

Complaint

IN THE MATTER OF

AMERICAN DRUG AND CHEMICAL COMPANY

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

Docket 4200. Complaint, July 26, 1940—Decision, Sept. 19, 1940

Where a corporation engaged in sale and distribution of various drug products, including certain preparations designated and advertised by it as Ardanol, Chloro-Zol and Germ-I-Tabs, to purchasers in various other States and in the District of Columbia; in advertisements which it disseminated and caused to be disseminated concerning its said products in periodicals and trade journals and circulars, leaflets, folders, pamphlets, booklets, and other advertising literature, through the mails and through various other means in commerce and otherwise, and which were intended and likely to induce purchase thereof;

- (a) Represented directly and by implication that its said Ardanol was a cure or remedy for sterility in both sexes and would restore fertility of the generative organs, and was a reliable preventive of abortion, facts being, said product was not such a cure or remedy and possessed no value as such a preventive, and would not restore or beneficially effect fertility of organs;
- (b) Represented that its said products Chloro-Zol and Germ-I-Tabs constituted competent and effective antiseptics and germicides, and could be used as a basis to compound a reliable and effective douche for all needs and purposes in personal feminine hygiene, facts being, while products in question possessed antiseptic properties of a low toxicity, they were not competent or effective antiseptics or germicides and, whether used separately or together, did not constitute reliable or effective means of feminine hygiene; and
- (c) Represented that its said Chloro-Zol constituted a competent and effective treatment for bromidrosis, tetter, Cuban Itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, and body odors, facts being said Chloro-Zol did not constitute competent or effective treatment for aforesaid ailments and conditions;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and, because of such belief, into purchase of its said product:

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.

Mr. R. P. Bellinger for the Commission.

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

Complaint

31 F. T. C.

Trade Commission having reason to believe that American Drug and Chemical Co., a corporation, 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, American Drug & Chemical Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located at 420 South Sixth Street, Minneapolis, Minn.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing various drug products. Among the drug products sold and distributed by respondent are certain preparations designated and advertised as Ardanol, Chloro-Zol and Germ-I-Tabs.

Respondent causes said products, when sold, to be transported from its place of business in the State of Minnesota to purchasers thereof located in 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 products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. 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 products, 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 product; and respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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 magazines and trade journals, and by circulars, leaflets, folders, pamphlets, booklets, and other advertising literature, are the following:

943

Complaint

1. As to Ardanol:

For Vitamin E Deficiency

ARDANOL

Wheat Germ Oil

Medicinal

During recent years, it has been repeatedly demonstrated that a deficiency of Vitamin E in the diet is the cause of degenerative changes in the reproductive organs of both sexes. In the males, they undergo irreparable damage to the germinal epithelium of the testes. While the sex glands of the female may be apparently unaffected, the vitamin deficiency is the cause of the death of the foetus with subsequent abortion or reabsorption.

According to present knowledge, the principal function of Vitamin E is the prevention of certain types of sterility and infertility. Leading authorities have stated that in the male the gradual loss of reproductive power due to Vitamin E deficiency leads to complete and incurable sterility, but that fertility can be maintained if treatment with Vitamin E is started while a few normal tubules remain in the testes. Also, that female sterility due to Vitamin E deficiency is not incurable, since only temporary tissues are damaged.

2. As to Chloro-Zol:

CHLORO-ZOL is a synthetic chlorine carrying chemical. It is a most powerful antiseptic and germicide, having approximately 50 times the germicidal power of pure phenol (carbolic acid) yet being virtually non-poisonous and non-irritating.

Some suggested uses for CHLORO-ZOL:

Sterilization work

Prevention and treatment of infection

Open wounds and sores

Bromidrosis, tetter, Cuban Itch, itching between the toes, blisters on the feet

Irritation of the skin. Acne, Boils, Sore Throat, Halitosis. Treatment of abscesses after extraction of teeth.

Feminine Personal hygiene

Body deodorant.

FEMININE HYGIENE

When the douche is desired, use a solution made by emptying the contents of one

CHLORO-ZOL Capsule in one or two quarts of warm water. Stronger solutions may be used if desirable. The above strength, however, is the one usually prescribed by physicians and is very effective in destroying many objectionable germs.

CHLORO-ZOL SUPERIOR TO MANY COMPOUNDS

CHLORO-ZOL has many advantages over carbolic acid, cresol, bichloride of mercury, and similar poisonous compounds used in feminine hygiene. CHLORO-ZOL does not burn, harden or dry the tissues and membranes. In fact, it provides an efficient germicide that is harmless, and its action is especially beneficial upon the delicate membranes and tissues of the vaginal tract. It is also a very effective deodorant.

3. As to Germ-I-Tabs:

Always recommend Germ-I-Tabs * * * for the treatment and prevention of wound infection, feminine hygiene, personal deodorant or wherever an effective germicide and antiseptic may be required.

The enlightened and fastidious woman of today knows the importance of the douche as part of the feminine toilet. The convenience and economy of Germ-I-Tabs in personal feminine hygiene appeal to the modern woman. Most women know HOW to take care of themselves in this respect but they so frequently employ the wrong compounds, using poisonous caustic solutions.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, the respondent represents and has represented, directly and by implication, that its product designated as Ardanol is a cure or remedy for sterility in both sexes and will restore fertility of the generative organs, and is a reliable preventive of abortion; that its product designated as Chloro-Zol and Germ-I-Tabs constitute competent and effective antiseptics and germicides; that said product Chloro-Zol constitutes a competent and effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, and body odors; that the products Chloro-Zol and Germ-I-Tabs can be used as the basis to compound a reliable and effective douche for all needs and purposes in personal feminine hygiene.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as herein set forth are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, respondent's product Ardanol is not a cure or remedy for sterility in either of the sexes, nor does it possess any value as a preventive of abortion. The use of such product will not restore or beneficially affect the fertility of the generative organs. While said products Chloro-Zol and Germ-I-Tabs possess antiseptic properties of a low toxicity, they are not competent or effective antiseptics or germicides. Said product Chloro-Zol does not constitute a competent or effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, or body odors. The products Chloro-Zol and Germ-I-Tabs, whether used separately or together, do not constitute a reliable or effective means of feminine hygiene.

PAR. 6. The use by the respondent of the aforesaid false, exaggerated, misleading, and deceptive statements and representations with respect to respondent's said products, 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 said statements and representations are true, and into the purchase of respondent's said products because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of 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 July 26, 1940, issued and on July 29, 1940, served its complaint in this proceeding upon respondent, American Drug and Chemical Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 27, 1940, the respondent filed its answer, in which answer it 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, American Drug & Chemical Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located at 420 South Sixth Street, Minneapolis, Minn.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing various drug products. Among the drug products sold and distributed by respondent are certain preparations designated and advertised as Ardanol, Chloro-Zol, and Germ-I-Tabs.

Respondent causes said products, when sold, to be transported from its place of business in the State of Minnesota to purchasers thereof located in 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 products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. 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 products, 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 products; and respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products 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 magazines and trade journals, and by circulars, leaflets, folders, pamphlets, booklets, and other advertising literature, are the following:

1. As to Ardanol:

For Vitamin E Deficiency

ARDANOL

Wheat Germ Oil

Medicinal

During recent years, it has been repeatedly demonstrated that a deficiency of Vitamin E in the diet is the cause of degenerative changes in the reproductive organs of both sexes. In the males, they undergo irreparable damage to the germinal epithelium of the testes. While the sex glands of the female may be apparently unaffected, the vitamin deficiency is the cause of the death of the foetus with subsequent abortion or reabsorption.

According to present knowledge, the principal function of Vitamin E is the prevention of certain types of sterility and infertility. Leading authorities have stated that in the male the gradual loss of reproductive power due to Vitamin E deficiency leads to complete and incurable sterility, but that fertility can be maintained if treatment with Vitamin E is started while a few normal tubules remain in the testes. Also, that female sterility due to Vitamin E deficiency is not incurable since only temporary tissues are damaged.

2. As to Chloro-Zol:

CHLORO-ZOL is a synthetic chlorine carrying chemical. It is a most powerful antiseptic and germicide, having approximately 50 times the germicidal power of pure phenol (carbolic acid) yet being virtually non-poisonous and non-irritating.

Some suggested uses for CHLORO-ZOL:

Sterilization work

Prevention and treatment of infection

Open wounds and sores

Bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet

Irritation of the skin. Acne, Boils, Sore Throat, Halitosis. Treatment of abscesses after extraction of teeth.

Feminine Personal hygiene.

Body deodorant.

FEMININE HYGIENE

When the douche is desired, use a solution made by emptying the contents of one CHLORO-ZOL Capsule in one or two quarts of warm water. Stronger solutions may be used if desirable. The above strength, however, is the one usually prescribed by physicians and is very effective in destroying many objectionable germs.

CHLORO-ZOL SUPERIOR TO MANY COMPOUNDS

CHLORO-ZOL has many advantages over carbolic acid, cresol, bichloride of mercury, and similar poisonous compounds used in feminine hygiene. CHLORO-ZOL does not burn, harden or dry the tissues and membranes. In fact, it provides an efficient germicide that is harmless, and its action is especially beneficial upon the delicate membranes and tissues of the vaginal tract. It is also a very effective deodorant.

3. As to Germ-I-Tabs:

Always recommend Germ-I-Tabs * * * for the treatment and prevention of wound infection, feminine hygiene, personal deodorant or wherever an effective germicide and antiseptic may be required.

The enlightened and fastidious woman of today knows the importance of the douche as part of the feminine toilet. The convenience and economy of Germ-I-Tabs in personal feminine hygiene appeal to the modern woman. Most women know HOW to take care of themselves in this respect but they so frequently employ the wrong compounds, using poisonous caustic solutions.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, the respondent represents and has represented, directly and by implication, that its product designated as Ardanol is a cure or remedy for sterility in both sexes and will restore fertility of the generative organs, and is a reliable preventive of abortion; that its products designated as Chloro-Zol and Germ-I-Tabs constitute competent and effective antiseptics and germicides; that said product Chloro-Zol constitutes a competent and effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, and body odors; that the products Chloro-Zol and Germ-I-Tabs can be used as the basis to compound a reliable and effective douche for all needs and purposes in personal feminine hygiene.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as herein set forth are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, re-

Order

31 F. T. C.

spondent's product Ardanol is not a cure or remedy for sterility in either of the sexes, nor does it possess any value as a preventive of abortion. The use of such product will not restore or beneficially affect the fertility of the generative organs. While said products Chloro-Zol and Germ-I-Tabs possess antiseptic properties of a low toxicity, they are not competent or effective antiseptics or germicides. Said product Chloro-Zol does not constitute a competent or effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, or body odors. The products Chloro-Zol and Germ-I-Tabs, whether used separately or together, do not constitute a reliable or effective means of feminine hygiene.

PAR. 6. The use by the respondent of the aforesaid false, exaggerated, misleading, and deceptive statements and representations with respect to respondent's said products, 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 said statements and representations are true, and into the purchase of respondent's said products because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of 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 the 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, American Drug & Chemical Co., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its medicinal preparations designated as Ardanol, Chloro-Zol, and Germ-I-Tabs, 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 preparation designated Ardanol is a cure or remedy for sterility in either of the sexes or will restore or beneficially affect the fertility of the generative organs or possess any value as a preventive of abortion; that said preparations designated Chloro-Zol and Germ-I-Tabs constitute competent or effective antiseptics or germicides, or that they constitute a reliable or effective means of feminine hygiene; that said preparation designated Chloro-Zol constitutes a competent or effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, or body odors.

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.

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

FRESH GROWN PRESERVE CORPORATION, SUN DISTRIBUTING COMPANY, INC., RITE PACKING CORPORATION, MURRAY GREENBERG, AND LEO GREENBERG

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

Docket 3682. Complaint, Dec. 30, 1938—Decision, Sept. 20, 1940

Where corporation engaged in manufacture, sale, and distribution of various kinds of preserved products, two companies engaged in sale and distribution of such products made by said corporation, and two individuals who, as officers, directors and principal stockholders, controlled and directed the business activities, sales policies and practices of the three companies aforesaid, and in active and substantial competition in sale of their said products in commerce among the various States and in the District of Columbia with others engaged in the sale and distribution of fruit preserves in commerce, as above set forth—

- (a) Represented their said products as preserves or pure fruit preserves through labels and in price lists and invoices, and in salesmen's representations also thus designated and described their said products;

Facts being products in question were not preserves or pure preserves within the meaning and popular acceptance of such words as understood by trade and purchasing public as product prepared from a mixture of clean, sound fruit with sugar in proportion of at least 45 pounds of fruit to 55 pounds of sugar cooked to appropriate consistency, but contained, as analyzed over extended periods, substantially small proportions of fruit, and were imitation or substandard products so made that in appearance they simulated unadulterated preserves made as above set forth to the extent that difference in fruit content between imitation and genuine products could not be discerned by visual inspection;

- (b) Represented in their said labels that certain fruits had been used in the manufacture of the contents of the jars and containers;

Facts being sample of product labeled "Pure Grape Preserves" disclosed approximately 25 percent apple tissue as component part of fruit content thereof, blackberry and raspberry preserves were disclosed, as sampled, to consist of fruit content of fruit punice, and fruit portions of their said products were not composed entirely of specified fruit represented, but contained instead, in part, mixture of fruits or products other than that specified by them as being in or comprising their products in question;

With result that they obtained, through use of lesser amount of fruit resulting in saving in cost thereof and greater percentage of yield, advantage over competitors who did not resort to such practice sufficient to force those using standard formula to sell below actual cost in order to meet aforesaid saving, and with effect of misleading and deceiving trade and wholesale and retail dealers and consuming public into mistaken and erroneous belief that said products had fruit content of at least 45 pounds of fruit to each 55 pounds of sugar, and that fruit portion of completed product was