

Syllabus

IN THE MATTER OF

WILLARD C. McAHREN AND MAUDE B. McAHREN, TRADING AS PURITY PRODUCTS COMPANY, AND LONDON & WARNER COMPANY

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

Docket 3847. Complaint, July 13, 1939—Decision, Nov. 15, 1939

Where two individuals engaged in distribution and sale, under name "Wheatol," of certain drug by them claimed to contain vitamin E, to members of purchasing public in various States and in the District of Columbia; in advertisements which they disseminated through the mails and through circulars and other printed matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of said "Wheatol"—

- (a) Represented, directly and by implications, that impairment of youthful vigor, vitality, and general well-being in males up to and considerably over 50 years of age was due to an inadequate supply of vitamin E and could be averted or delayed by the use of "Wheatol" as source of vitamin E; and
- (b) Represented that vitamin E had a direct effect upon the organs of reproduction and their functioning and that the absence, loss, or impairment of sexual desire, fertility, or vigor in both sexes, and, in the female, inability to bear children successfully after conception, were due to a deficiency of Vitamin E, and that such conditions would be corrected by use of said "Wheatol";

Facts being advancing years in the male result in a gradual impairment of youthful physical vigor, vitality, and general condition, such impairment is not due to deficiency of vitamin E and cannot be averted or delayed by use thereof or of "Wheatol," inability aforesaid in women is usually due to pathological conditions and anatomical abnormalities and not to deficiency in vitamin E, and such inability will not be remedied or corrected by use of "Wheatol," except in cases of rare occurrence where such inability may be due to deficiency of vitamin E of degree no greater than is susceptible of replacement by vitamin E content of said "Wheatol," existence of deficiency in such vitamin cannot be determined by layman solely from objective symptoms, but only by physicians after consideration of many factors, of which such symptoms are but one, and in other respects ailments and conditions aforesaid would not be corrected through use of said preparation or drug, which will not render potent or fertile those who are not;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and claims were true, and that said preparation possessed properties claimed and represented and would accomplish results indicated, and of causing such portion of said public, because of such belief, to purchase substantial quantities thereof:

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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 constituted unfair and deceptive acts and practices in commerce.

Mr. Randolph W. Branch for the Commission.

Mr. George Landon, of Chicago, Ill.; for Landon & Warner Co.

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 Willard C. McAhren and Maude B. McAhren, individuals, trading and doing business under the name of Purity Products Co., and Landon & Warner Co., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondents Willard C. and Maude B. McAhren and individuals trading and doing business under the name of Purity Products Co. and having an office and principal place of business at 801 Bluff Road, Sioux City, Iowa.

Respondent Landon & Warner Co. is a corporation, organized under the laws of the State of Illinois, and having an office and principal place of business at 360 North Michigan Avenue, Chicago, Ill.

PAR. 2. Respondents Willard C. and Maude B. McAhren, trading and doing business under the name of Purity Products Co., are now, and have been for more than 10 months last past, engaged in the business of distributing and selling a certain drug, as "drug" is defined in the Federal Trade Commission Act, known as "Wheatol," and claimed by respondents to contain Vitamin E. Respondents sell said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause such preparation, when sold, to be transported from their aforesaid place of business in the State of Iowa to purchasers located in the various States of the United States other than the State of Iowa and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

Respondent Landon & Warner Co. is and has been the advertising agent for the respondents Willard C. and Maude B. McAhren and

has participated in the preparation and dissemination of the advertising matter to which reference is hereinafter made.

PAR. 3. In the course and conduct of the business of respondents Willard C. and Maude B. McAhren, the said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the said Wheatol by United States mails and also in circulars and other printed 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 said Wheatol; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said Wheatol by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said 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:

As for men past fifty, they should still be in their full prime both mentally and physically.

DO NOT SLIP INTO PREMATURE OLD AGE! There are many * * * who feel themselves slipping into premature old age, their normal vigor and vitality so impaired they are no longer LIVING but EXISTING!

IT IS A NEW SCIENTIFIC DISCOVERY OF A VITAMIN WHICH IS CALLED THE "ANTI-STERILITY VITAMIN" * * * and it comes under the head of VITAMIN E and has to do with fertility, youthful vigor and all the other desirable things which we mortals covet! Various names have been applied to this new Vitamin E such as anti-sterility, fertility, etc., but * * * it should be called "THE VITAMIN OF GENERAL FITNESS."

Well, we are writing this letter to tell you of a new discovery called "Wheatol". It is one of the most potent sources known for VITAMIN E.

But they (Vitamins A, B, C, D and G) are not specifically devoted to the reproductive organs * * * as is our friend "VITAMIN E" * * *.

Recent biochemical research indicates that premature senescence (old age) *can be markedly delayed by adequate amounts of VITAMIN E.*

Deficiency of this "anti-sterility" vitamin produces sterility in both male and female. * * * It helps the proper development of the adolescent boy or girl; the man or woman needs it most of all during "middle life" and it helps the promotion of fertility and vigor far along into old age—for science has established Vitamin E deficiency as a definite entity through experimentation.

If your vitality is lowered; if you have a feeling of sluggishness and fatigue constantly; if life has lost its zest and zip; if you are without "pep" after a hard day's work in the office or home; if, when you see a romantic picture on the screen, you sigh for the thrill which is absent from your life, then by all means give

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Wheatol a chance to come to your rescue—by supplying you with the needed Vitamin E. And when you have given this wonder-discovery a fair trial by taking as directed for one week, you will feel that it is the one thing to restore your old-time vim and vigor * * *.

And just what is VITAMIN E deficiency, do I hear you ask? Well, it has been established AS AN ACTUAL ENTITY in leading clinics and has to do with sterility; habitual abortion in females; sterility and impotence in males; proper development of the adolescent boy and girl; suckling paralysis in the infant; premature old age, and all such diseases as lack of VITAMIN E can produce. In fact, VITAMIN E is used from the cradle to the grave, and "WHEATOL," is representative, should be administered REGULARLY until such "deficiency" symptoms subside. * * * Its use should be continual for some months after the symptoms have subsided to assure its complete subsidence.

PAR. 4. Through the use of the representations and statements hereinbefore 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 respondents recommend and have recommended the said Wheatol, the preparation itself and its effectiveness in the treatment of certain ailments and conditions, respondents directly and by implication, among other things, have represented that impairment of youthful vigor, vitality, and general well-being in males up to and considerably over 50 years of age is due to an inadequate supply of Vitamin E and can be averted or delayed by the use of Wheatol, which is a source of Vitamin E; that Vitamin E has a direct effect upon the organs of reproduction and their functioning and that the absence, loss, or impairment of sexual desire, fertility, or vigor in both sexes and, in the female, inability to bear children successfully after conception, are due to a deficiency of Vitamin E and will be engendered, restored, or renewed by the use of Wheatol.

PAR. 5. The aforesaid representations used and disseminated by respondents in the manner above described are grossly exaggerated, misleading and untrue and constitute false advertising. In truth and in fact, advancing years in the male result in a gradual impairment of youthful physical vigor, vitality, and general condition; this impairment is not due to a deficiency of Vitamin E and cannot be averted or delayed by the use of Vitamin E or Wheatol. Only in rare cases involving habitual involuntary abortion in women does Vitamin E deficiency affect the organs of reproduction or their functioning. Absence, loss, or impairment of sexual desire or impotency or sterility in either sex is not due to a deficiency of Vitamin E and will not be engendered, restored, or removed by the use of Wheatol. Women's inability to bear children successfully after conception is usually due to pathological conditions and anatomical

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abnormalities and not to a deficiency in Vitamin E, and will not be remedied or corrected by the use of Wheatol, except in cases of rare occurrence where such inability may be due to a deficiency of Vitamin E of a degree no greater than is susceptible of replacement by the Vitamin E content of Wheatol. The existence of a deficiency in Vitamin E cannot be determined by laymen solely from objective symptoms, but only by physicians after a consideration of many factors of which the objective symptoms are but one.

PAR. 6. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and claims disseminated as aforesaid, with respect to the said preparation and the causes of ailments and conditions of the human body for which respondents have recommended Wheatol, 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 the said 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 the said preparation.

PAR. 7. The aforesaid acts and practices of said respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 13, 1939, issued, and thereafter served its complaint in this proceeding upon the respondents, Willard C. McAhren and Maude B. McAhren, individuals, trading and doing business under the name Purity Products Co., on July 15, 1939, and upon respondent Landon & Warner Co., a corporation, on July 14, 1939, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 26, 1939, respondents Willard C. and Maude B. McAhren filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to the facts. On July 31, 1939, respondent Landon & Warner Co. filed its answer denying participation in the preparation or dissemination of the advertising to which the complaint refers, and denying

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knowledge as to all the other allegations of the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and answers, and the Commission having duly considered the matter, and being now fully advised in the premises, finds this proceeding is in the interest of the public, and as to respondents Willard C. McAhren and Maude B. McAhren, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Willard C. and Maude B. McAhren are individuals trading and doing business under the name of Purity Products Co. and having an office and principal place of business at 801 Bluff Road, Sioux City, Iowa.

PAR. 2. Respondents Willard C. and Maude B. McAhren, trading and doing business under the name of Purity Products Co., are now, and have been for more than 1 year last past, engaged in the business of distributing and selling a certain drug, as "drug" is defined in the Federal Trade Commission Act, known as "Wheatol," and claimed by respondents to contain vitamin E. Respondents sell said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause such preparation, when sold, to be transported from their aforesaid place of business in the State of Iowa to purchasers located in the various States of the United States other than the State of Iowa and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, the said respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning the said Wheatol by United States mails and also in circulars and other printed 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 said Wheatol; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said Wheatol by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the said preparation in com-

merce, 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:

As for men past fifty, they should still be in their full prime both mentally and physically.

DO NOT SLIP INTO PREMATURE OLD AGE!

There are many * * * who feel themselves slipping into premature old age, their normal vigor and vitality so impaired they are no longer LIVING but EXISTING!

IT IS A NEW SCIENTIFIC DISCOVERY OF A VITAMIN WHICH IS CALLED THE "ANTI-STERILITY VITAMIN" * * * and it comes under the head of VITAMIN E and has to do with fertility, youthful vigor and all the other desirable things which we mortals covet! Various names have been applied to this new Vitamin E such as anti-sterility, fertility, etc., but * * * it should be called "THE VITAMIN OF GENERAL FITNESS."

Well, we are writing this letter to tell you of a new discovery called "Wheatol."

It is one of the most potent sources known for VITAMIN E.

But they (Vitamins A, B, C, D and G) are not specifically devoted to the reproductive organs * * * as is our friend "VITAMIN E" * * *.

Recent biochemical research indicates that premature senescence (old age) *can be markedly delayed by adequate amounts of VITAMIN E.*

Deficiency of this "anti-sterility" vitamin produces sterility in both male and female. * * * It helps the proper development of the adolescent boy or girl; the man or woman needs it most of all during "middle life" and it helps the promotion of fertility and vigor far along into old age * * * for science has established Vitamin E deficiency as a definite entity through experimentation.

If your vitality is lowered; if you have a feeling of sluggishness and fatigue constantly; if life has lost its zest and zip; if you are without "pep" after a hard day's work in the office or home; if, when you see a romantic picture on the screen, you sigh for the thrill which is absent from your life, then by all means give Wheatol a chance to come to your rescue * * * by supplying you with the needed Vitamin E. And when you have given this wonder-discovery a fair trial by taking as directed for one week, you will feel that it is the one thing to restore your old-time vim and vigor * * *.

And just what is VITAMIN E deficiency, do I hear you ask? Well, it has been established AS AN ACTUAL ENTITY in leading clinics and has to do with sterility; habitual abortion in females; sterility and impotence in males; proper development of the adolescent boy and girl; suckling paralysis in the infant; premature old age, and all such diseases as lack of VITAMIN E can produce. In fact, VITAMIN E is used from the cradle to the grave, and "WHEATOL," its representative, should be administered REGULARLY until such "deficiency" symptoms subside. * * * Its use should be continual for some months after the symptoms have subsided to assure its complete subsidence.

PAR. 4. Through the use of the representations and statements hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments

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and conditions of the human body for which respondents recommend and have recommended the said Wheatol, the preparation itself and its effectiveness in the treatment of certain ailments and conditions, respondents directly and by implication, among other things, have represented that impairment of youthful vigor, vitality and general well-being in males up to and considerably over fifty years of age is due to an inadequate supply of Vitamin E and can be averted or delayed by the use of Wheatol, which is a source of Vitamin E; that Vitamin E has a direct effect upon the organs of reproduction and their functioning and that the absence, loss or impairment of sexual desire, fertility or vigor in both sexes, and, in the female, inability to bear children successfully after conception, are due to a deficiency of Vitamin E and will be engendered, restored or removed by the use of Wheatol.

PAR. 5. The aforesaid representations used and disseminated by respondents in the manner above described are grossly exaggerated, misleading and untrue and constitute false advertising. In truth and in fact, advancing years in the male result in a gradual impairment of youthful physical vigor, vitality and general condition; this impairment is not due to a deficiency of vitamin E and cannot be averted or delayed by the use of Vitamin E or Wheatol. Only in rare cases involving habitual involuntary abortion in women does vitamin E deficiency affect the organs of reproduction or their functioning. Absence, loss or impairment of sexual desire or impotency or sterility in either sex is not due to a deficiency of vitamin E. Sexual desire, when absent, will not be engendered, or when lost or impaired, will not be restored by the use of Wheatol. The use of Wheatol will not render those who are impotent or sterile, potent or fertile. Women's inability to bear children successfully after conception is usually due to pathological conditions and anatomical abnormalities and not to a deficiency in vitamin E, and will not be remedied or corrected by the use of Wheatol, except in cases of rare occurrence where such inability may be due to a deficiency of vitamin E of a degree no greater than is susceptible of replacement by the vitamin E content of Wheatol. The existence of a deficiency in vitamin E cannot be determined by laymen solely from objective symptoms, but only by physicians after a consideration of many factors of which the objective symptoms are but one.

PAR. 6. The use by respondents of the foregoing false, deceptive and misleading statements, representations and claims disseminated as aforesaid, with respect to the said preparation and the causes of ailments and conditions of the human body for which respondents have recommended Wheatol, has had and now has the capacity and

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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 the said 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 the said preparation.

CONCLUSION

The aforesaid acts and practices of said respondents, Willard C. McAhren and Maude B. McAhren, trading as Purity Products Co., as herein found, 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.

ORDER TO CEASE AND DESIST, ETC.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, Willard C. and Maude B. McAhren, in which answer said respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearings as to the facts, and upon the answer of respondent Landon & Warner Co., and the Commission having made its findings as to the facts and conclusion that respondents Willard C. and Maude B. McAhren have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Willard C. McAhren and Maude B. McAhren, individually and trading under the name of Purity Products Co. or any other name or names, their agents, employees, and representatives, 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 containing vitamin E and now designated by the name of "Wheatol," or any other preparation composed of similar ingredients or possessing substantially similar therapeutic qualities, whether sold under that designation or any other designation, 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

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defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that the impairment of youthful vigor, vitality and general condition which accompanies advancing years in the male is due to a deficiency in vitamin E; or that such impairment can be averted or delayed by the use of said preparation; or that said preparation will affect the female organs of reproduction or their functioning or women's ability to successfully conceive or bear children except in rare cases involving habitual involuntary abortion where inability to successfully bear children after conception may be due to a vitamin E deficiency of a degree susceptible of replacement by the vitamin E content of the said preparation; or that absence, loss or impairment of sexual desire or impotency or sterility is due to a deficiency of vitamin E, or that said preparation will in any way benefit such conditions.

It is further ordered, That the respondents Willard C. and Maude B. McAhren shall, within 60 days after 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.

It is further ordered, That the case be closed as to respondent Landon & Warner Company without prejudice to the right of the Commission to reopen and resume prosecution thereof in the event the facts so warrant.

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IN THE MATTER OF

STANDARD TOYKRAFT PRODUCTS, INC.

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

Docket 3876. Complaint, Aug. 25, 1939—Decision, Nov. 15, 1939

Where a corporation engaged in sale and distribution of toys and playthings to retailers and other purchasers for resale to members of purchasing public—

Represented to members of purchasing public situated in various States and in the District of Columbia, that its toy sets were wholly made in the United States, through inserting on containers thereof such legends as "Toykraft Knitting Spool Set, Copyright 1936 and Made by Standard Toykraft Products, Inc., New York, U. S. A.," and through use of other representations of similar import and meaning, notwithstanding fact its said toy sets were not toys or playthings wholly made in the United States, such as purchased to the exclusion of those made in whole or in part in foreign countries by substantial number of members of purchasing public, by reason of their preference for many years for toys and playthings wholly made in the United States over those made in whole or in part in foreign country, but substantial portion of units comprising said sets had been made in Japan and purchased by it from importers and thereafter assembled into sets and sold and distributed as aforesaid;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such toys and playthings thus represented were wholly manufactured in the United States, and of thereby causing said portion of such public, to purchase substantial quantities thereof:

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

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Milton Strasburger, 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 Standard Toykraft Products, Inc., a corporation, 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: