

Complaint

IN THE MATTER OF
NATIONAL PROPRIETARIES, INC.

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

Docket 4271. Complaint, Aug. 27, 1940—Decision, Jan. 15, 1941

Where a corporation engaged in sale and distribution of its "Nuga-Tone" to purchasers in various States; 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 in newspapers, circulars and other advertising literature, and which were intended and likely to induce purchase of its said product—

- (a) Represented, directly and by implication, that its said "Nuga-Tone" possessed substantial therapeutic value in treatment of nervous disorders, facts being it possessed no such value and was not a safe and harmless preparation, in that it contained drugs Corrosive Sublimate, Strychnine Sulphate, Arsenic Trioxide, Reduced Iron, Extract Gentian, Extract Cascara Sagrada, Extract Taraxacum and Zinc Phosphide in quantities sufficient to produce serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions, as are customary and usual, and use thereof might result in chronic poisoning which may be recognized by renal irritations, nervous irritability, neuritis, psychoses, nutritional disturbances leading to cachexia, muscular atrophy, decalcification of the bones, and anemia; and
- (b) Failed to reveal in said advertisements facts material in light of such representations, and that use of said product, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said false, misleading and deceptive statements, representations and advertisements were true, and that said "Nuga-Tone" was a valuable medicine for treatment of nervous disorders, and to induce, directly or indirectly, purchase by such public 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.

Newby, Simmons & Cessna, of Chicago, Ill., 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 National Proprie-

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taries, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. National Proprietaries, Inc., is a corporation organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business located at 767 North Milwaukee Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for some time past has been, engaged in the sale and distribution of a drug preparation advertised as "Nuga-Tone." Respondent has caused said preparation, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparations, by United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its preparation, and respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars, and other advertising literature, are the following:

WIECEJ ENERGII DLA NERWOWYCH, PRZEMECZONYCH MEZCZYZN I KOBIEC

NUGA-TONE zawiera duzo Zlnc Phosphide, wartosciowego skladnika dostarczajacego fosforu, tak potrzebnego do silnych, mocnych nerwow. Lekarstwo zawierajace fosfor jest przepisywane przez lekarzy w celu uspokojenia i uleczenia rozdrazniczonych, niespokojnych bolacych nerwow. Jest to pomocne lekarstwo, gdy stan nerwow powduje ciagle uczucie przemeczenia i brak wypoczynku.

Ten doskonały preparat także zawiera te formy żelaza, która przyczynia się do budowania bogatej, czerwonej krwi, do budowania silniejszych, zdrowszych mięśni i do przywrócenia koloru i zdrowego wyglądu chudym, bladym twarzom, jeśli powodem tego jest anemia. Ponadto Nuga-Tone zawiera inne cenne lecznicze składniki. Zaczniј używać NUGA-TONE dzisiaj i zauważ jak twoja krew i nerwy odżyją. Sprzedawane we wszystkich aptekach po cenie Jednego Dolara za jednomiesięczny okres leczenia. Pieniądze zostaną zwrócone jeśli nie będziecie zupełnie zadowoleni.

Na zatwardzenie użyj—UGA-SOL—Idealny środek rozrzućniający. 25¢ i 50¢.

The English translation of the above statement is as follows:

MORE PEP FOR NERVOUS, RUN-DOWN MEN AND WOMEN

NUGA-TONE is rich in Zinc Phosphide, the precious compound supplying an available phosphorus, the element so necessary for strong, powerful nerves. Medicinal phosphorus is prescribed by doctors to soothe and quiet irritated, shaky, achy nerves. It is a valuable medicine in nervous conditions that cause a constant tired and worn-out feeling.

This excellent preparation also contains a form of Iron which is useful in making rich red blood for building firmer, healthier muscle and bringing back color and fullness to pale, thin faces when caused by simple anemia. In addition NUGA-TONE contains other valuable medicines. Start taking NUGA-TONE today and notice how your blood and nerves will be invigorated. Sold by all druggists at only One Dollar for a month's treatment. Money back if you are not satisfied.

For constipation take—UGA-SOL—The Ideal Laxative. 25¢ and 50¢.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated as "Nuga-Tone" possesses substantial therapeutic value in the treatment of nervous disorders.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact respondent's preparation "Nuga-Tone" does not possess any value in the treatment of nervous disorders. Moreover, said preparation is not a safe and harmless preparation in that it contains the drugs Corrosive Sublimate, Strychnine Sulphate, Arsenic Trioxide, Reduced Iron, Extract Gentian, Extract Cascara Sagrada, Extract Taraxacum and Zinc Phosphide in quantities, sufficient to produce serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary and usual.

Such use of said preparation may result in chronic poisoning which may be recognized by renal irritations, nervous irritability, neuritis, psychoses, nutritional disturbances leading to cachexia, muscular atrophy, decalcification of the bones, and anemia.

PAR. 6. In addition to the representations hereinabove set forth respondent has also engaged in the dissemination of false advertise-

ments in the manner above set forth, in that said advertisements of the preparation designated as "Nuga-Tone" failed to reveal facts material in the light of such representations and failed to reveal that the use of said preparation under the conditions prescribed in said advertisements or under conditions as are customary or usual may result in serious and irreparable injury to health.

PAR 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and advertisements are true, and that the preparation designated as "Nuga-Tone" is a valuable medicine for the treatment of nervous disorders, and to induce directly or indirectly, purchase by the public of the respondent's said preparation.

PAR. 8. 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 August 27, 1940 issued and on August 28, 1940 served its complaint in this proceeding upon the respondent National Proprietaries, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 5, 1940, the respondent filed its answer, in which answer respondent admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. National Proprietaries, Inc., is a corporation, organized, existing, and doing business under the laws of the State

of Illinois, with its office and principal place of business located at 767 North Milwaukee Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for some time past has been, engaged in the sale and distribution of a drug preparation advertised as "Nuga-Tone." Respondent has caused said preparation, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparations, by United States mails, and by various other means in commerce as commerce is defined in the Federal Trade Commission Act for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its preparation, and respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation 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 advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

WIECEJ ENERGII DLA NERWOWYCH, PRZEMECZONYCH MEZCZYZN I KOBIET

NUGA-TONE zawiera duzo Zinc Phosphide, wartosciowego skladnika dostarcza-
Jacego fosforu, tak potrzebnego do silnych, mocnych nerwow. Lekarstwo
zawierajace fos for jest przepisywane przez lekarzy w celu uspokojenia i
uleczenia rozdraznlonych, niespokojnych bolacych nerwow. Jest to pomocne
lekarstwo, gdy stan nerwowy powdouje ciagle uczucie przemeczunia i brak
wypoczynku.

Ten doskonaly preparat takze zawiera te forme zelaza, ktora przyczynia sie do
budowania bogatej, czerwonej krwi, do budowania silnie-jszych, zdrowszych
muskulow i do przywracania koloru i zdrowego wygladu chudym, bladym twar-
zom, jesli powodem tego jest anemia. Pozatym Nuga-Tone zawiera inne cenne
lecznicze skladniki Zacznlj uzywac NUGA-TONE dzislaj i zauwaz jak twoja krew
i nerwy odzyja. Sprzedawane we wszystkich aptekach po cenie Jednego Dolara
za jednomiesieczny okres leczenia. Pieniadze zostana zwrocone jesli nie bed-
ziecie zupełnie zadowoleni.

Na zatwardzenie uzyj—UGA-SOL—Idealny srodek rozwalniajacy. 25¢ i 50¢.

The English translation of the above statement is as follows:

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This excellent preparation also contains a form of Iron which is useful in making rich red blood for building firmer, healthier muscle and bringing back color and fullness to pale, thin faces when caused by simple anemia. In addition NUGA-TONE contains other valuable medicines. Start taking NUGA-TONE today and notice how your blood and nerves will be invigorated. Sold by all druggists at only One Dollar for a month's treatment, Money back if you are not satisfied.

For constipation take—UGA-SOL—The Ideal Laxative. 25¢ and 50¢.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated as "Nuga-Tone" possesses substantial therapeutic value in the treatment of nervous disorders.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false and misleading. In truth and in fact respondent's preparation "Nuga-Tone" does not possess any value in the treatment of nervous disorders. Moreover, said preparation is not a safe and harmless preparation in that it contains the drugs Corrosive Sublimate, Strychnine Sulphate, Arsenic Trioxide, Reduced Iron, Extract Gentian, Extract Cascara Sagrada, Extract Taraxacum and Zinc Phosphide in quantities sufficient to produce serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary and usual.

Such use of said preparation may result in chronic poisoning which may be recognized by renal irritations, nervous irritability, neuritis, psychoses, nutritional disturbances leading to cachexia, muscular atrophy, decalcification of the bones, and anemia.

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

PAR. 7. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements are true, and that the preparation designated as "Nuga-Tone" is a valuable medicine for the treatment of nervous disorders, and to induce directly or indirectly purchase by the public of the respondent's said preparation.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts, 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, National Proprietaries, Inc., a corporation, its agents, representatives, employees, and officers, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its medicinal preparation now designated as Nuga-Tone, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by 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 respondent's preparation Nuga-Tone possesses any therapeutic value in the treatment of nervous disorders or which advertisement fails to reveal that the use of said preparation may result in chronic poisoning, irritation of the kidneys, nervous irritability, neuritis, psychoses, cachexia, muscular atrophy, decalcification of the bones or anemia.

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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 Nuga-Tone, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fail to reveal that the use of said preparation may result in chronic poisoning, irritation of the kidneys, nervous irritability, neuritis, psychoses, cachexia, muscular atrophy, decalcification of the bones or anemia.

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

Syllabus

IN THE MATTER OF

**HARRY S. BENHAM, TRADING AS THE ZONE COMPANY,
ACTIVE MERCHANDISERS, ACTIVE MEDICINE, NU-
MODE COMPANY, AND AMERICAN MEDICINE COMPANY**

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

Docket 4352. Complaint, Oct. 17, 1940—Decision, Jan. 15, 1941

Where an individual engaged, under various trade names such as The Zone Co., American Medicine Co., and others, in interstate sale and distribution of various medicinal preparations, including certain products and devices for so-called feminine hygiene purposes, designated as Nu-Mode Vaginal Jelly (also known as A. M. Vaginal Jelly), Nu-Mode Hygiene Tablets, Vaginal Suppositories, Douche Tablets and Powders, Athlete's Foot Salve, Wonder Salve, and Womb Supporter; in advertisements of his said medicinal preparations and devices which he disseminated and caused to be disseminated through the mails and through various other means in commerce, and otherwise, and including advertisements in newspapers and periodicals, and circulars and other printed matter, and which were intended and likely to induce purchase of his said preparations and devices—

- (a) Represented, directly and through implication, that his products Nu-Mode Vaginal Jelly, A. M. Vaginal Jelly, Nu-Mode Hygiene Tablets, Vaginal Suppositories and Douche Tablets, and Speed Nu-Mode Hygiene Douche Tablets, were safe, competent and effective preventives against conception, and that use of such products was a dependable, positive, and guaranteed method of preventing pregnancy due to antiseptic and powerful germ-destroying properties thereof, and that such use prevented disease, insured health, and caused rapid destruction of bacteria, that said products were effective as prophylactics and healed delicate membranes and tissues in vaginal tract and formed competent and effective treatments for subnormal or unhealthy conditions of the uterus or vagina, and that they were prescribed by well known physicians or gynecologists, facts being said products did not form or constitute safe or competent preventives against conception and, while they might possess antiseptic properties, they were not powerful germicides and did not provide dependable, positive or guaranteed method of preventing pregnancy, said products were not effective prophylactics or preventives against disease and would not insure health, cause rapid destruction of bacteria or heal membranes or tissues of vaginal tract, and they were not competent and effective treatments for unhealthy conditions in uterus or vagina and were not prescribed or recommended by well known physicians and gynecologists;
- (b) Represented that said Supporter was comfortable, efficient and sanitary, supported the womb without irritation to vagina or any interference with any function or act of nature, and tended to relieve overworked muscles, giving nature a chance to heal and return womb to its proper position, and that said product was efficacious in treatment of mild sores, swollen or inflamed uterine parts and fissures, facts being use of said supporter, as advertised, disregards anatomical relationships and gynecological principles, and would