

Syllabus

IN THE MATTER OF
GARDNER REMEDIES, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3595. Complaint, Sept. 19, 1938—Decision, June 19, 1940*

Where a corporation engaged in the manufacture of its "Gardner's Food Herbs" medicinal preparation, and in sale and distribution thereof to dealer and consumer purchasers in various other States, in substantial competition with others engaged in sale and distribution, among the various States, of various medicinal preparations designed for treatment of same ailments and diseases—

(a) Represented, through advertisements disseminated among prospective purchasers by the mails and in periodicals of interstate circulation and by radio broadcasts and through circulars, leaflets, and other advertising literature that use of its preparation would rid the body of excess acid or hyperacidity and of acidosis, and thereby serve as a cure or remedy and competent and effective treatment for numerous ailments and diseases of the body, including rheumatism, kidney disorders, stomach ulcers, indigestion, constipation, liver disorders, stomach disorders, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of breath, and high and low blood pressure and sleeplessness;

Facts being that its said product would not serve to correct or affect to any material extent condition known as hyperacidity or excess acid or condition known as acidosis, and it was not a cure or remedy for and had no substantial therapeutic value in the treatment of rheumatism and the various other ailments and conditions above enumerated, and possessed no therapeutic value except insofar as small peppermint contained therein might have slight tendency to aid digestion;

With effect of causing members of purchasing public to believe that its said preparation possessed therapeutic properties and qualities, which it did not in fact possess, and with result, as consequence of such erroneous and mistaken belief, that such public was induced to and did purchase substantial quantities of its said product and trade was thereby diverted unfairly to it from its competitors; to their substantial injury:

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.

Before *Mr. John J. Keenan*, trial examiner.

Mr. William L. Pack and *Mr. DeWitt T. Puckett* for the Commission.

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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 Gardner Remedies, Inc., 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, Gardner Remedies, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, and having its office and principal place of business in the city of Seattle, State of Washington.

PAR. 2. The respondent is now and has been for more than four years last past engaged in the business of compounding, selling, and distributing a medicinal or pharmaceutical preparation designated as "Gardner's Food Herbs." Respondent sells said preparation to members of the purchasing public situated in various States of the United States and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Washington to the purchasers thereof at their respective points of location in various States in the United States other than the State of Washington. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between various States of the United States.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States with other corporations and with partnerships, firms, and individuals selling and distributing medicinal and other preparations and products designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said preparation, respondent has caused false advertisements, containing representations and claims with respect to the properties of said preparation and the results that may be expected to be obtained from 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 publications having a circulation throughout the various States of the United States, through bulletins distributed among prospective purchasers of said preparation, and through continuities broadcast from radio stations which have power to, and do, convey the programs emanating therefrom to the listeners thereof located in various States of the United States and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

And as nearly 95% of all organic troubles are caused by excess acid, you can see how necessary it is to rid the system of it. But this does not complete the treatment. It is necessary to prevent the return of this condition. And that is just what GARDNER'S FOOD HERBS do.

As we know, excess acid is the cause of about 90% of all our organic ailments, and rheumatism is one that is a direct result of excess acid. Now it is only reasonable, to get lasting results, we must first rid ourselves of the excess acid in the bloodstream and then continue to keep the blood free from the return of this trouble. This is just what GARDNER'S FOOD HERBS do. They first gently stimulate the kidneys to throw off all the excess acid that the bloodstream is carrying, and then by reducing the dose, it builds the kidneys back to normal, thereby insuring lasting results.

We do not treat rheumatism; just as in the case of stomach ulcers we do not treat the stomach. We treat the cause of the trouble. That is why we get such wonderful results.

The usual treatment for ulcers of the stomach is * * * The only way to really rid yourself of this ailment is to eliminate the cause, and in this case it is too much acid in the bloodstream. This can now be done by taking GARDNER'S FOOD HERBS * * * All they do is eliminate the acid, the only way possible by means of the kidneys. After this they gradually help the kidneys to build back to normal.

During the winter, one of the most complained of ailments is rheumatism * * * Usually rheumatism is not the only ailment people suffer with, but indigestion, gas and constipation. How would you like to rid yourselves of these troublesome and painful ailments? * * * Today you can. It is no longer necessary to suffer. GARDNER'S FOOD HERBS will clear up the cause of the trouble, giving Nature a chance to heal the ailments.

Facts You Should Know About GARDNER'S FOOD HERBS: "Nature's Way." How they have relieved sufferers from Stomach, Liver and Kidney Troubles, including acid or sour stomach, stomach ulcers, indigestion, gas, heartburn, constipation, colitis, dizziness, abnormal kidney functions, backache, swelling of ankles, soreness in the region of the kidneys, severe soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, and shortness of breath, high and low blood pressure, sleeplessness and rheumatism. A Natural Way to Remove Hyperacidity.

Gardner's Food Herbs stands alone in its field in the treatment of Hyperacidity.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its

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effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that from 90 to 95 percent of all the organic ailments of the human body are caused by a condition of excess acid in the human system; that the use of said preparation will cure, and is of substantial therapeutic value in the treatment of, excess acid in the human system, including hyperacidity and acidosis; that the use of said preparation will eliminate excess acid from the blood stream; that the use of said preparation will cure, and is of substantial therapeutic value in the treatment of, stomach ulcers; and that said preparation is a competent and effective remedy or treatment for, or will cure, stomach, liver and kidney troubles, including acid or sour stomach, indigestion, gas, heartburn, constipation, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, severe soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of the breath, high and low blood pressure, sleeplessness, and rheumatism.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading and untrue and constitute false advertisements. In truth and in fact 90 to 95 percent of the organic ailments of the human body are not caused by a condition of excess acid in the human system. Various organic ailments may give rise to acidosis, but such ailments are not caused by excess acid. The use of said preparation will not cure and has no substantial therapeutic value in the treatment of a condition of excess acid, including hyperacidity and acidosis. The use of said preparation will not eliminate excess acid from the blood stream.

The use of said preparation will not cure, nor has it any substantial therapeutic value in the treatment of, stomach ulcers. Said preparation is not a competent and effective remedy or treatment for, nor will it cure or be of substantial therapeutic value in the treatment of, stomach, liver and kidney troubles, including acid or sour stomach, indigestion, gas, heartburn, constipation, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, severe soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of the breath, high and low blood pressure, sleeplessness and rheumatism, or any other ailment, disease, or condition which may be present in, or afflict, the human body.

Respondent's claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false and deceptive, and greatly

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exceed any claims as to the therapeutic value and efficacy of said preparation which might truthfully be made.

PAR. 7. 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. 8. The use by the respondent 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 indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products as described in paragraph 3. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and 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 19th day of September 1938, issued, and thereafter served, its complaint in this proceeding upon the respondent, Gardner Remedies, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and 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 thereto by respondent, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, Esquire, attorney for the Commission, and in opposition thereto by the respondent, who appeared in person, before John J. Keenan, examiner of the Commission theretofore duly designated by it. Said testimony and other evidence were

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duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief on behalf of the Commission in support of the complaint (no brief having been filed on behalf of the respondent, and oral argument not having been requested). 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, Gardner Remedies, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2633 50th Avenue, S. W., Seattle, Wash. It is now, and since 1931, has been, engaged in the manufacture, sale and distribution of a medicinal preparation designated as "Gardner's Food Herbs." Respondent sells and distributes its product both to dealers and to consumers.

PAR. 2. In the course and conduct of its business respondent causes and has caused its product, when sold, to be transported from its place of business in the State of Washington, to purchasers thereof located in various other States of the United States. Respondent maintains, and since 1931 has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. Respondent is now, and at all times mentioned herein has been, engaged in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution, in commerce between and among the various States of the United States, of various medicinal preparations designed for the treatment of the same ailments and diseases of the human body as those for which respondent's preparation is recommended.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its preparation, the respondent is disseminating and has disseminated advertisements among prospective purchasers by the United States mails, by insertion in periodicals having interstate circulation, by radio broadcasts, and by means of circulars, leaflets and other advertising literature. Among and typical of the statements and representations contained in such advertisements are the following:

And as nearly 95% of all organic troubles are caused by excess acid, you can see how necessary it is to rid the system of it.

But this does not complete the treatment. It is necessary to prevent the return of this condition. And that is just what GARDNER'S FOOD HERBS DO.

As we know, excess acid is the cause of about 90% of all our organic ailments, and rheumatism is one that is a direct result of excess acid. Now it is only reasonable, to get lasting results, we must first rid ourselves of the excess acid in the bloodstream and then continue to keep the blood free from the return of this trouble. This is just what GARDNER'S FOOD HERBS do. They first gently stimulate the kidneys to throw off all of the excess acid that the bloodstream is carrying, and then by reducing the dose, it builds the kidneys back to normal, thereby insuring lasting results.

We do not treat rheumatism; just as in the case of stomach ulcers we do not treat the stomach. We treat the cause of the trouble. That is why we get such wonderful results.

The usual treatment for ulcers of the stomach is * * * The only way to really rid yourself of this ailment is to eliminate the cause, and in this case it is too much acid in the bloodstream. This can now be done by taking GARDNER'S FOOD HERBS * * * All they do is to eliminate the acid, the only way possible by means of the kidneys. After this they gradually help the kidneys to build back to normal.

During the winter, one of the most complained of ailments is rheumatism * * * Usually rheumatism is not the only ailment people suffer with, but indigestion, gas and constipation. How would you like to rid yourselves of these troublesome and painful ailments? * * * Today you can. It is no longer necessary to suffer. GARDNER'S FOOD HERBS will clear up the cause of the trouble, giving Nature a chance to heal the ailments.

Facts You Should Know About GARDNER'S FOOD HERBS. "Nature's Way". How they have relieved sufferers from Stomach, Liver and Kidney Troubles, including acid or sour stomach, stomach ulcers, indigestion, gas, heartburn, constipation, colitis, dizziness, abnormal kidney functions, backache, swelling of ankles, soreness in the region of the kidneys, severe soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains and shortness of breath high and low blood pressure, sleeplessness and rheumatism. A Natural Way to Remove Hyperacidity.

Gardner's Food Herbs stand alone in its field in the treatment of Hyperacidity.

PAR. 5. Through the use of the foregoing statements and representations, and others of similar import, the respondent represents and has represented that nearly all ailments and diseases of the human body are due to the presence of excess acid in the system, that the use of respondent's preparation will rid the body of excess acid or hyperacidity, as well as acidosis, and thereby will serve as a cure or remedy and a competent and effective treatment for numerous ailments and diseases of the body, including rheumatism, kidney disorders, stomach ulcers, indigestion, constipation, liver disorders, stomach disorders, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of breath, high and low blood pressure, and sleeplessness.

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PAR. 6. The Commission finds that respondent's product is an herbal preparation, the ingredients of which are "ledum glandulosum", an herb found principally in the State of Oregon, 87½ percent; alfalfa, 10 percent; and peppermint, 2½ percent. The preparation is intended to be taken somewhat like tea. A teaspoonful is placed in a pint of boiling water and the user then takes three tablespoonfuls of the liquid in a half glass of warm water before each meal and at bedtime.

The Commission further finds that respondent's preparation possesses no substantial therapeutic value. Its use will not serve to correct or affect to any material extent the condition known as hyperacidity or excess acid, nor the condition known as acidosis. The preparation is not a cure or remedy for, nor has it any substantial therapeutic value in the treatment of, rheumatism, kidney disorders, liver disorders, stomach disorders, stomach ulcers, indigestion, constipation, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness or stiffness in the cords or muscles of the neck, hives, skin rashes, heart pains, shortness of breath, high or low blood pressure, or sleeplessness. The preparation possesses no therapeutic value except in so far as the small peppermint content might have a slight tendency to aid digestion.

PAR. 7. The Commission finds that the statements and representations used by the respondent with respect to its preparation as herein set forth are grossly exaggerated, false and misleading. The use by the respondent of such statements and representations has the tendency and capacity to, and has, caused members of the purchasing public to believe that the respondent's preparation possesses therapeutic properties and qualities which it does not in fact possess. As a result of such erroneous and mistaken belief, the purchasing public has been induced to, and has, purchased substantial quantities of respondent's preparation and thereby trade has been diverted unfairly to the respondent from its competitors. In consequence thereof, substantial injury has been done and is being done by the respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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, the answer of the respondent, testimony and other evidence taken before John J. Keenan, examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested), 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, Gardner Remedies, Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparation designated "Gardner's Food Herbs," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, 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 preparation is a cure or remedy for, or that it possesses any substantial therapeutic value in the treatment of, hyperacidity or excess acid, acidosis, rheumatism, kidney disorders, liver disorders, stomach disorders, stomach ulcers, indigestion, constipation, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness or stiffness in the cords or muscles of the neck, hives, skin rashes, heart pains, shortness of breath, high or low blood pressure, or sleeplessness,

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 said preparation, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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
WESTMINSTER TIRE CORPORATION

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

Docket 3786. Complaint, May 9, 1939—Decision, June 19, 1940

Where a corporation engaged in sale and distribution of pneumatic automobile and truck tires to purchasing distributors, jobbers, and dealers in State of origin and in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such tires in commerce as aforesaid, and including among its competitors some who sell and distribute such products but do not inaccurately set forth number of plies contained therein, and tire designations of which, in hands of unscrupulous or uninformed retail dealers, do not provide means and instrumentality to mislead purchasing public—

Caused to be placed, affixed, or molded on or into the side walls of its said tires, which were of four-ply bead-to-bead construction, with double breaker strips, white sidewalls, extra material and tread stock, and had a net weight considerably in excess of the corresponding weight of first line four-ply tires marketed by other manufacturers and distributors, and upon the tire wrappings encasing said tires, in addition to its name and size and type of tire, the designation "V-7" and, because of unusual character of construction, made no express declaration as to four-ply construction of such "V-7" tires and did not disclose further, in absence of specific inquiry, four-ply construction thereof to jobber, distributor and other dealer-purchasers, by whom likewise in resale thereof no express declaration was made as to said four-ply construction, and, in absence of inquiry, no such advice given to prospective purchasers;

Facts being there was custom and usage in industry, followed by number of manufacturers of pneumatic automobile and truck tires, and well known to public, of marketing such tires with words and figures or phrases so as conspicuously and accurately to indicate number of plies existing in construction of tires concerned, public was accustomed, in purchasing tires, to place full credence in manufacturer's representations as to manner and quality of construction and number of plies therein contained as indicated by marks, brands, words, letters, figures, insignia, or phrases appearing on wrappings and sidewalls of such tires, and tires herein concerned were, as aforesaid, four-ply and not 7;

With tendency and capacity, through such inaccurate marking or branding in use of said designation "V-7", and especially in hands of unscrupulous or uninformed retail dealers, to induce portion of purchasing public to believe tires thus designated and marked contained 7 plies, and with effect of thereby placing in hands of such unscrupulous or uninformed retailers means and instrumentality whereby they might mislead purchasing public into erroneous belief that said "V-7" tires actually contained 7 plies, and with result, as consequence of such erroneous and mistaken belief, that number of public purchased substantial volume of said tires, and trade was thereby diverted unfairly to it from its competitors engaged in sale and distribution of such products: