now has, the capacity and tendency to engender in the minds of the purchasing public the erroneous and mistaken belief that the said statements, representations and claims are true; that respondent's preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's 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 do not misrepresent their respective preparations or the therapeutic properties thereof.

## CONCLUSION

The aforesaid acts and practices of the respondent, United Distributors, Inc., a corporation, 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 and unfair and deceptive acts and practices in commerce in violation of the provisions 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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence 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 (respondent and counsel for the Commission having elected not to exercise their privilege, which was reserved in said stipulation, of filing briefs and making application for oral argument), 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, United Distributors, Inc., 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 ad-

vertisement by means of 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 its medicinal preparation now designated "Wittone" or any other preparation or preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, 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 indirectly:

1. That constipation causes a swelling of the digestive organs or that the generation of poisons is a usual consequence of constipation.

2. That a distention of the digestive organs is caused by poisons or that a distention of such organs causes any significant pressure on the nerves in the locality of such organs.

3. That bilious spells, dizziness, headaches, sour stomach, dull tired feelings, sleepless nights, coated tongue, bad taste, or loss of appetite are due to pressure on the nerves caused by a distention of the digestive organs, or that the use of said preparation will, by relieving pressure on the nerves, eliminate any of such conditions.

4. That the use of said preparation will lift mental depression regardless of its cause, render the mind active or alert, or afford any significant immediate relief for all stomach disorders.

5. That the action of such preparation is gentle or that its use will assure, in all cases, good health, vitality, well-being, or a healthy condition of the blood stream.

6. That such preparation contains seven carminatives or that said preparation contains any specified number of carminatives other than the number which is in fact contained in said preparation.

7. That said preparation has any beneficial effect in stimulating the appetite or digestive processes or nourishing the blood stream unless such representation is limited to the effectiveness of the tonic, laxative and cathartic properties of said preparation.

8. That said preparation relieves the liver of any portion of its normal functions or that said preparation is a notable discovery.

9. That said preparation is a remedy or an adequate treatment for all deranged stomachic conditions, inactive livers, weak kidneys or similar disorders.

10. That said preparation has any therapeutic value in the treatment of constipation other than inducing an artificial bowel move-

ment or that the use of said preparation will tone up or improve the natural action of the bowels.

11. That the use of said preparation will strengthen the nerves or assure or impart physical beauty to the user.

12. That professional medical opinion is to the effect that 87 percent of all ailments are traceable to constipation as the fundamental cause, or that such opinion is to the effect that any other percentage of ailments are so traceable unless such percentage is the percentage generally recognized by the consensus of the medical profession.

13. That said preparation is a remedy or a competent treatment for rheumatic aches or pains or is beneficial to women passing through the period of change of life, or that said preparation possesses significant analgesic properties.

14. That said preparation has any therapeutic value in the treatment of kidney troubles unless such representation is limited to those conditions in the treatment of which a mild diuretic is indicated.

15. That said preparation will relieve nervous indigestion, pains in the legs or sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate or gall bladder trouble or ulcers of the stomach, or that said preparation will avert the common cold, or that said preparation will restore to normal all abnormal functioning of the nervous system, blood stream, liver, or stomach.

*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.

## Syllabus

## IN THE MATTER OF

ISAAC S. FRIEDMAN, AN INDIVIDUAL TRADING AS  
WRIGHT PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3806. Complaint, June 3, 1939—Decision, Sept. 7, 1939*

Where an individual engaged in sale and distribution of hosiery, clocks, pen and pencil sets, manicure sets and other articles of merchandise to purchasers in various other States and in the District of Columbia, in soliciting, selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution thereof to purchasing public, and distribution to said public of certain literature and instructions, including push cards, order blanks and depictions of merchandise in question in circulars explaining his plan of selling same, under which person selecting by chance from 35 feminine names displayed on card, name corresponding with name concealed under card's large seal received spinning-wheel clock of asserted \$5 value, and person receiving certain number received De Luxe Combination Pen and Pencil of asserted \$2 value, and amount paid by customer, if any, was contingent upon number selected by chance as determined by disk of card pushed, and operator of card was compensated by premium or prize; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid or similar sales plans, varying in detail only therefrom, and under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, or article of merchandise free, and which article of merchandise purchaser was to receive, if any, was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said sales plan or method employed in sale and distribution of his merchandise and by element of chance involved therein and were thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors aforesaid who do not use such or equivalent method and with effect through use of such method and because of said game of chance of diverting trade unfairly to him from his competitors aforesaid who do not use such or equivalent method:

*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.