

Syllabus

IN THE MATTER OF

R. G. BOWE AND W. W. HARTMAN, TRADING AS BOWE & HARTMAN

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

Docket 4373. Complaint, Nov. 8, 1940—Decision, Jan. 11, 1941

Where two individuals engaged in interstate sale and distribution of their "Bowe's Tablets," medicinal preparation, in advertisements thereof which they disseminated and caused to be disseminated through the mails, and through other means in commerce, and through newspapers and periodicals, and through circulars, leaflets, and other advertising literature, and otherwise, and which were intended and likely to induce purchase of their said product—

- (a) Represented, directly or by implication, that ulcers of the stomach, duodenum and intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia were due to or persisted because of hyperacidity or the presence of excess acid in the body, and that their said product was a cure or remedy for hyperacidity and thereby constituted a cure or remedy for the specific ailments and conditions mentioned, facts being that, while gastric hyperacidity might be associated with ulcers of the stomach and various other symptoms above set forth, it was not the cause of such conditions, and they did not persist solely because of hyperacidity and, while their said product would afford temporary neutralization of such hyperacidity, it did not constitute a cure or remedy therefor and possessed no therapeutic value in the treatment thereof, in excess of such temporary and palliative relief as it might afford in those cases where gastric hyperacidity was a concomitant factor; and
- (b) Represented that they were manufacturing pharmacists, and that said preparation was made by them, facts being they did not manufacture their said preparation, but obtained same from other sources and were not, as aforesaid claimed, manufacturers, for dealing with whom there is a preference on the part of substantial portion of the purchasing public due to belief, in part, that thereby lower prices and other advantages may be obtained;

With effect of misleading and deceiving substantial portion of purchasing public with respect to their business status and as to the therapeutic properties of their said preparation, and with result of inducing such public to purchase substantial quantities of said preparation:

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. William L. Taggart for the Commission.

Complaint

32 F. T. C.

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 R. G. Bowe and W. W. Hartman, individually, and trading as Bowe & Hartman, hereinafter, referred to as respondents, have 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. Respondents, R. G. Bowe and W. W. Hartman, are individuals trading as Bowe & Hartman, with their office and principal place of business located at 101 Summit Street in the city of Toledo, Ohio. Respondents are now and for more than 2 years last past have been, engaged in the sale and distribution of a medicinal preparation designated and described as "Bowe's Tablets."

In the course and conduct of their business, respondents cause said preparation, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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 hereinabove set forth by United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets and other advertising literature, are the following:

Complaint

STOMACH ULCERS

If you are suffering from stomach trouble in any form, no matter how severe or long standing, including Ulcers, Constipation, Gas, Sick, Sour or Bloating Stomach, etc., Bowe's Tablets will give you quick positive relief or they are free to you
* * *

ULCERS

Stomach Trouble relief in a short time with

BOWE'S TABLETS

There is no need to suffer with indigestion; sick, sour or bloated stomach; heartburn; pains around the heart; ulcers or other digestive disturbances due to hyperacidity. Take BOWE'S TABLETS—a prescription, scientifically prepared for the purpose of neutralizing the acid condition of the stomach and healing tender membranes, no matter how severe or long standing your suffering, allowing digestion to proceed in a normal manner * * *.

STOMACH ULCERS

Stomach trouble in any form—Indigestion, Gas Pains, Nervousness, Sour or Bloating Stomach, Bad Breath—pains around the heart—due to hyperacidity quickly relieved by

BOWE'S TABLETS

* * * Guaranteed. Get results in 10 days or get your money back * * *

* * * What you need is to correct the condition of hyperacidity that causes sour stomach, gas pains, indigestion, heartburn, colds, muscular pains, melancholy and ulcers of the stomach, duodenum and lower tracts.

Acidosis may be indicated by burning pains in the stomach, pain after eating, headaches, dizziness, belching, fatigue, melancholy, lack of appetite, colds, insomnia, nervousness and constipation.

Manufacturing Pharmacists.

PAR. 3. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondents represent and have represented directly or by implication that ulcers of the stomach, duodenum and intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath and insomnia are due to, or persist because of, hyperacidity or the presence of excess acid in the body; that respondents' preparation is a cure or remedy for hyperacidity and thereby constitutes a cure or remedy for the specific ailments and conditions mentioned. Respondents further represent that they are manufacturing pharmacists and that said preparation is manufactured by them.

PAR. 4. The representations used and disseminated by the respondents as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, while gastric hyperacidity may be associated with

ulcers of the stomach, duodenum or intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia, it is not the cause of such conditions, nor do such conditions persist solely because of hyperacidity. Although the respondents' product will assist in the temporary neutralization of gastric hyperacidity, it does not constitute a cure or remedy for any of the conditions above enumerated. Said preparation possesses no therapeutic value in the treatment of such conditions in excess of such temporary and palliative relief as it may afford in those cases where gastric hyperacidity is a concomitant factor. Respondents are not manufacturing pharmacists and do not manufacture their said preparation but obtain said preparation from other sources.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with a manufacturer, such preference being due in part to a belief that thereby lower prices and other advantages may be obtained.

PAR. 6. The use by the respondents of the aforesaid false advertisements has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to respondents' business status and with respect to the therapeutic properties of respondents' preparation. As a result the purchasing public has been induced to purchase and has purchased substantial quantities of said preparation.

PAR. 7. The aforesaid acts and practices of the respondents 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 November 8, 1940, issued and on November 9, 1940, served its complaint in this proceeding upon respondents R. G. Bowe and W. W. Hartman, individually, and trading as Bowe & Hartman, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 27, 1940, the respondents filed their answer, in which answer they admitted all the material allegations of facts set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission

on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being 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. Respondents, R. G. Bowe and W. W. Hartman, are individuals trading as Bowe & Hartman, with their office and principal place of business located at 101 Summit Street in the city of Toledo, Ohio. Respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of a medicinal preparation designated and described as "Bowe's Tablets."

In the course and conduct of their business, respondents cause said preparation, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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 hereinabove set forth, by United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets and other advertising literature, are the following:

STOMACH ULCERS

If you are suffering from stomach trouble in any form, no matter how severe or long standing, including Ulcers, Constipation, Gas, Sick, Sour or Bloated Stomach, etc., Bowe's Tablets will give you quick positive relief or they are free to you * * *

Findings

32 F. T. C.

ULCERS

Stomach Trouble relieved in a short time with

BOWE'S TABLETS

There is no need to suffer with indigestion; sick, sour or bloated stomach; heartburn; pains around the heart; ulcers or other digestive disturbances due to hyperacidity. Take BOWE'S TABLETS—a prescription, scientifically prepared for the purpose of neutralizing the acid condition of the stomach and healing tender membranes, no matter how severe or long standing your suffering, allowing digestion to proceed in a normal manner * * *

STOMACH ULCERS

Stomach trouble in any form—Indigestion, Gas Pains, Nervousness, Sour or Bloating Stomach, Bad Breath—pains around the heart—due to hyperacidity quickly relieved by

BOWE'S TABLETS

* * * Guaranteed. Get results in 10 days or get your money back * * *

* * * What you need is to correct the condition of hyperacidity that causes sour stomach, gas pains, indigestion, heartburn, colds, muscular pains, melancholy and ulcers of the stomach, duodenum and lower tracts.

Acidosis may be indicated by burning pains in the stomach, pain after eating, headaches, dizziness, belching, fatigue, melancholy, lack of appetite, colds, insomnia, nervousness and constipation.

Manufacturing Pharmacists.

PAR. 3. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondents represent and have represented directly or by implication that ulcers of the stomach, duodenum and intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia are due to, or persist because of, hyperacidity or the presence of excess acid in the body; that respondents' preparation is a cure or remedy for hyperacidity and thereby constitutes a cure or remedy for the specific ailments and conditions mentioned. Respondents further represent that they are manufacturing pharmacists and that said preparation is manufactured by them.

PAR. 4. The representations used and disseminated by the respondents as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, while gastric hyperacidity may be associated with ulcers of the stomach, duodenum or intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia, it is not the cause of such conditions, nor do such conditions persist solely because of hyperacidity. Although the respondents' product will assist in the temporary neutralization of gastric hyper-

acidity, it does not constitute a cure or remedy for any of the conditions above enumerated. Said preparation possesses no therapeutic value in the treatment of such conditions in excess of such temporary and palliative relief as it may afford in those cases where gastric hyperacidity is a concomitant factor. Respondents are not manufacturing pharmacists and do not manufacture their said preparation but obtain said preparation from other sources.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with a manufacturer, such preference being due in part to a belief that thereby lower prices and other advantages may be obtained.

PAR. 6. The use by the respondents of the aforesaid false advertisements has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to respondents' business status and with respect to the therapeutic properties of respondents' preparation. As a result the purchasing public has been induced to purchase and has purchased substantial quantities of said preparation.

CONCLUSION

The aforesaid acts and practices of the respondents 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, R. G. Bowe and W. W. Hartman, individually and trading as Bowe & Hartman, or trading under any other name, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their medicinal preparation known as Bowe's Tablets, or any other medicinal preparation of substantially similar composition, or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

Order

32 F. T. C.

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 ulcers of the stomach, duodenum or intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, or insomnia are caused by, or persist solely because of, hyperacidity; that respondents' preparation constitutes a cure or remedy for any of said ailments or conditions, or for hyperacidity; that said preparation possesses any therapeutic value in the treatment of any of said ailments or conditions, in excess of such temporary and palliative relief as it may afford by the neutralization of gastric hyperacidity in those cases where gastric hyperacidity is a contributing factor; that respondents are manufacturing pharmacists or that they manufacture said preparation.

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 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.

Syllabus

IN THE MATTER OF

PUREX CORPORATION, LTD.

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

Docket 4074. Complaint, Mar. 29, 1940—Decision, Jan. 13, 1941

Where a corporation engaged in manufacture of its "Purex" chemical preparation for use as germicide, and in interstate sale and distribution thereof, in advertisements of its said product which it disseminated and caused to be disseminated through the mails and by various other means in commerce and otherwise, and including advertisements by circulars, leaflets, pamphlets, and other advertising literature—

- (a) Represented, in its said advertising, that said product was "a most powerful germicide" and, directly and by implication, that such preparation possessed such powerful germicidal qualities that solution made by adding two tablespoonfuls thereof to gallon of water would, applied externally to livestock or other animals, destroy all bacteria and disinfect any surface cuts or sores; and
- (b) Represented that such a solution would prevent spread of and destroy all bacteria on metal or wood equipment, through such statements as " * * * After thoroughly washing and cleaning equipment," "such as Milk cans, Milking Equipment, Feed Pans, Troughs, Etc.," "spray or soak with a disinfecting bath made by using two tablespoons PUREX to each gallon of water";

Facts being, while such a solution possessed disinfectant and germicidal qualities, it was not effective for all purposes and would not destroy all bacteria or absolutely disinfect surface cuts and sores, nor, used as recommended and directed, prevent spread of all bacteria, nor destroy all such life on metal or wood or any other kind of equipment, but degree of effectiveness thereof, used as disinfectant or antiseptic, was dependent upon concentration of solution and length of time of exposure, in order for solution of product in question to constitute competent and effective germicide or disinfectant in treatment of surface cuts and sores, in accordance with accepted medical practice, it would have to contain at least 10 percent by volume of preparation in question in its undiluted form, and solution diluted, as above set forth in such a "disinfectant bath," was not an absolute chemical disinfectant or germicide, capable of killing all bacterial life;

With result that purchasing public was caused to believe it such an absolute chemical disinfectant, etc., as above set forth, through use of word "disinfectant" as above stated, and portion of such public was also caused to believe that product in question possessed stronger germicidal qualities when used in solution recommended and directed, through statement "a most powerful germicide," than was actually the case, and with effect, through use of foregoing misleading statements and representations, disseminated as aforesaid, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements