

IN THE MATTER OF
HERB JUICE-PHENOL COMPANY, INC., TRADING AS
POW-O-LIN LABORATORIES

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

Docket 4067. Complaint, Mar. 20, 1940—Decision, June 6, 1940

Where a corporation engaged in sale and distribution of its "Pow-O-Lin" medicinal preparation, for treatment of certain ailments, to purchasers in various other States and in the District of Columbia; in advertisements of its said product, which it disseminated and caused to be disseminated, through the mails and by various other means in commerce and otherwise, and including advertisements in newspapers and periodicals and radio continuities, and circulars, leaflets, pamphlets, and other advertising literature in which were reproduced, among other things, testimonials or purported testimonials—

Represented directly and indirectly that "constipation and faulty elimination" are characterized by, and associated with, following among other symptoms, namely, biliousness, indigestion, gas pains, headaches, dizziness, pains in back and chest, stiffness of the joints, swollen feet and ankles, nervousness, insomnia, loss of appetite and lack of energy, and that said preparation possessed beneficial therapeutic properties with respect to curling or remedying and competently treating constipation and "faulty elimination," and with respect to removing or overcoming symptoms hereinabove set forth, by reason of its use serving to eliminate tendency toward constipation;

Facts being its said product possessed no therapeutic properties in excess of those of a cathartic or laxative, and served no purpose other than to assist in the temporary evacuation of the intestinal tract, symptoms set out are not generally or usually characteristic or typical of any particular type or group of disorders and are not necessarily due to, and do not generally persist because of, constipation or "faulty elimination," use of said preparation would not serve as a remedy or cure for or eliminate or in any way affect any tendency to constipation, had no beneficial value in overcoming or removing specific symptoms set forth or in treating such symptoms other than to extent such symptoms might be temporarily relieved by evacuation of intestinal tract when due to, or persisting because of, constipation, and in those cases in which said symptoms are due to causes other than constipation, preparation in question would be of no value in treatment thereof;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false advertisements were true and with result, as consequence of such belief thus engendered, that substantial portion of purchasing public had been and were induced to buy its said preparation:

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. Maurice C. Pearce for the Commission.

Complaint

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 Herb Juice-Penol Co., Inc., a corporation, doing business under the trade name of Pow-O-Lin Laboratories, hereinafter referred to as respondent, has 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. Respondent Herb Juice-Penol Co., Inc., doing business under the trade name of Pow-O-Lin Laboratories, is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business located in the city of Danville, State of Virginia.

Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a certain medicinal preparation designated "Pow-O-Lin," recommended as a treatment for certain ailments of the human body.

Respondent causes said medicinal preparation, when sold, to be transported from respondent's place of business in the State of Virginia to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said preparation, by United States mails and by various 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 preparation; and respondent has also disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said preparation, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be

Complaint

31 F. T. C.

disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

No one can deny the fact that this marvelous vegetable preparation (Pow-O-Lin) is all that is claimed for it—that it will relieve bilious attacks, indigestion, stomach gas pains, headaches, dizzy spells and a tired let-down miserable condition brought on by constipation.

All Richmond heralds Pow-O-Lin as a blessing to suffering humanity—by the hundreds, people who have never been relieved by any medicine or treatment are finding Pow-O-Lin a boon, a reliable and trustworthy remedy for ills due to faulty elimination and the temporary clogging of the intestinal tract.

If you'll try this splendid medicine so many of your neighbors recommend, you'll find it the most pleasant, prompt and efficient medicine you ever used for the relief of faulty elimination and resulting ills!

For about a year I hardly knew a well day, suffered continually with headaches, pains in back and chest, was very pervious, feet and ankles often badly swollen and I was always nervous, due to faulty elimination. Some time ago I went all to pieces and was hardly able to be up. * * * Pow-O-Lin * * * has simply done wonders for me. I have a wonderful appetite, food agrees with me. No more gas pains or headaches, bowels act regular. I rest well at night and I am relieved of the trouble with my feet and ankles swelling.

If your days and nights are miserable,—you can't eat,—your food sours and ferments causing gas,—you can't sleep,—you get up in the morning feeling as though you have had no rest at all,—this condition is very often brought on by nerve pressure on the walls of the intestines, because of improper elimination,—Pow-O-Lin must bring relief * * *.

* * * They allow a temporarily clogged intestinal tract to bring on agonizing, miserable sufferings and discomforts such as indigestion, gas pains, dull, throbbing headaches, nervousness, billousness and dizzy spells. * * * This pleasant-tasting vegetable medicine (Pow-O-Lin), extracted from roots and herbs, absolutely must bring the relief you need. * * *.

Are you the same person you were six months or a year ago, or has billousness, nervousness, stiffness of the joints, made a different person of you? Are you tired and let down even though you have just gotten out of bed? Do you feel like working or do you have to use all your energy just to get out of bed * * *. If that is the way you feel then why don't you try Pow-O-Lin?

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 and therapeutic properties of its preparation, the respondent has represented and does now represent, directly, and indirectly, that constipation and "faulty elimination" are characterized by and associated with the following, among other, symptoms: biliousness, indigestion, gas pains, headaches, dizziness, pains in the back and chest, stiffness of the joints, swollen feet and ankles, nervousness, insomnia, loss of appetite, and lack of energy; and that said preparation possesses beneficial therapeutic properties with respect to curing or remedying and compe-

tently treating constipation and "faulty elimination" and with respect to removing or overcoming the symptoms hereinabove set forth by reason of its use serving to eliminate tendency toward constipation.

PAR. 4. The aforesaid representations are grossly exaggerated, false, and misleading. In fact, respondent's preparation possesses no therapeutic properties in excess of those of a cathartic or laxative and serves no purpose other than to assist in the temporary evacuation of the intestinal tract. The symptoms set out in paragraph 3 are not generally or usually characteristic or typical of any particular type or group of disorders and such symptoms are not necessarily due to, and do not generally persist because of, constipation or "faulty elimination." The use of said preparation will not serve as a remedy or cure for or eliminate or in any way affect any tendency to constipation. It has no beneficial value in overcoming or removing the specific symptoms herein set forth or in treating such symptoms other than to the extent such symptoms may be temporarily relieved by the evacuation of the intestinal tract when they are due to, or persist because of, constipation, when such symptoms are due to causes other than constipation, said preparation will be of no value in the treatment thereof.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading advertisements with respect to its said medicinal preparation disseminated as aforesaid, 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 advertisements are true. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public, have been and are induced to purchase respondent's medicinal preparation.

PAR. 6. The aforesaid acts and practices of the respondent 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 the 20th day of March 1940, issued and thereafter served its complaint in this proceeding upon respondent, Herb Juice-Penol Co., Inc., a corporation, trading as Pow-O-Lin Laboratories, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 23, 1940, the respondent filed its answer in which answer it admitted all the material allegations of fact set

forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 Herb Juice-Penol Co., Inc., doing business under the trade name of Pow-O-Lin Laboratories, is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business located in the city of Danville, State of Virginia.

Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a certain medicinal preparation designated "Pow-O-Lin," recommended as a treatment for certain ailments of the human body.

Respondent causes said medicinal preparation, when sold, to be transported from respondent's place of business in the State of Virginia to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said preparation, by the United States mails and by various 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 preparation; and respondent has also disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said preparation, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and

periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

No one can deny the fact that this marvelous vegetable preparation (Pow-O-Lin) is all that is claimed for it—that it will relieve bilious attacks, indigestion, stomach gas pains, headaches, dizzy spells and a tired let-down miserable condition brought on by constipation.

All Richmond heralds Pow-O-Lin as a blessing to suffering humanity—by the hundreds, people who have never been relieved by any medicine or treatment are finding Pow-O-Lin a boon, a reliable and trustworthy remedy for ills due to faulty elimination and the temporary clogging of the intestinal tract.

If you'll try this splendid medicine so many of your neighbors recommend, you'll find it the most pleasant, prompt and efficient medicine you ever used for the relief of faulty elimination and resulting ills!

For about a year I hardly knew a well day, suffered continually with headaches, pains in back and chest, was very nervous, feet and ankles often badly swollen and I was always nervous, due to faulty elimination. Some time ago I went all to pieces and was hardly able to be up. * * * Pow-O-Lin * * * has simply done wonders for me. I have a wonderful appetite, food agrees with me. No more gas pains or headaches, bowels act regular. I rest well at night and I am relieved of the trouble with my feet and ankles swelling.

If your days and nights are miserable—you can't eat,—your food sours and ferments causing gas,—you can't sleep,—you get up in the morning feeling as though you have had no rest at all,—this condition is very often brought on by nerve pressure on the walls of the intestines, because of improper elimination,—Pow-O-Lin must bring relief * * *.

* * * They allow a temporarily clogged intestinal tract to bring on agonizing, miserable sufferings and discomforts such as indigestion, gas pains, dull, throbbing headaches, nervousness, biliousness and dizzy spells. * * * This pleasant-tasting vegetable medicine (Pow-O-Lin), extracted from roots and herbs, absolutely must bring the relief you need * * *.

Are you the same person you were six months or a year ago, or has biliousness, nervousness, stiffness of the joints, made a different person of you? Are you tired and let down even though you have just gotten out of bed? Do you feel like working or do you have to use all your energy just to get out of bed * * *. If that is the way you feel then why don't you try Pow-O-Lin!

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, and therapeutic properties of its preparation, the respondent has represented and does now represent, directly and indirectly, that constipation and "faulty elimination" are characterized by and associated with the following, among other, symptoms; biliousness, indigestion, gas pains, headaches, dizziness, pains in the back and chest, stiffness of the joints, swollen feet and ankles, nervousness, insomnia, loss of appetite and lack of energy; and that said preparation possesses beneficial therapeutic properties with respect to curing or remedying and com-

Order

31 F. T. C.

petently treating constipation and "faulty elimination" and with respect to removing or overcoming the symptoms hereinabove set forth by reason of its use serving to eliminate tendency toward constipation.

PAR. 4. The aforesaid representations are grossly exaggerated, false, and misleading. In fact, respondent's preparation possesses no therapeutic properties in excess of those of a cathartic or laxative and serves no purpose other than to assist in the temporary evacuation of the intestinal tract. The symptoms set out in paragraph 3 are not generally or usually characteristic or typical of any particular type or group of disorders and such symptoms are not necessarily due to, and do not generally persist because of, constipation or "faulty elimination." The use of said preparation will not serve as a remedy or cure for or eliminate or in any way affect any tendency to constipation. It has no beneficial value in overcoming or removing the specific symptoms herein set forth or in treating such symptoms other than to the extent such symptoms may be temporarily relieved by the evacuation of the intestinal tract when they are due to, or persist because of, constipation. When such symptoms are due to causes other than constipation, said preparation will be of no value in the treatment thereof.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading advertisements with respect to its said medicinal preparation disseminated as aforesaid, 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 advertisements are true. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public, have been and are induced to purchase respondent's medicinal preparation.

CONCLUSION

The aforesaid acts and practices of the respondent 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

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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Herb Juice-Penol Co., Inc., a corporation, trading as Pow-O-Lin Laboratories, or trading under any other name or names, its officers, 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 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 respondent's medicinal preparation now designated by the name "Pow-O-Lin" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent directly or by implication:

1. That respondent's preparation is a cure or remedy for biliousness, indigestion, gas pains, headaches, dizziness, pains in the back or chest, stiffness of the joints, swollen feet or ankles, nervousness, insomnia, loss of appetite, or lack of energy.

2. That respondent's preparation is a competent or effective treatment for such symptoms as biliousness, indigestion, gas pains, headaches, dizziness, pains in the back or chest, stiffness of the joints, swollen feet or ankles, nervousness, insomnia, loss of appetite, or lack of energy, in excess of temporarily relieving such symptoms when they are due to, or persist because of, constipation.

3. That respondent's preparation is a cure or remedy for constipation or that the use of said preparation will serve to eliminate or affect the tendency to constipation.

4. That respondent's preparation constitutes a competent or effective treatment for constipation in excess of assisting in the temporary evacuation of the intestinal tract.

5. That respondent's preparation possesses any therapeutic properties beyond those of a cathartic or laxative.

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.

IN THE MATTER OF

HYGIENIC CORPORATION OF AMERICA, HYGIENIC COMPANY OF AMERICA, MERRILL-SAUNDERS COMPANY, LTD., AND HAROLD L. DEBAR, TRADING AS AMERICAN HEALTH ASSOCIATION OF WASHINGTON, D. C., WOMEN'S ADVISORY BUREAU, ETC.

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

Docket 3303. Complaint, Jan. 17, 1938—Decision, June 8, 1940

- Where a corporation and two subsidiaries thereof, and an individual, who was principal stockholder of all three and directed and controlled their business activities and sales policies, and did business under the names of American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Co-Operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, engaged in the manufacture, sale, and distribution to purchasers in various other States and in the District of Columbia, of certain medicinal preparations and appliances which they recommended for so-called feminine hygiene and for use in the treatment of diseases and ailments peculiar to women and for use in preventing pregnancy, and which they designated generally as "Protex-U" and "Surete," and which consisted substantially of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, and were sold in sets and separately, and, as thus engaged, in substantial competition with others engaged in sale and distribution of products designed and intended for legitimate hygienic use by women and for use in the treatment and prevention of diseases peculiar to women, in commerce among the various States and in said District; and acting in conjunction and cooperation with each other in carrying on the acts and practices below set forth;
- In advertising their said products through newspapers and other periodicals, and booklets, pamphlets, circulars, and other advertising material distributed among prospective purchasers, and also through set of six booklets entitled "The Happy Family Series," and booklets entitled "New Knowledge for Women" and "Feminine Secrets," dealing directly or by implication with prevention of conception—
- (a) Represented, directly and by implication, that their said various products constituted competent and effective preventives of conception, facts being they did not constitute competent and effective preventives of conception;
 - (b) Represented, as aforesaid, that their said products possessed substantial therapeutic value in the treatment of ailments and diseases peculiar to women, particularly delayed menstruation, and destroyed bacteria and were competent and effective prophylactics, facts being such products possessed no therapeutic value in the treatment of delayed menstruation or any other ailments or diseases peculiar to women, did not serve to destroy bacteria, and were not effective or competent prophylactics; and
 - (c) Represented, as aforesaid, that their said appliances, and particularly that designated vaginal diaphragm, would fit all female anatomies, and that