

IN THE MATTER OF
DAVID H. FULTON, DOING BUSINESS AS VENDOL
COMPANY

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

Docket 3895. Complaint, Sept. 16, 1939—Decision, Dec. 31, 1940

Where an individual engaged in interstate sale and distribution of his "Vendol" medicinal preparation for constipation and related conditions; in advertisements thereof which he disseminated and caused to be disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter which were distributed in commerce in the various States, and through radio broadcasts of extra-state audience, and through pamphlets, booklets, and advertising copy setting forth testimonial letters, and which advertisements were intended and likely to induce purchase of his said product—

- (a) Represented that said "Vendol" was a remedy or cure and effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness, and declining health; and in all cases brought relief to sufferers from constipation, stomach and liver disorders, pains in muscles and back, headache and rheumatism;

Facts being that it was not a remedy or cure for the diseases or conditions of which stomach disorders and other ailments and conditions above set forth are symptoms, and had no therapeutic value in treatment of such symptoms or conditions in excess of that afforded by a laxative with mild diuretic and slightly antacid effect, and, while it might give temporary relief from constipation and from stomach and liver disorders, muscular and back pains and headaches, when such conditions were definitely due to constipation or need of a diuretic, it did not in all cases bring relief to sufferers from constipation and various other disorders and ailments above enumerated;

- (b) Represented that it assured good digestion and enabled one to eat all kinds of food without fear of acid indigestion and prevented acidity, gas, cramps, burning stomach, and constipation and was a tonic and beneficial in toning system, and soothed nerves and relieved and ended sleeplessness or insomnia and strengthened stomach and digestive organs, was an appetizer and increased strength and energy, promoted new vigor and made one seem years younger;

Facts being it would not accomplish various results claimed for it as above set forth, was not a tonic, did not beneficially affect nervousness or relieve sleeplessness, strengthen stomach or digestive organs or promote vigor and make one appear younger, and had little value in stimulating appetite and was not an appetizer;

- (c) Represented that it would overcome or cure irregularity and that constipation or irregularity of the bowels is the cause of indigestion, skin disorders,

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gas, dizzy spells, acidity, headaches, heartburn, sleeplessness, dyspepsia, heart fluttering, and liver ailments and other similar conditions, and that the majority of common aches, pains, and disorders are due entirely to constipation, and that need for a diuretic is responsible for back, joint, muscular back pains, and stiffness;

Facts being constipation is not usually or generally cause of indigestion and other ailments or conditions set forth and of common aches and pains and other similar conditions, and said "Vendol" had no therapeutic value in treatment of backaches, joint, muscular, or other pains or stiffness in excess of that afforded by a mild diuretic in those cases in which such conditions are symptoms of those kidney disorders which respond to such a diuretic, and symptoms aforesaid are often indicative of other disorders which will not respond thereto; and

(d) Represented that said "Vendol" would relieve numerous symptoms which he listed in various advertisements, and disorders and ailments of which such symptoms were indicative, through such typical advertisements disseminated by him, as "Relieves many troubles such as dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of the stomach, lump in the throat, nervousness, poor sleep—when due to constipation," with tendency and capacity to cause erroneous belief that said product would relieve various symptoms above enumerated with exception of last, irrespective of whether or not due to constipation;

Facts being preparation in question would have no therapeutic value with respect to relieving any such symptoms, or disorders with which they were connected, except when due to constipation, which is often not the case:

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. J. W. Brookfield, Jr. for the Commission.

Barton, Wilmer, Bramble, Addison & Semans, of Baltimore, Md., for respondent.

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 David H. Fulton, an individual, trading as Vendol Co., 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, David H. Fulton, is an individual doing business under the trade name of the Vendol Co., with his principal office and place of business located at 1 West Biddle Street, in the city of Baltimore, State of Maryland.

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Respondent is now, and for more than 1 year last past, has been engaged in the sale and distribution of a certain medicinal preparation known as "Vendol" which is offered for sale and sold as a treatment for constipation and related conditions. In the course and conduct of his business respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Maryland to the purchasers thereof at their respective locations in various states of the United States other than the State of Maryland and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Vendol has always brought a most needed relief to thousands of persons suffering from constipation, stomach troubles and liver ailments as well as pains in the back, muscles and joints, rheumatism, headaches, etc.

Buy a bottle of Vendol, the efficacious remedy that assures good digestion, prevents acidity, gas, cramps and burning stomach. Vendol is composed of 12 different herbs soft alkalines that tonify your system and prevents all these ailments.

Vendol will aid in strengthening the stomach. Vendol brings calm and peace to jumpy nerves. Vendol will make you look better, feel better and you will seem years younger.

Sallow, acned skin often is due to irregularity so you will no doubt be interested to learn that you can help improve the condition of your skin by getting at the cause of your skin disorders—irregularity. Getting relief from these unfortunate ailments is often attained when you try Vendol through the elimination of the poisons that cause skin eruptions. Take Vendol for a while and see if your complexion doesn't improve noticeably.

Do you ever get out of bed in the morning feeling irritated, in bad humor, have headaches, feel dizzy, with your tongue coated and breath bad? If so, you need Vendol. It stimulates the appetite so you can enjoy all your favorite foods.

Let Vendol give you the relief you need to overcome irregularity and return to normal.

It acts on the bowels as a laxative and helps clear out, old, foul substances that often cause headaches, dizzy spells, skin eruptions, boils and pimples. Brings forth gas, relieves gas pains, bloating, and palpitation. It is a mild diuretic to the kidneys, relieving backache, pains in muscles, and stiffness. Vendol is a splendid appetizer which in turn creates strength and energy, * * *

You see Vendol works on the true basic principal that irregularity is often responsible for the aches and pains suffered because of indigestion, gaseousness, dizzy spells and super-acidity.

Vendol activates the function of the intestines * * * strengthens the digestive organs * * * and produces a marvelous effect on the kidneys, giving you complete elimination without causing pain * * * In taking Vendol, you will regain your rosy complexion, and new vigour * * *

Vendol enables many people to enjoy foods of all kinds, without fear or acid indigestion and common aches and pains due to irregularity.

In addition to the foregoing advertisements the respondent disseminates false advertisements in the same manner as set out above by means of purported testimonial letters which the respondent places in pamphlets, booklets and advertising copy and in continuities broadcast from radio stations. Among and typical of the false statements and representations disseminated as aforesaid by respondent by use of purported testimonial letters in its advertising are the following:

I was troubled continually with an upset stomach and was always taking some kind of a laxative. This made me feel dizzy, caused many sleepless nights and made me terribly run down. Vendol proved to be an excellent laxative and soon relieved a great deal of my suffering. I now have a good appetite and sleep well since my nerves stopped bothering me.

I have been suffering a long time from terrible aching pains in my arms, back and legs. My shoulders ached frequently. So much so that I lost valuable sleep and was in misery most of the time. A friend recommended Vendol saying that it had done a great deal for him. Vendol and the little Vendol laxative tablets gave such fine relief from upset stomach and proved to be such a splendid diuretic that I am no longer troubled by aches and pains, headaches or nervousness due to irregularity.

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For several years my health had been declining and although I tried many different ways to restore it, nothing seemed to do much good. I heard about Vendol and decided to try it. To my surprise I began to feel better from my very first bottle. Vendol and the little Vendol laxative tablets gave truly remarkable relief. The terrible dizzy spells, headaches and other spells I used to have have now disappeared. My nerves are now calm and sleep comes easily.

My back seemed to ache just about all the time and my right arm was practically useless. Also I had to be very careful about what I ate. Vendol and the little Vendol tablets worked easily and pleasantly as a laxative and I was soon relieved of my distress after taking my first bottle of Vendol.

I never had a remedy give such marvelous relief from the distress of after eating and acid stomach. The first few treatments relieved the cramps and bloated feeling and now I can eat anything I desire without fear of the after effects.

I was so dizzy at times that I'd have to hold on to something to steady myself, little spots danced before my eyes, my skin was sallow and full of little pimples. After Vendol relieved my constipation these troubles all disappeared and I feel great now.

After Vendol relieved my constipation all signs of indigestion, gas, upset stomach, headache, biliousness, in fact all my old troubles passed away and I actually feel better today than I have in years.

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly and indirectly, that his preparation "Vendol": (a) is a remedy or cure and an effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness and declining health; (b) in all cases brings relief to sufferers from constipation, stomach and liver disorders, pains in muscles and back, headache and rheumatism; (c) assures good digestion and enables one to eat all kinds of food without fear of acid indigestion; (d) prevents acidity, gas cramps, burning stomach and constipation; (e) is a tonic and benefits and tones the system; (f) soothes the nerves and relieves and ends sleeplessness and insomnia; (g) strengthens the stomach and digestive organs; (h) is an appetizer and stimulates the appetite and increases strength and energy and promotes new vigor and makes one seem years younger; (i) will overcome or cure "irregularity"; and

That constipation or "irregularity" is the cause of indigestion, skin disorders, gas, dizzy spells, acidity, headaches, heartburn, sleeplessness, dyspepsia, heart fluttering, liver ailments and other similar conditions, and

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.That the need for a diuretic is responsible for back, joint, muscular, and other pains and stiffness and

That a majority of common aches, pains, and disorders are due entirely to constipation.

The aforesaid representations and claims, used and disseminated by the respondent as hereinabove described, are grossly exaggerated, misleading and untrue. In truth and in fact Vendol is not a remedy or cure, or an effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness, or declining health. It does not in all cases bring relief to sufferers from constipation, stomach and liver disorders, muscular and back pains, headaches, nor rheumatism. Its use does not assure or insure good digestion or enable one to eat all kinds of food and be free from acid indigestion. It does not prevent acidity, gas, cramps, burning stomach or constipation. It is not a tonic. It does not generally soothe the nerves or relieve sleeplessness and insomnia. It does not strengthen the stomach and digestive organs and its use does not promote new vigor or make one appear younger. It is not an appetizer and it does not stimulate the appetite. It will not overcome or correct "irregularity." Constipation is not generally or usually the cause of indigestion, skin disorders, gas, dizzy spells, acidity, headaches, heartburn, sleeplessness, dyspepsia, heart fluttering, liver ailments and other similar conditions and the need for a diuretic is not generally responsible for back aches, joint, muscular and other pains or stiffness. Constipation is not generally or in a majority of cases the direct cause of common aches and pains.

In truth and in fact the therapeutic properties of Vendol are limited to that of a laxative with mild diuretic and antacid effects.

PAR. 4. In certain of his advertising the respondent lists symptoms which are attributable to various diseases with the representation that his said preparation will relieve or cure such symptoms if due to constipation. By this means the respondent represents that his said preparation is an effective treatment for various disorders which are not in fact related to or connected with constipation and upon which respondent's preparation will have no curative or therapeutic effect. Typical of this practice is the use of the following statement by the respondent in his advertising:

Relieves many troubles such as dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of the stomach,

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lump in the throat, nervousness, poor sleep—when due to constipation. Vendol is a mild diuretic to the kidneys and a wonderful appetizer.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said medicinal 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 said preparation is a cure or remedy for various disorders for which it has little or no therapeutic value, and induces, or is likely to induce, directly or indirectly, the purchase by the public, of respondent's medicinal preparation containing drugs.

PAR. 6. The aforesaid acts and practices of the 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 September 16, 1939, issued its complaint against respondent and caused such complaint to be served as required by law, charging respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On October 4, 1939, respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, William R. Semans, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation. Said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, David H. Fulton, is an individual doing business under the trade name of the Vendol Co., with his principal office and place of business located at 1 West Biddle Street, in the city of Baltimore, State of Maryland.

Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation known as "Vendol," constituting a drug, or containing drugs, as defined in the Federal Trade Commission Act, which is offered for sale and sold as a treatment for constipation and related conditions. In the course and conduct of his business respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Maryland to the purchasers thereof at their respective locations in various States of the United States other than the State of Maryland and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among¹ and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Vendol has always brought a most needed relief to thousands of persons suffering from constipation, stomach troubles and liver ailments as well as pains in the back, muscles and joints, rheumatism, headaches, etc.

Buy a bottle of Vendol, the efficacious remedy that assures good digestion, prevents acidity, gas, cramps, and burning stomach. Vendol is composed of 12 different herbs soft alkalines that tonify your system and prevents all these ailments.

Vendol will aid in strengthening the stomach. Vendol brings calm and peace to jumpy nerves. Vendol will make you look better, feel better and you will seem years younger.

Sallow, ained skin often is due to irregularity so you will no doubt be interested to learn that you can help improve the condition of your skin by getting at the cause of your skin disorders—irregularity. Getting relief from these unfortunate ailments is often attained when you try Vendol through the elimination of the poisons that cause skin eruptions. Take Vendol for a while and see if your complexion doesn't improve noticeably.

Do you ever get out of bed in the morning feeling irritated, in bad humor, have headaches, feel dizzy, with your tongue coated and breath bad? If so, you need Vendol. It stimulates the appetite so you can enjoy all your favorite foods.

Let Vendol give you the relief you need to overcome irregularity and return to normal.

It acts on the bowels as a laxative and helps clear out, old, foul substances that often cause headaches, dizzy spells, skin eruptions, boils and pimples. Brings forth gas, relieves gas pains, bloating, and palpitation. It is a mild diuretic to the kidneys, relieving backache, pains in muscles, and stiffness. Vendol is a splendid appetizer which in turn creates strength and energy, * * *

You see, Vendol works on the true basic principal that irregularity is often responsible for the aches and pains suffered because of indigestion, gaseousness, dizzy spells and superacidity.

Vendol activates the function of the intestines * * * strengthens the digestive organs * * * and produces a marvelous effect on the kidneys, giving you complete elimination without causing pain * * * In taking Vendol, you will regain your rosy complexion, and new vigour * * *

Vendol enables many people to enjoy foods of all kinds, without fear of acid indigestion and common aches and pains due to irregularity.

In the course of his business, respondent has similarly disseminated a circular entitled "How Are You Feeling?," containing the following statement:

It acts on the bowels as a laxative and helps clear out old foul substances that often cause headaches, dizzy spells, skin eruptions, boils and pimples. Brings forth gas, relieves gas pains, bloating and palpitation. It is a mild diuretic to the kidneys, relieving backaches, pains in muscles, and stiffness. Vendol is a splendid appetizer which in turn creates strength and energy.

The publication of this circular was discontinued December 21, 1938.

In addition to the foregoing advertisements the respondent disseminates false advertisements in the same manner as set out above by means of testimonial letters which the respondent places in pamphlets, booklets and advertising copy and in continuities broad-

cast from radio stations. Among and typical of the false statements and representations disseminated as aforesaid by respondent by use of testimonial letters in its advertising are the following:

I was troubled continually with an upset stomach and was always taking some kind of a laxative. This made me feel dizzy, caused many sleepless nights and made me terribly run down. Vendol proved to be an excellent laxative and soon relieved a great deal of my suffering. I now have a good appetite and sleep well since my nerves stopped bothering me.

I have been suffering a long time from terrible aching pains in my arms, back and legs. My shoulders ached frequently. So much so that I lost valuable sleep and was in misery most of the time. A friend recommended Vendol saying that it had done a great deal for him. Vendol and the little Vendol laxative tablets gave such fine relief from upset stomach and proved to be such a splendid diuretic that I am no longer troubled by aches and pains, headaches or nervousness due to irregularity.

For several years my health had been declining and although I tried many different ways to restore it, nothing seemed to do much good. I heard about Vendol and decided to try it. To my surprise I began to feel better from my very first bottle. Vendol and the little Vendol laxative tablets gave truly remarkable relief. The terrible dizzy spells, headaches and other spells I used to have have now disappeared. My nerves are now calm and sleep comes easily.

My back seemed to ache just about all the time and my right arm was practically useless. Also I had to be very careful about what I ate. Vendol and the little Vendol tablets worked easily and pleasantly as a laxative and I was soon relieved of my distress after taking my first bottle of Vendol.

I never had a remedy give such marvelous relief from the distress of after eating and acid stomach. The first few treatments relieved the cramps and bloated feeling and now I can eat anything I desire without fear of the after effects.

I was so dizzy at times that I'd have to hold on to something to steady myself, little spots danced before my eyes, my skin was sallow and full of little pimples. After Vendol relieved my constipation these troubles all disappeared and I feel great now.

After Vendol relieved my constipation all signs of indigestion, gas, upset stomach, headache, biliousness, in fact all my old troubles passed away and I actually feel better today than I have in years.

PAR. 3. The statements set forth in paragraph 2 hereof and others similar thereto not specifically set out herein, are intended to be descriptive of the remedial, curative, or therapeutic properties of respondent's preparation, and by the use of such statements the respondent represents, directly and indirectly, that respondent's preparation "Vendol": (a) is a remedy or cure and an effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness, and declining health; (b) in all cases brings relief to

sufferers from constipation, stomach and liver disorders, pains in muscles and back, headache and rheumatism; (*c*) assures good digestion and enables one to eat all kinds of food without fear of acid indigestion; (*d*) prevents acidity, gas, cramps, burning stomach and constipation; (*e*) is a tonic and benefits and tones the system; (*f*) soothes the nerves and relieves and ends sleeplessness and insomnia; (*g*) strengthens the stomach and digestive organs; (*h*) is an appetizer and stimulates the appetite and increases strength and energy and promotes new vigor and makes one seem years younger; (*i*) will overcome or cure "irregularity" of the bowels; and

That constipation or "irregularity" of the bowels is the cause of indigestion, skin disorders, gas, dizzy spells, acidity, headaches, heartburn, sleeplessness, dyspepsia, heart fluttering, liver ailments and other similar conditions, and

That the need for a diuretic is responsible for back, joint, muscular and other pains and stiffness, and

That a majority of common aches, pains, and disorders are due entirely to constipation.

All of the advertising representations set out in paragraph 2 hereof which were broadcast from radio stations are excerpts from more detailed statements furnished by the respondent to the various broadcasting stations and are misleading with reference to the remedial and therapeutic properties of respondent's medicinal preparation.

PAR. 4. In truth and in fact Vendol is not a remedy or cure for the diseases or conditions of which stomach disorders, liver ailments, muscular pain and body pain, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness or declining health are symptoms and it has no therapeutic value in the treatment of such symptoms or conditions in excess of that afforded by a laxative with mild diuretic and slightly antacid effects. Vendol does not in all cases bring relief to sufferers from constipation, stomach and liver disorders, muscular and back pains, headaches and rheumatism although it may give temporary relief from constipation and may give temporary relief from stomach and liver disorders, muscular and back pains and headaches when such conditions are definitely due to constipation or the need of a diuretic. Its use does not assure or insure good digestion or enable one to eat all kinds of food and be free from acid indigestion. It does not prevent acidity, gas, cramps or burning stomach. It is not a tonic and does not beneficially affect the nerves or relieve sleeplessness or insomnia and does not strengthen the stomach or digestive organs and does

not promote vigor or make one appear younger. It is not an appetizer and has little value in stimulating the appetite.

Constipation is not generally or usually the cause of indigestion, skin disorders, gas, headaches, "heartburn," sleeplessness, dyspepsia, heart fluttering, common aches and pains or other similar conditions.

Vendol has no therapeutic value in the treatment of backaches, joint, muscular, and other pains or stiffness in excess of that afforded by a mild diuretic when such conditions are symptoms of those kidney disorders which respond to a mild diuretic, and such symptoms are often indicative of other disorders which will not respond to a mild diuretic.

PAR. 5. The respondent in various advertisements lists numerous symptoms with the representation that the preparation Vendol will relieve such symptoms and the disorders and ailments of which they are indicative. Typical of such advertisements disseminated by the respondent is the following:

Relieves many troubles such as dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of the stomach, lump in the throat, nervousness, poor sleep—when due to constipation.

The use of advertisements of this type has the tendency and capacity to cause the erroneous belief that respondent's preparation will relieve the symptoms of dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of the stomach, lump in the throat and nervousness, irrespective of whether such symptoms are due to constipation. This is particularly true since the qualifying statement "when due to constipation" appears in the advertisement in such a manner as to be readily identified with only one of the numerous symptoms therein listed. Respondent's preparation will have no therapeutic effect with respect to relieving any of these symptoms or the disorders with which they are connected except when they are due to constipation, which is often not the case.

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.

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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, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that, without further evidence and without presentation of argument or filing of briefs, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, David H. Fulton, an individual, trading as Vendol Co., or trading under any other name or names, his representatives, agents, servants, and employees, acting directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparation "Vendol," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined by the Federal Trade Commission Act, which advertisement:

(a) Represents that said preparation is a cure or remedy for constipation or constitutes a competent or effective treatment therefor, in excess of furnishing temporary relief for such condition.

(b) Represents that said preparation is a cure or remedy for stomach disorders, liver ailments, skin disorders or dyspepsia; or that said preparation constitutes a competent or effective treatment therefor, in excess of furnishing temporary relief when such conditions are due to constipation or the need of a mild diuretic.

(c) Represents that said preparation is a cure or remedy for muscular and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, bad breath, palpitation, bloating, stiffness or heart flutterings, or that said preparation is a cure or remedy for any disease or malady of which such ailments may be symptoms, or that said preparation has any therapeutic value in the treatment of such symptoms in excess of the temporary relief from such symptoms afforded by a laxative with mild diuretic and slightly anti-acids effects.

(d) Lists symptoms of diseases or conditions which are not generally or usually caused by, or directly associated with, constipation in such a manner as to represent either directly or inferentially that such symptoms are typical symptoms of constipation or that the presence of such symptoms indicates that the sufferer therefrom has constipation or is in need of a laxative.

(e) Lists symptoms of diseases or disorders which may be caused by or directly associated with constipation without an additional statement that such preparation will be of value in the treatment of such symptoms only when they are due to constipation and only to the extent of the temporary relief afforded by a laxative, mild diuretic and antiacid.

(f) Represents that the use of said preparation will insure good digestion, relieve insomnia, strengthen the stomach or digestive organs, promote vigor, stimulate the appetite, or make the user appear younger.

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.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
THE AMERICAN CRAYON COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECTIONS (a) AND (d) OF SECTION 2 OF AN ACT OF CONGRESS AP-
PROVED OCT. 15, 1914, AS AMENDED BY SECTION 1 OF AN ACT OF CONGRESS
APPROVED JUNE 19, 1936

Docket 4142. Complaint, May 24, 1940—Decision, Dec. 31, 1940

Where a corporation engaged in manufacturing crayons, chalk, paint sets, educational supplies, and allied products, and in offering for sale, selling, and distributing said products to purchasers in various States, in substantial competition with other concerns similarly engaged—

In selling its products of like grade and quality to all customers at one list price, from which those who purchased solely in case lots were allowed 50 percent trade discount—

- (a) Granted and allowed to certain "multiple discount customers" who were those "receiving discounts over and beyond the regular quantity or schedule discounts from one or more manufacturers in a similar field" and who were in active competition with other customers receiving only the aforesaid regular trade discount of 50 percent, additional discounts including (1) discounts ranging from 5 percent to 10 percent over and above aforesaid regular trade discount; and (2) varying discounts ranging from 15 percent to 10 percent plus 10 percent on certain sizes of "Prang" tempera only, over and above said regular trade discount;

With result that effect of such discriminations in price might be substantially to lessen competition in the lines of commerce concerned, to injure competition with it in the sale of its products, and substantially to injure competition in the resale of such products with its favored customers who were granted and allowed aforesaid discounts over and above the regular 50 percent trade discount:

Held, That under the facts and circumstances above set forth, said corporation discriminated in price in the sale of its products between different purchasers in violation of subsection (a) of section 2 of the Clayton Act as amended; and

Where said corporation, engaged as aforesaid—

- (b) Granted to certain "special or promotional distributors," over and above aforesaid regular trade discount of 50 percent and as compensation for carrying warehouse stocks and furnishing promotional and selling services and facilities, (1) in some cases additional percentage discounts of 10 percent; and (2) in another group of cases, additional discounts of 5 percent, without making such compensation available on proportionally equal terms to their competitors, whose requests to be allowed such compensation for furnishing the same services and facilities as those supplied by aforesaid favored customers it refused:

Held, That said corporation granted and allowed compensation to certain of its customers for services and facilities without making such payments available to all other competing customers on proportionally equal terms in violation of subsection (d) of Section 2 of the Clayton Act as amended.