

IN THE MATTER OF
**THE PERASTHMAN COMPANY, INC., AND E. FOUGERA
& CO., INC.**

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

Docket 3719. Complaint, Feb. 20, 1939—Decision, Nov. 7, 1939

Where a corporation and its exclusive distributor engaged in manufacture, sale, and distribution of first-name corporation's "Perasthman" or "Perasthman Tablets" for asthma, and acting together and in cooperation with one another in acts and practices below set out; in advertisements which they disseminated through the mails, insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter, and by other means, and which were distributed in commerce among the various States and were intended and likely to induce purchase of their said product—

- (a) Represented that preparation in question constituted a cure for asthma and an effective treatment therefor, and for the symptoms thereof, and was of substantial therapeutic benefit in such treatment; and
- (b) Represented that product in question was a new, sensational, European discovery, free from harmful drugs, and preparation which might be used promiscuously without harmful effects, and that use thereof was beneficial to all sufferers from said ailment and would assure nights of restful sleep and days of greater comfort, and stop wheezing and other symptoms of said condition;

Facts being it was not a cure therefor, nor of substantial therapeutic benefit in treatment thereof or of symptoms or manifestations of said condition, ephedrine, as only ingredient therein of any value to sufferers from asthma, had long been used by medical profession to afford, in some cases, temporary relief from symptoms or manifestations in question, and said preparation was neither new nor sensational and could not be used without harmful effects by all sufferers from asthma, but could only be used in limited quantities and under competent medical supervision by those with heart or kidney ailments, and might result, in case of unlimited and unsupervised use by such persons, in injury, and it had not accomplished and would not accomplish results claimed therefor, as above set forth, and only benefit that asthma sufferer could receive therefrom was temporary relief from some of manifestations of ailment, and it had not "freed" thousands or any other substantial number of asthma sufferers;

With effect of misleading and deceiving purchasing public into erroneous and mistaken belief that said preparation was a cure for or of therapeutic benefit in treatment of asthma or symptoms and manifestations thereof, and that other representations and implications set out were true, and of inducing purchasing public, because of such belief, to purchase its said preparation, and with result of thereby unfairly diverting trade in commerce to them from those of their competitors who do not misrepresent efficacy and therapeutic value of their products; to the substantial injury of competitors in commerce and to injury of public:

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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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. John R. Phillips, Jr. for the Commission.

Mr. Walter L. Post, of New York City, for respondents.

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 The Perasthman Co., Inc., and E. Fougera & Co., Inc., hereinafter referred to as respondents, have 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. The Perasthman Co., Inc., is a corporation created by and existing under the laws of the State of New York, with its principal office and place of business located at 276 Fifth Avenue in the city of New York, State of New York.

E. Fougera & Co., Inc., is a corporation created by and existing under the laws of the State of New York, with its principal offices and place of business located at 75 Varick Street in the city of New York, State of New York.

Respondent, The Perasthman Co., Inc., is now, and for more than 3 years last past has been, engaged in the manufacture of a proprietary medicine or preparation designated "Perasthman" or "Perasthman Tablets," an alleged remedy for asthma, and through the respondent, E. Fougera & Co., as its exclusive distributor, has been engaged in the business of selling and distributing said "Perasthman" or "Perasthman Tablets."

Respondents have acted together and in cooperation with each other in carrying out the acts and practices herein alleged.

PAR. 2. Respondents cause said medical preparation, when sold, to be transported from their places of business in the State of New York to the purchasers thereof located in various States of the United States other than New York and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said medical preparation sold and distributed by them, in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other corporations and with partnerships and individuals engaged in the business of selling and distributing similar preparations and preparations used and useful for the alleviation of the ailments and conditions where respondents' said preparation might be efficacious, in commerce between and among the various States of the United States and in the District of Columbia. There are among the competitors of respondents many who truthfully advertise and represent their said preparations and their efficacy in use.

PAR. 4. Respondents, in the course and conduct of their aforesaid business, have disseminated, and have caused, and are now causing, the dissemination of, false advertisements concerning their said product, by the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, and by other means, all of which are distributed in commerce among and between the various States of the United States, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

A reproduction of a line drawing, showing a kneeling female figure with one hand clasping her throat and nearby a large hand holding a whip, the whip lash encircling the woman's waist. Beneath this drawing there appears in large caps the words "Slaves of Asthma." Following, in smaller capitals, are the words and phrases "Freed by the Thousands" and the following words and phrases:

Way to stop wheezing.

Wheezing stops.

Sleep soundly.

Quick relief.

Nights of restful sleep and days of greater comfort.

Sleep is restful.

Without dangerous drugs.

Attacks curbed or completely ended.

A sensational new European discovery.

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 respondents' said preparation and its efficacy in the treatment of the ailment or condition commonly referred to as asthma and the symptoms and manifestations thereof, respondents represent and imply that said preparation will cure, or be of substantial therapeutic benefit in the treatment of asthma and the symptoms and manifestations thereof, and that said preparation is a new sensational European discovery, free from harmful drugs, and may be used promiscuously without harmful effects.

Respondents further represent that the use of said preparation has "freed" thousands from asthma; that its use will benefit all sufferers from asthma, assuring nights of restful sleep and days of greater comfort; and that it will stop "wheezing" and other symptoms and manifestations of asthma.

PAR. 5. The foregoing representations and implications used and disseminated by the respondents as above described are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, respondents' said preparation is not a cure for asthma nor is it of substantial therapeutic benefit in the treatment of asthma or the symptoms and manifestations thereof. The preparation is neither new nor sensational, as the only ingredient therein which is of any value to a sufferer from asthma is ephedrine, which has long been used by the medical profession, in some cases, to afford temporary relief from some symptoms or manifestations of asthma, but which is not used or recognized as a cure for asthma or the symptoms or manifestations thereof.

The preparation cannot be used without harmful effects by all sufferers from asthma, for the principal active ingredient therein, ephedrine, is not safe for use by persons with heart or kidney ailments, except in limited quantities and under competent medical supervision. The unlimited and unsupervised use of the preparation by such persons may result in injury.

The preparation has not "freed" thousands or any other substantial number of persons from asthma. It will not benefit all sufferers from asthma, nor does it assure the user of nights of restful sleep or days of greater comfort, and it will not stop "wheezing" or other symptoms or manifestations of asthma.

The only benefit that a sufferer from asthma could receive from the use of said preparation is temporary relief from some of the manifestations of asthma.

PAR. 6. The above and foregoing representations and implications used by respondents as to the therapeutic value and effect of their said preparation, in the course of their advertising, offering for sale, and sale of their said preparation in said commerce as aforesaid, have

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the capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said preparation is a cure for, or of therapeutic benefit in the treatment of, asthma or the symptoms and manifestations thereof, and that the other representations and implications as hereinabove set out are true and have had, and do have, the capacity and tendency to, and do, induce the purchasing public because of such erroneous and mistaken belief to purchase respondents' said preparation, thereby unfairly diverting trade in said commerce to the respondents from those of their competitors who do not misrepresent the efficacy and therapeutic value of their said products. Thereby substantial injury is done to said competitors in commerce between and among the various States of the United States and in the District of Columbia, to the injury of said competitors and to the injury of the public.

PAR. 7. The aforesaid acts and practices of the respondents are all to the prejudice of the public and of respondents' 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 20, 1939, issued, and on February 21, 1939 served, its complaint in this proceeding upon the respondents, The Perasthman Co., Inc., and E. Fougera & Co., Inc., corporations, charging them 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. After the issuance of said complaint and the filing of respondents answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Perasthman Co., Inc., is a corporation created by and existing under the laws of the State of New York, with its principal office and place of business located at 276 Fifth Avenue in the city of New York, State of New York.

E. Fougera & Co., Inc., is a corporation created by and existing under the laws of the State of New York, with its principal offices and place of business located at 75 Varick Street in the city of New York, State of New York.

Respondent, The Perasthman Co., Inc., is now, and for more than 3 years last past has been, engaged in the manufacture of a proprietary medicine or preparation designated "Perasthman" or "Perasthman Tablets," an alleged remedy for asthma, and through the respondent, E. Fougera & Co., as its exclusive distributor, has been engaged in the business of selling and distributing said "Perasthman" or "Perasthman Tablets."

Respondents have acted together and in cooperation with each other in carrying out the acts and practices herein alleged.

PAR. 2. Respondents cause said medical preparation, when sold, to be transported from their places of business in the State of New York to the purchasers thereof located in various States of the United States other than New York and in the District of Columbia.

Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said medical preparation sold and distributed by them, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, respondents are now, and have been, in substantial competition with other corporations and with partnerships and individuals engaged in the business of selling and distributing similar preparations and preparations used and useful for the alleviation of the ailments and conditions where respondents' said preparation might be efficacious, in commerce between and among the various States of the United States and in the District of Columbia. There are among the competitors of respondents many who truthfully advertise and represent their said preparations and their efficacy in use.

PAR. 4. Respondents, in the course and conduct of their aforesaid business, have disseminated, and have caused, and are now causing, the dissemination of, false advertisements concerning their said product, by the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars

and other printed or written matter and by other means, all of which are distributed in commerce among and between the various States of the United States, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

A reproduction of a line drawing, showing a kneeling female figure with one hand clasping her throat and nearby a large hand holding a whip, the whip lash encircling the woman's waist. Beneath this drawing there appears in large caps the words "Slaves of Asthma." Following, in smaller capitals, are the words and phrases "Freed by the Thousands" and the following words and phrases:

Way to stop wheezing.

Wheezing stops.

Sleep soundly.

Quick relief.

Nights of restful sleep and days of greater comfort.

Sleep is restful.

Without dangerous drugs.

Attacks curbed or completely ended.

A sensational new European discovery.

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 respondents' said preparation and its efficacy in the treatment of the ailment or condition commonly referred to as asthma and the symptoms and manifestations thereof, respondents represent and imply that said preparation will cure, or be of substantial therapeutic benefit in the treatment of asthma and the symptoms and manifestations thereof, and that said preparation is a new sensational European discovery, free from harmful drugs, and may be used promiscuously without harmful effects.

Respondents further represent that the use of said preparation has "freed" thousands from asthma; that its use will benefit all sufferers from asthma, assuring nights of restful sleep and days of greater comfort; and that it will stop "wheezing" and other symptoms and manifestations of asthma.

PAR. 5. The foregoing representations and implications used and disseminated by the respondents as above described are grossly exag-

gerated, misleading and untrue and constitute false advertisements. In truth and in fact, respondents' said preparation is not a cure for asthma nor is it of substantial therapeutic benefit in the treatment of asthma or the symptoms and manifestations thereof. The preparation is neither new nor sensational, as the only ingredient therein which is of any value to a sufferer from asthma is ephedrine, which has long been used by the medical profession, in some cases, to afford temporary relief from some symptoms or manifestations of asthma, but which is not used or recognized as a cure for asthma or the symptoms or manifestations thereof.

The preparation cannot be used without harmful effects by all sufferers from asthma, for the principal active ingredient therein, ephedrine, is not safe for use by persons with heart or kidney ailments, except in limited quantities and under competent medical supervision. The unlimited and unsupervised use of the preparation by such persons may result in injury.

The preparation has not "freed" thousands or any other substantial number of persons from asthma. It will not benefit all sufferers from asthma, nor does it assure the user of nights of restful sleep or days of greater comfort, and it will not stop "wheezing" or other symptoms or manifestations of asthma.

The only benefit that a sufferer from asthma could receive from the use of said preparation is temporary relief from some of the manifestations of asthma.

PAR. 6. The above and foregoing representations and implications used by respondents as to the therapeutic value and effect of their said preparation, in the course of their advertising, offering for sale, and sale of their said preparation in said commerce as aforesaid, have the capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said preparation is a cure for, or of therapeutic benefit in the treatment of, asthma or the symptoms and manifestations thereof, and that the other representations and implications as hereinabove set out are true and have had, and do have, the capacity and tendency to, and do, induce the purchasing public because of such erroneous and mistaken belief to purchase respondents' said preparation, thereby unfairly diverting trade in said commerce to the respondents from those of their competitors who do not misrepresent the efficacy and therapeutic value of their said products. Thereby substantial injury is done to said competitors in commerce between and among the various States of the United States and in the District of Columbia, to the injury of said competitors and to the injury of the public.

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CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The Perasthman Co., Inc., and E. Fougera & Co., Inc., corporations, their officers, agents, servants, representatives, 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 mail 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 the medicinal preparation, containing drugs, now designated "Perasthman" and "Perasthman Tablets," or any other medicinal preparation composed of substantially similar ingredients, or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said preparation is a cure for asthma or is an effective treatment for asthma or the symptoms thereof, or that said preparation has any therapeutic value in the treatment of asthma other than affording, in some cases, temporary relief from some of the symptoms of asthma; that said preparation is new or sensational or that the use thereof is beneficial to all sufferers from asthma; that said preparation is harmless or that the use thereof will assure suf-

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ferers from asthma, nights of restful sleep or days of greater comfort or will stop wheezing or other symptoms of asthma; or which advertisements fail to reveal that said preparation is not safe if used in self-medication by members of the lay public suffering from heart or kidney ailments.

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

IN THE MATTER OF

EDWARD L. JENKINS AND MILDRED JENKINS, TRADING
AS ANTISEPTO PRODUCTS COMPANY, ANTISEPTO
PRODUCTS, EDUCATIONAL PRODUCTS COMPANY,
SANITOL PRODUCTS COMPANY, XL PRODUCTS COM-
PANY AND XL PRODUCTSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3867. Complaint, Aug. 7, 1939—Decision, Nov. 7, 1939*

Where two individuals engaged in sale and distribution of certain medicinal preparations for women, and of a certain so-called gland medicine for men, to purchasers in other States and in the District of Columbia; in advertisements which they disseminated through the mails, through insertions in newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributing in commerce among the various States, and which included quotations, or purported quotations from testimonials, and were intended and likely to induce purchase of their said preparations—

- (a) Represented that their said medicinal products, known and designated as "Guaranteed Antisepto Anti-Delay Compound Regular" and "Guaranteed Antisepto Anti-Delay Compound Super Strength," were cures or remedies for delayed menstruation and competent and effective treatments therefor, and would accomplish the desired results without delay;

Facts being said preparations were not cures or remedies for said condition and did not constitute competent or effective treatments therefor, would not accomplish the results claimed for them as aforesaid, and were not safe and harmless, but contained aloes, extract cotton root bark, extract black hellebore, oil of savin, and extract ergot, in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual;

- (b) Represented that their said medicinal preparations known and designated as "Guaranteed Prosaïd Gland Medicine Double XX" and "Guaranteed Prosaïd Gland Medicine Triple XXX" were cures or remedies for prostate gland weakness and competent and effective treatments therefor, and would restore the prostate gland to normal activity;

Facts being said "Double XX" preparation sold and distributed was not a cure or remedy for said conditions, did not constitute competent or effective treatment therefor, and would not accomplish results claimed or restore the gland to normal activity, and was not safe and harmless, in that it contained certain drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and said "Triple XXX" medicine was likewise neither cure nor remedy for such weakness nor competent or effective treatment therefor, and would not accomplish results claimed or restore such gland to normal activity, and