

Syllabus

IN THE MATTER OF
ZO-AK COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3724. Complaint, Feb. 28, 1939—Decision, Dec. 19, 1939*

Where a corporation engaged in sale and distribution of certain medicinal or pharmaceutical preparations designated as "Zo-Ak Tablets" (blue label) or "Zo-Ak for Men," and "Zo-Ak Tablets" (orange label) or "Zo-Ak for Women," to wholesale and retail druggists and other purchasers in various other States and in the District of Columbia; in advertisements which it disseminated concerning its said preparations through the mails and through newspapers and periodicals of general circulation and through circulars and other printed or written matter distributed in commerce, and which were intended and likely to induce purchase thereof—

- (a) Represented that its said "Zo-Ak Tablets for Men" constituted a competent remedy or treatment for sexual debility and a stimulant for reduced virile powers, and was of peculiar value to men in relation to their sex life, and would build up health and strength, facts being said preparation was not a competent remedy or treatment for aforesaid conditions, nor of peculiar value, as above claimed, but acted only as an irritant, did not contain sufficient concentrated vitamins to be beneficial in building up health and strength, and did contain dangerous ingredient yohimbine hydrochloride, aphrodisiac effect of which cannot be produced by recognized and established therapeutic dosage, which was greatly exceeded by recommended dosage in preparation in question;
- (b) Represented that said "Zo-Ak Tablets for Women" constituted a remedy or relief for the nervous symptoms due to "change of life" and a cure, remedy, or relief for various symptoms of "change of life," such as hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells, facts being said preparation was not a remedy or relief for such symptoms, did not make period in question one of greater ease and comfort, and was not a cure or relief for hot flushes, etc., as above set forth, and was entirely insufficient to accomplish any of the results claimed therefor by it; and
- (c) Failed to reveal to purchasers and prospective purchasers, in false advertisements disseminated by it, that use of its said preparation for men, under conditions prescribed or under such conditions as are customary or usual, in some cases caused injury to health and might be injurious, taken as aforesaid, and caused irritation and injury to urinary tract, with serious nephritis as one of its possible after-effects;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of inducing portion of said public, because of such belief, to purchase its injurious, drug-containing medicinal preparations:

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

Complaint

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Before *Mr. Randolph Preston*, trial examiner.
Mr. Merle P. Lyon for the Commission.

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 Zo-Ak Co., 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:

PARAGRAPH 1. Respondent, Zo-Ak Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 56 West Forty-fifth Street, New York, N. Y. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing certain medicinal or pharmaceutical preparations designated as Zo-Ak Tablets (blue label), or Zo-Ak for Men, and Zo-Ak Tablets (orange label), or Zo-Ak for Women.

In the course and conduct of its said business, respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to wholesale and retail druggists and other purchasers thereof located in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said preparations among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination, of false advertisements concerning its said medicinal preparation, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said medicinal preparations, and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said medicinal preparations by various means for the purpose of inducing, and

which are likely to induce, directly or indirectly, the purchase of its said products 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:

MEN

Get free booklet about Zo-Ak Tablets—the formula of a well-known New York physician *created especially for men*. Zo-Ak contains *quick acting* vegetable stimulants plus *essential* vitamin concentrates in *adequate* amounts to build up health and strength.

ZO-AK A SPECIAL TONIC FOR MEN

It is the formula of a well-known New York physician created especially for men whose virile vigor is temporarily lowered. Zo-Ak contains *Quick Action* vegetable stimulants plus Adequate amounts of essential vitamin concentrates to build up health and strength.

MEN

Whose virile power is temporarily below par should try Zo-Ak, the formula of a well-known New York physician *created especially for men*. Zo-Ak contains *quick acting* vegetable ingredients plus *adequate* amounts of essential vegetable concentrates to build up health and strength. Try Zo-Ak faithfully as directed. Then if you don't notice a marked stimulation of virile power your druggist will refund your money.

In many cases however virility is not lost but merely lowered by overwork or worry. This is especially noticeable in business men who after a hard day at the office come home thoroughly unfit for the marital attentions their wives expect. * * * For such men whose virile powers are temporarily reduced, not lost, a course of treatment with Zo-Ak Tablets frequently gives the necessary boost that assists nature.

Zo-Ak Tablets are indicated for temporary reduction of virile powers since they stimulate the natural functions of important organs.

Take 2 or 3 Zo-Ak Tablets three times daily one-half hour before meals. For best results take Zo-Ak at least a month. * * * The longer you take Zo-Ak Tablets the more satisfactory will be the result from their use. However many men get quick stimulation after a single bottle.

Thousands of men whose virile powers have become temporarily reduced or weakened (but not totally lost) have found that Zo-Ak Tablets give them the stimulation they so much desire.

Zo-Ak contains two potent quick acting vegetable herb substances which are acknowledged by many of the medical profession to be invaluable in stimulating the important organs concerned with masculine functions.

In addition to these stimulants Zo-Ak contains essential vitamin concentrates in *adequate dosage*. These build up health and strength.

Generally around the age of 40 or 45 most women go through a physiological change called the menopause or "change of life."

This change is often accompanied by many distressing and miserable symptoms. These are hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells.

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These symptoms often last for months, often years, but fortunately they may be considerably relieved in many cases by the use of hormones and certain substances contained in Zo-Ak Tablets for Women (orange box).

These tablets are also the formula of a prominent New York physician so they may be taken with confidence. Zo-Ak Tablets for Women are not a "cure all" but a special medicine intended to relieve the nervous symptoms of the "change of life" and make this trying period one of greater ease and comfort.

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's products, respondent has represented, and does now represent, directly and indirectly, that its preparation, Zo-Ak Tablets for Men, or Zo-Ak Tablets (blue label), is a competent remedy, treatment, or stimulant for sexual debility or reduced virile powers; that it is of peculiar value to men in relation to their sex life and that said preparation will build up health and strength; that Zo-Ak Tablets (orange label), or Zo-Ak for Women, is a remedy or relief for the nervous symptoms due to "change of life" and is a cure, remedy, or relief for various symptoms of "change of life," such as hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's medicinal preparation, Zo-Ak Tablets (blue label), or Zo-Ak for Men, is not a competent remedy, treatment or stimulant for sexual debility or reduced virile powers and is not of peculiar value to men in relation to their sex life but acts only as an irritant to the sexual organs. Furthermore, this preparation does not contain sufficient concentrated vitamins to make it beneficial in the building up of health and strength. In truth and in fact, Zo-Ak Tablets (orange label), or Zo-Ak for Women, is not a remedy or relief for the nervous symptoms of the "change of life" and does not make this trying period one of greater ease and comfort. Furthermore, this preparation is not a cure or relief for hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells, and is entirely insufficient to accomplish any of the results claimed for it by the respondent's directions.

PAR. 5. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements as aforesaid in that respondent fails to reveal to the purchasers and prospective purchasers that the use of its medicinal preparation, Zo-Ak Tablets (blue label), or Zo-Ak for

Men, under conditions prescribed or under such conditions as are customary or usual in some cases cause injury to health.

Zo-Ak Tablets (blue label), or Zo-Ak for Men, contains the dangerous ingredient yohimbine hydrochloride. The aphrodisiac effect of yohimbine hydrochloride cannot be produced by the recognized and established therapeutic dosage. The recommended dosage for respondent's preparation is greatly in excess of the therapeutic dosage. Such tablets taken under the conditions prescribed by respondent and under the conditions which are customary or usual may be injurious to the health of the users thereof and cause irritation and injury to the urinary tract and serious nephritis may be one of its after-effects.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to said medicinal preparations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations containing injurious drugs.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 28, 1939, issued, and on March 1, 1939, served, its complaint in this proceeding upon the respondent, Zo-Ak Co., Inc., a corporation, charging it with 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 an answer by said respondent, the Commission, by order entered herein, granted said respondent's motion for permission to withdraw said answer and to substitute therefor an amended 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 the proceeding regularly came on for final

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hearing before the Commission on the said complaint and amended 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. Respondent, Zo-Ak Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 56 West Forty-fifth Street, New York, N. Y. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing certain medicinal or pharmaceutical preparations designated as Zo-Ak Tablets (blue label), or Zo-Ak for Men, and Zo-Ak Tablets (orange label), or Zo-Ak for Women.

In the course and conduct of its said business, respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to wholesale and retail druggists and other purchasers thereof located in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said preparations among and between the various States of the United States and in the District of Columbia.

PAR.2. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination, of false advertisements concerning its said medicinal preparations, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said medicinal preparations and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said medicinal preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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:

MEN

Get free booklet about Zo-Ak Tablets—the formula of a well-known New York physician *created especially for men*. Zo-Ak contains *quick acting* vegetable stimulants plus *essential* vitamin concentrates in *adequate* amounts to build up health and strength.

ZO-AK A SPECIAL TONIC FOR MEN

It is the formula of a well-known New York physician created especially for men whose virile vigor is temporarily lowered. Zo-Ak contains *Quick Action* vegetable stimulants plus Adequate amounts of essential vitamin concentrates to build up health and strength.

MEN

Whose virile power is temporarily below par should try Zo-Ak, the formula of a well-known New York physician *created especially for men*. Zo-Ak contains *quick acting* vegetable ingredients plus *adequate* amounts of essential vegetable concentrates to build up health and strength. Try Zo-Ak faithfully as directed. Then if you don't notice a marked stimulation of virile power your druggist will refund your money.

In many cases however virility is not lost but merely lowered by overwork or worry. This is especially noticeable in business men who after a hard day at the office come home thoroughly unfit for the marital attentions their wives expect. * * * For such men whose virile powers are temporarily reduced, not lost, a course of treatment with Zo-Ak Tablets frequently gives the necessary boost that assists nature.

Zo-Ak Tablets are indicated for temporary reduction of virile powers since they stimulate the natural functions of important organs.

Take 2 or 3 Zo-Ak Tablets three times daily one-half hour before meals. For best results take Zo-Ak at least a month. * * * The longer you take Zo-Ak Tablets the more satisfactory will be the result from their use. However, many men get quick stimulation after a single bottle.

Thousands of men whose virile powers have become temporarily reduced or weakened (but not totally lost) have found that Zo-Ak Tablets give them the stimulation they so much desire.

Zo-Ak contains two potent quick acting vegetable herb substances which are acknowledged by many of the medical profession to be invaluable in stimulating the important organs concerned with masculine functions.

In addition to these stimulants Zo-Ak contains essential vitamin concentrates in *adequate dosage*. These build up health and strength.

Generally around the age of 40 or 45 most women go through a physiological change called the menopause or "change of life."

This change is often accompanied by many distressing and miserable symptoms. These are hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells.

These symptoms often last for months, often years, but fortunately they may be considerably relieved in many cases by the use of hormones and certain substances contained in Zo-Ak Tablets for Women (orange box).

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These tablets are also the formula of a prominent New York physician so they may be taken with confidence. Zo-Ak Tablets for Women are not a "cure all" but a special medicine intended to relieve the nervous symptoms of the "change of life" and make this trying period one of greater ease and comfort.

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's products, respondent has represented, and does now represent, directly and indirectly, that its preparation, Zo-Ak Tablets for Men, or Zo-Ak Tablets (blue label), is a competent remedy or treatment for sexual debility and is a stimulant for reduced virile powers; that it is of peculiar value to men in relation to their sex life and that said preparation will build up health and strength; that Zo-Ak Tablets (orange label), or Zo-Ak for Women, is a remedy or relief for the nervous symptoms due to "change of life" and is a cure, remedy, or relief for various symptoms of "change of life," such as hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's medicinal preparation, Zo-Ak Tablets (blue label), or Zo-Ak for Men, is not a competent remedy or treatment for sexual debility or a stimulant for reduced virile powers and is not of peculiar value to men in relation to their sex life but acts only as an irritant to the sexual organs. Furthermore, this preparation does not contain sufficient concentrated vitamins to make it beneficial in the building up of health and strength. In truth and in fact, Zo-Ak Tablets (orange label), or Zo-Ak for Women, is not a remedy or relief for the nervous symptoms of the "change of life" and does not make this trying period one of greater ease and comfort. Furthermore, this preparation is not a cure or relief for hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells, and is entirely insufficient to accomplish any of the results claimed for it by the respondent's directions.

PAR. 5. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements as aforesaid in that respondent fails to reveal to the purchasers and prospective purchasers that the use of its medicinal preparations, Zo-Ak Tablets (blue label), or Zo-Ak for Men, under conditions prescribed or under such conditions as are customary or usual in some cases cause injury to health.

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Zo-Ak Tablets (blue label), or Zo-Ak for Men, contains the dangerous ingredient yohimbine hydrochloride. The aphrodisiac effect of yohimbine hydrochloride cannot be produced by the recognized and established therapeutic dosage. The recommended dosage for respondent's preparation is greatly in excess of the therapeutic dosage. Such tablets taken under the conditions prescribed by respondent and under the conditions which are customary or usual may be injurious to the health of the users thereof and cause irritation and injury to the urinary tract and serious nephritis may be one of its after-effects.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said medicinal preparations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations containing injurious drugs.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Zo-Ak Co., Inc., a corporation, its officers, agents, 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 the medicinal or pharmaceutical preparations hereinafter described, 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 the medicinal preparations hereinafter described, which advertisement represents, directly or by implication, that the medicinal preparation now designated by the name Zo-Ak Tablets (blue label) or Zo-Ak for Men, or any other medicinal or pharmaceutical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under those names or any other name or names, is a competent remedy or treatment for sexual debility or a stimulant for reduced virile powers, or that it is of peculiar value to men in relation to their sex life, that it will build up health and strength, or that it contains quick-acting vegetable stimulants plus essential vitamin concentrates in adequate amounts to build up health and strength; or which advertisement fails to reveal to purchasers or prospective purchasers that the use of said preparation under conditions prescribed or under such conditions as are customary or usual may in some cases cause injury to health; or which advertisement represents, directly or by implication, that the medicinal preparation now designated by the name Zo-Ak Tablets (orange label) or Zo-Ak for Women, or any other medicinal or pharmaceutical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under those names or any other names, is a remedy for, or affords relief from, the nervous symptoms due to "change of life," or that it is a cure, remedy or relief for various symptoms of "change of life," such as hot flashes, dizzy spells, bursting headaches, "nerves," irritability, and crying spells.

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
NUTRINE CANDY COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936; AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3756. Complaint, Apr. 11, 1939—Decision, Dec. 19, 1939

Where a corporation engaged in manufacture, offer, sale, and distribution of a small line of fancy boxed candy to dealers, and of bulk candy, in which it specialized, directly to retailers in some 15 States, and for sale of which bulk candy of like grade and quality it maintained 4 separate and distinct price schedules governing price to be charged in accordance with classification of particular dealer as Eastern Syndicate, National Syndicate, Small Syndicate, or Small Retail account, as case might be—

Discriminated in price through sale of its said candy to purchasers competitively engaged with one another in resale thereof at its "ES," "NS," "SS," and "SR" prices, in accordance with classification of such customers, governed by no standard rule, by its salesmen, and in accordance with permitted action of latter in selling to same customer certain items under "NS" or "SS" price classifications and rest of items purchased at same time under "SR" list price, and thereby sold different competitively engaged purchasers candy of like grade, quality, and quantity at varying prices and price differentials ranging from a low of \$0.0075 per pound to high of \$0.04% per pound, depending upon brand of candy thus sold and purchased;

With result that the effect of such discriminations in prices might be to lessen competition between those retailers who purchase from it in one of aforesaid price classifications and competing retailers who purchase in higher price classification, and to injure, destroy, and prevent competition between said retailers and to tend to concentrate in most favored retailers, who were in direct competition with those less favored, retail sales of its said products, and with tendency and capacity to eliminate and destroy bulk candy business of latter:

Held, That such discrimination in price in sale in commerce of bulk candies of like grade and quality to purchasers competitive one with the other, absent anything in record to justify same, constituted violation of provisions of section 2 (a) of Clayton Act, as amended by Robinson-Patman Act; and

Where said corporation engaged also, as aforesaid, in manufacture, offer, sale, and distribution of its fancy boxed candy to retail dealers in aforesaid States, including various assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumer, and were composed of (1) number of 1-pound boxes of candy, together with push card for use in sale and distribution of such candy under a plan in accordance with which customer and purchaser paid therefor varying amount, ranging from 1 cent to 39 cents, as determined by number concealed within disk bearing feminine name selected, or of (2) other assortments involving lottery or chance feature similar to aforesaid, and varying therefrom in detail only—