

Syllabus

IN THE MATTER OF
BASIC FOODS, INC., AND CURTIS HOWE SPRINGER

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

Docket 2844. Complaint, June 16, 1936—Decision, Nov. 1, 1940

Where a corporation and an individual, who was president thereof and in control of its business and of the advertising and sale of its product, respectively engaged in manufacture, sale, and distribution, or sale, of certain so-called herb, drug, and health preparations, including their "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" proprietary products, to dealers for resale and to members of public in various other States and in District of Columbia, in substantial competition with others engaged in sale in commerce among the several States and in said District, of various products sold and distributed for some of the same purposes for which they offered and sold their products, and including among said competitors many who do not misrepresent the nature or character of the products sold by them, or the efficacy thereof in the treatment of diseases or ailments—

- (g) Represented through use of abbreviation "Dr." in names of their aforesaid products and advertisements thereof in newspapers and periodicals circulated in various States and in said District, and broadcasts and through other statements made orally to the public in advertising the same, that individual in question was a physician or doctor of medicine, licensed to practice by duly constituted authority empowered to issue licenses for such practice, and that products in question were made under direct supervision and with approval of a regularly qualified and duly licensed physician or doctor of medicine, and were, therefore, of substantial therapeutic value and efficacy in the treatment of various diseases, ailments, or symptoms mentioned by them in their advertising;

Notwithstanding fact individual in question was not a physician or doctor of medicine or licensed to practice same by any such authority empowered to issue licenses therefor, and products in question were not preparations made under direct supervision and with approval of regularly qualified and duly licensed physician or doctor of medicine;

- (b) Represented, in their said advertising, that most human aches and pains are due to congestion of the glands and organs of the body, and due to constipation and overacid conditions;

Facts being most such aches and pains are not due to such congestion or constipation or overacid conditions;

- (c) Represented, as aforesaid, that their said products were beneficially effective for the glands and organs of the body by removing poisons therefrom, and that products in question were respectively beneficial, effective and safe therapeutic remedies for majority of human aches and pains, and for treatment, among other ailments, of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, and nervousness;

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Facts being—

(1) Said "Dr. Springer's Antediluvian Tea" has no beneficial, curative, or remedial value for any malady or diseased condition of body, possesses no therapeutic value for treatment of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, nervousness, or any other conditions of body, except to extent that constipation or impaired elimination, as symptom of disease or ailment, may be relieved by administration of mild laxative, and anyone drinking five or six glasses of water daily would derive substantially same effect as from use of said tea according to directions on containers, while use in large quantities, or as recommended, might have deleterious effects upon those suffering from any of a number of conditions of which constipation is symptom, and might result in rupture of intestine if taken by those suffering from ulcer thereof; and,

(2) Said "Dr. Springer's Re-Hib," in which were included, in addition to certain known digestants, number of substances commonly used in neutralization of stomach acids, has no beneficial, curative or remedial value for any condition or malady of body and possesses no therapeutic value in treatment of any such condition or malady, except to extent that same is caused by hyperacidity of stomach, which may be relieved by administration of such a product as a palliative or acid neutralizer, and to extent that digestion may be aided by administration of said product as a digestant, while habitual use of substances of type of which said product was composed, for relief of pain after eating, as recommended, would, in some cases, tend to prevent making of definite diagnosis of cause of such pain and delay treatment for diseases or ailments characterized by pain after eating, would have tendency to be injurious, in certain cases, and use thereof would not, as represented, be effective treatment or remedy for all cases of so-called "heartburn" or "Insomnia"; and

(d) Represented, in their said advertising, that they, in their desire to cooperate with existing laws and regulations, had submitted and were submitting packages of their said products, together with all advertising literature relating thereto, to the Administration in Washington, and to all Federal agencies having any interest therein, offering to make any changes in the products or the literature that the Administration would suggest; with intent and effect of representing falsely to public that their said products had been approved by Federal governmental agencies as sold and distributed by them in conformity with existing laws and regulations applicable thereto;

Notwithstanding fact their said products had not been inspected, supervised, and approved by competent governmental authorities having jurisdiction over food and drugs and the advertising matter relating thereto, and their said advertising literature had not been thus approved;

With effect of engendering in minds of a substantial number of purchasing public erroneous belief that said statements, representations, and claims were true, that said individual possessed qualifications implied by use of abbreviation "Dr.," that their said products possessed therapeutic value claimed and would accomplish results indicated, and that said products and advertising had been approved by competent governmental authorities, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of their said prod-

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ucts, and with result that trade was diverted unfairly to them from their competitors, engaged as above set forth, and who truthfully advertise the nature, character, effectiveness, and therapeutic value of their respective products:

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.

Before *Mr. Edward E. Reardon* and *Mr. John L. Hornor*, trial examiners.

Mr. Jay L. Jackson, for the Commission.

Mr. Leland W. Walker, of Somerset, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Basic Foods, Inc., and Curtis Howe Springer, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in 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, Basic Foods, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business and address located at Somerset, in the State of Pennsylvania. Said respondent is now and for more than 1 year last past has been engaged in manufacturing, offering for sale, selling, and distributing prepared food, herb, drug, and health products, more specifically known and designated as "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," in commerce among and between various States of the United States, and in the District of Columbia, and has caused and now causes said products, when sold or ordered, to be shipped and transported from the State of origin thereof to various States of the United States other than the State of origin of said shipments, and to the District of Columbia, in the course and conduct of which said corporate respondent has been and now is in competition with corporations, firms, partnerships, and individuals engaged in selling and distributing products for like purposes and in like commerce as that of said respondent.

Respondent, Curtis Howe Springer, is an individual, president of respondent, Basic Foods, Inc., and an agent and employee thereof, with his principal place of business and address located at Somerset,

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in the State of Pennsylvania, and as such is now and at all times material to this complaint has been engaged in and with the business of said corporate respondent and in and with the organization of said corporation and with the advertising, promotion, offering for sale, sale, and distribution of its said products in commerce, all as aforesaid.

PAR. 2. Respondents have sold and now sell the said "Antediluvian Tea" and "Re-Hib" in interstate commerce, as set forth in paragraph 1 above, by use of the mails, interstate carriers, and other channels of interstate commerce, by means of radio broadcasting, oral statements, newspapers, magazines, pamphlets, periodicals, labels, and other forms of printed matter and advertising literature which have had and have a circulation in and through the various States of the United States and in the District of Columbia and which have been and are circulated and distributed by respondents to customers and prospective customers in and through the various States of the United States and in the District of Columbia, in the course and conduct of which respondents, Basic Foods, Inc., and Curtis Howe Springer, individually and together, have made and now make false and misleading statements and representations, all to the injury of the public and to the injury of competitors of respondent, Basic Foods, Inc.

PAR. 3. The word "Doctor," or its abbreviation "Dr." when used in connection with the advertising and sale of drugs, medicines, and products having to do with human health and with the treatment of disease, sickness, or human ailments, either as a part of the trade name of said products or as a title and prefix before the proper name of any person publicly advising, prescribing, or sponsoring the use of such products, for many years has been and now is understood by the purchasing and consuming public in general to mean and signify, and does mean and signify, that such products have the approval of competent medical authority in the form of a doctor, physician, or practitioner of medicine who has been and is duly licensed by some competent and recognized governmental authority to practice medicine in some form, either general or specialized, and that the said word refers to a person under whose name, advice, prescription, or auspices the said products are offered and sold and that said person is one who is, or has been a doctor, physician, or practitioner of medicine and as such is duly licensed by some competent and recognized governmental authority to practice medicine in some form, either general or specialized.

PAR. 4. In the course and conduct of said corporate respondent's business, as aforesaid, respondents did and do advertise, offer for sale, sell, and distribute the said tea and Re-Hib products by causing the words and trade name "Dr. Springer's" to be labeled and to appear thereon and in combination with the words and name "Antediluvian

Tea" and "Re-Hib," and otherwise caused and cause said products to be advertised, offered for sale, sold, and distributed as and for products known and described as "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" and as products advised, prescribed, and sponsored by one Dr. Springer, thereby falsely and misleadingly representing said products as having the approval of competent medical authority and as being products sold under the name, advice, prescription, or auspices of one who is, or has been, a doctor, physician, or practitioner of medicine and as such is duly licensed by some competent and recognized governmental authority to practice medicine in some form, either general or specialized; that said person is one known as "Dr. Springer," and that said person is, or has been, a doctor, physician, or practitioner of medicine and as such is duly licensed by some competent and recognized governmental authority to practice medicine in some form, either general or specialized; whereas, in truth and in fact, the said products are not sold under the name, advice, prescription, or auspices of one who is, or has been, a doctor, physician, or practitioner of medicine and as such duly licensed by any competent and recognized governmental authority to practice medicine in any form, either general or specialized, and whereas further, the said person referred to as "Dr. Springer" is not and has not been a doctor, physician, or practitioner of medicine and is not duly licensed by any competent and recognized governmental authority to practice medicine in any form, either general or specialized.

PAR. 5. In the course and conduct of the business of said corporate respondent, all as aforesaid, respondents, individually and together, did and do falsely and misleadingly represent and disseminate facts and information relative to the conditions, symptoms, and causes of human aches, pains, ailments, and disease, and relative to cures, correctives, and remedies therefor, and in connection therewith did and do falsely and misleadingly advertise, state, imply, and represent, among other things, that most human aches and pains are due to congestion of the glands and organs of the body; that the majority of human aches and pains are due to constipation and to digestive systems suffering from an over-acid condition; that the majority of human beings suffer from constipation and an over-acid condition and are in need of correctives or remedies therefor; that the said "Dr. Springer's Antediluvian Tea" acts beneficially and effectively upon the glands and organs of the body, removes poison or poisons from the body, and is a beneficial and effective therapeutic remedy or corrective for the majority of human aches and pains, for gas, aches, and pains due to congestion of the glands and organs of the body, for congestion of the glands and organs of the body, and

for kidney troubles, diseased tonsils, stiff and aching joints, swollen feet, so-called "heartburn," inability to sleep or rest at night, and nervousness; whereas, in truth and in fact, most human aches and pains are not due to congestion of the glands and organs of the body and not to constipation or to digestive systems suffering from an over-acid condition; the majority of human beings do not suffer from constipation and an over-acid condition and are not in need of correctives or remedies therefor; the said "Antediluvian Tea" is primarily a laxative or purgative, does not act beneficially and effectively upon the glands and organs of the body, does not and cannot remove poison or poisons from the body, and is not a beneficial and effective therapeutic remedy or corrective for the majority of human aches and pains, for gas, aches, and pains due to congestion of the glands and organs of the body, for congestion of the glands and organs of the body, or for kidney troubles, diseased tonsils, stiff and aching joints, swollen feet, heartburn, inability to sleep or rest at night, or for nervousness.

Respondents, individually and together, further did and do falsely and misleadingly advertise, state, imply, and represent, that an over-acid condition of the stomach and of the digestive system is common to and suffered by most human beings; that the said "Re-Hib" is a beneficial and effective therapeutic remedy or corrective for all cases of over-acidity, for so-called "heartburn," for all gas pains of the stomach, and for inability to sleep or rest at night; that said product is a beneficial drug compound for the majority of human beings, will enable one to overcome gas of the stomach of whatever cause, to eat heavy foods without suffering stomach pains, and that the same contains digestants of a quality and quantity sufficient to aid and enable the digestion of all foods which a person or persons may find difficult to digest; whereas, in truth and in fact, most human beings do not suffer from over-acidity; the said "Re-Hib" is not a beneficial and effective therapeutic remedy or corrective for all cases of over-acidity, or for heartburn, all gas pains of the stomach, or for inability to sleep or rest at night; that said product is not a beneficial drug compound for the majority of or any substantial percentage of human beings and should not be taken except upon doctor's prescription following diagnosis of the condition and needs of the person taking the same; the said product will not enable one to overcome gas of the stomach of whatever cause, or in all cases to eat heavy foods without suffering stomach pains, and said product does not contain digestants of a quality and quantity sufficient to aid and enable the digestion of all foods which a person or persons may find difficult to digest.

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Respondents, individually and together, further did and do advertise, state, imply, and represent that respondents submitted and were submitting packages of both of the aforesaid products, together with bulletins and all literature relative thereto, to the administration in Washington, offering to make any changes they would suggest, in respondents' desire to cooperate, should any statements on labels or in the said literature be found to be contrary to existing laws and regulations, thereby falsely and misleadingly implying and representing that the said products and the labels, advertising statements, and literature relative thereto were and are being submitted to all Federal agencies having an interest therein and any regulatory jurisdiction over the same, and that the same were and are being approved by Federal governmental agencies as being in conformity with existing laws and regulations; whereas, in truth and in fact, it is not the present function of any Federal governmental agency, as related to products of said corporate respondent, to approve or censure the same or the advertising statements and literature relative thereto, in advance of or concurrent with the shipment and distribution thereof in the channels of interstate commerce, and said products, labels, advertising statements, and literature were not and are not being submitted to all Federal agencies having an interest therein and regulatory jurisdiction thereover, and the same were not and are not being approved by Federal governmental agencies as being in conformity with existing laws and regulations.

PAR. 6. The aforesaid false and misleading statements, implications, and representations as set out in paragraphs 4 and 5 above, have had and have, and each of them has had and has, the tendency and capacity to confuse, mislead, and deceive the purchasing and consuming public into the false and erroneous belief that the said statements, implications, and representations are, and each of them is, true, and into the purchase and consumption of the said products of respondent, Basic Foods, Inc., in the place and stead of competing products of said respondent's competitors, which said competitors offer and sell for like purposes and uses as those for which said corporate respondent offers and sells its products, and thereby to divert trade to said corporate respondent from its competitors in interstate commerce who do not offer for sale and sell their products by means of false and misleading statements, implications, or representations.

PAR. 7. The above acts, conduct, and things done by respondents are to the injury and prejudice of the public and to competitors of respondent, Basic Foods, Inc., in interstate commerce within the meaning and intent of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of June 1936, issued its complaint in this proceeding and caused the complaint to be served upon the respondents, Basic Foods, Inc., and Curtis Howe Springer, charging the respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents did not make answer to the complaint.

Thereafter, testimony and other evidence in support of the allegations of the complaint were introduced by Jay L. Jackson, attorney for the Commission, and in opposition to the allegations of the complaint by Curtis Howe Springer, pro se, and as president of respondent Basic Foods, Inc., before Edward E. Reardon and John L. Hornor, trial examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, testimony and other evidence, and brief in support of the complaint, respondent not having filed brief and oral argument not having been requested, 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 the conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Basic Foods, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Somerset, Pa. It is now, and since more than 1 year prior to June 16, 1936, has been, engaged in the manufacture and in the sale and distribution in commerce of certain so-called herb, drug, and health products, including the proprietary products "Dr. Springer's Antediluvian Tea," and "Dr. Springer's Re-Hib."

PAR. 2. Respondent Curtis Howe Springer is and at all times referred to above has been the president of respondent Basic Foods, Inc., with his principal place of business at Somerset, Pa., and at all of said times he has been in control of the business of Basic Foods, Inc., and of the advertising and sale of its products.

PAR. 3. The respondents, during the times referred to above, have sold the products of respondent Basic Foods, Inc., to dealers for resale and to members of the public located in various States of the United States other than Pennsylvania, and in the District of Columbia, and

they have caused said products, including "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," when so sold, to be transported, in commerce, from the place of business of respondent Basic Foods, Inc., in Somerset, Pa., to the purchasers thereof located in the other States of the United States and in the District of Columbia.

In the course and conduct of their business, as aforesaid, the respondents have been in substantial competition with corporations, firms, and individuals engaged in the sale, in commerce between and among the several States of the United States and in the District of Columbia, of various products sold and distributed for some of the same purposes of use for which the respondents have offered for sale and sold the products of respondent Basic Foods, Inc. There are many among said competitors of respondents who do not misrepresent the nature or character of the products sold by them, or the efficacy of their products when used in the treatment of diseases or human ailments.

PAR. 4. The word "Doctor" and the abbreviation "Dr.," when used in connection with the name of an individual engaged in the treatment of human ailments, or used in connection with the name of an individual engaged in the sale of drugs or products sold for the treatment of human ailments, are understood by the public to mean that the individual so described is one who has been duly qualified and licensed to practice medicine by some governmental or other duly authorized agency.

PAR. 5. During all the times referred to above, and in order to further the sale of their products designated "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," the respondents have caused advertisements thereof to be published in newspapers, magazines, and periodicals which have been circulated among the public in various States of the United States and in the District of Columbia, and to be broadcast by means of the radio, and they have also caused other statements to be made orally to the public advertising said products.

Through the use of the abbreviation "Dr." in the names of said products and in the advertisements thereof, the respondents have represented that the respondent Curtis Howe Springer is a physician or doctor of medicine, licensed to practice medicine by a duly constituted authority empowered to issue licenses for the practice of medicine, and that the products called "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" are preparations made under the direct supervision of, and with the approval of, a regularly qualified and duly licensed physician or doctor of medicine, and are therefore of substantial therapeutic value and efficacy in the treatment of the various diseases, ailments, or symptoms mentioned by respondents in their advertising.

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PAR. 6. In the course and conduct of respondents' advertising, as aforesaid, respondents, among other things, further stated, implied, and represented that most human aches and pains are due to congestion of the glands and organs of the body and due to constipation and overacid conditions, and that their products, "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," are beneficially effective for the glands and organs of the body by removing poisons from the body, and that these products, respectively, are beneficial, effective, and safe therapeutic remedies for the majority of human aches and pains and for the treatment, among other ailments, of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, and nervousness.

PAR. 7. The respondents have further represented in the advertising matter mentioned above that they, in their desire to cooperate with existing laws and regulations, had submitted and were submitting packages of the products "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," together with all the advertising literature relating thereto, to the Administration in Washington and to all Federal agencies having any interest therein, offering to make any changes in the products or the literature that the Administration would suggest, with the intent on the part of the respondents, and with the effect, of falsely representing to the public that respondents' products have been approved by Federal governmental agencies as products being sold and distributed by respondents in conformity with existing laws and regulations applicable thereto.

PAR. 8. As a matter of fact, respondent Curtis Howe Springer is not a physician or doctor of medicine, or licensed to practice medicine by any duly constituted authority empowered to issue licenses for the practice of medicine, and the products of respondents, "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," are not preparations made under the direct supervision of, and with the approval of, a regularly qualified and duly licensed physician or doctor of medicine. Most human aches and pains are not due to congestion of the glands and organs of the body or to constipation or overacid conditions.

PAR. 9. Respondents' preparation, called "Dr. Springer's Antediluvian Tea," has no beneficial, curative, or remedial value for any malady or diseased condition of the human body, and possesses no therapeutic value for use in the treatment of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, nervousness, or the treatment of any other condition of the human body except to the extent that constipation, or impaired elimination, as a symptom of disease, or as an ailment, may be relieved by the administration of a mild laxative. Any person using five or six glasses

of drinking water daily would derive substantially the same effect from the water as would be obtained from the use of respondents' "Antediluvian Tea" according to the directions printed on the packages or cartons thereof. The use of "Dr. Springer's Antediluvian Tea" in large quantities, or as recommended by respondents, might have deleterious effects upon persons suffering from any of a number of pathological conditions of which constipation is a symptom. If so taken by a person suffering from an ulcer in the intestines, the use of "Antediluvian Tea" might result in rupture of the intestine, a condition which presents an immediate surgical emergency associated with a high mortality rate.

Respondent's preparation called "Dr. Springer's Re-Hib" contains, in addition to certain substances known as digestants, a number of substances commonly used in the neutralization of acids of the stomach. It has no beneficial, curative, or remedial value for any condition or malady of the human body, and possesses no therapeutic value in the treatment of any condition or malady of the human body except to the extent that such condition or malady is caused by hyperacidity of the stomach which may be relieved by the administration of such product as a palliative or acid neutralizer, and except to the extent that the digestion of foods may be aided by the administration of said product as a digestant. The habitual use of substances of the type of which "Re-Hib" is composed, for the relief of pain after eating, as recommended by respondents, in some cases would tend to prevent the making of a definite diagnosis of the cause of such pain and would delay treatment for diseases or ailments characterized by pain after eating. In the case of a person suffering from gastro-intestinal-tract lesion, for example, the use of such a product would have a tendency to be injurious. The use of said product would not, as represented by respondents, be an effective treatment or remedy for all cases of so-called "heartburn" or "insomnia."

PAR. 10. Respondents' products "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" have not been inspected, supervised, and approved by competent governmental authorities having jurisdiction over food and drugs and the advertising matter relating thereto, and respondents' advertising literature has not been so approved.

PAR. 11. The use by the respondents of the foregoing statements, representations and claims, disseminated as aforesaid, has had and now has the capacity and tendency to and does engender in the minds of a substantial number of the purchasing public the erroneous belief that said statements, representations and claims are true; that respondent Curtis Howe Springer possesses the qualifications implied

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by the use of the abbreviation "Dr."; that respondents' products possess the therapeutic value claimed and will accomplish the results indicated, and that respondents' products and advertising have been approved by competent governmental authorities, and has caused and causes a substantial portion of the purchasing public situated in various States of the United States and in the District of Columbia, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products. As a result, trade is and has been diverted unfairly to the respondents from their competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of similar medicinal preparations or other preparations intended for similar usage who truthfully advertise the nature, character, effectiveness, and therapeutic value of their respective products.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition 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, testimony and other evidence taken before Edward E. Reardon and John L. Hornor, examiners of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and brief of counsel for the Commission, (respondents having filed no answer to the complaint and no brief in opposition to the allegations of the complaint, and no request for oral argument having been made) 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, Basic Foods, Inc., a corporation, its officers, representatives, agents, and employees, and Curtis Howe Springer, an individual, his representative, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of medicinal preparations now designated as "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib", or any other medicinal preparation or preparations containing substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold or distributed under the

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same name or names or under any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Doctor" or any abbreviation thereof, to designate, identify or refer to any person or product when the person so designated is not, or has not been, a physician or practitioner of medicine, duly licensed as such to practice medicine by a recognized governmental authority, and when the product so designated or identified is not the product or prescription of, and approved or sponsored by, such a physician or practitioner of medicine.

2. Representing that the majority of human aches and pains are due to congestion of the glands and organs of the body, or to constipation or over-acid conditions.

3. Representing that the preparations called "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," or any products of like or substantially similar composition, may be beneficially or safely taken by all persons.

4. Representing that the preparation called "Dr. Springer's Antediluvian Tea," or any product of like or substantially similar composition, has any beneficial, curative or remedial value for any malady or diseased condition of the human body; or possesses any therapeutic value in the treatment of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, nervousness, or in the treatment of any other condition of the human body except to the extent the symptoms thereof may be relieved by the administration of a mild laxative.

5. Representing that the preparation called "Dr. Springer's Re-Hib," or any product of like or substantially similar composition, has any beneficial, curative or remedial value for any condition or malady of the human body, or possesses any therapeutic value in the treatment of any condition or malady of the human body except to the extent that such condition or malady is caused by hyperacidity of the stomach which may be relieved by the administration of said product as a palliative or acid neutralizer, and except to the extent that the digestion of foods may be aided by the administration of said product as a digestant.

6. Representing that any of respondents' products are approved by any governmental agency.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, 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
IDEAL CANDY NOVELTIES COMPANY, INC., AND ABRAHAM ARONOFF AND ROSE ARONOFF, INDIVIDUALLY AND AS OFFICERS THEREOF

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

Docket 4086. Complaint, Apr. 8, 1940—Decision, Nov. 1, 1940

Where a corporation and two individuals, who were its president and vice president and secretary, and formulated, controlled, and directed its acts, practices, and policies, engaged in sale and distribution of certain assortments of candy and other articles of merchandise which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) 150 penny pieces of individually wrapped caramels, of uniform size and shape, together with 14 common lead pencils and 8 pencil sets consisting of ruler, pencil, and penholder, for sale and distribution under a plan in accordance with which purchasers securing by chance chocolate caramels were entitled to and received without additional cost one of such pencils, those procuring one of the red caramels were similarly entitled to and received one of such pencil sets, and purchaser of last caramel in assortment also became entitled to and thus received one of such sets, and (2) various other assortments of candy and other articles involving lot or chance feature, but similar to that described and varying therefrom in detail only; acting together in cooperation with each other in such acts and things—

Sold such assortments to brokers, wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, said assortments and other articles were exposed and sold to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their products in accordance with such plan, as above set forth, involving game of chance or sale of a chance to procure an article of merchandise at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and who refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by them and element of chance involved therein, and were thereby induced to buy and sell their said products in preference to those of competitors aforesaid, and with tendency and capacity, through use of said method and because of such game of chance, unfairly to divert trade in commerce to them from their said competitors who do not use same or equivalent method: