

Syllabus

IN THE MATTER OF
PATCH PREMEK CORPORATION, AND H. K. PATCH,
TRADING AS H. K. PATCH COMPANY

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

Docket 3469. Complaint, Sept. 27, 1938¹—Decision, Mar. 29, 1940

Where a corporation and an individual, who was president thereof and controlled and directed its business activities, sales policies, and practices, engaged in sale and distribution of their "Premek 33," or "C. S. 53," medicinal preparation for various ailments, diseases, and conditions, to purchasers at various points in various other States, in substantial competition with others engaged in sale and distribution, in commerce among the various States, of preparations for use in connection with treatment of ailments, diseases, and conditions for which they recommended and claimed their said preparation to be effective and competent treatment, and including many who do not in any manner misrepresent the character, nature, and therapeutic properties of their products; in advertisements which they disseminated, in cooperation with one another in acts and things below set forth, through newspapers and other periodicals of general circulation throughout the various States, and through booklets, leaflets, pamphlets, and other printed matter distributed among prospective customers—

- (a) Represented that their said preparation was an amazing new discovery, and the most effective way to end irritations of all kinds, and that it constituted most effective treatment for, and would end, numerous ailments and conditions, including, among others, eczema, athlete's foot, prickly heat, skin irritations and rashes, acne in various forms, and dandruff and eczema; and
- (b) Represented that use thereof would stop perspiration and provided only sure way to prevent noxious body odors, and that it was a bactericide which would prevent reinfection and which penetrated skin pores and deep-seated organisms, and killed parasites responsible for irritation, and that it had been successful in the treatment of chronic irritations where other medications had failed;

Facts being that only ingredient in preparation in question of therapeutic consequence was sulfur in colloidal or finely divided form, which was neither new nor amazing discovery, but had been in use as an adjunct or accessory in medication generally for a long time, most that could properly be claimed for preparation in question, excepting as to scabies, was that under proper direction or medical supervision it might be used as beneficial accessory treatment in case of some of conditions or ailments in question resulting from superficial or external causes, and it was not a quick or effective treatment for, and would not cure, any of conditions, symptoms, or ailments in question, with exception aforesaid, and it was not a bactericide and would not accomplish results claimed therefor as above, and claims as to its therapeutic value and properties greatly exceeded those which might truthfully be made for such a product;

¹ Amended and supplemental.

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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 that their products possessed properties claimed and represented, and would accomplish such results, and of causing purchase of substantial quantities thereof as consequence of such beliefs, thus induced, and of thereby unfairly diverting to themselves trade from their competitors; to the substantial injury of competition in commerce:

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 acts and practices therein.

Before *Mr. Charles P. Vicini* and *Mr. John J. Keenan*, trial examiners.

Mr. Jesse D. Kash for the Commission.

AMENDED AND SUPPLEMENTAL 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 Patch Premek Corporation, a corporation, and H. K. Patch, individually, and trading under the firm name and style, H. K. Patch Co., 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Patch Premek Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its principal office and place of business at 1716 East Seventh Street, Los Angeles, Calif. Respondent H. K. Patch, who is president of said respondent Patch Premek Corporation, controls and directs the business activities, sales policies, and practices of the respondent Patch Premek Corporation. Said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondents are now and have been for some time last past engaged in the business of selling and distributing a certain purported medicinal preparation which is recommended for use in the treatment of various ailments, diseases, and conditions which may be present or exist in the human body. This product is known as, and sold under the name of "Premek 33," and is similar to a preparation sold by the respondents to the medical profession under the name and designation of "C. S. 53."

PAR. 2. Respondents, in the course and conduct of their said business, cause said product, when sold, to be transported from their said place of business in the State of California to the purchasers thereof located at various points in the several States of the United States other than the State of California. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the various States of the United States, in the District of Columbia, and with foreign countries.

Respondents have been and are in substantial competition with corporations, firms, partnerships, and individuals likewise engaged in the business of selling and distributing in said commerce preparations for use in connection with the treatment of the ailments, diseases, and conditions for which the respondents represent and claim their preparation to be an effective and competent treatment.

There are among the competitors of the respondents in said commerce many who do not in any manner misrepresent the character, nature, and therapeutic properties of the products sold and distributed by them.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said preparation, respondents have caused false advertisements containing representations and claims with respect to the character, nature, and properties of said preparation and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through the use of advertisements in newspapers and other periodicals having a general circulation throughout the various States of the United States and through the use of booklets, leaflets, pamphlets, and other printed matter distributed among prospective purchasers. Among others, and typical of the representations and claims contained in said false advertisements so used and disseminated as aforesaid, the respondents represent that their said preparation is an amazing new discovery; that it is the most effective way to end irritations of all kinds; that it is the most effective treatment for and that its use will end eczema, athlete's foot, dhobie and jock strap itch, prickly heat, insect bites, dermatitis herpetiformis, skin irritations and rashes, pimples, barber's itch, chafing, shingles, ringworm or epidermophytosis, scabies, impetigo, acne in various forms, pruritus, aching feet, soft corns, dandruff and eczema of the scalp, furunculosis of the ear canal; that its use will stop perspiration and it provides the only sure way to prevent noxious body odors; that it is a bactericide and will prevent reinfection; that it penetrates the skin pores and deep-seated organ-

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isms and kills the parasites which cause irritation; and that it has been successful in the treatment of chronic irritations where other medications have failed.

PAR. 4. The aforesaid representations and claims used and designated by the respondents in the manner above described are grossly exaggerated, misleading and untrue, and constitute false advertisements. In truth and in fact "Premek 33" is by quantitative analysis shown to contain:

	<i>Percent</i>
Colloidal elemental sulfur.....	50.00
Magnesium oxide.....	3.00
Resublimed beta-naphthol.....	.20
Glycerine.....	5.00
Gum arabic.....	5.00
Water.....	36.8

and the only ingredient therein of consequence therapeutically is the colloidal or finely divided sulfur, and sulfur is neither a new nor an amazing discovery but has been in use as an adjunct or accessory in medication generally for a long time. Said preparation is not a quick or effective treatment for nor will it cure any of the conditions, symptoms, or ailments hereinabove mentioned except scabies. Its use in some of such conditions is fraught with possible danger to the public health. Except as to scabies, the most that can be accomplished by, or properly claimed for, respondents' said preparation is that as to some of the conditions or ailments mentioned, which result from superficial or external causes, said preparation may be used under proper direction or medical supervision as a beneficial accessory treatment. Said preparation is not a bactericide, does not prevent reinfection and does not penetrate sufficiently to destroy subcutaneous parasites which cause irritation. Respondents' claims as to the therapeutic value and properties of said preparation greatly exceed those which might truthfully be made for such a preparation.

PAR. 5. The use of the aforesaid false advertisements, disseminated in the manner above described, induces or is likely to induce, directly or indirectly, the purchase of a drug.

PAR. 6. The use by respondents of the foregoing false, deceptive, and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondents' said preparation possesses the properties claimed and represented and will accomplish the results represented, and causes the purchase of substantial quantities of

respondents' said preparation as a result of the erroneous and mistaken beliefs induced as aforesaid. As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise the effectiveness and use of their respective products. In consequence thereof, injury has been, and is now being, done by respondents to competitors in commerce among and between the various States of the United States and in the District of Columbia, and with foreign countries.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair 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 the 28th day of June 1938, issued, and on the 5th day of July 1938, served its complaint in this proceeding upon the respondent Patch Premek Corporation, a corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Said Patch Premek Corporation filed its answer to said complaint on the 18th day of July 1938. On September 27, 1938, the Commission issued, and subsequently served, its amended and supplemental complaint in this proceeding, upon said Patch Premek Corporation, and also upon the respondent H. K. Patch, an individual, trading as H. K. Patch Co., charging them with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of said act. Thereafter, and after certain hearings had been held in this proceeding, the Commission, by order entered herein, granted the request of respondent Patch Premek Corporation for permission to withdraw its answer filed on July 18, 1938, and to substitute therefor an answer admitting all of the material allegations of fact set forth in said amended and supplemental complaint, with one exception therein specified. Said substitute answer, which waived all intervening procedure and further hearings as to said facts was duly filed in the office of the Commission. The respondent H. K. Patch joined in said substitute answer. Thereafter, this proceeding regularly came on for final hearing before the Commission on 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

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public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Patch Premek Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 1716 East Seventh Street, Los Angeles, Calif. Respondent H. K. Patch, an individual, is president of said respondent, Patch Premek Corporation, and controls and directs the business activities, sales policies and practices of respondent, Patch Premek Corporation. Respondent, H. K. Patch also trades under the name of H. K. Patch Co. Said respondents have cooperated each with the other and have acted in concert in doing the acts and things herein-after alleged. Respondents are now and have been for some time last past engaged in the business of selling and distributing a certain medicinal preparation which is recommended for use in the treatment of various ailments, diseases, and conditions which may be present or exist in the human body. This product is known as, and sold under the name of "Premek 33" and is also sold by the respondents to the medical profession under the name and designation "C. S. 53."

PAR. 2. Respondents, in the course and conduct of their said business, cause said product, when sold, to be transported from their said place of business in the State of California to the purchasers thereof located at various points in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said preparation in commerce between and among the various States of the United States, in the District of Columbia, and with foreign countries.

Respondents have been and are in substantial competition with corporations, firms, partnerships, and individuals also engaged in the business of selling and distributing in commerce among and between the various States of the United States preparations for use in connection with the treatment of the ailments, diseases, and conditions for which the respondents represent and claim their preparation to be an effective and competent treatment.

There are among the competitors of respondents in said commerce many who do not in any manner misrepresent the character, nature, and therapeutic properties of the products sold and distributed by them.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said preparation, respond-

ents have caused false advertisements containing representations and claims with respect to the character, nature and properties of said preparation and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce, as "commerce" is defined in the Federal Trade Commission Act, through the use of advertisements in newspapers and other periodicals having a general circulation throughout the various States of the United States, and through the use of booklets, leaflets, pamphlets, and other printed matter distributed among prospective customers. Among others and typical of the representations and claims contained in said false advertisements so used and disseminated as aforesaid, the respondents represent that their said preparation is an amazing new discovery; that it is the most effective way to end irritations of all kinds; that it is the most effective treatment for and that its use will end eczema, athlete's foot, dhobie and jock strap itch, chafing, shingles, ringworm or epidermophytosis, prickly heat, insect bites, dermatitis herpetiformis, skin irritations and rashes, pimples, barber's itch, scabies, impetigo, acne in various forms, pruritus, aching feet, soft corns, dandruff and eczema of the scalp, furunculosis of the ear canal; that its use will stop perspiration and it provides the only sure way to prevent noxious body odors; that it is a bactericide and will prevent reinfection; that it penetrates the skin pores and deep-seated organisms and kills the parasites which cause irritation; and that it has been successful in the treatment of chronic irritations where other medications have failed.

PAR. 4. The Commission finds that the statements and representations hereinabove set forth in paragraph 3 hereof, and others similar thereto, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' product, are grossly exaggerated, misleading and untrue and constitute false advertisements. In truth and in fact, "Premek 33" is by quantitative analysis shown to contain:

	<i>Percent</i>
Colloidal elemental sulfur.....	50.00
Magnesium oxide.....	3.00
Resublimed beta-naphthol.....	.20
Glycerine.....	5.00
Gum arabic.....	5.00
Water	36.8

and the only ingredient therein of consequence therapeutically is the colloidal or finely divided sulfur, and sulfur is neither a new or an amazing discovery, but has been in use as an adjunct or accessory in medication generally for a long time. Said preparation is not a quick or effective treatment nor will it cure any of the conditions,

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symptoms, or ailments hereinabove mentioned except scabies. Except as to scabies, the most that can be accomplished by, or properly claimed for respondents' said preparation is that as to some of the conditions or ailments mentioned, which result from superficial or external causes, said preparation may be used under proper direction or medical supervision as a beneficial accessory treatment. Said preparation is not a bactericide, does not prevent reinfection, and does not penetrate sufficiently to destroy subcutaneous parasites which cause irritation. Respondents' claims as to the therapeutic value and properties of said preparation greatly exceed those which might truthfully be made for such a preparation.

PAR. 5. The Commission finds that the aforesaid false advertisements disseminated in the manner above described induce or are likely to induce, directly or indirectly, the purchase of a drug.

PAR. 6. The Commission finds that the use by respondents of the foregoing false, deceptive, and misleading statements, representations and advertisements disseminated as aforesaid with respect to said preparation has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results represented, and causes the purchase of substantial quantities of respondents' said preparation as a result of the erroneous and mistaken beliefs induced as aforesaid. As a result, trade has been diverted unfairly to respondents from their competitors, and in consequence substantial injury has been done and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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 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 amended and supplemental complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said amended

and supplemental complaint, with one exception therein specified, and state that they waive all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Patch Premek Corporation, a corporation, and its officers, and H. K. Patch, individually and trading as H. K. Patch Co., or trading under any other name or names, their respective representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation now designated as "Premek 23" and "C. S. 53" or any other preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under 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 Commerce Act, of said medicinal preparation, which advertisements represent, directly or through implication.

1. That said preparation is a cure, or remedy for eczema, athlete's foot, dhobie or barber's itch, jock strap itch, prickly heat, insect bites, dermatitis herpetiformis, skin irritations or rashes, pimples, chafing, shingles, ringworm or epidermophytosis, impetigo, acne, pruritus, aching feet, soft corns, dandruff, eczema of the scalp or furnuculosis of the ear canal, or that said preparation constitutes a competent or effective treatment for any of said ailments or conditions other than to serve as an accessory treatment for those which are due to superficial or external causes only.

2. That said preparation is a bactericide or that it will prevent reinfection.

3. That the use of said preparation will stop perspiration or prevent body odors.

4. That said preparation is a "new" or an "amazing" discovery.

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
**WILLIAM M. IRVINE, TRADING AS CONSOLIDATED
SILVER COMPANY OF AMERICA**

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

Docket 3789. Complaint, May 12, 1939—Decision, Mar. 29, 1940

Where an individual engaged in offer and sale of sales-promotional plans, including sales-promotion cards, silverware, and other materials used in connection therewith, to retailers and others in the various States and in the District of Columbia;

In selling, through agents supplied with order blanks, contract forms and various other items of advertising literature, plan in question, which contemplated distribution by dealer-purchaser to dealer's customers of cards, purchased of said individual at from \$3.50 to \$4.50 a thousand (with remaining payment therefor by merchant due upon receipt of cards), for sending in by customer or dealer-purchaser for "redemption" in "William A. Rogers silverware or tableware"—

- (a) Represented, through printed forms prepared by him, and setting forth terms of agreement between him and retailer, and made use of by his agents in taking retailers' orders, that he would supply to retailer, without charge, circulars, posters, and other advertising material and display set of silverware; facts being he failed, in many instances, to supply such circulars and advertising material, failed, in many cases, to supply dealers with particular display set agreed upon, failed, in one instance, to supply any display set until after repeated demands therefor, and, notwithstanding contract reference to "display set," supplied actually, in most instances, as display silverware, three small spoons attached to piece of cardboard;
- (b) Represented, in solicitation of orders through his said agents, that cards and operation of entire plan were without cost to dealer, in that he would refund to dealer entire purchase price of cards as soon as 25 percent thereof had been forwarded to him for redemption by dealer's customers, facts being, under contract provision, no refund was to be made unless and until such proportion had been thus sent in, in which event dealer became entitled only to refund of price of cards actually sent in, and provision in question was couched in such vague and ambiguous language and printed in such inconspicuous type as readily to permit his agents to misconstrue to retailers provision in question, or entirely ignore same, and dealers, in many instances, were unable to obtain from him any refunds, despite fact of sending in 25 percent or more of cards as above set forth;
- (c) Represented, through his agents, permitted readily so to represent, through character of contract forms and other advertising literature put by him into their hands, that he was connected with the manufacturer of William A. Rogers silverware, or Oneida, Ltd., and was putting on, for benefit of such manufacturer, advertising campaign, notwithstanding fact he had no connection whatever with company in question and was not authorized to put on any such campaign therefor, but merely bought, as any other purchaser,