

Order

30 F. T. C.

IN THE MATTER OF
THE AMERICAN PRODUCTS COMPANY, AND THE ZANOL
PRODUCTS COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2836. Order, Jan. 25, 1940

Order, in response to motion, modifying cease and desist order of November 8, 1939, 29 F. T. C. 1306, so as to require respondents, their officers, etc., in connection with offer, etc., in commerce, of food and toilet products and household cleaners, to cease and desist from misrepresenting volume of respondents' business or risk or expense incurred by their salesmen or distributors, or using term "free" to describe articles offered as compensation for distribution thereof, or misrepresenting earnings or profits of sales persons or dealers, as in said order below set forth.

Before *Mr. Edward E. Reardon* and *Mr. Randolph Preston*, trial examiners.

Mr. Alden S. Bradley and *Mr. M. C. Pearce* for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, and *Mr. J. M. George*, of Winona, Minn., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of W. T. Kelley, Chief Counsel for the Commission, to modify the order to cease and desist heretofore issued in this proceeding on November 8, 1939, and the Commission having considered said motion and the record herein and being now fully advised in the premises;

It is ordered, That the motion to modify the order to cease and desist as issued herein on November 8, 1939, be, and the same hereby is, granted as prayed;

It is further ordered, That the order to cease and desist issued herein on November 8, 1939, be, and the same hereby is, modified so as to read as follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, in which answer respondents admit the material allegations of facts set forth in said complaint, and the Commission having made its findings as to the facts and conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, The American Products Co., a corporation, and The Zanol Products Co., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of food and toilet products and household cleaners in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner the volume of respondents' business.

2. Representing that salesmen or distributors of respondents' merchandise incur no risk or expense when in fact respondents require a deposit from such persons for the goods, samples, or sales equipment supplied.

3. Using the term "free" or any other terms of similar import or meaning to describe or refer to articles offered as compensation for distributing respondents' merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the term "free" or other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such article or as to the services to be performed in connection with obtaining such articles.

4. Representing any specified sum of money as possible earnings or profits of sales persons or dealers for any stated period which is not a true representation of the net earnings or profits which have been made for such stated period of time by a substantial number of respondents' active sales persons or dealers in the ordinary course of business under normal conditions and circumstances.

5. Representing any specified sum of money as earnings or profits of any specified dealer or sales person for any stated period of time unless such sum of money has in fact been earned net, by such dealer or sales person averaged over a period of at least 2 months in the ordinary course of business and under normal conditions and unless such representation is immediately accompanied by a statement to the effect that such dealer or sales person is an exceptional or unusual dealer or sales person.

It is further ordered, That the respondents 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.

IN THE MATTER OF
FRYE COMPANY

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

Docket 3741. Complaint, Mar. 21, 1939—Decision, Jan. 25, 1940

Where a corporation engaged in sale and distribution of medicinal preparation under designation and label "Pancreobismuth," "Pancreo Bismuth" and "Pancreobismuth and Pepsin," to purchasers in other States, in substantial competition with others engaged in sale and distribution of similar preparations or other products designed and intended for similar usage, in commerce among the various States and in the District of Columbia; in advertisements in newspapers and other periodicals of general circulation, and in advertising folders and literature which it printed and circulated throughout the several States to customers and prospective customers, and in which it featured name "Pancreo Bismuth and Pepsin"—

- (a) Represented that its said product was effective in treatment of all cases of upset stomach and relieved indigestion due to acid condition of the stomach, and tended to neutralize excess acid and allay irritation, and constituted aid in digestion of starchy foods and helped to give relief from distress caused thereby; and
- (b) Represented, through use of name "Pancreo Bismuth and Pepsin" or "Pancreo Bismuth" or "Pancreobismuth" in connection with its said product, that same possessed physiological or therapeutic value due to presence of pancreatin or pepsin;

Facts being two ingredients in question were rendered physiologically inert when taken internally in preparation involved, active ingredients of which were bismuth subnitrate, sodium bicarbonate, and ginger, and, while product possessed therapeutic value of a simple antacid and carminative tending temporarily to neutralize excess acid and relieve symptoms of distress from gastric hyperacidity, it had no effect on causative factors thereof or systemic causes of excess acid in system, was not effective in treatment of upset stomach or relief of indigestion due thereto, other than as indicated, and statements and representations above set forth were otherwise false, deceptive, exaggerated, and misleading, with respect to therapeutic value of product in question; and

Where said corporation engaged as aforesaid; in advertisements which it disseminated concerning its said product through the mails and through insertion in circulars and other printed or written matter distributed in commerce among the various States, and which were intended and likely to induce purchase of its said product, and which were disseminated as above set forth through various means—

- (c) Represented, through use of trade name "Pancreobismuth," that product in question contained pancreatin as active ingredient thereof, facts being amount thereof was negligible and without physiological value and inert in preparation in question, active ingredients of which were as hereinabove set forth;