

IN THE MATTER OF

EDWIN L. LEISENRING, TRADING AS U. S. DRUG &
SALES COMPANY, U. S. DRUG LABORATORIES, AND
U. S. DRUG COMPANY; AND GORDON LEISENRINGCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4053. Complaint, Mar. 8, 1940—Decision, June 11, 1940*

Where two individuals engaged, as case might be, under certain trade names, or otherwise, in sale and distribution to purchasers in various other States and in the District of Columbia of a drug preparation advertised as "MAN'S PEP TONIC" and "MAN'S TONIC," and sold as "U. S. SPECIAL TABLETS," and another advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and "MAN'S TONIC" (Double Str. Capsule), and sold as "SEXTOGEN CAPSULES FOR MEN OR WOMEN"; in advertisements of their said products which they disseminated and caused to be disseminated through the mails and through insertion in newspapers of general circulation, and by other means in commerce, and otherwise, and which were intended and likely to induce purchase of their said products in commerce—

- (a) Represented, directly and by implication, among other things, that their said preparations were safe, competent, and scientific tonics and aphrodisiacs, and strengthened and rejuvenated the glands and sexual organs of man or woman, and that they possessed therapeutic value in the treatment of debility; facts being said products were practically without value as tonics in view of very small amounts therein contained of drugs possessed of tonic properties, and said products possessed no value for strengthening or rejuvenating glands or organs above referred to, or any therapeutic value in treatment of debility;
- (b) Failed to reveal in said advertisements of their said products designated as "MAN'S PEP TONIC" or "MAN'S TONIC" and sold as "U. S. SPECIAL TABLETS" facts material in light of representations therein or material with respect to consequences which might result from use of commodity in question under conditions prescribed in said advertisements or under such conditions as are customary or usual, in that such product contained dangerous drugs extract of nux vomica, which, even in small doses, is dangerous to man, and yohimbine hydrochloride, very powerful drug and dangerous one, not officially recognized by United States Pharmacopoeia, the national formulary, and one which, affecting particularly mucous membranes of certain organs and having similar effect upon other epithelial structures of urogenital tract, may, in large doses, produce psychic disturbances and vertigo, together with cerebral congestion; and
- (c) Failed to reveal in said advertisements of its product advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and as "MAN'S TONIC" (Double Str. Capsule) and sold as "SEXTOGEN CAPSULES FOR MEN AND WOMEN" facts material in the light of its said representations or material with respect to consequences which might result from the use of said commodity under conditions prescribed in said advertisements or under such conditions as are customary or usual in that said product above referred to contained,

Complaint

In addition to dangerous drugs extract of nux vomica and extract of yohim-bine, as above described, dangerous drug extract of thyroid which, taken in excess of the body's needs, may produce, among other things, headaches, muscular and articular pains, nausea, vomiting, vertigo, and other symptoms or ailments and may result, among other things, in permanent injury to tissues and organic functions and the entire body mechanism and in irreparable injury to heart muscles and premature death;

With effect, through use by them of such false and misleading statements, claims, representations, and advertisements disseminated as aforesaid with respect to their said products, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, etc., were true, and that their said preparations constituted effective, safe, and scientific tonics and aphrodisiacs, and effective, safe, and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman, and possessed therapeutic values in the treatment of debility, and to induce, directly or indirectly, the purchase by the public of their said preparations:

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. A. E. Lipscomb for the Commission.

Mr. Felix L. O'Neill, of Denver, Colo., for respondents.

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 Edwin L. Leisenring, an individual, trading as U. S. Drug & Sales Co., U. S. Drug Laboratories, and U. S. Drug Co., and Gordon Leisenring, an individual, 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Edwin L. Leisenring is an individual with his office and principal place of business located at 1534 Lawrence Street, Denver, Colo.

Respondent Gordon Leisenring is an individual with his office and principal place of business located at 1534 Lawrence Street, Denver, Colo.

Respondents are now, and for several years past have been, engaged in the sale and distribution of various medicinal preparations, including among others, a drug preparation advertised as "Man's Pep Tonic" and as "Man's Tonic," and sold as "U. S. Special Tablets"; and a drug preparation advertised as "Man's Pep Tonic" (Double Str. Capsule) and as "Man's Tonic" (Double Str. Capsule), and sold as "Sextogen Capsules for Men or Women." Respondents cause said

Complaint

31 F. T. C.

preparations when sold by them, to be transported from their aforesaid place of business in the State of Colorado to the purchasers thereof located in various other States of the United States, and the District of Columbia. Respondents maintain and at all times herein mentioned have maintained, a course of trade in said preparations in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparations, by United States mails, and by insertion in newspapers having a general circulation, all of which are distributed in commerce among 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 preparations, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their preparations, and by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements, claims, and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

MAN'S PEP TONIC

New improved formula with gland substance Ext. Passion Flower, Damiana and other ingredients. Used by thousands, \$1 box 3 for \$2.50. Double str. capsule, \$2; 3 for \$5. Postpaid. Plain wrap. Write or call

U. S. Drug Co., 1534 Lawrence St.

MAN'S TONIC

New Improved formula with gland substance. Ext. Passion Flower, Damiana and other ingredients. Used by thousands, \$1 box, 3 for \$2.50. Double str. capsules, \$2; 3 for \$5. Postpaid. Plain wrap. Write or call

U. S. Drug Co., 1534 Lawrence St.

MAN'S TONIC

New improved formula with gland substance. Iron, damiana and other tonic ingredients. Also for women, \$1 box, 3 for \$2.50. Double str. capsules, \$2; 3 for \$5. Postpaid. Plain wrap. Write or call

U. S. Drug Co., 1534 Lawrence St.

By the use of the statements and representations heretofore set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' preparations and their effectiveness, respondents have represented, directly and by implication, among other things, that said preparations are safe, competent and reliable tonics; that said preparations are effective, safe and scientific aphrodisiacs; that said preparations are effective, safe and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman; and that said preparations possess therapeutic value in the treatment of debility.

PAR. 3. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue.

In truth and in fact said preparations are practically without value as tonics, as the drugs contained therein which possess tonic properties are present only in very small amounts and are not present in such amounts as to give said preparations any value as tonics. Said preparations possess no value for the strengthening or rejuvenating of the glands or the sexual organs of man or woman. Said preparations do not possess any therapeutic value in the treatment of debility.

Furthermore, said statements and representations concerning said drug preparations advertised as "MAN'S PEP TONIC" and as "MAN'S TONIC" and sold as "U. S. SPECIAL TABLETS" constitute false advertisements in that they fail to reveal the fact that said preparation contains the dangerous drugs, extract nux vomica and yohimbine hydrochloride, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions which are customary or usual.

The drug, extract of nux vomica, is a dangerous drug the active ingredient of which is the poisonous alkaloid strychnine. Said drug is, even when taken in small doses, dangerous to many users. Mild toxic symptoms following the use of said drug include nervous irritability and insomnia, whereas convulsions may result from a more severe intoxication.

The drug yohimbine hydrochloride is a dangerous drug not officially recognized by the United States Pharmacopoeia or The National Formulary. Its action depends upon intense vasodilation, or congestion affecting particularly the mucous membrane of the sexual organs and it would also have a similar effect upon other

Complaint

31 F. T. C.

epithelial structures of the urogenital tract, including those of the kidney, prostate, and bladder. Said drug is a very powerful drug and in large doses yohimbine hydrochloride may produce psychic disturbances and vertigo, together with cerebral congestion.

Furthermore, said statements and representations concerning said drug preparation advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and as "MAN'S TONIC" (Double Str. Capsule) and sold as "SEXTOGEN CAPSULES FOR MEN AND WOMEN" are misleading and deceptive in that they fail to reveal the fact that said preparation contains the dangerous drugs, extract nux vomica, yohimbine, and extract of thyroid, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions which are customary or usual.

In addition to the dangerous drugs, extract of nux vomica and extract of yohimbine described above, said preparation, "SEXTOGEN CAPSULES FOR MEN AND WOMEN," contains the dangerous drug extract of thyroid. Extract of thyroid is a dangerous drug which, when taken in excess of the body's need, may produce headaches, muscular and articular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor and tachycardia, and may result in a thyroid toxicosis, permanent injury to tissues, organic functions and the entire body mechanism, irreparable injury to the heart muscle with auricular fibrillation and premature death.

PAR. 4. The use by the respondents of the foregoing false, deceptive, and misleading statements, claims, representations, and advertisements, disseminated as aforesaid, with respect to respondents' said 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, claims, representations, and advertisements are true and that said preparations are effective, safe, and scientific tonics; that said preparations are effective, safe, and scientific aphrodisiacs; that said preparations are effective, safe, and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman, and that said preparations possess therapeutic values in the treatment of debility, and to induce, directly or indirectly, the purchase by the public or respondents' said preparations.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts or 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 March 8, 1940, issued, and on March 11, 1940, served its complaint in this proceeding upon respondents, Edwin L. Leisenring, an individual, trading as U. S. Drug & Sales Co., U. S. Drug Laboratories, and U. S. Drug Co., and Gordon Leisenring, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 4, 1940, the respondents filed their answer, in which they admitted all of 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 Edwin L. Leisenring is an individual with his office and principal place of business located at 1534 Lawrence Street, Denver, Colo.

Respondent Gordon Leisenring is an individual with his office and principal place of business located at 1534 Lawrence Street, Denver, Colo.

PAR. 2. Respondents are now, and for several years past have been engaged in the sale and distribution of various medicinal preparations, including among others, a drug preparation advertised as "MAN'S PEP TONIC" and as "MAN'S TONIC," and sold as "U. S. SPECIAL TABLETS"; and a drug preparation advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and as "MAN'S TONIC" (Double Str. Capsule), and sold as "SEXTOGEN CAPSULES FOR MEN OR WOMEN." Respondents cause said preparations when sold by them, to be transported from their aforesaid place of business in the State of Colorado to the purchasers thereof located in various other States of the United States and the District of Columbia. Respondents maintain and at all times herein mentioned have maintained, a course of trade in said preparations in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements

Findings

31 F. T. C.

concerning their said preparations, by United States mails, and by insertion in newspapers having a general circulation, all of which are distributed in commerce among 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 preparations, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their preparations, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements, claims, and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

"MAN'S PEP TONIC

New improved formula with gland substance Ext. Passion Flower, Damiana and other ingredients. Used by thousands, \$1 box 3 for \$2.50. Double str. capsule, \$2; 3 for \$5. Postpaid. Plain wrap. Write or call U. S. Drug Co., 1534 Lawrence St."

"MAN'S TONIC

New improved formula with gland substance. Ext. Passion Flower, Damiana and other ingredients. Used by thousands, \$1 box, 3 for \$2.50. Double str. capsules, \$2; 3 for \$5. Postpaid. Plain wrap. Write or call U. S. Drug Co., 1534 Lawrence St."

"MAN'S TONIC

New improved formula with gland substance. Iron, damiana and other tonic ingredients. Also for women, \$1 box, 3 for \$2.50. Double str. capsules, \$2; 3 for \$5. Postpaid. Plain wrap. Write or call U. S. Drug Co., 1534 Lawrence St."

PAR. 4. By the use of the statements and representations heretofore set forth, and others similar thereto not specifically set out herein all of which purport to be descriptive of the therapeutic properties of respondents' preparations and their effectiveness, respondents have represented, directly and by implication, among other things, that said preparations are safe, competent, and reliable tonics; that said preparations are effective, safe and scientific aphrodisiacs; that said preparations are effective, safe, and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman; and that said preparations possess therapeutic value in the treatment of debility.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue.

In truth and in fact said preparations are practically without value as tonics, as the drugs contained therein which possess tonic properties are present only in very small amounts and are not present in such amounts as to give said preparations any value as tonics. Said preparations possess no value for the strengthening or rejuvenating of the glands or the sexual organs of man or woman. Said preparations do not possess any therapeutic value in the treatment of debility.

Furthermore, said statements and representations concerning said drug preparation advertised as "MAN'S PEP TONIC" and as "MAN'S TONIC" and sold as "U. S. SPECIAL TABLETS" constitute false advertisements in that they fail to reveal the fact that said preparation contains the dangerous drugs, extract nux vomica, and yohimbine hydrochloride, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The drug, extract of nux vomica, is a dangerous drug the active ingredient of which is the poisonous alkaloid strychnine. Said drug is, even when taken in small doses, dangerous to many users. Mild toxic symptoms following the use of said drug include nervous irritability and insomnia, whereas convulsions may result from a more severe intoxication.

The drug yohimbine hydrochloride is a dangerous drug not officially recognized by the United States Pharmacopoeia of The National Formulary. Its action depends upon intense vasodilation, or congestion affecting particularly the mucous membrane of the sexual organs and it would also have a similar effect upon other epithelial structures of the urogenital tract, including those of the kidney, prostate, and bladder. Said drug is a very powerful drug and in large doses yohimbine hydrochloride may produce psychic disturbances and vertigo, together with cerebral congestion.

Furthermore, said statements and representations concerning said drug preparation advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and as "MAN'S TONIC" (Double Str. Capsule) and sold as "SEXTOGEN CAPSULES FOR MEN AND WOMEN" are misleading and deceptive in that they fail to reveal the fact that said preparation contains the dangerous drugs, extract nux vomica, yohimbine, and extract of thyroid, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Order

31 F. T. C.

In addition to the dangerous drugs, extract of nux vomica and extract of yohimbine described above, said preparation, "SEXTOGEN CAPSULES FOR MEN AND WOMEN," contains the dangerous drug extract of thyroid. Extract of thyroid is a dangerous drug which, when taken in excess of the body's need, may produce headaches, muscular and articular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor and tachycardia, and may result in a thyroid toxicosis, permanent injury to tissues, organic functions and the entire body mechanism, irreparable injury to the heart muscle with auricular fibrillation and premature death.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, claims, representations, and advertisements, disseminated as aforesaid, with respect to respondents' said 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, claims, representations, and advertisements are true and that said preparations are effective, safe and scientific tonics; that said preparations are effective, safe, and scientific aphrodisiacs; that said preparations are effective, safe, and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman, and that said preparations possess therapeutic values in the treatment of debility, and to induce, directly or indirectly, the purchase by the public of respondent's said preparations.

CONCLUSION

The aforesaid acts and practices of the respondents 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 the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Edwin L. Leisenring, an individual, trading as U. S. Drug & Sales Co., U. S. Drug Laboratories,

and U. S. Drug Co., or trading under any other name or names, and Gordon Leisenring, an individual, their respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their medicinal preparations advertised as "Man's Pep Tonic" and as "Man's Tonic" and sold under the name "U. S. Special Tablets" or of their medicinal preparation advertised as "Man's Pep Tonic" (Double Str. Capsule) and as "Man's Tonic" (Double Str. Capsule) and sold under the name "Sextogen Capsules for Men and Women," or of any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparations are safe, competent or reliable tonics; that said preparations are effective, safe, or scientific aphrodisiacs; that said preparations are safe or scientific treatments for strengthening or rejuvenating the glands or sexual organs of men or women; or that said preparations possess any value in the treatment of debility; or which advertisements fail to reveal that the use of said preparations may result in serious and irreparable injury to the health of the user.

2. 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 any of said preparations, which advertisements contain any of the representations prohibited in paragraph 1 hereof or which fail to reveal that the use of said preparations may result in serious and irreparable injury to the health of the user.

It is further ordered, That the respondent shall, within 10 days after service upon them of this order file with the Commission an interim report in writing stating whether they intend to comply with this order and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, said respondents shall 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 C. EVANS, TRADING AS EVANS CANDY HOUSE

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

Docket 4102. Complaint, Apr. 23, 1940—Decision, June 11, 1940

Where an individual engaged in sale and distribution of candy including assortments thereof which were so packed and assembled as to involve use of game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and included (1) a number of candy bars, together with push card for use in sale and distribution of said bars under a plan by which customer purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents for bar, retail value of which was greater than many of the prices to be paid therefor, in accordance with number secured by chance from disk of card, and (2) various other assortments for distribution to consumers by methods involving lottery or chance features, similar to that hereinabove described and varying therefrom in detail only—

Sold to dealers such assortments and boards involving game of chance or sale of a chance to procure candy bars at prices much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with many who are unwilling to offer and sell candy so packed and assembled as above described or candy arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by his said method and manner of packing same and by element of chance involved in sale thereof as above described, and were thereby induced to purchase said product, thus packed and sold by him, in preference to candy offered and sold by his said competitors, who do not use such or equivalent methods, and with tendency and capacity, through use of said method and because of such game of chance, to divert unfairly to himself, trade from his said competitors who do not use same or equivalent methods, exclude from candy trade all competitors who are unwilling to and do not use such methods because unlawful, lessen competition in said trade and create monopoly thereof in him and such other distributions of candy as do use same or equivalent methods, and deprive purchasing public of benefit of free competition in trade in question, and to eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use said or equivalent methods:

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 and deceptive acts and practices therein.

Mr. D. C. Daniel for the Commission.

Mr. C. D. Stewart, of Atlanta, Ga., for respondent.