

Syllabus

IN THE MATTER OF

VICTORIA CHEMICAL COMPANY, SCHWARZ DRUGGIST,
INC., SCHWARZ DRUG COMPANY, SCHWARZ DRUG
STORES, INC., HIRAM SCHWARZ, INC., ET AL.

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

Docket 4403. Complaint, Dec. 6, 1940—Decision, Mar. 12, 1941

Where five corporations, with principal offices and places of business, as case might be, in Newark and Bloomfield, N. J., and White Plains, N. Y., and nine individuals, who were general officers of one or more of said corporations and formed their policies and directed and controlled their acts and practices, engaged in compounding, and in interstate sale and distribution of, their "Anti-Drink" drug-containing medicinal preparation, and cooperating in carrying out acts and practices below set forth; in advertisements which they disseminated and caused to be disseminated through the mails, in newspapers and periodicals, and through pamphlets, circulars, and other advertising matter, and by various other means in commerce and otherwise—

- (a) Represented, directly or by implication, that their said "Anti-Drink" preparation was a cure or remedy and competent and effective treatment for alcoholism and the liquor habit, through use of which desire for alcoholic stimulants was eradicated, and that such preparation was safe for use;

Facts being it was neither a cure or remedy nor competent or effective treatment for said condition or habit, and would not eradicate desire for said stimulants, and was not safe for use, by virtue of tartar emetic content in quantity sufficient to cause serious injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and thus used, might result in inflammatory disturbances of the stomach and intestinal tract, excessive depression of the cardio-vascular system and metabolic disturbances arising from the central nervous system; and

- (b) Failed to reveal facts material in the light of the representations contained in their said advertisements, and that use of their said product under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious injury to the stomach, intestinal tract, heart, and nervous system;

With the effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false advertisements were true, and of inducing such public to purchase substantial quantities of their said product as result of such belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Jesse D. Kash for the Commission.

Mr. Bertram S. Grand and *Mr. Michael Sokol*, of Newark, N. J., for respondents.

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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 Victoria Chemical Co., a corporation, Schwarz Druggists, Inc., a corporation, Schwarz Drug Co., a corporation, Schwarz Drug Stores, Inc., a corporation, Hiram Schwarz, Inc., a corporation, and Sarah Schwarz, Esther Schwarz, Joel J. Schwarz, Samuel Schwarz, Ira I. Schwarz, Sylvan Schwarz, Hiram Schwarz, Oscar Katz, and Jacob Eisen, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Victoria Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Schwarz Druggists, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 887 Broad Street, Newark, N. J.

Respondent, Schwarz Drug Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 565 Bloomfield Avenue, Bloomfield, N. J.

Respondent, Schwarz Drug Stores, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 457 Clinton Avenue, Newark, N. J.

Respondent, Hiram Schwarz, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 158 Main Street, White Plains, N. Y.

Respondent, Sarah Schwarz, is an individual and is president of the corporate respondent Victoria Chemical Co. Her principal office and place of business is located at 887 Broad Street, Newark, N. J.

Respondent, Esther Schwarz, is an individual and is secretary of the corporate respondent Victoria Chemical Co. Her principal office and place of business is located at 887 Broad Street, Newark, N. J.

Respondent, Joel J. Schwarz, is an individual and is treasurer of the corporate respondent Victoria Chemical Co., secretary of the corpo-

rate respondent Schwarz Druggists, Inc., and secretary of corporate respondent Hiram Schwarz, Inc., with his principal office and place of business located at 887 Broad Street, Newark, N. J.

Respondent, Samuel Schwarz, is an individual and is president of the corporate respondent Schwarz Druggists, Inc., vice president of the corporate respondent Schwarz Drug Co., vice president of the corporate respondent Schwarz Drug Stores, Inc., and president of the corporate respondent Hiram Schwarz, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Ira I. Schwarz, is an individual and is treasurer of corporate respondent Schwarz Druggists, Inc., president of the corporate respondent Schwarz Drug Co., secretary of the corporate respondent Schwarz Drug Stores, Inc., and vice president of the corporate respondent Hiram Schwarz, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Sylvan Schwarz, is an individual and is vice president of the corporate respondent Schwarz Druggists, Inc., secretary of the corporate respondent Schwarz Drug Co., and president of the corporate respondent Schwarz Drug Stores, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Hiram Schwarz, is an individual and is treasurer of the corporate respondent, Hiram Schwarz, Inc., with his principal office and place of business located at 158 Main Street, White Plains, N. Y.

Respondent, Oscar Katz, is an individual and is treasurer of the corporate respondent Schwarz Drug Co., with his principal office and place of business located at 565 Bloomfield Avenue, Bloomfield, N. J.

Respondent, Jacob Eisen, is an individual and is treasurer of the corporate respondent Schwarz Drug Stores, Inc., with his office and principal place of business located at 457 Clinton Avenue, Newark, N. J.

The individual respondents formulate the policies and direct, control, and dominate the acts and practices of the corporate respondents. All of the respondents have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of compounding, selling, and distributing a certain preparation containing drugs designated "Anti-Drink" and recommended by respondents for use as a treatment and cure for alcoholism and the liquor habit. Respondents cause their said preparation, when sold, to be transported from their aforesaid

places of business in the States of New York and New Jersey 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 said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated and have caused 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 have caused 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 the United States mails, by advertisements in newspapers and periodicals, and by pamphlets, circulars, and other advertising matter, are the following:

DRINK HABIT CAN BE STOPPED

Have you a loved one who drinks more than is good for him? If so, you can help him with Anti-Drink. This highly effective preparation makes liquor distasteful to the most habitual drinker. Anti-Drink may be obtained at any Schwarz Drug Store.

Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents have represented, directly or by implication, that their preparation Anti-Drink is a cure or remedy and a competent and effective treatment for alcoholism and the liquor habit; that by its use the desire for alcoholic stimulants is eradicated; that said preparation is safe for use.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation is not a cure or remedy nor a competent or effective treatment for alcoholism, or the liquor habit. The use of such product will not eradicate the desire for alcoholic stimulants.

Respondents' preparation is not safe for use, as it contains the drug tartar emetic in a quantity sufficient to cause serious injury to health

if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in inflammatory disturbances of the stomach and intestinal tract, excessive depression of the cardio-vascular system, and metabolic disturbances arising from the central nervous system.

PAR. 5. Further, the advertisements disseminated by respondents, as aforesaid, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in serious injury to the stomach, intestinal tract, heart, and nervous system.

PAR. 6. The use by the respondents of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true and to induce the purchasing public to purchase substantial quantities of respondents' product as a result of such belief.

PAR. 7. The aforesaid acts and practices of 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 the 6th day of December 1940, issued and served its complaint in this proceeding upon said respondents, Victoria Chemical Company, Schwarz Druggists, Inc., Schwarz Drug Co., Schwarz Drug Stores, Inc., Hiram Schwarz, Inc., corporations, and Sarah Schwarz, Esther Schwarz, Joel J. Schwarz, Samuel Schwarz, Ira I. Schwarz, Sylvan Schwarz, Hiram Schwarz, Oscar Katz, and Jacob Eisen, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 26, 1940 the respondents filed their 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 respondents through their attorneys, Bertram S. Grand and Michael Sokol, and W. T. Kelley, chief counsel of 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

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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 making its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without presentation of argument or the filing of briefs. Thereafter, this proceeding 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, Victoria Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Schwarz Druggists, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 887 Broad Street, Newark, N. J.

Respondent, Schwarz Drug Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 565 Bloomfield Avenue, Bloomfield, N. J.

Respondent, Schwarz Drug Stores, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 457 Clinton Avenue, Newark, N. J.

Respondent, Hiram Schwarz, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 158 Main Street, White Plains, N. Y.

Respondent, Sarah Schwarz, is an individual and is president of the corporate respondent Victoria Chemical Co. Her principal office and place of business is located at 887 Broad Street, Newark, N. J.

Respondent, Esther Schwarz, is an individual and is secretary of the corporate respondent Victoria Chemical Co. Her principal office and place of business is located at 887 Broad Street, Newark, N. J.

Respondent, Joel J. Schwarz, is an individual and is treasurer of the corporate respondent Victoria Chemical Co., secretary of the corporate

respondent Schwarz Druggists, Inc., and secretary of corporate respondent Hiram Schwarz, Inc., with his principal office and place of business located at 887 Broad Street, Newark, N. J.

Respondent, Samuel Schwarz, is an individual and is president of the corporate respondent Schwarz Druggists, Inc., vice president of the corporate respondent Schwarz Drug Co., vice president of the corporate respondent Schwarz Drug Stores, Inc., and president of the corporate respondent Hiram Schwarz, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Ira I. Schwarz, is an individual and is treasurer of corporate respondent Schwarz Druggists, Inc., president of the corporate respondent Schwarz Drug Co., secretary of the corporate respondent Schwarz Drug Stores, Inc., and vice president of the corporate respondent Hiram Schwarz, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Sylvan Schwarz, is an individual and is vice president of the corporate respondent Schwarz Druggists, Inc., secretary of the corporate respondent Schwarz Drug Co., and president of the corporate respondent Schwarz Drug Stores, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Hiram Schwarz, is an individual and is treasurer of the corporate respondent Hiram Schwarz, Inc., with his principal office and place of business located at 158 Main Street, White Plains, N. Y.

Respondent, Oscar Katz, is an individual and is treasurer of the corporate respondent Schwarz Drug Co., with his principal office and place of business located at 565 Bloomfield Avenue, Bloomfield, N. J.

Respondent, Jacob Eisen, is an individual and is treasurer of the corporate respondent Schwarz Drug Stores, Inc., with his office and principal place of business located at 457 Clinton Avenue, Newark, N. J.

The individual respondents formulate the policies and direct, control, and dominate the acts and practices of the corporate respondents. All of the respondents have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of compounding, selling, and distributing a certain preparation containing drugs designated "Anti-Drink" and recommended by respondents for use as a treatment and cure for alcoholism and the liquor habit. Respondents cause their said preparation, when sold, to be transported from their aforesaid

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places of business in the States of New York and New Jersey 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 said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated and have caused 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 have caused 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 the United States mails, by advertisements in newspapers and periodicals, and by pamphlets, circulars and other advertising matter, are the following:

DRINK HABIT CAN BE STOPPED

Have you a loved one who drinks more than is good for him? If so, you can help him with Anti-Drink. This highly effective preparation makes liquor distasteful to the most habitual drinker. Anti-Drink may be obtained at any Schwarz Drug Store.

Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents have represented, directly or by implication, that their preparation Anti-Drink is a cure or remedy and a competent and effective treatment for alcoholism and the liquor habit; that by its use the desire for alcoholic stimulants is eradicated; that said preparation is safe for use.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation is not a cure or remedy nor a competent or effective treatment for alcoholism, or the liquor habit. The use of such product will not eradicate the desire for alcoholic stimulants.

Respondents' preparation is not safe for use, as it contains the drug tartar emetic in a quantity sufficient to cause serious injury to

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health if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in inflammatory disturbances of the stomach and intestinal tract, excessive depression of the cardiovascular system, and metabolic disturbances arising from the central nervous system.

PAR. 5. Further, the advertisements disseminated by respondents, as aforesaid, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may result in serious injury to the stomach, intestinal tract, heart, and nervous system.

PAR. 6. The use by the respondents of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true and to induce the purchasing public to purchase substantial quantities of respondents' product as a result of such belief.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice 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, the answer of the respondents and a stipulation as to the facts entered into by Bertram S. Grand and Michael Sokol, attorneys for the respondents herein, Victoria Chemical Co., Schwarz Druggists, Inc., Schwarz Drug Co., Schwarz Drug Stores, Inc., Hiram Schwarz, Inc., corporations, and Sarah Schwarz, Esther Schwarz, Joel J. Schwarz, Samuel Schwarz, Ira I. Schwarz, Sylvan Schwarz, Hiram Schwarz, Oscar Katz, and Jacob Eisen, individuals, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceed-

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ing, and the Commission having made its findings as to the facts and conclusion that said respondents have violated provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Victoria Chemical Co., Schwarz Druggists, Inc., Schwarz Drug Co., Schwarz Drug Stores, Inc., Hiram Schwarz, Inc., corporations, their officers, representatives, agents, and employees, and Sarah Schwarz, Esther Schwarz, Joel J. Schwarz, Samuel Schwarz, Ira I. Schwarz, Sylvan Schwarz, Hiram Schwarz, Oscar Katz, and Jacob Eisen, individuals, their representatives, agents, and employees, directly or through any corporate device in connection with the offering for sale, sale, and distribution of their medicinal preparation designated "Anti-Drink" or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or names or under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through implication, that said preparation is a cure for or remedy or a competent or effective treatment for alcoholism or the liquor habit; that the use of said preparation will eradicate the desire for alcoholic stimulants; that said preparation is harmless, or may be safely used, or which fail to reveal that the use of such preparation may result in inflammation of the stomach and intestinal tract and disturbance of the heart and nervous system.

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 product, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of such preparation may result in inflammation of the stomach and intestinal tract and disturbance of the heart and nervous system.

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

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IN THE MATTER OF

J. H. CAMP, TRADING AS J. H. CAMP, AND DRUG
PROFITS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 446. Complaint, Jan. 14, 1941—Decision, Mar. 12, 1941*

Where an individual engaged in interstate sale and distribution of his "Phalene" and "Burtone" drug-containing preparations; by advertisements disseminated through the mails and through radio continuities—

- (a) Represented, directly and by implication, that said "Phalene" was a tonic for the liver and that its use would help remove poisons that cause premature aging, and that it was a competent and effective treatment for sick headache, nauseated stomach, loss of appetite, aching muscles and joints, indigestion, and acid conditions;

Facts being it was primarily an irritant laxative and was not a tonic for the liver, effect upon which would be limited to tending to increase secretion of bile; its action in removing poisons from the system was no greater than that of any ordinary laxative; and it had no value in preventing premature aging nor in the treatment of aforesaid ailments and conditions, in excess of affording temporary relief when such conditions were due to constipation; and

- (b) Represented, directly and by implication, that said "Burtone" was a competent and effective treatment for bilious attacks, stomach nausea, headaches, indigestion, stomach gas and weak, tired-out feeling, and that it would correct faulty habits of elimination, produce free organic action of the liver and lower bowel and free the body of toxic poisons;

Facts being, said preparation's therapeutic property was limited to that of a laxative and mild choleric, it had no therapeutic value in treatment of aforesaid ailments and conditions in excess of affording temporary relief when such conditions were due to constipation, and it would not correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body from toxic poisons;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading representations were true, and because of said belief, of inducing purchase by it of products aforesaid in substantial quantities:

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. Jesse D. Kash for the Commission.