

Complaint

31 F. T. C.

IN THE MATTER OF

WAIN'S LABORATORY, INC.

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

Docket 4203. Complaint, July 30, 1940—Decision, Oct. 18, 1940

Where a corporation engaged in sale and distribution of its "Ama-Gon" or, as subsequently designated, "Wain's Compound," drug-containing preparation for bronchial asthma and coughs; in advertisements thereof which it disseminated and caused to be disseminated through the mails, newspapers, circulars, and other advertising matter, and in commerce and otherwise, and which were intended or likely to induce purchase of its said product—

- (a) Represented, directly and by implication, in its various statements and representations thus made, and which purported to be descriptive of the remedial, curative, and therapeutic properties of said preparation, that it was an effective and competent treatment for bronchial asthma and coughs, and that its use gave immediate or prompt relief from the paroxysms of asthma, and that it was entirely safe and harmless and might be used without danger of ill effects upon health of user;

Facts being such representations were grossly exaggerated, false and misleading, it was not an effective or competent treatment for bronchial asthma or coughs, and had no therapeutic value in treatment of such conditions in excess of furnishing temporary symptomatic relief from paroxysms of asthma and bronchial irritations, and, by virtue of potassium iodide content in quantity present, was not in all cases safe or harmless, but might, in some instances, cause injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual, and, thus used, might be harmful to those having healed lesions of arrested tuberculosis or goitre; and

- (b) Failed to reveal, in its said advertisements disseminated as aforesaid, facts material in the light of its representations and that use thereof, under the conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in injury to health;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all of such false statements and representations were true, and of inducing substantial portion of such public to purchase its said preparation because of such erroneous and mistaken belief engendered as above set forth:

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. John M. Russell 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 Trade Commission having reason to believe that Wain's Laboratory,

Inc., a corporation, 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, Wain's Laboratory, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, having its office and principal place of business at 4687 Hollywood Boulevard, Hollywood, Calif.

PAR. 2. Respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a certain preparation containing drugs, formerly designated Ama-Gon and now offered for sale and sold under the name "Wain's Compound," recommended for use in the treatment of bronchial asthma and bronchial coughs. Respondent sells its said product to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said product when sold by it, to be transported from its place of business in the State of California to the 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 its said product in commerce among and between 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 product 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 its 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 product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product 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 hereinbefore set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

TO PALLIATE ATTACKS OF BRONCHIAL

ASTHMA

And Bronchial Coughs

Complaint

31 F. T. C.

The active ingredient in Wain's Compound works rapidly. In a few minutes it is taken into the blood stream and starts its work. No matter how long you have suffered from torturing attacks of Bronchial Asthma and Bronchial Coughs, we want you to prove the value of Wain's Compound to yourself today. Accept this generous trial offer. You must be entirely satisfied. Wain's Compound helps you, or your MONEY BACK is GUARANTEED.

Sold at all OWL DRUG STORES

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's said preparation, respondent directly and by implication represents that said preparation is an effective and competent treatment for bronchial asthma and bronchial coughs; that its use gives immediate or prompt relief from the paroxysms of asthma; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not an effective or competent treatment for bronchial asthma or bronchial coughs, and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary symptomatic relief from the paroxysms of asthma and bronchial irritations.

Said preparation is not in all cases safe or harmless as it contains potassium iodide in quantities sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis or goitre. In arrested cases of tuberculosis the tendency of potassium iodide is to resolve the fibrous tissues about the healed lesions and thereby to reactivate the tuberculous process. The hazard in cases of goitre is the tendency to convert a benign adenoma to a toxic adenoma.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does,

mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such false statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

PAR. 8. 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 30, 1940, issued, and on August 3, 1940, served, its complaint in this proceeding upon the respondent, Wain's Laboratory, Inc., 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 September 11, 1940, 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 hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and 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, Wain's Laboratory, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, having its office and principal place of business at 4687 Hollywood Boulevard, Hollywood, Calif.

PAR. 2. Respondent is now and has been for more than two years last past engaged in the business of selling and distributing a certain preparation containing drugs, formerly designated Ama-Gon and now offered for sale and sold under the name "Wain's Compound," recommended for use in the treatment of bronchial asthma and bronchial coughs. Respondent sells its said product to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said product when sold by it, to be transported from its place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent main-

Findings

31 F. T. C.

tains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce among and between 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 product 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 its 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 product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product 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 hereinbefore set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

TO PALLIATE ATTACKS OF BRONCHIAL

ASTHMA

And Bronchial Coughs

The active ingredient in Wain's Compound works rapidly. In a few minutes it is taken into the blood stream and starts its work. No matter how long you have suffered from torturing attacks of Bronchial Asthma and Bronchial Coughs, we want you to prove the value of Wain's Compound to yourself today. Accept this generous trial offer. You must be entirely satisfied. Wain's Compound helps you, or your MONEY BACK IS GUARANTEED. Sold at all OWL DRUG STORES.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's said preparation, respondent directly and by implication represents that said preparation is an effective and competent treatment for bronchial asthma and bronchial coughs; that its use gives immediate or prompt relief from the paroxysms of asthma; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not an effective or competent treatment for bronchial asthma or

bronchial coughs, and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary symptomatic relief from the paroxysms of asthma and bronchial irritations.

Said preparation is not in all cases safe or harmless as it contains potassium iodide in quantities sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis or goitre. In arrested cases of tuberculosis the tendency of potassium iodide is to resolve the fibrous tissues about the healed lesions and thereby to reactivate the tuberculous process. The hazard in cases of goitre is the tendency to convert a benign adenoma to a toxic adenoma.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth, in that said advertisements so disseminated fail to reveal facts material in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such false statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

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 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, Wain's Laboratory, Inc., a corporation, its officers, representatives, agents, 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 "Wain's Compound," or any other medicinal preparation, composed of substantially similar ingredients, or possessing substantially similar therapeutic 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 advertisement represents directly or through inference that said preparation has any therapeutic value in the treatment of bronchial asthma or bronchial coughs, in excess of relief from the paroxysms of asthma and bronchial irritations; that said preparation is in all cases safe or harmless; or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goitre (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goitre).

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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goitre (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goitre).

It is further ordered, That the respondent shall within 10 days after service upon it of this order file with the Commission an interim report in writing stating whether it intends to comply with this order and, if so, the manner and form in which it intends to comply; and that within 60 days after service upon it of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

HARRY PURE, TRADING AS TRADING SALES COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3406. Complaint, May 6, 1938—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of manicure sets, electric lamps, leather wallets, silverware, clothing, and numerous various other articles of merchandise, to purchasers in the various other States and in the District of Columbia—

(a) Sold and distributed his said merchandise by means of a game of chance, gift enterprise, or lottery scheme under which he distributed to representatives or prospective representatives advertising or sales circulars depicting and describing, on the last page thereof, number of products being offered, and listing 22 articles and prices thereof, for use in sale and distribution of such articles under a plan by which particular article secured by customer and price paid therefor by him was dependent upon the legend concealed under the particular tab on accompanying pull card selected by particular customer, and under which scheme operator of card was compensated either by right to retain specified amount of total money received by him through sale of card's chances, or to receive from said individual premium as specified, and "Notice to Purchasers" on pull card device, advising that articles there listed might be purchased at prices set forth in connection therewith, was not called to attention of or seen by customer-purchasers; and

Supplied thereby to and placed in the hands of others means of selling and distributing his said merchandise by means of a game of chance or lottery scheme in accordance with such sales plan, involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, and under which particular article of merchandise received by purchaser and fact as to whether he was required to pay more or less than prices designated for various articles on list thereof displayed as aforesaid, and what amount, were determined wholly by lot or chance, contrary to an established public policy of the United States Government and in violation of criminal law, and in competition with many who are unwilling to adopt and use said or any other sales plan or method involving game of chance, or sale of a chance to win something by chance, or which is contrary to public policy, and refrain therefrom; With result that many persons were induced to buy and sell his said merchandise in preference to that offered and sold by his competitors aforesaid, and trade was thereby unfairly diverted to him from them, to their substantial injury; and

(b) Made such various false, deceptive and misleading statements and representations in his said sales circular as "Absolutely Free—Gifts for All—Absolutely Free," "How to Get Your Big Reward Premium Without Any Cost," "Special Offer—2 Extra Surprise Gifts—Free," and "All Shipping Charges are Paid by Us," facts being none of his said articles were thus given away without cost to such operators or representatives, but they